



C.M.A.No.1846 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:02.03.2023

Delivered on: 09.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.No.1846 of 2018

1.Ranjani

2.Mahali

... Appellants

Vs.

1.M.Senthil Kumar

2.The Managing Director
Tamil Nadu State Transport Corporation
Mettupalayam Road,
Coimbatore

... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988

seeking enhancement of compensation in the judgment and decree dated
27.04.2018 made in M.C.O.P.No.269 of 2014 on the file of the Motor
Accident Claims Tribunal/Sub Court at Sathyamangalam, Erode District.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mr.A.Sundaravadanan for R2
R1- Exparte

JUDGMENT



C.M.A.No.1846 of 2018

WEB COPY This present Civil Miscellaneous Appeal is at the instance of the claimants, aggrieved by the award passed by the Motor Accidents Claims Tribunal/Sub Court, Sathyamangalam in M.C.O.P.No.269 of 2014 in and by judgment and decree dated 27.04.2018, awarding a sum of Rs.7,82,000/- together with interest at 7.5% per annum.

2. The brief facts set out in the claim petition are as hereunder:

The appellants before this Court as appellants, wife and father of the deceased, one, Velusamy, S/o Mahali who died in a road accident on 04.06.2014 sought for compensation of Rs.20,00,000/-. The case of the claimants before the Tribunal was that late Velusamy was running a provision stores and was earning not less than Rs.20,000/- per month and that the 1st respondent/State Transport Corporation bus driven in a rash and negligent manner and that too at high speed and without using horn hit the deceased motor cycle resulting in grievous injuries and also died on the spot.

3. The 2nd respondent/State Transport Corporation filed a counter



C.M.A.No.1846 of 2018

denying the allegations of rash and negligent driving by the 2nd respondent's driver. In the said counter, it is also contended that the deceased was not earning Rs.20,000/- per month and only Rs.15,000/- ought to be taken towards notional income as per the II schedule of the Motor Vehicles Act. The insurance company also denied the compensation claimed under various heads and put the claimants to strict proof of such claims.

4. Before the Tribunal, the wife of the deceased was examined as P.W.1 and one Murugesan was examined as P.W.2. Exs.P.1 to P.16 were marked on the side of the claimants. On the side of the respondents no oral and documentary evidence was let in.

5. The Tribunal after considering the oral and documentary evidence available on record, awarded a sum of Rs.7,82,000/-, with each of the claimants being entitled to 50%, being wife and father of the deceased.

6. Aggrieved by the said award the claimants as appellants are before



C.M.A.No.1846 of 2018

this Court.

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7. The main grounds of challenge to the award are that the income of the deceased fixed by the Tribunal at Rs.8,000/- is very low and erroneous and that future prospects have not been taken into account at all, considering the deceased was only aged 41 years. It is also contended that the Tribunal has not awarded any amount towards transport to hospital. On these grounds, the judgment and decree of the Tribunal was sought to be modified.

8. Learned counsel appearing for the parties have made their rival submissions and in so far as applying the multiplier of 14, both the learned counsel fairly conceded that even though there was a discrepancy with regard to the age of the deceased, a multiplier of 14 was rightly adopted.

9. In so far as deduction towards personal expenses, as rightly contended by the learned counsel for the appellants, admittedly the number of dependants being two i.e., wife and father of the deceased, $1/3^{\text{rd}}$ should have



C.M.A.No.1846 of 2018

been deducted towards personal expenses of the deceased. However, this Court finds that the Tribunal has deducted $\frac{1}{2}$ which is clearly erroneous and not in line with the ratio laid down by the Hon'ble Supreme Court in number of cases, which have been repeatedly followed by this Hon'ble Court as well.

10. In so far as the income of the deceased, this Court finds that the Tribunal has fixed the notional income at Rs.8,000/- per month, even though it is the specific case of the claimants that the deceased was earning not less than Rs.20,000/- per month. Admittedly, the accident was in the year 2014. The Hon'ble Supreme Court in ***M.Shiva Kumar vs. The Managing Director, BMTC***, reported in ***2017(1) TNMAC 598 (SC)*** held, while deciding the income of a painter whose income was stated to be Rs.15,000/- to Rs.16,500/- per month, fixed a sum of Rs.15,000/- per month. In the case on hand, the deceased was running a provision stores. The claimants have also produced Exs.P.12,13,15 and 16 to establish the income of the deceased. Considering the oral and documentary evidence available on record, this Court fixes the monthly income of the deceased at Rs.12,000/- per month. It



C.M.A.No.1846 of 2018

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is also noted that the Tribunal has not factored future prospects. Considering the age of the deceased and applying the principles laid down by the Hon'ble Supreme Court in *Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another*, reported in *(2009) 6 SCC 121* and *National Insurance Company Limited Vs. Pranay Sethi and others* reported in *(2017) 16 SCC 680*, 25% is fixed as the percentage to be factored for future prospects.

11. With regard to the argument of the learned counsel for the appellant that no amount was awarded under the head transportation, this Court does not find any justifiable reason for awarding any amount under this head because admittedly it was a case of a fatal accident.

12. This Court does not find any necessity for interference with regard to the findings of the Tribunal in respect of compensation awarded under various other heads. The award of the Tribunal is modified in the manner following:



C.M.A.No.1846 of 2018

WEB COPY

Notional income fixed at Rs.12,000/- and 25% towards future prospects. Therefore, the notional income would be Rs.12,000+3,000=Rs.15,000/-. Since the deceased was aged 41 years old, multiplier of 14 is adopted. Therefore, the amount under the head of loss of pecuniary benefits would be Rs.15,000X12X14=25,20,000/-, out of which, 1/3 has to be deducted towards personal expenses of the deceased, which would amount to a sum of Rs.8,40,000/-. Therefore, the net amount due under the head of Loss of pecuniary benefits would be Rs.25,20,000-8,40,000= Rs.16,80,000/-.

Loss of pecuniary benefits	Rs.16,80,000/-
Loss of consortium	Rs.80,000/-
Funeral Expenses	Rs.15,000/-
Loss of belongings	Rs.15,000/-

Total compensation amount	Rs.17,90,000/-

In the result, the Civil Miscellaneous Appeal is partly allowed as



C.M.A.No.1846 of 2018

follows:
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(i) The award of the Tribunal is enhanced to Rs.17,90,000/- from Rs.7,82,000/-;

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit;

(iii) In view of the above modified enhanced award amount, the respondents are directed to deposit the award amount with proportionate interest and costs, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order;

(iv) On such deposit, the petitioners/claimants are permitted to withdraw the amount awarded, by filing proper application before the Tribunal, less the amount if any already withdrawn, with accrued interest. The wife is entitled to 70% and the father of the deceased would be entitled



C.M.A.No.1846 of 2018

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to the remaining 30%. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application. No costs.

09.03.2023.

Internet:Yes
Index:Yes/No
Speaking order
Neutral Citation:Yes/No
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To

1. The Judge
Motor Accidents Claims Tribunal/
Sub Court at Sathyamangalam, Erode District

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



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C.M.A.No.1846 of 2018

P.B.BALAJI, J.,
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Pre-delivery judgment in
C.M.A.No.1846 of 2018

09.03.2023