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C.M.A. No.2182 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.2182 of 2018

1. Kanniappan
2. K.Moorthy
3. K.Kumar
4. K.Murugan
5. S.Lakshmi

... Appellants

Vs.

The Managing Director
State Express Transport Corporation
Pallavan Salai, Chennai - 600 002

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1989, against the judgment and decree dated 26.08.2016 made in MACT O.P. No.1949 of 2012 on the file of the the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai,

For Appellants : Mr.K.Suryanarayanan

For Respondent : Mr.P.M.Vijayakumar



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J U D G M E N T

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 26.08.2016 made in MACT O.P. No.1949 of 2012, on the file of the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai.

2. The appellants are the claimants. The respondent is the owner of the offending bus bearing Regn. No.TN-01-N-9444.

3. The case of the claimants is that on 23.03.2012, at about 13.40 hours, the deceased Pattammal was traveling as a pillion in the motorcycle bearing Regn. No.TN-02-aR-9811, ridden by her son Kumar on the G.S.T. Road, Thailavaram Junction, Guduvancherry P.S. Limit, from East to West. At that time, a State Transport Corporation Bus bearing Regn. No.TN-01-N-9444, which was proceeding in the same direction and driven by its driver in a rash and negligent manner and at a high speed, hit against a Tata Indica Car which was going in front of the bus and in turn, the Tata Indica Car hit against the motorcycle of the deceased due to which, the deceased Pattammal and her son Kumar were thrown out as a result, the deceased Pattammal sustained fatal injuries and died in the hospital after 10 from the date of



accident and her son Kumar sustained grievous injuries.

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4. The claimants who are the husband, sons and daughter of the deceased Pattammal, filed a claim petition in MACT O.P. No.1949 of 2012 on the file of the III Judge, Small Causes Court (Motor Accident Claims Tribunal) at Chennai, seeking compensation of Rs.6,00,000/- for the death of the deceased Pattammal.

5. The son of the deceased Pattammal namely K.Kumar, who sustained grievous injuries in the said accident, filed a separate claim petition in MCOP No.2108 of 2012. Since both the petitions were arising out of the very same accident, the Tribunal heard both the petitions together and delivered a common judgment.

6. On the side of the claimants, 2 witnesses were examined as P.W.1 and P.W.2 and 14 documents were marked as Ex.P.1 to Ex.P.14. On the side of the respondent, one witness was examined as R.W.1 and no documentary evidence was let in.

7. The Tribunal, after hearing the arguments on either side and



considering the materials, awarded compensation of Rs.6,10,300/- to the claimants in MACT O.P. No.1949 of 2012 for the death of the deceased Pattammal with interest at 7.5% per annum from the date of numbering the petition till deposit.

8. Challenging the Award passed by the Tribunal, the claimants therein have filed the present appeal for enhancement of compensation.

9. The learned counsel for the appellants submitted that the liability of the respondent is not in dispute. At the time of accident, the deceased was aged 55 years and was working as a Helper in Muthuth Finance and earning Rs.6,000/- per month but the Tribunal failed to appreciate the same and fixed only Rs.3,000/- as notional income of the deceased which is on the lower side. Further, the Tribunal has awarded only Rs.25,000/- each towards 'loss of love and affection' which is also on the very lower side. The Tribunal ought to have awarded Rs.40,000/- each. Hence, he prays for enhancement.

10. The learned counsel for the respondent/Transport Corporation submitted that the Award passed by the Tribunal is a 'just compensation and



there is no necessity for enhancement of compensation. Hence, the appeal may be dismissed.

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11. Heard the learned counsel for the appellants and the learned counsel for the respondent and perused the materials available on record.

12. The appeal is filed by the claimants against the quantum of compensation awarded by the Tribunal. The age of the deceased is not in dispute. As per the post mortem report, at the time of accident, the age of the deceased was 55 years. The respondent/Transport Corporation not denied the liability and also not filed appeal against the award passed by the Tribunal.

13. Though in the claim petition, the employment of the deceased is mentioned as Helper in Muthuth Finance and her monthly income is mentioned as Rs.6,000/-, no material was let in to prove the same. Therefore, the Tribunal fixed Rs.3,000/- as the notional income of the deceased. However, a working woman in the age group of 55 years, normally would have earned more than Rs.3,000/- per month in the year 2012. However, there is no material to show the employment and income of the deceased. Therefore, in the absence of any material, this Court fix the notional income of



the deceased as Rs.4,500/- instead of Rs.3,000/- per month. Eventhough there are 5 claimants, as per the Principles laid down in Sarala Verma, 1/4th is deducted towards personal expenses and the multiplier '11' is adopted. Accordingly, the pecuniary loss is calculated as Rs.4,45,500/- (Rs.3,375/- x12x11). Since the deceased was aged 55 years, no future prospects would be added.

14. As far as consortium is concerned, the Tribunal has awarded Rs.50,000/- and this Court reduces the same as Rs.40,000/-.

15. As far as love and affection is concerned, the Tribunal has awarded Rs.25,000/- each to the claimants 2 to 5. The same is enhanced at Rs.50,000/- each. Accordingly, Rs.2,00,000/- is awarded to the claimants 2 to 5 towards "loss of love and affection".

16. Though the Tribunal has awarded Rs.25,000/- towards pain and sufferings, since it is a fatal case, the compensation under the said head would not arise. Hence, the compensation of Rs.25,000/- awarded by the Tribunal under the head of "pain and sufferings" is set aside.



17. Accordingly, the Award passed by the Tribunal is re-worked

as tabulated below;

S. No.	Particulars	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced or set aside
1.	Pecuniary loss	Rs.2,97,000/-	Rs.4,45,500/-	Enhanced
2.	Loss of consortium to 1st petitioner	Rs.50,000/-	Rs.40,000/-	Reduced
3.	Loss of Love and Affection to the 1st petitioner	Rs.75,000/-	---	Set aside
4	Loss of Love and affection to claimants 2 to 5	Rs.1,00,000/- (Rs.25,000/- each)	Rs.2,00,000/- (Rs.50,000/- each)	Enhanced
5	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
6	Transport Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
7	Medical Expenses	Rs.38,300/-	Rs.38,300/-	Confirmed
8	Pain and Sufferings	Rs.25,000/-	--	Set Aside
	Total	Rs.6,10,300/-	Rs.7,48,800/-	Enhanced



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18. The award passed by the Tribunal is modified by enhancing the compensation amount from Rs.6,10,300/- to Rs.7,48,800/-.

19. The respondent is directed to deposit the enhanced award amount of Rs.7,48,800/- to the credit of in MACT O.P. No.1949 of 2012 on the file of the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai, with cost and interest at 7.5% per annum from the date of numbering the petition i.e. 25.04.2012 till deposit as awarded by the Tribunal, less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment.

20. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimants, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

21. The appellants/claimants are directed to pay necessary Court



fee, if any, on the enhanced compensation amount.

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22. In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs in the present appeal.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate Court), Krishnagiri.

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



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P.VELMURUGAN. J.

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