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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.3124 & 3125 of 2014,
C.M.A.Nos.540 & 541 of 2016
and C.M.P.Nos.4543 & 4544 of 2016

The Managing Director,
State Express Transport
Corporation (T.N.) Ltd.,
Pallavan Salai,
Chennai - 2.
&

... Appellant in C.M.A.Nos.540 & 541 of 2016

2014

Respondent in C.M.A.Nos.3124 & 3125 of

Vs.

1. Kalaiselvi

2. Minor Divya

3. Minor Nivetha

2016

(Minor petitioners are rep.
2014

by their Mother and natural
guardian, 1st petitioner herein)

... Respondents in C.M.A.No.No.540 of

& Appellants in C.M.A.No.3124 of

(Claimants)

1. Kamala

2. Nirmala

3. Nithyanandam

2016

2014

... Respondents in C.M.A.No.No.541 of

& Appellants in C.M.A.No.3125 of

(Claimants)

Common Prayer: This Civil Miscellaneous Appeals are filed under



Section 173 of Motor Vehicles Act, 1988, to set aside the orders made in MCOP.Nos.4502 & 4503 of 2012, dated 05.03.2014 on the file of the Motor Accident Claims Tribunal - Chief Judge, Court of Small causes, Chennai.

In all C.M.As.

For Claimant : Mr.V.Velu

For Insurance Company : No appearance

COMMON JUDGMENT

Since the issue involved in these appeals are one and the same, the same are disposed of by way of this common order.

2. CMA.Nos.541 and 549 of 2016 have been filed by the Transport Corporation questioning the negligence and quantum of the compensation awarded by the Tribunal. In turn, CMA.Nos.3124 and 3125 of 2014 have been filed by the claimants seeking enhancement of the compensation.

3. For the sake of convenience, the appellants in CMA.Nos.3124 and 3125 of 2014 are referred to as "the claimants" and the appellants in CMA.Nos.541 and 549 of 2016 are referred to as "Transport Corporation". The claimants are the legal heirs of the deceased who were travelled as rider and pillion rider in the two wheeler.

4. The brief facts of the case are as hereunder :-



6. The Tribunal, after hearing the arguments on either side and after considering the oral and documentary evidences, has come to the conclusion that the accident occurred only due to negligent driving of the driver of the bus and awarded compensation in favour of the claimants.



7. Aggrieved by the said common award dated 05.05.2014, the both the claimants and the Transport Corporation have filed this appeal before this Court.

8. The learned counsel appearing for the claimants submitted that the above interpolation in the documents have not been gone into in proper perspective by the Tribunal, while appreciating the documents, which have been placed by the claimants and, therefore, the compensation awarded by the Tribunal deserves to be enhanced. The Tribunal failed to consider that due to the rash and negligent driving of the driver of the bus, two persons died. The amount awarded to the claimants are very meager which has to be enhanced.

9. Learned counsel appearing for the transport Corporation submitted that the accident had occurred only due to the rash and negligent driving of the rider of the two wheeler. In the deposition, RW1 stated that the driver of the bus has stopped the bus on seeing the rash and negligent driving by the two wheeler and the two wheeler only hit in front side of the bus. Without considering the said fact, the Tribunal has fixed entire negligence as against the Corporation, which is not sustainable one.



WEB COPY 10. Heard the learned counsel for the claimants as well as the learned counsel for the Transport Corporation and also perused the materials available on record.

11. From the materials on record, it is seen that the driver of the bus, was examined as RW1 and he deposed that the rider of the motorcycle alone was responsible for the accident. He admitted in the cross examination that departmental enquiry were initiated against the driver and increment of salary was not granted for two years and he was suspended for a period of two months. In view of the same, this Court feels that for safeguarding himself from the departmental proceedings, the RW1 has stated the allegation against the deceased persons and the said statement is not believable. Hence, the negligence fixed on the Corporation is correct, which does not warrant any interference.

12. As far as the quantum of compensation is concerned in CMA. No.3124 of 2014, at the time of the accident, the deceased was aged about 30 and working as masons and the Tribunal has fixed the notional income of Rs.4500/- and "17" multiplier has been applied and awarded 7,79,600/-



towards loss of dependency, which is perfectly in order, there is no interference required. However, the Tribunal has not awarded any amount in respect of future prospects. The Constitution Bench of the Supreme Court in the case of *National Insurance Co. Ltd. – Vs – Pranay Sethi & Ors. (2017 (16) SCC 680)*, has laid down that where the deceased is employed and falling within the age group of 30 to 40 years, future prospects at the rate of 40% ought to be included in the income of the deceased, while arriving at the income for the purpose of fixing the compensation. Therefore, the future prospectus and loss of income is worked at Rs.8,56,800/- Further the deceased have two children and the trial Court has awarded Rs.25,000/- towards loss of love and affection, which is incorrect and the same has to modified at Rs.50,000/- The amounts awarded towards other heads are reasonable and hence, the same are confirmed.

13. The amount of compensation of Rs.8,70,600/- is enhanced to Rs.9,56,800/- under the following heads :-

Sl.No.	Description	Amount awarded by the	Amount awarded by this Court (Rs.)
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		Tribunal (Rs.)	
1	Loss of dependency + Future prospectus	7,95,600/-	8,56,800/-
2	Loss of Consortium	25,000	25000
3	Funeral Expenses	10,000	10,000
4	Loss of love and affection	25,000	50,000
5	Transportation	5,000	5,000
6	Loss of Estate	10,000	10,000
	Total	8,70,600	9,56,800/-

14.As far as the quantum of compensation is concerned in CMA. No.3125 of 2014, at the time of the accident, the deceased was aged about 25 and working as mason and the Tribunal has fixed the notional income of Rs.4500/- and "17" multiplier has been applied and awarded 7,95,600/- towards loss of dependency, which is perfectly in order, there is no interference required. However, the Tribunal has not awarded any amount in respect of future prospects. The Constitution Bench of the Supreme Court in the case of *National Insurance Co. Ltd. – Vs – Pranay Sethi & Ors. (2017 (16) SCC 680)*, has laid down that where the deceased is employed and falling within the age group of 20 to 25 years, future prospects at the rate of 40% ought to be included in the income of the



deceased, while arriving at the income for the purpose of fixing the compensation. Therefore, the future prospectus and loss of income is worked at Rs.9,07,200/- Further the deceased have three dependants and the trial Court has awarded Rs.25,000/- towards loss of love and affection, which is incorrect and the same has to be modified at Rs.75,000/- The amounts awarded towards other heads are reasonable and hence, the same are confirmed.

15. The amount of compensation of Rs.6,88,000/- is enhanced to Rs.9,97,200/- under the following heads :-

Sl.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of dependency + Future prospectus	7,95,600/-	9,07,200/-
2	Funeral Expenses	10,000	10,000
3	Loss of love and affection	25,000	75,000
4	Transportation	5,000	5,000
		6,88,000	9,97,200/-

16. With the above modification, the CMA.Nos.3124 and 3125 of 2014 are partly allowed and CMA Nos.541 and 542 of 2016 are dismissed. The compensation awarded by the Tribunal is hereby enhanced



at Rs.9,56,800/- and 9,97,200/- respectively with interest at the rate of

7.5% per annum from the date of petition till the date of realization. The Transport Corporation is directed to deposit the enhanced award amount with interest, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw their share of the award amount with interest and costs, as per the ratio of apportionment fixed by the Tribunal, by filing necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

05.10.2023

Index : Yes / No
Speaking Order : Yes/ No
rli

M.DHANDAPANI.,J.

rli

To

1. The Managing Director,
State Express Transport
Corporation (T.N.) Ltd.,
Pallavan Salai,
Chennai - 2.



2. The Motor Accident Claims Tribunal - Chief Judge, Court of Small causes, Chennai.

C.M.A.Nos.3124 & 3125 of 2014,
C.M.A.Nos.540 & 541 of 2016
and C.M.P.Nos.4543 & 4544 of 2016

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