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C.M.A.No.2480 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.2480 of 2021

1.R.Pazhaniyammal
2.R.Raji
3.R.Selvamuthukumaran

...Appellants

Vs

The Managing Director,
Tamil Nadu State Transport Corporation,
(Villupuram -Div.1) Ltd.,
No.3/137, Salamedu,
Vazhuthareddy Post,
Villupuram – 605 602.

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.03.2021 made in M.C.O.P.No.1376 of 2018 on the file of the Motor Accidents claims Tribunal, I Additional District and Sessions Judge, Cuddalore.

For Appellants : Mrs.Ramya V.Rao

For Respondent : Mr.S.S.Santhoshkumar



C.M.A.No.2480 of 2021

JUDGMENT

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This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 03.03.2021 made in M.C.O.P.No.1376 of 2018 on the file of the Motor Accidents claims Tribunal, I Additional District and Sessions Judge, Cuddalore.

2.The appellant/claimant filed M.C.O.P.No.1376 of 2018 on the file of the Motor Accidents claims Tribunal, I Additional District and Sessions Judge, Cuddalore, claiming a sum of Rs.40,00,000/- as compensation for the death of one Raja, who died in the accident that took place on 25.09.2017.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the respondent's bus driver and directed the respondent/Transport Corporation to pay a sum of Rs.12,70,000/- along with interest at the rate of 7.5% as compensation to the appellants/claimants under following heads:



C.M.A.No.2480 of 2021

WEB COPY

S.No	Description	Amount awarded by Tribunal (Rs)
1.	Loss of Income	11,70,000
2.	Loss of Consortium	40,000
3.	Loss of Love & Affection	30,000
4.	Transport Expenses	15,000
5.	Funeral Expenses	15,000
	Total	12,70,000

4. Aggrieved over the award passed by the Tribunal, the appellants/claimants filed the present appeal challenging the quantum of compensation.

5. Learned counsel appearing for the appellants/claimants would submit that the appellants/claimants are the wife and two children of the deceased. The accident took place on 25.09.2017 and at the time of accident the deceased was aged about 47 years. The deceased was working as mason and he was earning Rs.15,000/- per month. The Tribunal fixed the notional income of the deceased at Rs.9,000/-, in the absence of any income proof for the accident occurred in the year 2017, which is very meager. The Hon'ble Supreme Court in the case of *Syed Sadiq vs. Divisional Manager, United India Insurance* reported in *2014 1 TNMAC 459 (SC)*, awarded a sum of Rs.6,500/- for the vegetable vendor for



the accident took place in the year 2008. Therefore, considering the cost inflation index, the income of the deceased would come about Rs.13705/- and hence, she prayed to fix the notional income of the deceased at Rs.14,000/-.

6.She would further submit that the Tribunal has awarded a sum of Rs.30,000/- towards loss of love and affection for the wife and two children. However, the Tribunal ought to have awarded a sum of Rs.80,000/- towards loss of love and affection to the children. Under the head of loss of consortium, the Tribunal has awarded a sum of Rs.40,000/-, which shall be confirmed and the Tribunal has not awarded any amount towards loss of estate and hence prayed to award considerable amount towards loss of estate.

7.On the other hand, learned counsel appearing for the respondent/Transport Corporation would submit that since no income proof was provided by the appellants/claimants to prove the income of the deceased as Rs.15,000/-, the Tribunal has fixed a sum of Rs.9,000/- as notional income, which is just and fair, in the absence of any income proof. With regard to the compensation awarded under other heads are concerned, he would fairly submit that the law laid down by the Hon'ble Apex Court may be followed.



8. Heard the learned counsel appearing for the appellants/claimants as well as the respondent/Transport Corporation and perused the materials available on record.

9. Taking into consideration the submission made by the learned counsel appearing for either parties and considering the nature of avocation of the deceased and the cost inflation index, this Court is inclined to fix the notional income of the deceased at Rs.14,000/-. Further, for the age of 47 years the multiplier applicable is 13 as held by the Hon'ble Supreme Court in the case of ***Sarla Verma & others vs. Delhi Transport Corporation & another*** reported in ***2009 (2) TNMAC 1 SC***. As held by the Hon'ble Supreme Court in the case of ***National Ins. Co. v. Pranay Sethi & others*** reported in ***2017(2)TNMAC 609 (SC)***, the future prospect for the age group of 47 years is 25%. Since there are three legal heirs for the deceased, 2/3rd has to be deducted towards personal expenses and hence, the loss of income computed as follows:

$$\text{Rs.14000/-} + 3500 \text{ (25\% of Rs.14000)} \times 12 \times 13 \times \frac{2}{3} =$$

Rs.18,20,000/-.



10. The Tribunal has awarded a sum of Rs.30,000/- under the head of loss of love and affection which is on the lower side. As held by the Hon'ble Supreme Court in the case of *Magma General Insurance Company Ltd., vs. Nanu Ram Alias Chuhru Ram and others* reported in (2018) 18 SCC 130, the children are entitled for a sum of Rs.40,000/- towards parental consortium and hence, the parental consortium is re-fixed as a sum of Rs.40,000/- each to the appellants 2 and 3. Further, the Tribunal has not awarded any amount towards loss of estate and this Court award a sum of Rs.15,000/- towards loss of estate and the compensation awarded by the Tribunal under all other heads are just and fair and the same stands confirmed. Thus, the compensation awarded by the Tribunal is re-determined as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of Income	11,70,000	18,20,000
2.	Loss of consortium for spouse	40,000	40,000
3.	Loss of love and affection	30,000	80,000
4.	Funeral expenses	15,000	15,000
5.	Transportation	15,000	15,000
6.	Loss of Estate	-	15,000
	Total	12,70,000	19,85,000



C.M.A.No.2480 of 2021

11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.12,70,000/- is hereby enhanced to Rs.19,85,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The respondent/Transport Corporation is directed to deposit the modified award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of eight from the date of receipt of a copy of this judgment. Thereafter, the Tribunal is directed to transfer the award amount to the appellants/claimants by way of RTGS to their bank account directly, within a period of three weeks from the deposit being made or from date of furnishing the RTGS particulars by the appellants/claimants, whichever is later. On such deposit, the 1st appellant is permitted to withdraw a sum of Rs.13,85,000/- and the appellants 2 and 3 are permitted to withdraw a sum of Rs.3,00,000/- each along with proportionate interest. No costs.

11.07.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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7/8



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C.M.A.No.2480 of 2021

KRISHNAN RAMASAMY,J.

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To:

The Motor Accident Claims Tribunal
I Additional District and Sessions Judge,
Cuddalore.

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