



C.M.A.No.59.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No.592 of 2022

1.Kuppammal

2.Achuthan

... Appellants

Vs.

The Managing Director
Tamil Nadu State Transport Corporation
Bharathipuram
Dharmapuri – 636 705.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 29.11.2018 made in M.C.O.P.No.11 of 2018 on the file of the Motor Accidents Claims Tribunal, Sub Court, Uthangarai.

For Appellants : Mr.J.Pradeep

For Respondent : Mr.D.Nitin



JUDGMENT

The appeal is filed by the appellants/claimants for enhancement of compensation granted by the Tribunal in the award dated 29.11.2018 made in M.C.O.P.No.11 of 2018 on the file of the Motor Accidents Claims Tribunal, Sub Court, Uthangarai.

2. The brief facts leading to the appeal are that, on 10.09.2017 at about 6.50 hours, while the deceased Sampathkumar was standing near Mittapalli bus stop on the extreme left side, mud portion of the road, the driver of the bus belonging to the Transport Corporation drove the same in a rash and negligent manner, suddenly turned the bus and dashed the deceased, causing him fatal injuries. According to the claimants, the deceased Sampathkumar was aged 42 years at the time of accident and was earning a sum of Rs.15,000/- per month by doing agricultural work and milk vending business. Therefore, the mother and brother of the deceased Sampathkumar filed the Claim Petition claiming a sum of Rs.30,00,000/- as compensation.

3. Before the Claims Tribunal, the respondent/Transport Corporation filed a detailed counter denying all the averments raised in the Claim Petition including negligence, liability and quantum of compensation.



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4. Before the Claims Tribunal, the mother of the deceased examined herself as P.W.1, the eye-witness was examined as P.W.2 and Exs.P1 to P13 were marked. On the side of the respondent, driver of the bus was examined as R.W.1 and no documentary evidence was marked.

5. The Claims Tribunal, on an assessment of entire evidence on record, returned a finding of negligence against the driver of the bus belonging to the Transport Corporation and assessed the compensation at Rs.6,04,160/- along with 9% interest. Not satisfied with the award passed by the Tribunal, the claimants have filed the present appeal seeking enhancement of compensation.

6. Learned counsel for the claimants submitted that the accident occurred in the year 2017 and the notional income assessed by the Tribunal at Rs.8,000/- per month was very much meagre. Learned counsel further submitted that the calculation of compensation towards loss of earning by the Tribunal was erroneous as, even if, the notional income is taken at Rs.8,000/- per month, the amount would be Rs.8,40,000/-, but the Tribunal arrived at Rs.5,24,160/-. The award of the Tribunal towards loss of love & affection and other heads was not in conformity with the judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others* reported in (2017) 16 SCC 680. On these grounds, the learned counsel prayed for enhancement of compensation.



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7. Learned counsel for the respondent admitted that calculation arrived at by the Tribunal towards loss of earning was erroneous. As far as income of the deceased was concerned, the counsel submitted that the assessment of notional income at Rs.8,000/- by the Tribunal, in the absence of any evidence in support of the income of the deceased, was just and reasonable. Learned counsel further submitted that the award passed by the Tribunal under other heads was fair and reasonable and did not call for any interference in the appeal.

8. I have heard the learned counsel for the appellants and the learned counsel for the respondent and perused the materials available on record.

9. The short point that arises in this appeal for consideration is whether the claimants are entitled for enhancement of compensation. According to the claimants, the deceased was aged 42 years at the time of accident and was earning a sum of Rs.15,000/- per month by doing agricultural work and milk vending business. In the absence of any evidence, in my view, the notional income arrived at by the Tribunal at Rs.8,000/- per month is just and reasonable. Learned counsel for the appellants is right in submitting that the calculation arrived at by the Tribunal towards loss of earning for the notional income at Rs.8,000/- is erroneous. If 25% is added towards future prospects i.e., Rs.2,000- ($\text{Rs.8,000/-} \times 25\%$), the income would be Rs.10,000/- ($\text{Rs.8,000/-} + 2000$). The deceased was a bachelor at the time of accident and after



deducting 50% towards personal expenses, the income would be Rs.5,000/-. Thus, the compensation towards loss of earning would be Rs.8,40,000/- (Rs.5,000/- X 12 X 14).

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10. Learned counsel for the appellants is justified in his submission that the award of the Tribunal under other heads calls for interference as they are not in conformity with the judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others* reported in (2017) 16 SCC 680.

11. In view of the above discussions, the award of the Tribunal is modified as follows:

<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Loss of earning	Rs.5,24,160/-	Rs.8,40,000/-
2.	Transportation charges	Rs.5,000/-	-
3.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
4.	Loss of consortium	Rs.40,000/-	-
5.	Loss of love & affection	Rs.20,000/-	Rs.80,000/- (Rs.40,000/- X 2)
6.	Loss of estate	-	Rs.15,000/-
Total Compensation		Rs.6,04,160/-	Rs.9,50,000/- enhanced compensation amount of Rs.3,45,840/-

The appellants are entitled to the total compensation of Rs.9,50,000/- along with interest at the rate of 9% per annum from the date of petition till the date of deposit.



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12. It is submitted by the learned counsel for the respondent that 50% of the amount awarded by the Tribunal along with accrued interest and costs was already deposited before the Tribunal. In view of the said submission, there shall be a direction to the respondent/Transport Corporation to deposit the balance compensation amount along with 9% interest, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants shall be entitled to withdraw the same, as per the apportionment fixed by the Tribunal, by filing proper application before the Tribunal.

13. The appeal is accordingly partly allowed. There shall be no order as to costs.

21.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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N.MALA.J.,

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To

1. The Subordinate Judge
The Motor Accidents Claims Tribunal
Uthangarai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

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