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C.M.A.No.1239



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1239 of 2022

1.R.Santhiraj
2.S.Vaijayanthi
3.S.Geethanjali
4.S.Gowri

... Appellants

Vs.

Managing Director
Tamil Nadu State Transport Corporation Ltd.
(Salem) No.12
Ramakrishna Road
Salem-636 007.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 01.07.2021 made in M.C.O.P.No.300 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellants : Mr.C.Kulanthaivel

For Respondent : Mr.D.Nitin

JUDGMENT

The appeal is filed by the appellants/claimants for enhancement of compensation granted by the Tribunal in the award dated 01.07.2021 made in



M.C.O.P.No.300 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

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2. The brief facts leading to the appeal are that, on 16.10.2017 at about 2.45 p.m., while the deceased Kalaivani was travelling as a pillion rider in a Honda Activa motor cycle, which was driven by her husband in five roads, opposite to Rathna complex, Salem, the driver of the bus bearing Registration No.TN 30 N 0231 belonging to the respondent/Transport Corporation, drove the same in a rash and negligent manner, hit the motor cycle driven by the husband of the deceased from behind, due to which, the deceased Kalaivani fell down and sustained fatal injuries. According to the appellants/claimants, the deceased Kalaivani was aged 42 years at the time of accident and she was a home maker and was earning a sum of Rs.15,000/- per month by doing tailoring work. Therefore, the husband and unmarried daughters of the deceased Kalaivani filed Claim Petition claiming a sum of Rs.25,00,000/- as compensation.

3. Before the Claims Tribunal, the respondent/Transport Corporation filed a counter denying all the averments raised in the Claim Petition including negligence, liability and quantum of compensation.



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4. Before the Claims Tribunal, in support of their claim, the 1st appellant/1st claimant, husband of the deceased examined himself as P.W.1, other two witnesses were examined as P.W.2 & P.W.3 and Exs.P1 to P15 were marked. On the side of the respondent, driver of the bus was examined as R.W.1 and Ex.R1 was marked. Two documents were marked as Exs.C1 & C2.

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 awarded a sum of Rs.7,97,000/- as compensation along with 7.5% interest. Not satisfied with the quantum of compensation awarded by the Claims Tribunal, the appellants/claimants have filed the present appeal for enhancement of compensation.

6. Learned counsel for the appellants submitted that assessment of notional income by the Tribunal at Rs.6,000/- per month was erroneous and unsustainable. The deceased Kalaivani was a home maker and was a tailor by profession. She had contributed a monthly income of Rs.15,000/- to her family and due to her death, her family suffered loss of income. Learned counsel further submitted that the Tribunal failed to award any sum towards future prospects. Even the deduction towards personal expenses at 1/3rd was unsustainable. On these grounds, the learned counsel prayed for enhancement of compensation.



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7. Learned counsel for the respondent/Transport Corporation on the other hand submitted that the 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 records.

9. The short point that arises in this appeal is whether the appellants/claimants are entitled for enhancement of compensation. It is not disputed that the deceased Kalaivani was aged 42 years at the time of accident and was a home maker. According to the claimants, the deceased was a tailor by profession and was earning a sum of Rs.15,000/- per month. The Tribunal in the absence of any evidence with regard to income of the deceased, fixed the notional income at Rs.6,000/- per month. No doubt, there is no proof in support of the income of the deceased. In any event, the deceased was a home maker and her value to her family cannot be undermined. The contribution of the home maker is invaluable and therefore, in my view the assessment of notional income at Rs.6,000/- by the Tribunal does not reflect the true value of the home maker and hence, I am of the view that a sum of Rs.10,000/- can be fixed as notional income of the deceased. The Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others* reported

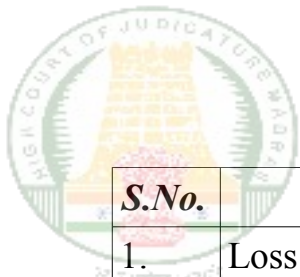


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in (2017) 16 SCC 680, 25% is to be added towards future prospects. If 25% is added towards future prospects i.e. Rs.2,500/- (Rs.10,000/- X 25/100), the income would be Rs.12,500/- (Rs.10,000/- + 2500). There are four dependants of the deceased and the Tribunal erred in deducting 1/3rd instead of 1/4th towards personal expenses. If 1/4th is deducted towards personal expenses of the deceased, it comes to Rs.9,375/- (12500 - 3125). The Tribunal was right in applying multiplier '14'. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.15,75,000/- (Rs.9,375/- X 12 X 14).

10. Learned counsel for the appellants is justified in his contention that the 1st appellant, husband of the deceased is entitled to Rs.40,000/- towards loss of consortium and the appellants 2 to 4, unmarried daughters of the deceased are entitled to Rs.40,000/- each towards loss of love and affection. The Tribunal awarded a sum of Rs.25,000/- towards funeral expenses and did not award any sum towards loss of estate. Therefore, the appellants are entitled to Rs.15,000/- each towards funeral expenses and loss of estate.

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.6,72,000/-	Rs.15,75,000/-
2.	Loss of consortium to the 1 st appellant	Rs.20,000/-	Rs.40,000/-
3.	Loss of love & affection (Appellants 2 to 4)	Rs.80,000/-	Rs.1,20,000/- (Rs.40,000/- X 3)
4.	Funeral expenses	Rs.25,000/-	Rs.15,000/-
5.	Loss of estate	-	Rs.15,000/-
Total Compensation		Rs.7,97,000/-	Rs.17,65,000/- enhanced amount Rs.9,68,000/-

The appellants are entitled to the total compensation of Rs.17,65,000/- along with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

12. It is submitted by the learned counsel for the respondent/Transport Corporation that the entire amount awarded by the Tribunal along with accrued interest and costs was already deposited before the Tribunal. In view of the said submissions, there shall be a direction to the respondent/Transport Corporation to deposit the balance enhanced compensation of Rs.9,68,000/- along with 7.5% interest, less the amount already 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 appellants/claimants shall be entitled to withdraw the same, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn, by making proper application before the Claims Tribunal.



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13. It is submitted by the learned counsel for the appellants that appeal was restricted to Rs.1,00,000/-. Therefore, the appellants are directed to pay the deficit Court fee for the balance enhanced amount. The Registry is directed not to draft the decree till the additional Court fee is received.

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

15.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

1. The Special District Judge
The Motor Accidents Claims Tribunal
Salem.

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



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N.MALA.J.,

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