



C.M.A.No.2465 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.2465 of 2021

1.Ranjitham
2.Lakshmi
3.Subramanian @ Subramani
4.Settu
5.K.Jagadha ... Appellants/Petitioners

vs.

V C and MD APSRTC
Bus Bhavan
APSRTC Bus Station Complex,
Tirupati – 517 501.
Andhra Pradesh. ... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree in M.C.O.P.No.3 of 2018 dated 25.03.2021 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Cuddalore.

For Appellants : Mrs.Ramya V.Rao

For Respondent : Ms.G.V.Shoba

JUDGMENT

This Civil Miscellaneous Appeal is focused against the Judgment and Decree dated 25.03.2021 passed in M.C.O.P.No.3 of 2018 on the file of Motor Accident Claims Tribunal / Principal District Court, Cuddalore,



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filed by the legal heirs of the deceased Nallathambi for enhancement of compensation.

2. Claim petition was filed under Section 166 (1) of Motor Vehicles Act, 1988, claiming compensation of Rs.20,00,000/- for the death of Nallathambi, S/o.Subramaniam @ Chinnasamy in a road accident that occurred on 14.05.2017.

3. The learned Tribunal, after hearing arguments of both sides and upon consideration of both oral and documentary evidence has passed an award for an amount of Rs.50,000/- with 8% interest per annum from the date of filing of claim petition till the date of realisation.

4. The learned counsel appearing for the appellant Mrs.Ramya V.Rao would vehemently contend that age of the deceased at the relevant point of time was 70 years. No amount was granted for pecuniary loss and prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the Insurance Company would strenuously argue that as per the legal heir-ship certificate, age of the 1st claimant is mentioned as 69 years: Therefore, at



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the relevant point of time, age of the deceased must have been above 85 years: Due to old age, deceased would not have worked as coolie: Ultimately, the claimants are not entitled for the compensation as they were not dependents of the deceased and prayed for dismissal.

6. Heard the rival submissions put forth by the learned counsels of both sides and perused the materials available on record.

7. The Tribunal held that the Andhra Pradesh State Road Transport Corporation is solely responsible to pay compensation to the claimants. The age of the deceased is fixed at 70 years. Taking into account of the age of the dependents found in the legal heir-ship certificate Ex.P7, it was held that the claimants were not depending upon the income of the deceased. Hence, they are not entitled to any compensation except for loss of love and affection. For loss of love and affection an amount of Rs.50,000/- was granted.

8. At trial, on the claimants' side one of the daughter of the deceased Smt.Ranjitham was examined as PW1. Mr.Panjamoorthy, ocular witness has been examined as PW2. Exs.P1 to P7 have been marked. Postmortem Certificate of the deceased Nallathambi is Ex.P2. Copy of



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legal heirship certificate is Ex.P7. On the side of the respondent, Mr.Kirankumar, bus conductor of the respondent/Transport Corporation has been examined as RW1 and no document was marked.

9. It is the evidence of PW2 ocular witness Mr.Panjamoorthy that he along with the deceased Nallathambi went to Tirupati on 13.05.2017 Cuddalore O.T.Railway Station and on the next day, at about 4 p.m., when they were standing in front of the railway station entrance steps, the respondent's Andhra Pradesh State Road Transport Corporation bus bearing Reg.No.AP-03-Z-5123 came at a high speed and in a rash and negligent manner and dashed against Nallathambi. Due to the said impact, Nallathambi died on 25.05.2017 in the hospital, is not in dispute.

10. It is the evidence of the elder daughter of the deceased Nallathambi, PW1 Smt.Ranjitham that her father was earning Rs.12,000/- p.m., working as a coolie. As per Ex.P7 - legal heir certificate of the deceased Nallathambi, dated 27.11.2019, age of the 1st petitioner is 69, 2nd petitioner is 63, 3rd petitioner is 59, 4th petitioner is 54 and 5th petitioner is 49. But, these details have been refuted by PW1.

11. The learned counsel appearing for the respondent/Transport



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Corporation would strenuously contend that all the children of the deceased Nallathambi got married and they were not living along with the deceased Nallathambi, hence-forth they cannot be considered as dependents and therefore, they are not entitled for any compensation.

12. With regard to this aspect, it is relevant to refer to the decision of the Hon'ble Supreme Court in ***Manjuri Bera v. The Oriental Insurance Company Ltd., and Others*** reported in ***MANU/SC/1978/2007***, wherein the ratio decidendi in the case is that "even if there is no loss of dependency, the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140.

13. As per the post-mortem certificate-Ex.P2, age of the deceased is mentioned as 70 years. As it was not seriously disputed by the respondent's side, the Tribunal has taken the age of the deceased at 70 years. However, relying upon the details of Ex.P7 legal heirs certificate, the age of the 1st petitioner is 69 years. When the daughter is aged about 69 years, in the year 2017, father's age should be minimum 85 years. It is the evidence of PW1



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Tmt.Ranjitham who is the eldest daughter of the deceased Nallathambi that her age is 45 years and age of her elder son is 23 years. Whereas, the legal heir certificate reads that the age of the 1st petitioner is 69 years. There are vital contradictions with regard to the age of the deceased and the claimants. However, based on the post-mortem certificate, age of the deceased is taken as 70 years. It is the common understanding that 70 years aged person will never be employed either as a coolie or a monthly salaried person. Therefore, the claimants are not entitled for any compensation for the loss of dependency.

14. Relying upon the evidence of PW2, the Tribunal has come to the conclusion that because of rash and negligent driving of the bus driver of respondent Corporation, accident occurred and the liability was fastened on the respondent Corporation to pay compensation. An amount of Rs.15,000/- is granted for funeral expenses. An amount of Rs.50,000/- awarded by the Tribunal towards love and affection is confirmed. The Compensation awarded by the Tribunal is reworked and tabulated below:



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For loss of love and affection	Rs.50,000/-	Rs.50,000/-	Confirmed
2	For Funeral Expenses	NIL	Rs.15,000/-	Granted
	Total	Rs.50,000/-	Rs.65,000/-	

15. Thus, the compensation awarded by the Tribunal is enhanced from Rs.50,000/- to **Rs.65,000/-** which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

16. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.50,000/- to **Rs.65,000/-**.

(iii) The respondent / Transport Corporation is directed to deposit the enhanced compensation amount i.e., **Rs.65,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.3 of 2018 on the file of the Motor Accident Claims Tribunal /



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Principal District Judge, Cuddalore, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, as per the apportionment made by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing cheque petition before the Tribunal. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

22.09.2023

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
Principal District Judge,
Cuddalore.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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