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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.3035 & 3036 of 2014

1. Manvizhi
2. V.Balu ... Appellants in C.M.A.No.3035 of 2014

1. B.Senthil Vadivu
2. S.Balamurugan ... Appellants in C.M.A.No.3036 of 2014

Vs.

The Managing Director,
MTC, Anna Salai,
Chennai 2. ... Respondent in both the appeals

Prayer in C.M.A.No.3035 of 2014: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 06.03.2014 made in M.C.O.P.No.628 of 2011, on the file of the Motor Accidents Claims Tribunal, (II Addl. District Court), Poonamallee.

Prayer in C.M.A.No.3036 of 2014: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 06.03.2014 made in M.C.O.P.No.629 of 2011, on the file of the Motor Accidents Claims Tribunal, (II Addl. District Court), Poonamallee.

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Appearance in both Appeals:

For Appellants : C/V filed by M/S.M.N.Mohanraj, Mr.M.Lokesh, MA.P.Thangavel, B.Devagi Thangavel

For Respondent : Mr.Vinodh Raj

COMMON JUDGEMENT

Since the issue involved in both the appeals are one and the same, with the consent of the learned counsel for the parties, both the appeals were heard together and disposed of by this common order.

2. The facts in brief are as follows :-

On 19/20.05.2011 at about 00.30 hours, when the deceased persons in M.C.O.P.Nos.628 and 629 of 2011 were travelling in an Yamaha motor cycle bearing Regn.No.TN 57 AZ 5353 as rider and pillion rider, at that time, a bus belonging to the respondent/Transport Corporation driven by its driver in a rash and negligent manner and dashed the motor cycle driven by the deceased persons, due to which they sustained fatal injuries and died. Seeking compensation for a sum of Rs.15,00,000/- the legal heirs of the deceased persons have filed respective claim petitions.

3. Before the Tribunal the claimants examined P.W.1 to P.W.4 and

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marked Exs.P.1 to P.16. On the side of respondents they examined R.W.1 and R.W.2 and no documents were marked and no witnesses were examined on their behalf. Upon perusing the oral and documentary evidence, the Tribunal fastened 20% negligence on the part of the rider of the motor cycle and 80% negligence on the part of the driver of the respondent/Transport Corporation. Being not satisfied with the compensation awarded by the Tribunal, the dependants of the deceased persons are before this Court.

4. The learned counsel for the appellants in C.M.A.No.3035 of 2014 submits that the Tribunal awarded the lumpsum compensation of Rs.5,00,000/- as loss of income, since the deceased was a Bachelor and also a Student, he was having a potential choice for pursuing higher education, thereby he would have earned more income. In this regard he relied on the decision of the Hon'ble Supreme Court in the case of ***V.Mekala Vs.M.Malathi and Anr.*** Reported in ***2014 11 SCC 178.*** He also relied upon the decision of this Court in ***C.M.A.(MD).No.96 of 2019*** vide judgment dated ***30.03.2021*** in the case of ***Iffco-Tokio General Insurance Company Vs.V.Raha and ors.***

5. The learned counsel appearing for the appellants in

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C.M.A.No.3036 of 2014 submits that the Tribunal erred in fixing the negligence at 80% : 20%. He further submits that the respondent Corporation have not proved properly, the possession or smell of alcohol on the rider of the motor cycle. Further there is no solid evidence that the rider of the motor cycle having the smell of alcohol. He further submits that there is a conflicting evidence on the side of respondents i.e., between R.W.1 Driver and R.W.2 Conductor of the Corporation bus. When there is a conflicting evidence, the Tribunal ought not to have believed the evidence of the respondent and fixed the negligence. Hence the award of the Tribunal should be interfered with.

6. The learned counsel for the respondent / Corporation submits that the deceased persons have been travelling in the motor cycle after consuming alcohol and they have completely lost their control and had driven the vehicle in a rash and negligent manner and dashed the respondent's bus. Therefore, the respondent / corporation is not liable to pay the compensation to the dependants. Hence, the appeals are liable to be dismissed.

7. Heard the learned counsel for the appellants in respective appeals and the learned counsel for the respondent / corporation and perused the

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materials placed on record.

8. In the light of the aforesaid narration of events and the legal contentions, this Court is required to examine whether the appellants are entitled to enhancement of compensation or not. Insofar as the negligence fixed on the part of the rider of the motor cycle, it is seen from Ex.P9, the post-mortem certificate of the deceased Ramkumar that 500 milligrams of semi digested solid food grains with the smell of alcohol was present in the stomach of the deceased Ramkumar. Hence, this Court is not inclined to interfere with the negligence fixed on the part of the rider of the motor cycle.

9. In the case of pillion rider in M.C.O.P.No.628 of 2011, the Tribunal has awarded a lumpsum amount of Rs.5,00,000/-, however, the Hon'ble Supreme Court in the case of ***V.Mekala (supra)*** has considered the case of a student in an unequivocal terms and held that the monthly notional income has to be determined as a reasonable compensation under the head loss of income instead of awarding lumpsum amount. In the case of ***Iffco-Tokio (supra)*** this Court after relying upon the decision of Division Bench of this Court in S.Chinnaraj and others Vs.Suresh Kumar and another reported in 2019

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(1) TNMAC 189 (DB) fixed the monthly income of the deceased at Rs.10,000/-. In the present case the deceased was aged 18 years and was a student at the time of accident, about to join SRM Polytechnic to persue his higher education. While granting compensation in the case of a student / bachelor several factors should be taken into consideration including education and the nature of job. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however as far as possible should be based on certain principles. A person may have a bright future prospect; he might have chances of an immediate pay revision, whereas in another situation the nature of employment was such that he might not have continued in service. It is therefore difficult for any Court to lay down rigid tests which should be applied in all situations. Hence, in some cases it has been suggested that some sort of hypotheses or guesswork may be inevitable. Therefore following the ratio laid down by the Hon'ble Supreme Court in the case of V.Mekala (Supra) and also the judgment of this Court in the case of ***Iffco-Tokio (supra),*** this Court is inclined to fix monthly income of the deceased at Rs.10,000/-. Accordingly, the monthly income of the deceased is fixed as Rs.10,000/- and after adding 40% towards future prospects, the same would arrive at Rs.14,000/- (Rs.10,000 + Rs.4,000). Since the deceased died as

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a bachelor, 50% has to be deducted towards personal expenses. After deducting 50% towards personal expenses, the monthly income of the deceased would be at Rs.7,000/- (Rs.14,000 – 50% of Rs.14,000) and as per the Judgment of the Hon'ble Apex Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC), the right multiplier to be adopted is '18' and hence, the loss of income would be at Rs.15,12,000/- (Rs.7,000 x 12 x 18).

10. The Tribunal awarded a sum of Rs.20,000/- to the claimants in M.C.O.P.No.628 of 2011 under the head loss of love and affection, which is on the lower side and the same is enhanced to a sum of Rs.40,000/- to each claimants. The Tribunal awarded a sum of Rs.5,000/- under the head funeral expenses which is also on the lower side and the same is enhanced to a sum of Rs.15,000/- under the said head. The other heads awarded by the Tribunal are just and reasonable and the same does not require any interference. This Court finds that the Tribunal has failed to award any amount towards loss of estate, hence, this Court is inclined to award a sum of Rs.15,000/- under the said head.

11. In the above circumstances, the compensation awarded by the

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Tribunal in M.C.O.P.No.628 of 2011 is modified as under :-

Heads	**Awarded by the Tribunal (Amount in Rs.)**	**Awarded by this Court (Amount in Rs.)**
Loss of Income	**5,00,000/-**	**15,12,000/- (enhanced)**
Loss of love and affection	**20,000/-**	**80,000/- (enhanced)**
Medical expenses	6,22,430/-	6,22,430/- (confirmed)
Funeral expenses	**5,000/-**	**15,000/- (enhanced)**
Transport	9,720/-	9,720/- (confirmed)
Loss of estate	-	**15,000/- (awarded)**
Total	**11,57,150/-**	**22,54,150/-**
Less 20% contributory negligence on the part of the rider of the motorcycle	**2,31,430**	**4,50,830/-**
Total	**9,25,720/-**	**18,03,320/-**

12. The appeal in C.M.A.No.3035 of 2014 is partly allowed and the impugned Award of the Tribunal in M.C.O.P.No.628 of 2011 is modified by enhancing the compensation amount to **Rs.18,03,320/-**. The respondent/Transport Corporation is directed to deposit the said amount to the credit of M.C.O.P.No.628 of 2011 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as

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awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. The said award amount shall be apportioned amongst the appellants in C.M.A.No.3035 of 2014 as per the Award of the Tribunal.

13. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants in C.M.A.No.3035 of 2014 through RTGS within a period of two weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation. The appellants in C.M.A.No.3035 of 2014 is directed to pay necessary additional Court fee on the enhanced compensation amount and thereafter.

14. In the case of the rider of the motor cycle in M.C.O.P.No.629 of 2011, with regard to the quantum of compensation, the Tribunal has taken the monthly income of the deceased only as Rs.10,840/- instead of Rs.12,898/- which is the salary of the deceased as per Ex.P.12. Hence, this Court is inclined to fix a sum of Rs.12,898/- as the notional income of the deceased Ramkumar and after adding 40% towards future prospects, the same would arrive at

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Rs.18,057/- (Rs.12,898 + Rs.5,159). Since the deceased died as a bachelor, 50% has to be deducted towards personal expenses. After deducting 50% towards personal expenses, the monthly income of the deceased would be at Rs.9,028/- (Rs.18,057 – 50% of Rs.18,057) and as per the Judgment of the Hon'ble Apex Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC), the right multiplier to be adopted is '18' and hence, the loss of income would be at Rs.19,50,048/- (Rs.9,028 x 12 x 18).

15. The Tribunal awarded a sum of Rs.20,000/- to the claimants in M.C.O.P.No.629 of 2011 under the head loss of love and affection, which is on the lower side and the same is enhanced to a sum of Rs.40,000/- to each claimants. The Tribunal awarded a sum of Rs.5,000/- under the head funeral expenses which is also on the lower side and the same is enhanced to a sum of Rs.15,000/- under the said head. The Tribunal has awarded only a sum of Rs.5,000/- under the head transport expenses which is on the lower side and the same is enhanced to a sum of Rs.10,000/- under the said head. This Court finds that the Tribunal has failed to award any amount towards loss of estate, hence, this Court is inclined to award a sum of Rs.15,000/- under the said head.

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16. In the above circumstances, the compensation awarded by the Tribunal in M.C.O.P.No.629 of 2011 is modified as under :-

Heads	**Awarded by the Tribunal (Amount in Rs.)**	**Awarded by this Court (Amount in Rs.)**
Loss of Income	**13,87,584/-**	**19,50,048/- (enhanced)**
Loss of love and affection	**20,000/-**	**80,000/- (enhanced)**
Funeral expenses	**5,000/-**	**15,000/- (enhanced)**
Transport expenses	5,000/-	10,000/- **(enhanced)**
Loss of estate	-	**15,000/- (awarded)**
Total	**14,17,584/-**	**20,70,048/-**
Less 20% contributory negligence on the part of the rider of the motorcycle	**2,83,517/-**	**4,14,009/-**
Total	**11,34,067/-**	**16,56,038/-**

17. The appeal in C.M.A.No.3036 of 2014 is partly allowed and the impugned Award of the Tribunal in M.C.O.P.No.629 of 2011 is modified by enhancing the compensation amount to **Rs.16,56,038/-**. The respondent/Transport Corporation is directed to deposit the said amount to the

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credit of M.C.O.P.No.629 of 2011 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. The said award amount shall be apportioned amongst the appellants in C.M.A.No.3036 of 2014 as per the Award of the Tribunal.

18. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants in C.M.A.No.3036 of 2014 through RTGS within a period of two weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation. The appellants in C.M.A.No.3036 of 2014 is directed to pay necessary additional Court fee on the enhanced compensation amount and thereafter. There shall be no order as to costs in the present appeal.

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Speaking Order : Yes/No
Index : Yes/No
NCC : Yes/No

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1. The Motor Accidents Claims Tribunal,
   II Additional District Court, Poonamallee.
2. The Section Officer
   V.R. Section, High Court, Madras.

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M.DHANDAPANI, J.

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