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C.M.A.No.2667 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.2667 of 2022

and C.M.P.No.20901 of 2022

The Managing Director,
Tamilnadu State Transport Corporation,
(VPM Div.III) Ltd.,
Kanchipuram.

... Appellant

VS

1.N.Parimala
2.N.Naresh
3.N.Nisha (Minor) rep by
her mother 1st respondent
4.R.Saratha

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 29.11.2021 passed in M.C.O.P.No.870 of 2018 by Motor Accidents Claims Tribunal (Special Sub-Judge), Cuddalore.

For Appellant : Mr.R.Balaji

For Respondents

For RR1 & 3 : Mrs.Ramya V.Rao



For R2 : No appearance
For R4 : Died

J U D G M E N T

(Judgment of the Court was delivered by D.Krishnakumar, J.)

The civil miscellaneous appeal has been filed by the Tamil Nadu State Transport Corporation, Villupuram Division III, Kanchipuram to set aside the award dated 29.11.2021 passed in M.C.O.P.No.870 of 2018 by Motor Accidents Claims Tribunal (Special Sub-Judge), Cuddalore.

2. Brief facts leading to filing of this appeal is as follows;

On 08.11.2017, at about 12.30 Hrs., while the deceased Nagaraj was driving his motorcycle bearing Reg.No.PY-01-CJ-0941 at his left hand side of Periyamudaliarchavadi, East Coast Road, near Diwankandappa Nagar, the appellant's bus bearing Reg.No.TN-21-N-1825 dashed against the deceased Nagaraj's motorcycle. Due to which, the deceased Nagaraj was thrown out from the motorcycle and died on the spot. The legal heirs of the



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deceased have filed a claim petition before the tribunal in M.C.O.P.No.870 of 2018, claiming a compensation of Rs. 75,00,000/- .

3. The Tribunal after elaborate discussion of evidence and documents, has come to a conclusion that the accident had occurred only due to the rash and negligence on the part of the driver of the Transport Corporation Bus and fixed the liability as against the Transport Corporation and awarded a sum of Rs. 25,93,000/- as compensation. Challenging the said award, the Transport Corporation / appellant has filed this instant appeal on the ground that the said compensation awarded by the Tribunal is excessive.

4. The learned counsel for the appellant / Transport Corporation submitted that the Tribunal has wrongly awarded compensation of Rs.22,68,000/- under the head of Pecuniary loss by fixing monthly income at Rs.12,000/- which was not proved by the claimants, which is excessive. The Tribunal has awarded Rs.2,50,000/- under the head “Loss of Love and Affection”, which is against the proposition of ***Pranay Sethi*** case. He also contended that the compensation awarded under other heads are also



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excessive and, hence seeks modification of the award passed by the Tribunal.

5. The learned counsel appearing for the respondents/claimants has submitted that the tribunal after considering the documents and evidences filed on behalf of the claimants, has rightly fixed the negligence on the part of the driver of the Transport Corporation Bus and fixed the liability on the Transport Corporation and awarded compensation of Rs.25,93,000/- as total compensation by fixing monthly income of the deceased at Rs.12,000/- per month. Therefore, the award passed by the tribunal does not require any interference by this Court.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The point for consideration of the appeal is whether the compensation awarded by the tribunal under the head 'Pecuniary Loss' and 'Loss of Love and affection' is excessive or not?



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8. On perusal of the documents, the claimants have marked Ex.A5 (Fishermen Identity Card issued by the Central Government) & A6 (Fishermen Identity Card issued by the State Government) to prove the avocation of the deceased. Though the claimants have not produced any proof for income of the deceased, the tribunal by considering the above documents viz., Ex.A5 & Ex.A6, has fixed the monthly income of the deceased at Rs.12,000/- as against the claim made by the claimants at Rs.30,000/- per month. Since, the accident occurred in the year 2017, considering the age of the deceased who was 39 years at the time of the accident and the cost of living during that period, the tribunal has fixed the monthly income at Rs.12,000/-, which is reasonable. Further, for calculation of Pecuniary Loss, the future prospects taken at 40% and the multiplier 15 adopted by the tribunal are found proper as per the guidelines framed by the Hon'ble Supreme Court in *National Insurance Company Vs. Pranay Sethi's* Case reported in *Special Leave Petition (Civil) No.25590 of 2014*. Therefore, the compensation awarded by the tribunal under the head 'Pecuniary Loss' at Rs.22,68,000/- is proper and does not require any modification by this Court.



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9. Another contention made by the learned counsel for the appellant-

Transport Corporation is that the compensation awarded by the Tribunal under the head “Loss of love and affection” is against the proposition of *National Insurance Company Limited Vs. Pranay Sethi* case and requires modification.

10. We have considered the submissions made by the learned counsel for the appellant that compensation awarded by the tribunal at Rs.2,50,000/- for loss of love and affection is on higher side and hence, we inclined to reduce the same to Rs.1,20,000/-. There is no dispute as against the compensation awarded under other heads viz., 1. Loss of Consortium, 2. Loss of estate, 3. Funeral expenses and 4. Transportation, hence the compensation awarded under these heads are confirmed and the total compensation awarded by the tribunal is modified as follows;

<i>Heads</i>	<i>Compensation awarded by the tribunal Rs.</i>	<i>Compensation modified by this Court Rs.</i>
Pecuniary loss	22,68,000	22,68,000
Loss of love and affection	2,50,000	1,20,000



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Loss consortium	40,000	40,000
Loss of estate	15,000	15,000
Funeral expenses	15,000	15,000
Transportation	5,000	5,000
Total	25,93,000	24,63,000

11. In view of the above modification, the compensation awarded by the tribunal at Rs. 25,93,000/- is reduced to Rs. 24,63,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

12. The appellant / Transport Corporation is directed to deposit the entire compensation amount along with interest as modified by this Court, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents / claimants are permitted to withdraw the modified compensation amount along with interest, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The apportionment shall be as fixed by the tribunal.



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13. To the above extent, the award passed by the tribunal is modified and consequently the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(D.K.K.J.) (K.G.T.J.)

16.03.2023

Index : Yes

Neutral Citation : Yes/No

Speaking / Non- Speaking order

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To

The Special Sub-Judge,
Motor Accident Claims Tribunal,
Cuddalore.



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D.KRISHNAKUMAR, J.

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