IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2023

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THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.1922 of 2021

1.Shajahan

2.S. Shahitha ...Appellants

Vs

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram Divn-I) Ltd.,
No.3/137, Salamedu, Vazhuthareddy Post,
Villuputam – 605 602. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles, Act, 1988 to allow the appeal and enhance the compensation in M.C.O.P.No.3395 of 2015 dated 11.12.2020 on the file of the Motor Accidents Claims Tribunal/ first Additional District and Sessions Judge, Cuddalore and pass orders.

For Appellants : Mr.Ramya V. Rao

For Respondent : Mr.T.Chandrasekaran

JUDGEMENT

This Civil Miscellaneous Appeal has been filed against the award dated 11.12.2020 made in M.C.O.P.No.3395 of 2015 on the file of the Motor Accidents Claims Tribunal/ first Additional District and Sessions Judge, Cuddalore.

2. An application has been filed under Section 166(1) of Motor Vehicles Act before the Tribunal by the parents of one Shahinsha who died in the Motor Accident that had taken place on 31.07.2015, for a claim of Rs.50,00,000/- towards the death of their son.

3. The learned Tribunal after perusing all the case records oral and documents evidence available on record passed an award for a sum of Rs.13,45,200/- with interest at the rate of 7.5% per annum from the date of petition till the date of payment. To enhance the quantum of compensation

the Appellants-Claimants has come out with this appeal.

4. Mrs.Ramya Rao, the learned counsel appearing for the appellant/claimants would vehemently argue that in order to prove the salary details of the deceased Shahinsha, Ex.P.5/Food Production Course Completion certificate, Ex.P.6/Certificate of appreciation of deceased, Ex.P.9/Working Experience Certificate from Hotel Accord, Pondicherry ,Ex.P.11/pay slip of the deceased issued by Hotel, The Park, Chennai, Ex.P.12/ Pay slip of the deceased issued by ITC Hotel, Chennai have been marked, but, the Tribunal has fixed the income of the deceased only at Rs.9,000/- per month which is insufficient. The learned counsel would also further contend that the compensation awarded under the heads of loss of love and affection and transport expenses are also very meager and hence, she prays for enhancement of compensation.

5. Per Contra, Mr.T. Chandrasekaran, the learned counsel appearing

for the respondent/State Transport Corporation would argue that though the above said documents have been marked, no person connected to the said documents were examined in order to prove the same. Hence, the learned Tribunal had rightly fixed the notional income of the deceased at Rs.9,000/- per month which is quite reasonable as he was a trainee at the relevant point of time. It is his arguments that the Tribunal after fixing the monthly income of the deceased at Rs.9,000/- per month added future prospects at 40% computed income as Rs.12,600/- and proper deduction was also made towards Personal and living expenses of the deceased at 50% and the total annual income arrived by the Tribunal at Rs.75,600/- is quite reasonable and needs no interference. As regards the other heads also the Tribunal has awarded a reasonable amount, which also needs no interference.

6. Heard the arguments of learned counsels for both sides and perused the materials available on record.

7. There is no dispute as to the manner in which the accident has

taken place. This appeal is preferred for enhancement of the compensation as mentioned supra. Regarding the facts of the case, it appears that on the fateful day i.e on 31.07.2015 at about 16:50 hours while the deceased was travelling in a motor vehicle bearing Registration No. TN-31-F-4342 towards Guindy at a moderate speed along the left side of the road near National School, the respondent bus bearing Registration No.TN-32-N-3873 came from behind at a great speed in a rash and negligent manner and dashed against the deceased motor cycle and ran over his head and the said Shahinsha succumbed to the injuries.

8. It is the case of the appellants/claimants that the deceased was aged about 26 years at the time of accident and he was working in I.T.C.Grand Chola Hotel, Chennai and earning a sum of Rs.15,000/- per month. With regard to income of the deceased, Ex.P.5/Food Production Course Completion certificate, Ex.P.6/Certificate of appreciation of deceased, Ex.P.7/Training Certificate of deceased Shahinsha issued by Taj Madras Flight Kitchen Pvt. Ltd., Ex.P.8/ Training Certificate of deceased Shahinsha issued by Taj Madras , Ex.P.9/Working Experience Certificate from Hotel

Accord, Pondicherry ,Ex.P.11/pay slip of the deceased issued by Hotel, The Park, Chennai, Ex.P.12/ Pay slip of the deceased issued by ITC Hotel have been marked.

9. Though more number of documents have been marked in order to substantiate as to the income of the deceased no witness was examined on the side of the appellants to prove the said details. It appears that the deceased had completed the Food Production Course. The passport of the deceased was also filed and marked as Ex.P.13 and it was stated that he intended to go abroad to work.

10. Therefore, relying upon the said documents and considering the age of the deceased, his monthly income is fixed at Rs.10,000/- per month. The Hon'ble Supreme Court in ***National Insurance Company Ltd Vs Pranaisethi and others reported in 2017(5) Ctc 56***1 has standardized the details of future prospectus with regard to the persons who are below 40 years, 40% to be added. As the deceased was a bachelor, in respect of the

deductions for the personal expenses to be made, the Hon'ble Supreme Court of India has standardized the details in the case of ***Sarla Verma and others Vs Delhi Transport corporation and another reported in 2009(2) TNMAC 1 (Sc)***, in the case of the deceased who happens to be a bachelor 50% deduction to be made towards personal and living expenses of the deceased. Therefore, based on the aforesaid observations the loss of dependency is worked out as follows:

Monthly income of the deceased	- Rs.10,000/-
40% is added toward future prospectus(Rs.10,000/-x40/100)	- Rs.14,000/-
Deduct: 50% of the monthly income as personal expenses	- Rs.7,000/-
Annual Income(Rs.7,000/-x12)	- Rs.84,000/-
Proper multiplier to be applied is 17.Loss of income(Rs.84,000/- x 17)	- Rs.14,28,000/-

11. It is very pathetic to know that the appellants/claimants who have lost their son, was aged about 26 yeas at the relevant point of time . It also appears that he is the only son of their parents namely the appellants/claimants. The Hon'ble Supreme Court in ***National Insurance Company Ltd Vs Pranay Sethi and others reported in 2017(5) CTC 561*** in paragraph No. 54, held as follows:

> *As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs.25,000/- towards Funeral Expenses Rs.1,00,000/- Los of Consortium and Rs.1,00,000/- towards loss of care and Guidance for Minor Children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The Conventional and Traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in Bank interest, escalation of rates in many a field have to be noticed. The Court cannot remain oblivious to the same. There has been a thumb rule in this aspect.*

Otherwise, there will be extreme difficult in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the Tribunals and Courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, Loss of Consortium and Funeral Expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The principle of revising the said heads is an accepted principle. .

12. Therefore, based on the above said principle laid down by the Hon'ble Supreme Court, the compensation awarded by the Tribunal towards loss of love and affection is enhanced to Rs.80,000/-. In other aspects, the amounts awarded by the Tribunal appears to be reasonable and hence, the same does not warrant any interference. Thus, the compensation awarded by the Tribunal is re-worked and tabulated as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For Loss of Income	12,85,200/-	14,28,000/-	Enhanced
2.	For Loss of love and affection	30,000/-	80,000/-	Enhanced
3.	For Transport Expenses	15,000/-	15,000/-	Confirmed
4.	For Funeral Expenses	15,000/-	15,000/-	Confirmed
	Total	**Rs.13,45,200/-**	**Rs.15,38,000/-**	**Enhanced by Rs.1,92,800/-**

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is hereby enhanced to Rs.**15,38,000**/- from Rs.**13,45,200** /- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-State 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 weeks from the date of receipt of a copy of this judgment, to the credit of

M.C.O.P.No.3395 of 2015 on the file of the Motor Accidents Claims Tribunal/ first Additional District and Sessions Judge, Cuddalore. On such deposit the claimants are at liberty to withdraw the same as per apportionment made by the Tribunal after following due process of law. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required, the tribunal shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants. No costs.

23.06.2023

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Index : Yes/No
Speaking order/non-speaking order

To,

The Managing Director,
Tamil Nadu State Transport Corporation
(villuputam Divn-I) Ltd.,
No.3/137, Salamedu, Vazhuthareddy Post,
Villuputam – 605 602.

<u>R.KALAIMATHI, J.,</u>

smn

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