IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.792 of 2023

1.M.Veerappan

2.V.Kuralanban

3.V.Chilambarasan ... Appellants

Vs.

1.The General Manager,
Tamilnadu State Transport
Corporation (VPM- Dn-1) Ltd.,
Cuddalore Region,
Imperial Road, Cuddalore-2. ... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to allow the appeal and enhance the compensation in M.C.O.P.No.403 of 2021 dated 20.09.2022 on the file of the Motor Accident Claims Tribunal/ Principal District Judge, Cuddalore.

For Appellant : Mrs.Ramya V.Rao

For respondent : M/S.J.Tamilselvi

JUDGMENT

The appeal is filed against the judgment and decree dated 20.09.2022 made in M.C.O.P.No.403 of 2021 on the file of the Motor Accidents Claims Tribunal/ Principal District Judge, Cuddalore.

2. The appeal is filed by the claimants/appellants for enhancement of compensation. On 11.03.2021, when the deceased was travelling as a pillion rider, along with her husband, in Hero Honda Activa scooter, the Transport Corporation bus, which was driven by its driver in a rash and negligent manner came in opposite direction and dashed against the two wheeler. As a result, the deceased sustained fatal head injuries and died on the spot. According to the claimants, the accident occurred only due to the negligence of the driver of the Transport Corporation. According to the claimants, the deceased was aged about 46 years at the time of accident and was earning a sum of Rs.30,000/- per month as a Fashion Dressing Tailor. Therefore, the claimants filed the claim petition claiming a sum of Rs.50,00,000/- as compensation.

3. The respondent Transport Corporation filed the counter

denying all the averments made in the claim petition, apart from denying the negligence of its driver. According to the transport Corporation, the claim was exorbitant and untenable.

4. Before the Claims Tribunal, the first claimant, the husband of the deceased, examined himself as P.W.1 and also examined one other witness and marked Exs.P.1 to P.8. The Transport Corporation neither examined any witness nor marked any document.

5. The Tribunal on assessment of the entire evidence on record, returned a finding of negligence against the driver of the Transport Corporation and awarded a compensation of Rs.8,80,000/- along with interest at the rate of 8% per annum. Not satisfied with the award passed by the Claims Tribunal, the claimants have filed this Civil Miscellaneous Appeal for enhancement of compensation.

6. The learned counsel for the appellants submitted that the deceased was aged about 46 years and earning a sum of Rs.30,000/- as Fashion Dressing Tailor, therefore, the Tribunal erred in fixing notional income at Rs.6,000/- per month. The learned counsel further submitted

that the accident occurred in the year of 2021 and therefore, the assessment of notional income at Rs.6,000/- per month was very meagre.

7. The learned counsel for the appellants relied upon the judgment of the Division Bench of this Court in ***Andal vs. Avinav***, reported in 2019 (1) 10 TNMAC54DB and submitted that the procedure adopted by the Tribunal while assessing notional income of the deceased is erroneous.

8. The learned counsel further submitted that the Tribunal has erred in assessing parental consortium at Rs.30,000/-, overlooking the the judgment of the Supreme Court ***National Insurance Co. Ltd. vs. Pranay Sethi and others***, 2017 (2) TN MAC 609 (SC) : 2017 (16) SCC 680. According to the learned counsel, the second and third claimants were entitled to a sum of Rs.40,000/- each, towards loss of parental consortium.

9. The learned counsel for the respondent, on the other hand submitted that the assessment of the notional income by the Claims Tribunal could not be faulted because the second and third claimants who were the major sons of the deceased were not dependent on the

income of the deceased. The learned counsel for the respondents further submitted that the major sons were not entitled to file the claim petition as they were not dependent on the deceased. The learned counsel further submitted that the award of the Tribunal was fair, just and reasonable and hence there were no merits in the appeal.

10.I have heard both the learned counsels and I have perused the materials placed before me.

11. First, the objection of the learned counsel for the respondent that the second and third claimants, who are major sons, were not dependent on the income of the deceased and hence not entitled to compensation is taken up. In my view the said objection is unsustainable in the light of the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Birender and Others,*** reported in 2021 11 SCC 356**.** The Hon'ble Supreme Court held as follows:

> *"13...............The Compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate.*

Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondents 1 and 2 (Claimants) even though they are major sons of the deceased and also earning.

14.It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only. ....”

12. It is not disputed that the deceased was aged about 46 years at the time of accident and she was a Fashion Dressing Tailor. The Tribunal considering the age, avocation and the year of accident ought not to have assessed the notional income at Rs.6,000/- only.

13. The Hon'ble Division Bench of this Court in ***Andal vs. Avinav Kannan***, reported in 2019 (1) TN MAC 54DB laid down a procedure for assessing notional income. Following the Hon'ble Division Bench judgment, I am of the view that the income of the deceased can be assessed at Rs.18,750 per month (Income Rs.15,000 + Future Prospects:25% 3750 = Rs.18750/-). 1/3rd of the income of the deceased is deducted towards personal expenses of the deceased. Hence the loss of income is assessed at Rs.19,50,000/- (18,750 X 12 X 13 X 1/3 = Rs.19,50,000/-. The learned counsel for the appellant conceded that the second and third claimants, the major sons of the deceased, are entitled to loss of parental consortium of Rs.40,000/- each.

14. In view of the above discussions the award of the Tribunal is 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	7,80,000/-	19,50,000/-	Enhanced
2.	Parental Consortium	30,000/-	80,000/-	Enhanced
3.	Loss of Consortium	40,000/-	40,000/-	Confirmed
4.	Loss of Estate	15,000/-	15,000/-	Confirmed
5.	Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	**Rs.8,80,000/-**	**Rs.21,00,000/-**	**Rs.12,20,000/-**

15. It is submitted by the learned counsel for the respondent that Tribunal has awarded interest at the rate of 8% per annum. According to the learned counsel the interest awarded at 8% is on the higher side. I agree with the said submission of the learned counsel for the respondent and therefore the interest is fixed at 7.5% per annum. The claimants shall therefore be entitled to Rs.21 lakhs as compensation along with 7.5% interest. It is submitted by the learned counsel for the appellant that transport Corporation has not deposited any amount pursuant to the award of the Tribunal. Therefore, the transport Corporation is directed to deposit the enhanced amount of Rs.21,00,000/-, along with 7.5%

interest within a period of six weeks from the date of receipt of copy of this order. The appellants shall be entitled to withdraw the above said amount by making appropriate application before the Tribunal and as far as apportionment is concerned, the order of the Tribunal shall be followed. It is seen that the value of the appeal is restricted to Rs.8.00 lakhs and Court fee is paid for the said sum. The appellant is therefore directed to pay the difference in Court fee for the enhanced amount. The Registry shall draft the decree only after the payment of the deficit Court fee. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

31.03.2023

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Index : Yes/No
Neutral Citation : Yes/No

To:

1.The Motor Accidents Claims Tribunal
Principal District Judge, Cuddalore.

2.The Section Officer,
VR Section, High Court, Madras.

N.MALA, J.

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