



C.M.A. No. 2036 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2036 of 2021

1. R. Annalakshmi
 2. G. Ramanathan
 3. R. Shathiga
- ... Appellants / Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram - Div. 1) Ltd.,
No.3/137, Salamedu,
Vazhuthareddy Post,
Villupuram - 605602.

... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 25.02.2021 passed in M.C.O.P. No. 17 of 2018 on the file of the 1st Additional District & Sessions Judge, Motor Accident Claims Tribunal, Cuddalore.

For Appellants : M/s. N. Keerthana

For Respondent : M/s. J. Tamil Selvi



JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimants challenging the Judgment and Decree passed in M.C.O.P. No. 17 of 2018, dated 25.02.2021 on the file of the 1st Additional District & Sessions Judge, Motor Accident Claims Tribunal, Cuddalore.

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

3. The claimants herein are the parents and sister of the deceased R. Deepan, who died in a road accident. The case of the claimants is that on 24.09.2017 at about 13:00 Hours, the deceased R. Deepan, who was a final year B.Tech Student studying in Alpha Engineering College, Puducherry was riding a Bajaj Pulsar two wheeler bearing Registration No.TN-31-BU-1321 from Puducherry to Chinnur back, at a moderate speed on the left hand side of Chinnur Salai. While he reached near Kannikoil Mudakku, Tamil Nadu State Transport Corporation (TNSTC) bus bearing Registration No.TN-32-N-2382 proceeding to Samiyarpettai driven by its driver in rash and negligent manner and without making horn dashed against



the deceased's Motorcycle, in which the deceased sustained fatal injuries and succumbed to injuries at JIPMER Hospital, Puducherry at about 7:56 PM on the same day. A criminal case was also registered against the driver of the TNSTC bus in Cr.No.251/2017 on the file of SHO Porto Novo Police Station. Due to loss of deceased R.Deepan, the claimants have come forward with a claim petition seeking compensation for a sum of Rs.50,00,000/- along with interest under section 166(1) of the Motor Vehicles Act, 1988.

4. The respondent – Transport Corporation has filed a counter and denied all the allegations in the claim petitions and also contended that the driver of the bus has driven the bus with due care and caution, the accident was happened only due to negligent on the part of the deceased, who rode the two wheeler by using cell phone while riding. The Transport Corporation also contended that the deceased was not wearing a helmet at the time of occurrence and also disputed the age, occupation of the deceased and dependency of the claimants, and prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, the first claimant was examined as P.W.1 and eye witnesses to the occurrence were



examined as P.W.2 and P.W.3 and Exs.P.1 to P.22 were marked. On the side of the respondent, R.W.1 was examined and no witnesses were marked.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the driver of the bus bearing Registration No.TN-32-N-2382 is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.14,35,800/- 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 by the Tribunal, the claimants have come forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimants has submitted that the Tribunal has not properly appreciated the evidence placed on record and fixed monthly notional income of the deceased as Rs.9,000/-, which is on the lower side as the deceased was a final year engineering student and the deceased was also a fisherman earning a sum of Rs.15,000/- per month.



The learned counsel also contended that the compensation awarded under various heads is on the lower side, hence prays to enhance the compensation.

9. Per contra, the learned counsel appearing for the respondent – Transport Corporation has submitted that the Tribunal based on the evidence placed on record has rightly fixed the notional income and awarded just compensation, hence prays to confirm the same.

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

11. The Tribunal has fixed notional income as Rs.9,000/- per month for the deceased, who was a final year engineering student at the time of occurrence. Division Bench judgment of this Court, in ***J. Karunakaran and another vs. The Managing Director, Tamil Nadu State Transport Corporation Ltd., in CMA Nos.2114 and 1134 of 2022, and in Maanvizhi and 3 others vs. Suresh Babu and another, in C.M.A. No.1639/21, dated 17.03.2022*** has fixed Rs.20,000/- per month as the notional income for a third year engineering student. In this case, the deceased herein is brilliant



student, athlete as well as recipient of various merit certificates which are marked as Ex.P.8 to P.20. Being B.Tech student, he has also involved himself in fishing job and he is a member of Tamil Nadu Fisheries Welfare Board. This Court of the view that fixing notional income of Rs.9,000/- to the deceased is on lower side. By following the Division Bench judgment of this Court cited supra, this Court is inclined to modify the monthly notional income of Rs.9,000/- fixed by the Tribunal to Rs.20,000/- per month.

12. The Tribunal has rightly followed 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. 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.20,000/- is assessed as follows:



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Annual income (Rs.20,000/- x 12)	= Rs.2,40,000/-
Future prospects @ 40%	= Rs.96,000/-
Yearly income of the deceased	= Rs.3,36,000/-
Yearly contribution to his family (deducting 50%)	= Rs.1,68,000/-
Applicable Multiplier	= 18
Total compensation (Rs.1,68,000/- x 18)	= Rs.30,24,000/-

13. The Tribunal has awarded Rs.15,000/- towards loss of love and affection for each of the claimants. By following the Hon'ble Apex Court judgment in *Magma General Insurance Co. Ltd., vs Nanu Ram* reported in *[2018 ACJ 2018]*, the compensation awarded under the head loss of love and affection is comprehend with loss of consortium and this Court is inclined to grant Rs.40,000/- to each of the claimants. The other heads are concerned the Tribunal has granted a just compensation and the same are hereby confirmed.

14. 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	13,60,800/-	30,24,000/-	Enhanced
2.	loss of love and affection	45,000/-	1,20,000/-	Enhanced



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
	(15,000 x 3)/ modified to Loss of consortium (40,000 x 3)			
3.	Transport Expenses	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total Compensation	14,35,800/-	31,74,000/-	Enhanced

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,35,800/- is hereby enhanced to **Rs.31,74,000/- [Rupees Thirty One Lakh and Seventy Four Thousand 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. 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.17 of 2018 on the file of the I Additional District and Sessions Judge, Motor Accident Claims Tribunal, Cuddalore. On such deposit, the appellants 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



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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.

17.11.2023

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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.

K. RAJASEKAR, J.

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