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C.M.A. No. 3292 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3292 of 2021

Santhi (Died)

1. Sekar

2. Maragatham

... Appellants / Petitioners

Vs.

The Regional Manager
Tamil Nadu State Transport Corporation
Salem Limited,
Regional Office,
Dharmapuri.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 06.06.2020 made in M.C.O.P. No. 56 of 2017, on the file of the Additional Special Judge, Motor Accident Claims Tribunal, Krishnagiri.

For Appellants : Mr. C. Prabakaran

For Respondent : Mr. D. Nithin
(Standing Counsel for TNSTC Salem Ltd.,)



JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimants against the Judgment and decree dated 06.06.2020 made in M.C.O.P. No. 56 of 2017, on the file of the Additional Special Judge, Motor Accident Claims Tribunal, Krishnagiri, seeking enhancement of compensation.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. On 17.07.2010, the claimant namely Santhi was travelling in a bus bearing Registration No.TN-29-N-2052 belongs to the respondent – Transport Corporation from the Dharmapuri to Karimangalam. At about 1:15 AM, the bus reached Karimangalam stop, and while the claimant was de-boarding from the bus at the front foot board, the driver of the bus suddenly moved the bus in rash and negligently, and the claimant lost her balance, fell down from the bus. The left rear wheel of the bus ran over the right leg of the claimant thereby causing serious injuries. A criminal case was also registered against the driver of the bus in Cr.No.648 of 2010 U/s. 279, 337 of I.P.C. On the file of the Karimangalam Police Station. Due to



the injuries sustained, the claimant, filed a claim petition seeking compensation for a sum of Rs.15,00,000/- U/s.166 of Motor Vehicles Act.

During the pendency of the claim petition, the claimant was died on 28.10.2012, and the legal heirs of the deceased, were impleaded in the claim petition.

4. The respondent – Transport Corporation filed counter and disputed the manner in which the occurrence has taken place and contended that due to drowsiness, the first claimant Santhi has fell down from the bus while de-boarding, hence the driver of the bus was not responsible for the accident. The respondent – Transport corporation also disputed the age, occupation, income of the claimant and also contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

4. Based on the evidence placed on record, the Tribunal in point no.1, has held that negligence on the part of the driver of the bus is responsible for the accident. In point Nos.2 and 3, the Tribunal has only granted compensation under the head medical expenses for a sum of



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Rs.2,08,374.20 along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and directed the respondent – Transport Corporation to pay the compensation to the claimants.

5. Aggrieved over the compensation awarded by the Tribunal, the claimants, who are the legal heirs of the deceased Santhi have come forward with this appeal seeking compensation under various other heads.

6. The learned counsel for the claimants submitted that the first claimant Santhi, succumbed to injuries during the pendency of the claim petition before the Tribunal, however, the Tribunal treated the case as a injury case and restricted the compensation only to the medical expenses, hence the Tribunal has not granted a 'Just compensation' in terms of section 166 of the Motor Vehicles Act, hence prays to modify the award of the Tribunal.

7. The learned counsel appearing for the respondent – Transport Corporation has submitted that based on the evidence placed on record, the Tribunal has awarded a Just compensation and there is no evidence to treat



the case of the claim as fatal case, hence prays to confirm the same.

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8. Heard the submissions made on both sides and perused the materials available on record:

9. The Tribunal has awarded compensation only for the medical expenses, after observing that, the claim made is only for injury of the deceased. The Ex.P.2 – accident register and Ex.P.3- discharge summary shows that the first claimant Santhi has sustained grievous injuries and the rear side wheel of the bus ran over the right leg of the first claimant and she has undergone inpatient treatment from 22.07.2010 to 24.09.2010 in Ganga Hospital, Coimbatore. Prior to admission at Ganga Hospital, the claimant taken treatment on 19.07.2010 in Dharmapuri Government Medical College and Hospital. Hence, the claimant has undergone treatment nearly for two months. There is no evidence placed on record to show that, deceased was died due to the injuries sustained by her. The evidence of claimants also confined only to the injuries sustained by her and no evidence adduced or pleadings made to show the cause of death of the deceased herein. The Tribunal after taking note of the claimants evidence, has treated the claim as injury claim and same is proper and this Court finds no infirmity in it.



10. The Tribunal has not awarded loss of income of the deceased during her treatment period and the same is pecuniary loss to the claimants.

Accordingly, this Court is inclined to grant two months income as compensation under the head loss of income during treatment period. Therefore, Rs.14,000/- per month is fixed as notional income and loss of income during the treatment period is assessed as Rs.28,000/-. Considering the nature of injuries and period of treatment of the deceased Santhi, this Court is inclined to grant Rs.5,000/- towards transportation expenses, Rs.10,000/- towards attender charges and Rs.1,000/- towards damage to articles.

11. The other contention submitted by the learned counsel of the claimants is that the Tribunal has not properly granted compensation for the medical expenses incurred. The Tribunal has analysed each and every medical bills and given specific reasons for rejecting the bills and on perusal of Ex.P.12, medical bill, dated 13.11.2020, issued by Ganga Hospital, shows that the credit bill amount of Rs.3,56,720/- and the approved amount is Rs.2,00,000/-, credited amount is Rs.1,80,000/- and the balance amount paid by the patient is Rs.1,49,485/- and Concession given etc., hence the



Tribunal has rightly held that the credit bill amount of Rs.2,00,000/- has been received from the insurance company, and rejected the same. This Court finds no infirmity in that finding of the Tribunal, hence confirms the same.

12. Accordingly, the award passed by the Tribunal is hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Medical expenses	2,08,374.20	2,08,374.20	Confirmed
2.	Loss of income during treatment period	---	28,000/-	Granted
3.	Transportation expenses	---	5,000/-	Granted
4.	Attender charges	---	10,000/-	Granted
5.	Damage to articles	---	1,000/-	Granted
	Total Compensation	2,08,374.20	2,52,374.20 2,52,374/-	Enhanced

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,08,374.20 is hereby enhanced to **Rs.2,52,374/- [Rupees Two Lakh Fifty Two Thousand Three Hundred and Seventy Four only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of



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deposit, excluding the default period, if any. The respondent - Transport Corporation is directed to deposit the amount awarded 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.56 of 2017 on the file of the Additional Special Judge, Motor Accidents Claims Tribunal, Krishnagiri. On such deposit, the appellants/ claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

11.12.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

1. The Additional Special Judge,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.



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