



C.M.A.No.2492 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2492 of 2021

1. Ambiga
2. Minor Sanvanth
3. Minor Vanshika
4. Swamy Praganagana @ Ganesh
5. Gowramma ... Appellants/Claimants
[Minor appellants represented by their mother
viz., Ambiga, the first appellant herein]

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Regional Office, Bharathipuram,
Dharmapuri. ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the Award and Decree, dated 02.12.2019
made in M.C.O.P.No.229 of 2019 on the file of the Motor Accidents Claims
Tribunal, Special District Court for MACT cases, Krishnagiri.

For Appellants : Mr. S. P. Yuvaraj

For Respondent : Mr. D. Raghu



WEB COPY



C.M.A.No.2492 of 2021

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimants for enhancement of compensation against the Award passed in M.C.O.P.No.229 of 2019, dated 02.12.2019, on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri, for the death of one Parthasarathy in the road accident.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimants is that on 31.01.2016 at about 06.45 hours, the deceased namely, Parthasarathy was riding his motorcycle namely Yamaha Crux bearing Registration No.TN 70 A 9954 towards Hosur on the left hand side of the road with slowly and cautiously, while he reached near Supreme Granite Company at Agaram, a Government Bus bearing Registration No.TN 29 N 1795 belonging to the respondent Corporation, driven by its driver in rash and negligent manner and dashed on the two wheeler and caused the accident. Due to which, he sustained fatal



C.M.A.No.2492 of 2021

injuries and died on the spot. In this regard, a criminal case was also registered in Crime No.63 of 2016 under Sections 279, 304(A) IPC against the driver of the bus on the file of the Udhanapalli Police Station. Hence the claimants filed claim petition seeking compensation of Rs.40,00,000/-.

4. The first claimant is the wife of the deceased Parthasarathy and the second and third claimants are the son and daughter of the deceased and the fourth and fifth claimants are the parents of the deceased.

5. The respondent -Transport Corporation has contested the claim and contended that the driver of the bus drove the same very slowly and carefully however the deceased ride the motorcycle without wearing helmet in high speed, lost his control and fell down and dashed against the middle of the stopped bus. The accident had occurred only due to the rash and sudden overtaking of the deceased hence the respondent is not liable to pay the compensation to the claimants. The respondent also denied the age, income and avocation of the deceased and also the legal heirs of the deceased. Hence prays to dismiss the appeal.



C.M.A.No.2492 of 2021

WEB COPY

6. Before the Tribunal, the claimants have examined P.W.1 and P.W.2 and Exs.P1 to P16 were marked. On the side of the respondent R.W.1 was examined and no documentary evidence marked.

7. Based on the evidences placed on record, the Tribunal in Point Nos.1 and 2 has held that the accident had occurred only due to the negligent act of the driver of the bus and there is no fault on the part of the deceased. In Point No.4 the Tribunal has quantified the compensation and awarded a sum of Rs.20,17,800/- as compensation.

8. Aggrieved over the quantum of compensation awarded, the claimants have come forward with this appeal seeking enhancement of compensation.

9. The learned counsel for the claimants have submitted that the notional income fixed by the Tribunal is not in accordance with the norms followed by this Court. In this case, the age of the deceased is 27 years and the Tribunal has fixed a sum of Rs.9,000/- as notional income, which is on



the lower side, hence prays to enhance the award. He has also contended that the compensation awarded under various other heads is also on the lower side and prays to enhance the same.

10. The learned counsel for the Insurance Company has vehemently contended that the Tribunal has fixed the quantum of compensation based on the evidences placed on record. The compensation awarded under various other heads is also just and reasonable, hence prays to dismiss the same.

11. I have considered the rival submissions made on both sides and also perused the records available on record.

12. Before the Tribunal, the wife of the deceased was examined as P.W.1. She deposed that the deceased was a driver by profession and was earning a sum of Rs.12,000/- per month as monthly income. However the claimants were not able to prove the monthly income of the deceased. After taking note of the age of the deceased and date of accident, the Tribunal has fixed the notional income at Rs.9,000/-. This Court is of the view that the same is not in accordance with the norms followed by this Court. Since the accident was taken place in the year 2016, the notional income fixed for the driver is Rs.12,000/-. Accordingly, the notional income fixed by the



C.M.A.No.2492 of 2021

Tribunal is hereby modified to Rs.12,000/-. As per the Judgment of the Hon'ble Apex Court in *National Insurance Company Ltd., vs. Pranay Sethi and others [2017 (16) SCC 680]* the claimants are entitled for 40% as future prospects. The dependents of the deceased is five in number hence 1/4 deducted as personal expenses of the deceased and the Tribunal has adopted proper multiplier of '17'. The compensation awarded under the head loss of dependency is arrived as Rs.25,70,400/- $[(12000 - 3000 (1/4)) = 9000 + 3600 (40\% \text{ of } 9000) \times 12 \times 17]$. The Tribunal has awarded a sum of Rs.25,000/- under the head loss of consortium and this Court is of the view the same is very low and this Court is inclined to grant Rs.40,000/- each under the head loss of consortium to all the claimants. Since this Court has awarded compensation under the head loss of consortium, the Tribunal has separately awarded compensation under the head loss of love and affection is hereby rejected. The Tribunal has awarded compensation of Rs.15,000/- under the head Funeral Expenses and this Court finds the same is reasonable and the same is hereby confirmed. As per recent Judgment of the Hon'ble Apex Court in *Magma General Insurance Co. Ltd., vs. Nanu Ram and Others [2018 (18) SCC 130]*, the claimants are entitled to get compensation under the head loss of consortium. Accordingly, each claimant is entitled for



C.M.A.No.2492 of 2021

Rs.40,000/-. The Tribunal has awarded a sum of Rs.20,000/- for Loss of Estate and this Court is inclined to reduce the same by Rs.15,000/-.

13. Thus the compensation awarded by the Tribunal under various other 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 granted or rejected
1.	Loss of dependency	Rs.19,27,800/-	Rs.25,70,400/-	Enhanced
2.	Loss of Consortium	Rs.25,000/-	Rs.2,00,000/-	Enhanced
3.	Loss of Estate	Rs.20,000/-	Rs.15,000/-	Reduced
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Loss of Love and Affection	Rs.30,000/-	---	Removed
	Total Compensation	Rs.20,17,800/-	Rs.28,00,400/-	Enhanced by Rs.7,82,600/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.20,17,800/- is hereby enhanced to Rs.28,00,400/- [Rupees Twenty Eight Lakhs and Four Hundred only] together 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 award amount,



C.M.A.No.2492 of 2021

now determined 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.229 of 2019, on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. On such deposit, the appellants 1, 4 & 5/claimants 1, 4 & 5 are entitled to withdraw the amount, now awarded by this Court, along with interest and costs, as per the apportionment fixed by the Tribunal, less the amount if any, already withdrawn. The share of the minor claimants is directed to be deposited in any one of the Nationalised Bank till the minor claimants attains majority. On such deposit, the first claimant being the mother of the minor claimants is permitted to withdraw the accrued interest once in three months for the welfare of the minor claimants. Since this Court has enhanced the compensation the appellants/claimants are directed to pay the Court fee on the enhanced compensation, if any. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants, without any formal application. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

02.11.2023

ssi



C.M.A.No.2492 of 2021

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

WEB COPY

To:

1. The Special District Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



WEB COPY



C.M.A.No.2492 of 2021

K.RAJASEKAR,J.

ssi

C.M.A.No.2492 of 2021

02.11.2023



WEB COPY



C.M.A.No.2492 of 2021