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CMA.No.1840 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2023

PRONOUNCED ON : 21.07.2023

CORAM

**THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

C.M.A.No.1840 of 2021

1. A.Crazia Mary
2. A.Anthonimary
3. Minor A.Taicy
4. Minor A.Jenifer Shanthi Mary  
(Minors appellants represented by their guardian  
next friend mother first appellant A.Crazia Mary)

... Appellants

- Vs -

The Managing Director,  
Tamil Nadu State Transport Corporation  
(Villupuram) Ltd., Division - I,  
3/137, Salamedu, Vazhudha Reddy Post,  
Villupuram - 605 602.  
Respondent

...

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and decree dated 04.09.2018 made in M.C.O.P.No.3355 of 2013 on the file of the Motor Accident Claims Tribunal / (Principal District Judge at Cuddalore).

For Appellants : Ms. Ramya V Rao  
For Respondent : M/s. S.S.Santhosakumar



CMA.No.1840 of 2021

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## **JUDGMENT**

The instant appeal has been filed by the wife and three children of the deceased Anthoniraj @ Mani against the award passed in M.C.O.P.No.3355 of 2013 by the Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore, on 04.09.2018, awarding a sum of Rs.10,15,000/- as compensation.

2. For the sake of convenience, the parties are referred to as per their ranks mentioned in the petition.

3. According to the petitioners, on 30.10.2013 at about 10.25 Hours, when the deceased Anthoniraj @ Mani, proceeding in a motorcycle from North to South, on Panruti to Kumbakonam main Road, opposite to Vijayalakshmi Cashewnut Company, the respondent's Bus bearing Registration No.TN 32-N-3875 which came from the opposite direction in a rash and negligent manner, dashed against the deceased's motorcycle. As a result of the same, the deceased sustained fatal injuries and he later on, died in the hospital. The



CMA.No.1840 of 2021

accident occurred only due to the rash and negligent driving of the driver of the TNSTC bus. At the time of the accident, Anthoniraj @ Mani was aged about 45 years, and earning Rs.20,000/- per month from Cashewnut Export business and Agricultural work.

4. The respondent filed a counter statement denying the negligence on the part of the driver of the bus bearing Registration No. TN-32-N-3875. They further dispute that the age, avocation and dependency of the deceased. Therefore, they prayed for the dismissal of the petition.

5. Before the Tribunal, the first petitioner examined herself as PW1 and one Lawrence, who was the Eye witness examined as PW2 and one Manimaran, owner of M.M.Cashew's wholesale Business was examined as PW3, and marked 9 documents as Ex.P1 to Ex.P9. On the side of the respondent, neither the witness was examined nor the document was marked.

6. The Tribunal, based on the materials available on record and the evidence, has observed that the accident had occurred due to the negligent driving of the driver of the TNSTC bus and hence fixed the liability on the



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Transport Corporation and awarded a total compensation of Rs.10,15,000/- with interest at 8% per annum from the date of the petition. Feeling aggrieved with the quantum so awarded, the petitioners/claimants have preferred this appeal seeking enhancement of the same.

7. The learned counsel for the appellants would submit that the Tribunal has erred in awarding a meagre sum of Rs.10,15,000/- as against the claim of Rs.20,00,000/- made by the appellants / claimants. The learned counsel further submitted that when the deceased was earning Rs.20,000/- per month from Cashewnut Export business and Agricultural work, the Tribunal has erred in taking his income only at Rs.6,000/- per month is very meagre and contrary to the proof of income as shown in Ex.P8 and Ex.P9. It is also submitted that the amounts awarded towards other heads are also meagre and hence, the compensation awarded by the Tribunal needs interference at the hands of this Court by way of enhancement.

8. Per contra, the learned counsel for the respondent/Transport Corporation submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and



CMA.No.1840 of 2021

WEB COPY  
Court.

reasonable and hence, the same does not require any interference by this

9. I have given my anxious consideration to either side submissions.

10. In this case, the Tribunal after considering the evidence ultimately arrived at a conclusion that there was negligence on the part of the driver of the TNSTC Bus bearing Registration No.TN 32 N 3875. This portion of the finding is not under challenge before this Court. Therefore, the only point for consideration before this Court is only in respect of the just compensation.

11. With respect to the quantum of compensation, it is seen that the wife of the deceased was examined as P.W.1, who deposed in her evidence that the deceased was aged about 45 years and was earning Rs.20,000/- per month doing a Cashewnut Export business and Agricultural work. The trial Court has disbelieved the salary certificate and income certificate. At this juncture, the learned counsel for the appellant would invite the attention of this Court in respect of the award passed by the Division Bench in ***CMA.No.1635 of 2020 (Kumudha and others vs. the Managing Director, Puducherry Road***



CMA.No.1840 of 2021

WEB COPY

*Transport Corporation and others*) held on 09.02.2023, wherein the Division bench of this Court, observed that, even the non muster role employees were drawing salary between Rs.17,000 to Rs.18,000/-. Ultimately considering the vagaries of employment, for the accident of the year 2018, the Division Bench determined the notional income of Rs.15,000/-.

12. In *CMA.Nos.2210 & 2218 of 2021 (Kothandaraman and others vs. Rajasekar and others)* held on 13.06.2023 another Division Bench of this Court has determined the notional income of Rs.15,000/- for 2018 accident for the deceased, who was working as a Tailor cum Apalam maker. In our case, the accident took place in 2013. Therefore, taking cue from the above two Division Bench Judgments, notwithstanding the absence of proof towards income, this Court is of the view that a sum of Rs.8,000/- can be fixed as a notional income for an able bodied person who was aged about 45 years. Thus, this Court fixed the monthly notional income as Rs.8,000/-.



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13. In respect of the age of the deceased the Trial Court based upon the Ex.P3- Postmortem certificate and Ex.P4- Death certificate has rightly determined the age of the deceased as 45 years. Here, there is no serious dispute in respect of the age of the deceased. Thus, taking into consideration of the judgment of the Hon'ble Supreme Court, reported in **2017 (2) TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi & others)**, 25% to be added towards future prospects. The Tribunal has rightly taken the multiplier as '14', by following **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **2009 ACJ 1298 SC**. Here, considering 4 dependent family members, 1/4th of the monthly income is to be deducted towards the personal expenses of the deceased. Thus, the loss of dependency works out to Rs.12,60,000/-. Accordingly, the compensation towards loss of dependency is hereby enhanced to Rs.12,60,000/-.

14. That apart, the Tribunal has awarded a lump sum of Rs.70,000/- towards funeral expenses, loss of consortium, and loss of love and affection. In the opinion of this Court, the same is contrary to the judgment of the **Hon'ble Supreme Court in Pranay Sethi (cited supra)**. Thus, the same needs interference. Hence, towards loss of consortium to the first appellant a



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sum of Rs.40,000/- is awarded. Like wise for loss of love and affection towards appellants 2 to 4 a sum of Rs.1,20,000/- (40,000/-each to the appellants 2 to 4) . Towards funeral expenses Rs.15,000/- awarded. Further, the Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is hereby awarded under this head, in the given facts and circumstances of the case.

15. Eventually, the details of the modified compensation are as follows:

| <i>S.No</i> | <i>Various Heads</i>       | <i>Awarded by the Tribunal</i> | <i>Awarded by this Court</i> | <i>Award confirmed or enhanced or increased or reduced</i> |
|-------------|----------------------------|--------------------------------|------------------------------|------------------------------------------------------------|
| 1.          | Loss of dependency         | Rs.9,45,000/-                  | Rs.12,60,000/-               | Enhanced                                                   |
| 2.          | Loss of Consortium         | Rs.70,000/-                    | Rs.40,000/-                  | Enhanced                                                   |
| 3.          | Loss of love and affection |                                | Rs.1,20,000/-                | Enhanced                                                   |
| 4.          | Funeral Expenses           |                                | Rs.15,000/-                  | Enhanced                                                   |
| 5.          | Loss of Estate             | ---                            | Rs.15,000/-                  | Awarded                                                    |
|             | Total                      | Rs.10,15,000/-                 | Rs.14,50,000/-               | Enhanced                                                   |

16. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,15,000/-, is hereby enhanced to Rs.14,50,000/-. The respondent/ Transport Corporation is directed to deposit the modified amount of compensation, as ordered above, along with



CMA.No.1840 of 2021

WEB COPY

interest and costs, after deducting the amount if any, already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment.

On such deposit being made, the first appellant is entitled to withdraw a sum of Rs.5,50,000/- along with its accrued interest, the second appellant is entitled to withdraw a sum of Rs.3,00,000/- along with its accrued interest, less if any amount received. The minor appellants 3 & 4 are each entitled to a sum of Rs.3,00,000/- and their share shall be deposited in any one of the Nationalised bank as ordered by the Tribunal, till the minors attain majority. The interest accrued in respect of the minors, shall be withdrawn by the first appellant - mother once in three months directly from the bank, which shall be utilized for the benefit and welfare of the minors. It is made clear that the appellants/claimants have to pay the appropriate Court fee, before receiving the awarded amount. There is no order as to the cost of this appeal.

**21.07.2023**

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Index : yes/no

Speaking/Non Speaking Order



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CMA.No.1840 of 2021

**C.KUMARAPPAN.J**

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To

1. The Motor Accident Claims Tribunal,  
Principal District Judge, Cuddalore.
2. The Section Officer,  
V.R.Section, High Court,  
Madras.

**C.M.A.No.1840 of 2021**

21.07.2023