



C.M.A.No.1213 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1213 of 2021
and
Civil Miscellaneous Petition No.6137 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Bharathipuram,
Salem Main Road, Dharmapuri. ... Appellant / Respondent

Vs.

1. Kadhar Bee
2. Nasimma
3. Kamrunisa
4. Esmayil
5. Khadar Basha ... Respondents / Petitioners

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 15.12.2020 made in M.C.O.P.No.766 of 2019 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellant : Mrs. P. Rajathi
For Mr. D. Raghu

For Respondents : Mr. S. Ramprabu
For Mr. S. P. Yuaraj



JUDGMENT

WEB COPY

This Civil Miscellaneous Appeal has been filed by the State Transport Corporation, challenging the quantum of compensation awarded in favour of the claimants, as per the award in M.C.O.P.No.766 of 2019, dated 15.12.2020, on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri, whereby, the Tribunal has awarded a sum of Rs.4,82,000/- as compensation along with interest at the rate of 7.5% per annum for the death of the deceased one Ibrahim.

2. The parties are referred to herein according to their status and ranking before the Tribunal.

3. The case of the claimants is that the first claimant is the wife and claimants No. 2 to 5 are the children of the deceased Ibrahim, Son of Mastan Saib. On 31.03.2019, the deceased Ibrahim was proceeded in his bi-cycle around 6.00 a.m., from Veppanapalli to Nachikuppam Road, while he reached near Yanaikal Thoddi River Bridge, in front of one Muniraj Beeda Stall, at that time, a bus belongs to the Transport Corporation, bearing Registration No.TN 29 N 2547, came in the opposite direction in a high speed and negligent manner, lost his control and dashed on the deceased bi-cycle thereby, caused severe injuries and subsequently, the



deceased was succumbed to the injuries. In this regard, a criminal case was registered in Crime No.100 of 2019, under Sections 279 and 337 of IPC, on the file of the Veppanapalli Police Station. At the time of accident, the deceased was aged about 75 years and was involved in Leather and Tannery work and also used to do other manual work and was earning a sum of Rs.15,000/- per month. Hence, the dependants of the deceased filed claim petition claiming compensation of Rs.15,00,000/- from the respondent.

4. The respondent/Transport Corporation filed counter and contented that the driver of the bus was not responsible for the accident and due to sudden negligent entry of the deceased in the road, the accident has occurred in the middle of the road. Hence, the driver of the bus is not responsible for the accident and the compensation claimed under various heads are also on the higher side hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants P.W.1 and P.W.2 were examined and Exs.P1 to P18 were marked. On the side of the respondents no oral and documentary evidence marked.

6. The Tribunal based on the evidence placed on record in Point Nos.1 and 2, has held that the driver of the bus has negligently driven the



same and caused the accident and that the Tribunal has also quantified the compensation and the claimants have entitled for total compensation for a sum of Rs.4,82,000/-.

7. Aggrieved over the quantum of compensation awarded by the Tribunal, the Transport Corporation has filed this present Civil Miscellaneous Appeal.

8. The learned counsel for the Appellant-Transport Corporation has submitted that the accident was not occurred due to the negligent act of the driver of the bus and at the time of accident, there was rig work taken place, due to which, there was smoke preventing visibility in the road, and suddenly, the cyclist i.e., the deceased entered in to the main road, which resulted in the accident and this was not properly considered by the Tribunal and the Tribunal has also applied multiplier wrongly, which is against the norms fixed by the Judgments of the Hon'ble Apex Court in ***Sarla varma and Ors v. Delhi Transport Corporation and Another [AIR 2009 SC 3104]***, and prays to modify the compensation awarded under various heads.

9. The learned counsel for the claimants submitted that the



notional income fixed by the Tribunal is on the lower side eventhough the claimants have not filed any appeal to challenge the quantum of compensation awarded, since the Transport Corporation has challenged the quantum of compensation, the notional income fixed by the Tribunal has to be modified and prays to enhance the compensation.

10. I have considered the rival submissions on both sides and also perused the entire records.

11. The Award of the Tribunal, it shows that before the Tribunal the claimants have examined P.W.2, who is the eyewitness to the occurrence and he has categorically stated that there was no rig work taken place at the time of accident and the deceased was riding his bi-cycle with due care and caution on the left hand side of the road, however, the bus was crossed the middle of the road and negligently hit on the cyclist after losing control. There is no contra evidence adduced on the side of the Transport Corporation to disprove the evidence of P.W.2, who is the eyewitness to the occurrence. Since, there is no contra evidence adduced, the Tribunal has rightly held that the evidence of P.W.2 is credible and the same is supporting the case of the claimants and the fact that the driver of the bus has



WEB COPY

negligently driven the same and caused the accident. This Court finds there is no infirmity in the finding of the Tribunal and the same is hereby confirmed.

12. With regard to the quantum of compensation is concerned, the age of the deceased is 80 years which has been mentioned in the Post-mortem Certificate. Eventhough, it was stated that the deceased was involved in Tannery business as well as various manual works and thereby, earning a sum of Rs.15,000/- per month and no documents to substantiate the same was produced before the Tribunal. Hence, the Tribunal, based on the evidence, fixed the notional income of the deceased as Rs.4,000/- per month and accordingly adopted multiplier of '7'. The multiplier '7' adopted by the Tribunal is not in accordance with the Judgment of the Hon'ble Apex Court in *Sarla varma and Ors v. Delhi Transport Corporation and Another [AIR 2009 SC 3104]*, and the proper multiplier of the deceased is '5'. It is urged by the learned counsel for the claimants that the notional income fixed as Rs.4,000/- is on the lower side.

13. The learned counsel has also relied on the Judgment of the Kerala High Court passed in *New India Assurance Co. Ltd., vs. Gopinathan K.K. and others* reported in *2023 (1) TN MAC 701 (Ker.)*,



WEB COPY

wherein, the Kerala High Court has accepted the case of the claimants and held that the deceased being 94 years old person eventhough, there is no evidence based on the un-controverted pleadings to fix the notional income as Rs.11,000/- whereas, in this case, there is no evidence placed on record regarding the income of the deceased. However, the age of the deceased is 80 years, who was died in the year 2019, a sum of Rs.4,000/- per month is fixed for the income of the deceased is on the lower side. Hence, I am inclined to modify the same as Rs.10,000/- per month would be appropriate. Accordingly, the notional income is modified as Rs.10,000/- by adopting multiplier of '5' the quantum of compensation granted under the head loss of income is modified to Rs.6,00,000/- [10000 x 12 x 5].

14. It is also contended by the learned counsel for the Transport Corporation that the claimants 2 to 5 are not the dependants of the deceased since there is a categorical evidence placed on record by cross examining P.W.1 that the other claimants have married and settled in other places and they are having independent income and that they are not the dependants of the deceased. The Aadhar Cards produced by the claimants 2 to 5 also shows that they were not residing along with the deceased and they were living separately hence, they could not be considered as the dependants of



the deceased. However, they lost their father which resulted in causing loss of love and affection hence, I am of the view that they are entitled for loss of consortium for a sum of Rs.40,000/- alone and they could not be considered as the dependants of the deceased to get share in the income of the deceased. Since the claimants 2 to 5 could not be considered as the dependants of the deceased, 1/3 deducted towards personal expenses of the deceased and Accordingly, a sum of Rs.4,00,000/- [10000 x 12 x 5 x 1/3] is granted under the head loss of income. The loss of income shall be awarded in favour of the first claimant alone. The other claimants are not entitled any share in the loss of income of the deceased. As far as the compensation awarded under other heads are concerned, the same are just and reasonable and this Court is of the view that there is no need for interference and the same is hereby confirmed.

15. Thus, the compensation awarded by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency / Loss of income	Rs.2,52,000/-	Rs.4,00,000/-	Enhanced



C.M.A.No.1213 of 2021

2.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of Consortium	Rs.2,00,000/-	Rs.2,00,000/-	Confirmed
	Total	Rs.4,82,000/-	Rs.6,30,000/-	Enhanced by Rs.1,48,000/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,82,000/- is hereby enhanced to Rs.6,30,000/- [Rupees Six Lakhs and Thirty Thousand only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The appellant-Transport Corporation is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.766 of 2019, on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. On such deposit, the first claimant is permitted to withdraw a sum of Rs.4,70,000/- and remaining a sum of Rs.1,60,000/- the claimants 2 to 5 are permitted to withdraw a sum of Rs.40,000/- each along with proportionate interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant without any formal application. In



C.M.A.No.1213 of 2021

other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

05.10.2023

ssi

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.
2. The Section Officer,



WEB COPY

V.R.Section,
High Court,
Chennai.



C.M.A.No.1213 of 2021

K.RAJASEKAR,J.

ssi



WEB COPY



C.M.A.No.1213 of 2021

C.M.A.No.1213 of 2021

05.10.2023