IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM:

THE HONOURABLE Mr. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2679 of 2021

1.Nirmala
2.Minor Abhi
3.Minor Ashwini
4.Minor Aparna
5.Minor Kesavan
6.Manivannan
(Minor Appellants 2 to 5 are represented
by their Mother Nirmala as natural guardian
and next friend) ... Appellants / Claimants

Vs.

The Managing Director
Tamilnadu State Transport Corporation Limited
Salamedu
Valathareddy Post
Villupuram District. ... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside and to enhance the award against the Judgment and decree dated 13.12.2019 and made in M.A.C.T.O.P.No.1789 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

For Appellants	:	Ms.M.Malar
For Respondent	:	Mr.T.Chandrasekaran

JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellants/claimants, seeking enhancement of compensation awarded in M.A.C.T.O.P.No.1789 of 2017 dated 13.12.2019 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

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

3.It is the case of the claimants that on 25.06.2017, when the deceased – Chandrasekar was riding his two wheeler bearing Registration No.TN-09-AW-5386 and proceeding towards Tiruvannamalai in the Kallakurichi-Tiruvannamalai Road, near Meyyur Koot Road at around 10.00 am., a bus bearing Registration No.TN-32-N-2943 belonging to the respondent Corporation, came in the opposite direction in a rash and negligent manner, hit against the deceased, and due to which, the deceased died on the spot. The appellants/claimants are depending on the income of the deceased. After his death, they are left with no-one to take care of them and they find it very difficult to make both ends meet. Therefore, claiming compensation of Rs.50 Lakhs, the appellants/claimants laid the Claim Petition before the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai (hereinafter referred to as 'the Tribunal').

4.Before the Tribunal, on the side of the claimants P.Ws.1 to 4 were examined and Exs.P-1 to P-7 were marked and on the side of the respondent, R.Ws.1 and 2 were examined and no documents were marked.

5.The Tribunal, based upon the facts, materials and evidence has arrived at the said sums as compensation with the following breakup details:

Head	***Rs.***
Loss of income	15,12,000/-
Loss of love and affection (1st claimant)	40,000/-
Loss of love and affection (claimants 2,3,4 and 5)	80,000/- (each 20,000/-)
Loss of estate	15,000/-
Funeral expenses	15,000/-
Total	16,62,000/-

6.Aggrieved over the quantum of compensation fixed by the Tribunal, the claimants have approached this Court seeking enhancement of compensation.

7.The only point arose for consideration in this Appeal is that the applicable income for the deceased, who worked in the flower market.

8.The learned counsel appearing for the appellants/claimants would submit that in this case, the claimants have examined the employer of the deceased as P.W.4 and he has deposed that he is running a flower shop at Jothi flower market, Tiruvannamalai and the deceased was working under him for nearly 10 years in making garlands and thereby the deceased was earning a sum of Rs.1000/- per day. The said evidence was not accepted by the Tribunal without any reasons and hence, he prays to fix the notional income of the deceased as per the evidence adduced on the side of the claimants.

9.Per contra, the learned counsel appearing for the respondent – Transport Corporation submitted that the flower vending business is only a seasonal business and that too the deceased herein was worked for a limited period in a flower market and there is no documentary proof that he earns nearly Rs.1000/- per day by making garlands. Hence, he prays to confirm the notional income fixed by the Tribunal.

10.I have considered the rival submissions made on both sides and also perused the entire records.

11.On a perusal of the records, it shows that the evidence of P.W.4 that he is running a flower shop at Tiruvannamalai and he used to buy flowers from the neighboring farmers and sell it by converting it into garlands. As rightly pointed out by the learned counsel for the respondent Transport Corporation, selling of flowers is only a seasonal business and the deceased was employed only in the seasonal work. Hence, it could not be held that he was earning Rs.30,000/- per month by involving himself in making garlands for the flower shop. Similarly there is no evidence to substantiate the evidence of P.W.4 that he has paid a sum of Rs.1000/- per day to the deceased herein. The Hon'ble Supreme Court in ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TN MAC 459*** has fixed the monthly income at Rs.6,500/- for a vegetable vendor. Further, a reading of the Judgment of this Court in ***Andal and others Vs. Avinav Kannan*** reported in ***2019(1) TNMAC 54(DB)*** shows that the Division Bench of this Court has taken into consideration the notional income fixed by the Hon'ble Supreme Court of India for the Vegetable vendor at Rs.6,500/- during the year 2007-2008, multiplied the same by the Cost of Inflation Index for the year 2013-2014 and divided by Cost of Inflation Index for the year 2007-2008, paid the total income of deceased therein.

12.By following the above said Judgments, it would be appropriate for the present case on hand to fix the notional income as Rs.6500/-. The Inflation Index for the year 2017-2018 is 272. Thus,

Rs.6500/- x 272

-------------------- = Rs.13,705/-

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13.It is evident from Ex.P.4 – Death Certificate, that the deceased Chandrasekar @ Sekar was aged about 35 years at the time of accident. The Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay***

Sethi and others reported in ***2017 ACJ 2700***, has concluded that if the deceased was self employed, an addition at 40% of the established income should be the warrant, where the deceased was below the age of 40 years. Applying the above decision of the Honourable Apex Court, 40 % of the income is only to be added towards future prospects and it comes to Rs.19,187/- per month. (Rs.13705/- + 40%)

14.The Tribunal, taking note of the number of the claimants, has rightly deducted 1/4th of the income towards personal and living expenses of the deceased and after such deduction, the monthly income would come to Rs.14,390/- (19,187 - 4797).

15.As per the decision of the Hon'ble Supreme Court in ***Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104***, the appropriate multiplier would be '16'. Hence, the loss of dependency would be Rs.27,62,880/- (Rs.14,390 x 12 x 16).

16. Honourable Apex Court in ***National Insurance Company Limited***

vs. Pranay Sethi and others cited supra**,** has permitted to award Rs.40,000/- towards spousal consortium. Subsequently Honourable Supreme Court in ***Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others*** reported in ***(2018) 18 SCC 130***, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. Honourable Supreme Court interpreted consortium to be a compendious term, which encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, Honourable Apex Court in the ***New India Assurance Company Ltd. Vs. Smt.Somwati and others*** reported in ***(2020) 9 SCC 644***, has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in ***Pranay Sethi's case***. But, at the same time, they have specifically observed that no amount should be awarded under separate head of loss of consortium.

17.Considering the above, the claimants being the wife, children and son of the deceased are certainly entitled to get Rs.40,000/- each towards loss of Consortium.

18.The compensation awarded under heads of loss of estate and funeral expenses are retained and not disturbed. Thus, considering the above, this Court decides that the claimants are entitled to get compensation under the following heads:

Head of compensation	***Amount awarded by the Tribunal in Rs.***	***Amount awarded by this Court in Rs.***	***Award confirmed / enhanced / granted / reduced***
Loss of income	15,12,000/-	27,62,880/-	enhanced
Loss of Consortium (1st claimant)	40,000/-	40,000/-	confirmed
Loss of love and affection modified as Loss of Consortium (claimants 2,3,4 and 5)	80,000/- (each 20,000/-)	1,60,000/- (each 40,000/-)	enhanced
Loss of estate	15,000/-	15,000/-	confirmed
Funeral expenses	15,000/-	15,000/-	Confirmed
Total	16,62,000/-	29,92,880/-	enhanced

19.In the result, this Civil Miscellaneous Appeal is partly allowed on the following terms:-

(i) The compensation awarded by the Tribunal at Rs.16,62,000/- is hereby enhanced to Rs.29,92,880/- [Rupees Twenty Nine Lakhs Ninety Two Thousand Eight Hundred and Eighty only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit.

(ii) The respondent Transport Corporation is directed to deposit the award amount, now determined 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.1789 of 2017, on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tiruvannamalai.

(iii) The apportionment of shares made by the Tribunal is hereby confirmed.

(iv) The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants without any formal application, along with proportionate interest and costs, less the amount, if any, already withdrawn.

(v) As far as the share of the minors, if they not yet attained majority, it has to be deposited in any of the nationalised Bank, in a fixed deposit scheme and it has to be renewed periodically, until the minors attain majority. It they already attained majority, the compensation amount shall be disbursed as mentioned in clause (iv).

(vi) Since this Court has enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation.

(vii) In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

12.12.2023

Index : Yes / No
Speaking Order / Non-Speaking Order
Neutral citation : Yes / No
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K.RAJASEKAR, J.,

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To
1. The Managing Director
Tamilnadu State Transport Corporation Limited
Salamedu
Valathareddy Post
Villupuram District.
2. The Section Officer, V.R.Section,
Madras High Court, Chennai

C.M.A.No.2679 of 2021

12.12.2023