



WEB COPY

C.M.A.No.122



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1228 of 2023

1.Malliga

2.Bhavani

3.Vinothkanna

... Appellants

Vs.

The Managing Director
Tamil Nadu State Transport Corporation Ltd.
No.3/137, Salamedu
Vazhuthareddy post
Villupuram – 606 208.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 30.09.2022 made in M.C.O.P.No.1525 of 2021 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I to deal with MCOP cases, Small Causes Court, Chennai.

For Appellants : Mr.Amar Dineshbhai Pandiya

For Respondent : Mr.M.Murali Vinodh



JUDGMENT

WEB COPY

The appeal is filed by the appellants/claimants for enhancement of compensation granted by the Tribunal in the award dated 30.09.2022 made in M.C.O.P.No.1525 of 2021 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I to deal with MCOP cases, Small Causes Court, Chennai.

2. The brief facts leading to the appeal are that, on 08.03.2021 at about 2.30 hours, while the deceased Elumalai was travelling as passenger in the respondent Transport Corporation bus bearing Registration No.TN-32-N-3758 on Chennai to Tindivanam GST Road, near Thozhupedu bus stop, the driver of the bus drove the same in a rash and negligent manner and applied the brakes suddenly due to which, the deceased fell down from the bus, sustained fatal injuries and died on the spot. According to the appellants/claimants, the deceased Elumalai was aged 52 years at the time of accident and as a mason, was earning a sum of Rs.20,000/- per month. Therefore, the widow and children of the deceased Elumalai filed the Claim Petition seeking Rs.30,00,000/- as compensation, for his death in the accident.

3. The respondent/Transport Corporation contested the Claim Petition by filing counter, wherein the negligence, liability and quantum of compensation were denied.



WEB COPY

4. Before the Claims Tribunal, in support of their claim, the 1st appellant/1st claimant, wife of the deceased, examined herself as P.W.1, the eye-witness was examined as P.W.2 and Exs.P1 to P20 were marked. The respondent examined the driver of the bus as R.W.1, but did not file any document.

5. The Claims Tribunal, on an assessment of the entire evidence on record, returned a finding of negligence against the driver of the bus belonging to the respondent/Transport Corporation and assessed the compensation at Rs.13,60,000/- along with 7.5% interest. Not satisfied with the quantum of compensation awarded by the Claims Tribunal, the appellants/claimants have filed the above appeal for enhancement of compensation.

6. Learned counsel for the appellants submitted that the income claimed by the appellants was Rs.20,000/- per month, whereas the Tribunal fixed notional income of the deceased at Rs.12,500/- per month, which is very much meagre. The learned counsel further submitted that considering the age of the deceased and year of accident, the notional income deserved to be increased. On these grounds, the learned counsel prayed for enhancement of compensation.

7. Learned counsel appearing for the respondent/Transport Corporation on the other hand submitted that award of the Tribunal was fair, just and reasonable and did not call for any interference in the appeal.



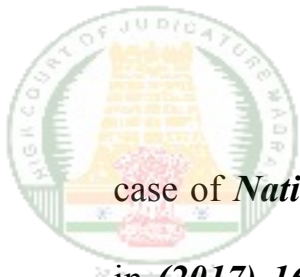
8. I have heard the learned counsel for the appellants and the learned counsel for the respondent and perused the materials available on record.

WEB COPY

9. According to the appellants/claimants, the accident occurred in the year 2021, the deceased was aged 52 years at the time of accident and was mason by profession. Though the appellants/claimants have claimed income at Rs.20,000/- per month, there is absolutely no evidence in support of their claim. The Tribunal in the absence of any evidence with regard to income, assessed the notional income of the deceased at Rs.12,500/- per month. In my view, the notional income fixed at Rs.12,500/- per month is very much meagre. Considering the cost escalation for the year 2021 and also considering that the deceased was maintaining a family of four members including himself, I am of the view that the notional income can be fixed at Rs.15,000/- per month. The Tribunal has rightly added 10% towards future prospects, applied multiplier '11' and deducted 1/3rd towards personal expenses of the deceased. If 10% is added towards future prospects (Rs.15,000/- X 10/100), the income would be Rs.16,500/- (Rs.15,000/- + 1,500) and if 1/3rd is deducted towards personal expenses of the deceased, it comes to Rs.11,000/- (Rs.16,500/- - 5500). Thus, the compensation towards loss of dependency is arrived at Rs.14,52,000/- (Rs.11,000/- X 12 X 11).

10. Learned counsel for the appellants fairly submits that the award towards

other heads are 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*. Therefore, the award of the Tribunal under other heads are confirmed.

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 dependency	Rs.12,10,000/-	Rs.14,52,000/-
2.	Loss of consortium	Rs.1,20,000/-	Rs.1,20,000/-
3.	Loss of estate	Rs.15,000/-	Rs.15,000/-
4.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
Total Compensation		Rs.13,60,000/-	Rs.16,02,000/- enhanced amount Rs.2,42,000/-

The appellants/claimants are entitled to the total compensation of Rs.16,02,000/- along with interest at the rate of 7.5% per annum (excluding the interest for the delay period, if any) from the date of petition till the date of deposit.

12. The respondent/Transport Corporation has not deposited any amount till date. Therefore, there shall be a direction to the respondent/Transport Corporation to deposit the enhanced compensation of Rs.16,02,000/- along with 7.5% interest and costs, less the amount 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



WEB COPY

appellants/claimants shall be entitled to withdraw the same as per the apportionment made by the Tribunal, less the amount if any, already withdrawn, by making proper application before the Claims Tribunal.

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

14.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

kj

To

1.The Special Subordinate Judge – I
(to deal with MCOP cases)
Motor Accidents Claims Tribunal
Small Causes Court, Chennai.

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



WEB COPY



C.M.A.No.122,

N.MALA.J.,

kj

C.M.A.No.1228 of 2023

14.06.2023