



C.M.A. No. 1927 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1927 of 2021

1. M. Gomathy
2. D. Moorthy
3. M. Shankar
4. M. Vinoth

... Appellants / Petitioners

Vs.

The Managing Director,
KSTRC, Bangalore Division,
KH Road, Shanthinagar,
Bangalore - 560027

... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 09.11.2020 passed in M.C.O.P. No. 3245 of 2016 on the file of the I Additional District and Sessions Judge, Motor Accident Claims Tribunal, Cuddalore.

For Appellants : M/s. Ramya V. Rao

For Respondent : Mr. T. Thiyagarajan



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JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimants for enhancement of compensation awarded in M.C.O.P. No. 3245 of 2016, dated 09.11.2020 on the file of the I Additional District and Sessions Judge, Motor Accident Claims Tribunal, Cuddalore, wherein the Tribunal has awarded compensation for a sum of Rs.11,85,856/- for the death of one Santhosh S/o Moorthy.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 09.07.2016 at about 19:30 hours, the deceased namely Santhosh has ridden his TVS Apache motor cycle bearing Registration No.PY-01-CJ-9636 on the Bharathi Road, Cuddalore, while he reached near Pazhamuthircholai, a bus bearing Registration No.KA-01-F-9220 belongs to the respondent Transport Corporation driven by its driver in rash and negligent manner came in the opposite direction dashed against the deceased motor cycle and thereby causing instantaneous death to the deceased. A criminal case was also registered against the driver of the respondent



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Transport Corporation bus in Cr.No.365/2016 on the file of SHO Cuddalore NT Police Station. According to the claimants, the deceased was working as Mazdoor in BSNL, Cuddalore and the first and second petitioners were the parents of the deceased and third and fourth petitioners were the brothers of the deceased and they have come forward with claim petition seeking a compensation for a sum of Rs.30,00,000/- along with interest under section 166(1) of the Motor Vehicles Act.

4. The respondent –Transport Corporation has filed a counter and contended that the driver of the bus has driven the bus with due care and caution by observing the traffic rules, when the bus reached near Pazhamudhircholai on the Bharathi Road, Cuddalore at about 19:30 hours, a two wheeler driven by the deceased along with one pillion rider in rash and negligent manner has hit against another two wheeler, which came in the wrong side and subsequently, the deceased has fell down on the right hand side of the road and sustained injuries. Hence, the said accident was not caused by the driver of the respondent bus, the F.I.R. was falsely implicated by the pillion rider against this respondent bus for the sake of claiming compensation, hence prays to dismiss the claim petition.



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5. Before the Tribunal, in addition to this case, the pillion rider, who was also injured in the said accident has filed a separate claim petition in M.C.O.P. No. 3446 of 2016 and both the claim petitions were taken up together by the Tribunal and common evidence was recorded. On the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.13 were marked. On the side of the respondents, R.W.1 was examined and Exs.R.1. to R.5 were marked. The Court exhibits X.1 and X.2 were also marked.

6. Based on the evidence placed on record, the Tribunal in point No.1, has held that the rash and negligent driving of the driver of the respondent Transport Corporation is responsible for the accident. In point No.2, the Tribunal has quantified and granted compensation for a sum of Rs.11,85,856/- to the claimants along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the quantum of compensation awarded, the claimants have come forward with this appeal seeking enhancement of compensation. The respondent has not filed any appeal challenging the



award.

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8. The learned counsel appearing for the claimants submitted that the income of the deceased has been proved by producing Exs.P.9 to P.13 – salary certificates and the Tribunal instead of fixing the income, based on the pay slip for the month of May 2016, the month of June 2016 was considered and awarded the compensation. The Take home salary in the month of June is less than May 2016, hence prays to modify the income fixed by the Tribunal from Rs.7,380/- received in the month of June 2016 to Rs.7,626/- received in the month of May 2016. The learned counsel also further contended that the compensation awarded under other heads are on the lower side, hence prays to enhance the same.

9. Per contra, the learned counsel appearing for the Transport Corporation has submitted that the claimants have marked Exs. P.9 to P.13 – salary certificates to show that the deceased has received monthly income from Sri Balaji Agencies, who is the contractor for the BSNL activities and these document were issued by the employer of the deceased. For April 2016, wages paid is Rs.7,380/-, for May 2016, wage increased to Rs.7,626/-, subsequently, in the month of June 2016, wages paid is Rs.7,380/-. Hence,



the Tribunal has accepted the wages paid in the month of June and awarded compensation, hence prays to confirm the same.

10. Heard the submissions made on both sides and perused the materials placed on record:

11. In this case, employer of the deceased - P.W.3 states that the deceased was earning a sum of Rs.370/- per day, if the deceased has worked for entire month, he will be paid Rs.11,100/- (370 x 30) per month. However, the payment received by the deceased as per the evidence placed on record, shows that he has not been paid for entire month and he has paid wages only for the working days. This Court is of the view that average of all the three months shall be considered for fixing the income and the same would be proper. Accordingly, monthly wages is fixed as $(Rs.7,380 + Rs.7,626 + Rs.7,380)/3 = \text{Rs.7,462/-}$.

12. The Tribunal has by following the dictum as laid down in *National Insurance Co. Ltd., vs. Pranay Sethi and other* reported in *[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]* and fixed 40% as future



prospectus and as per *Sarla Verma and others Vs. Delhi Transport Corporation and others* reported in *[2009 ACJ 1298 SC : 2009 (6) SCC 121]*, the multiplier is fixed as '18' by considering the age of the deceased at the time of the accident, hence this Court finds no infirmity in the above fixing of future prospectus and multiplier adopted by the Tribunal and hence, confirms the same. Since, the deceased is a bachelor, after deducting 50% of his monthly income towards his personal and living expenses, the compensation under loss of income / dependency with modified monthly notional income of Rs.7,462/-is assessed as follows:

Annual income (Rs.7,642/- x 12)	= Rs.91,704/-
Future prospects @ 40%	= Rs.36,681.6/-
Yearly income of the deceased	= Rs.1,28,385.6/-
Yearly contribution to his family(deducting 50%)	= Rs.64,192.8/-
Applicable Multiplier	= 18
Total compensation (Rs.64,192.8/- x 18)	= Rs.11,55,470/-

13. The Tribunal has awarded Rs.10,000/- each towards loss of love and affection to the claimants but as per the Hon'ble Apex Court in *United India Insurance Co. Limited v. Satinder Kaur and Ors.* *[MANU/SC/0500/2020 : (2021) 11 SCC 780]* and *Magma General*



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Insurance Co. Ltd., vs Nanu Ram reported in **2018 ACJ 2018**, all the claimants are entitled for consortium. Hence, this Court is inclined to grant the claimants, consortium of Rs.40,000/- each to the parents and brothers of the deceased Santhosh as per the Apex Court Judgment stated supra.

14. The Tribunal has awarded Rs.15,000/- each towards funeral expenses and transportation expenses. The funeral expenses includes transportation expenses, hence the compensation awarded under the head transportation expenses is hereby cancelled. The Tribunal has not granted compensation under the head loss of estate, hence this Court is inclined to award Rs.15,000/- under the head loss of estate.

15. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of income/ dependency	11,15,856/-	11,55,470/-	Enhanced
2.	loss of love and affection / modified to Loss of consortium	40,000/-	1,60,000/-	Enhanced
3.	Transport expenses	15,000/-	---	Cancelled
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
5.	Loss of estate	---	15,000/-	Granted
	Total Compensation	11,85,856/-	13,45,470/-	Enhanced

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,85,856/- is hereby enhanced to **Rs.13,45,470/- [Rupees Thirteen Lakh Forty Five Thousand Four Hundred and Seventy only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The respondent - Transport Corporation is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.3245 of 2016 on the file of the I Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Cuddalore. On such



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deposit, the appellants/ claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

01.11.2023

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The I Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Cuddalore.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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