



CMA.No. 1256 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No. 1256 of 2022

M. Lakshmi

...Appellant

Versus

The Managing Director
Tamilnadu Government Transport Corporation
No.12, Ramakrishna Road,
Salem Town, Salem.

.... Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 21.02.2022 in MCOP.No.1420 of 2016 on the file of the Motor Accidents Claims Tribunal/Additional District Judge, Namakkal.

For Appellant : Mr. R. Nalliyappan
For Respondent : Mr.D.Nitin



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JUDGMENT

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The appeal is filed by the claimant seeking enhancement of compensation.

2. According to the claimant, on 30.12.2015, while the deceased was crossing the main road, the State Transport Corporation bus bearing Registration No. TN-30-N-0459 belonging to the respondent, driven by its driver in a rash and negligent manner hit against the deceased causing him fatal injuries.

3. According to the claimant, the deceased was aged about 32 years at the time of accident and was earning a sum of Rs.15,000/- per month as an agriculturist. Therefore, the mother of the deceased filed the claim petition claiming a sum of Rs.25,00,000/- as compensation.

4. Before the Claims Tribunal, the claim petition was contested by the respondent Transport Corporation. A detailed counter affidavit was filed denying all the averments made in the claim petition apart from disputing the negligence, liability and quantum of compensation.



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5. Before the Claims Tribunal, the appellant examined herself as PW1 and one other witness was examined as PW2. Ex.P1 to Ex.P12 were marked in support of the claim. On the side of the respondent/Transport Corporation, the driver of the Transport Corporation bus was examined as RW1 and no documentary evidence was filed.

6. The Claims Tribunal, on an assessment of the entire evidence on record held that the deceased contributed to the accident and apportioned the negligence of the deceased at 20%. The Tribunal assessed the compensation at Rs.11,23,200/- at 7.5% interest and after deducting 20% towards the contributory negligence of the deceased fixed the “loss of dependency” at Rs.8,98,560/-. After awarding the amounts under the conventional heads, the Tribunal arrived at a total compensation of Rs.9,75,560/- along with 7.5% interest. Not satisfied with the award passed by the Claims Tribunal, the claimant has filed the above appeal for enhancement of compensation.

7. The learned counsel for the claimant submitted that the assessment of the income by the Claims Tribunal was erroneous and that



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the notional income arrived at by the Claims Tribunal was unsustainable.

The learned counsel further submitted that the finding of the Tribunal on negligence, that the deceased contributed to the accident was also unsustainable.

8. The learned counsel for the respondent, on the other hand, submitted that the award of the Tribunal was just, fair and reasonable and did not call for any interference in the appeal.

9. I have heard both the learned counsels and perused the materials available on record.

10. It is seen that the Transport Corporation has examined the driver, namely, Sundaraj as RW1. The driver deposed that the deceased suddenly crossed the road near the median and so he could not avoid the accident. According to the driver of the transport corporation bus, the accident occurred only due to the deceased's own negligence in crossing the road suddenly.



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11. In the light of the evidence of RW1, I am of the view that the finding of the Tribunal towards “contributory negligence” of the deceased cannot be found fault with. Considering that the deceased was only a pedestrian the contributory negligence is reduced to 10% instead of 20% fixed by the tribunal.

12. It is seen that the deceased was aged about 32 years at the time of accident and he was working as an agriculturist. As the accident occurred in the year 2015, considering the cost escalation for 2015, I am of the view that the income of the deceased can be fixed at Rs.12,000/- per month. 40% of the income is added towards “future prospects” and 50% of the income is deducted towards the “personal expenses” of the deceased. The multiplier 16, appropriate to the age of the deceased is adopted. Hence, the “loss of dependency” is arrived at Rs.16,12,800/-. Rs.15,000/- each is awarded towards “funeral expenses” and “loss of estate”. The claimant shall be entitled to Rs.40,000/- towards loss of consortium. Rs.7,000/- awarded towards 10% increase for every three years is set aside. The claimant shall be entitled to Rs.16,82,800/- as compensation. This Court has found that the deceased contributed to the



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accident which is apportioned at 10%. Therefore, 10% of the compensation amount awarded is deducted towards the contributory negligence of the deceased. Therefore, the total compensation is fixed at Rs.15,14,520/- along with 7.5% interest.

13. In view of the above discussions, the Award of the Tribunal is modified as under:-

S.No	Various Heads	Award of the Tribunal	Award of this Court
1.	Loss of dependency	Rs.8,98,560	Rs.16,12,800
2.	Loss of Consortium	Rs.40,000	Rs.40,000
3.	Loss of Love and Affection	Rs.15,000	Rs.15,000
4.	Funeral Expenses	Rs.15,000	Rs.15,000
5.	Percentage basis in every three years Rs.70,000x10%	Rs.7,000	---
	Total	Rs.9,75,560	Rs.16,82,800
6.	10% deduction towards contributory negligence		Rs.1,68,280
			Rs.15,14,520

Loss of Dependency:
= Rs.12,000 + Rs.4,800 [40% future prospects]
= Rs.16,800 – Rs.8,400 [50% personal expenses]
= Rs.8,400 x 12 x 16
= Rs.16,12,800.



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14. The learned counsel for the respondent/Transport Corporation submitted that the entire award amount has already been deposited before the Tribunal.

15. In view of the above submission, there shall be a direction to the respondent/Transport Corporation to deposit the balance enhanced compensation amount of Rs.5,38,960/- along with 7.5% interest within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant shall be entitled to withdraw the same by making appropriate application before the Tribunal.

16. Accordingly, the Civil Miscellaneous Appeal is partly allowed.
There shall be no order as to costs.

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
MSM



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To
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1. The Additional District Judge, Namakkal,
Motor Accidents Claims Tribunal.
2. The Section Officer, V.R. Section,
High Court of Madras, Chennai-600 104.



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N. MALA, J

msm

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