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C.M.A. No.1120 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1120 of 2022

1.Sundari

2.R.Ajithkumar

3.R.Ranjithkumar

4.Radhakrishnan

5.Pongothai

..

Appellants

Vs.

The Managing Director,
Tamilnadu State Transport Corpn.,
(Vpm - Divn. I) Ltd.,
Villupuram 605 401.

..

Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P. No.2478 of 2018 Dt.19.02.2021 on the file of the Motor Accident Claims Tribunal (1st Additional District & Sessions Judge, Cuddalore).



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For Appellants : Ms.Ramya V.Rao

For Respondent : M/s.S.S.Santhoshakoman

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 19.02.20210, made in M.C.O.P. No.2478 of 2018 on the file of the Motor Accident Claims Tribunal (1st Additional District & Sessions Judge, Cuddalore).

2.The appellants filed M.C.O.P. No.2478 of 2018 on the file of the Motor Accident Claims Tribunal (1st Additional District & Sessions Judge, Cuddalore) claiming a sum of Rs.40,00,000/- as compensation for the death of one Ramachandran, who died in the accident that took place on 20.02.2018.



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3. According to the appellants, on the date of accident, when the deceased Ramachandran was proceeding as a pillion rider of the TVS XL Super moped bearing Regn. no.TN32 D 1372 driven by its rider from South to North, the bus belonging to the respondent / Transport Corporation which was coming from East to West driven by its driver in a rash and negligent manner, dashed against the TVS XL Moped and caused the accident. In the said accident, the said Ramachandran died in the hospital.

4. The respondent filed counter statement and denied all the averments made by the appellants in the claim petition. According to the respondent, the accident occurred only due to the negligent act of the rider of the motorcycle who suddenly crossed the road from South to North, without noticing the upcoming bus and invited the accident. The respondent also denied the age, occupation and monthly income of the deceased. The total compensation claimed by the appellants are excessive and prayed for dismissal of the claim petition.



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5. The 1st appellant examined herself as PW1, examined the eye witness, the rider of the motorcycle as PW2 and marked seven documents Exs.P.1 to Exs.P.7. The driver of the respondent bus was examined as RW1 and xerox copy of the final report was marked as Ex.R1 .

6. The Tribunal after considering the evidence and documents filed on the side of the appellants as well as respondent, awarded a compensation of Rs.15,27,500/- to the appellants. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

7. The learned counsel appearing for the appellants submitted that the amount of compensation awarded by the Tribunal is meagre. At the time of accident, the deceased was running a tailoring shop. The Tribunal had taken the notional income of the deceased as Rs.7,500/- per month for the accident which took place in the year 2018. The learned counsel further submitted that as per the Judgment of this Court in *Andal and others vs. Avinan*



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Kannan and another reported in 2019 (1) TN MAC 54 (DB), by calculating the cost inflation index, the notional income has to be more than Rs.13,500/-.

The learned counsel further submitted that the Tribunal has awarded a sum of Rs.10,000/- each towards loss of love and affection to the appellants, totalling to Rs.50,000/-. The appellants are each entitled to a sum of Rs.40,000/- under the said head. That apart, the Tribunal has awarded only Rs.10,000/- towards funeral expenses and did not award any amount under the head loss of estate. For the above reasons, the learned counsel prayed for enhancement of compensation.

8. The learned counsel for the respondent per contra submitted that the appellants have not produced any proof to show that the deceased was running a tailoring shop. In such circumstances, the notional income fixed by the Tribunal cannot be faulted. The compensation awarded under the other heads are also just and reasonable and hence no interference is called for in the award passed by the Tribunal.



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WEB COPY 9. Heard the learned counsel appearing for the appellants as well as respondent and perused the materials available on record.

10. The only issue involved in this appeal is whether the amount of compensation awarded by the Tribunal is just and reasonable.

11. This court finds that the appellants had examined PW1, the wife of the deceased to show that the deceased was working as a tailor by running a tailoring shop. However, the appellants have not produced any document to establish the income of the deceased. The accident is of the year 2018. Considering the fact that the respondent has not denied the fact that the deceased was a tailor, the fact that the accident is of the year 2018 and considering the cost inflation index for the said year, this court is of the view that it would be just and reasonable to fix the notional income of the deceased at Rs.12,000/- per month. The deceased was aged 38 years at the time of accident and therefore, the appellants are entitled to increase of 40% towards



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future prospects. The multiplier applicable is 15. Since there are five dependents of the deceased, 1/4th has to be deducted towards personal expenses. Thus, the compensation awarded by the Tribunal under the head loss of income is modified as follows -

$$\text{Rs.12,000} + 4800 (12000 \times 40\%) \times 12 \times 15 \times 3/4 = \text{Rs.22,68,000/-}$$

12. The Tribunal has awarded a sum of Rs.40,000/- as compensation under the head loss of consortium to the first appellant, the wife of the deceased. However, the Tribunal has awarded only a sum of Rs.50,000/- to the appellants under the head loss of love and affection. The appellants 2 to 5 are entitled to a sum of Rs.40,000/- each under the said head. The 1st appellant, wife of the deceased is entitled to compensation only under the head loss of consortium and she is not entitled to compensation under the head loss of love and affection. Thus, the compensation awarded by the Tribunal under the head loss of love and affection is enhanced from Rs.50,000/- to Rs.1,60,000/-. Further, it is seen that the Tribunal had awarded Rs.10,000/- towards funeral expenses which is meagre and hence enhanced to Rs.15,000/- as per the judgment of the Hon'ble Supreme Court



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reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs.**

Pranay Sethi and others]. The Tribunal has not awarded any amount towards loss of estate and hence a sum of Rs.15,000/- is awarded under the said head. The compensation awarded under the head transportation is just and reasonable and hence the same is confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.15,27,500/- to Rs.25,08,000/-, break-up as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	14,17,500/-	22,68,000/-	Enhanced
2.	Loss of consortium	40,000/-	40,000/-	Confirmed
3.	Loss of love & affection to appellants 2 to 5	50,000/-	1,60,000/-	Enhanced
4.	Transport expenses	10,000/-	10,000/-	Confirmed
5.	Funeral expenses	10,000/-	15,000/-	Enhanced
6.	Loss of Estate	-	15,000/-	Granted
	Total	15,27,500/-	25,08,000/-	Enhanced by Rs.9,80,500/-



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13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,27,500/- is hereby enhanced to Rs.25,08,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The respondent / Transport Corporation is directed to deposit the enhanced award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight (8) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants are permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn, on the basis of apportionment fixed by the Tribunal. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

24.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

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SUNDER MOHAN, J

rgr

To

The Motor Accident Claims Tribunal
1st Additional District & Sessions Judge,
Cuddalore.

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Dated: 24.07.2023

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