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CMA No. 1503 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1503 of 2023

1.Kambateeswaran

2.Venupriya

3.Shamili

4.Ajith @ Ajith Kambattan

... Appellants

Versus

1.Nandakumar

2.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
37, Mettupalayam Road,
Coimbatore, having branch at,
Sathyamangalam.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award of Motor Accident Claims Tribunal, Sub Court, Sathyamangalam and made in M.C.O.P. No.87 of 2020 dated 10.11.2022.

For Appellants : Ms. P.T. Saleem Fathima.

For Respondents : No appearance (for R1)

Mr. M. Murali Vinodh (for R2)



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J U D G M E N T

The appeal has been filed by the appellants challenging the quantum of compensation awarded by the Tribunal in M.C.O.P. No. 87 of 2020 dated 10.11.2022.

2.The appellants have filed a claim petition before the Tribunal stating that on 25.12.2019, while the deceased was walking near Kothagiri Ration Shop at Palam on the extreme left side of the road, the first respondent drove the TNSTC bus bearing Registration No. TN 38 N 2877 from Kothagiri to Kattabettu in a rash and negligent manner and dashed against the deceased as a result of which, the deceased sustained severe injuries and died. Thus, the appellants filed claim petition against the respondents claiming compensation.

3.The respondents filed a counter denying all the averments made in the claim petition. It is stated that the accident occurred only due to the negligent act of the deceased who came to the opposite left side of the bus. Though the driver of the bus slowed down and swerved the bus, the deceased collided with the rear side of the bus. Thus the second



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respondent is not liable to pay compensation. In any case, the claim was excessive and prayed for dismissal of the claim petition.

4.The appellants examined two witnesses on their side and marked Ex.P.1 to Ex.P.20. The respondents examined RW1 on their side and no document was marked.

5.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the second respondent and awarded a compensation of Rs.22,37,500/- to the appellants to be paid by the second respondent. Aggrieved by the said quantum of compensation, the appellants have preferred the instant appeal.

6.The learned counsel for the appellants submitted that the notional income fixed by the Tribunal at Rs.14,000/- is meagre though the appellants claimed Rs.15,000/- as notional income. The learned counsel further submitted that considering the age, occupation and cost inflation index, the Tribunal ought to have fixed the notional income at least at Rs.15,000/- per month. The compensation awarded towards Loss of



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Love and Affection and Loss of consortium are also meagre and prayed for enhancement of compensation.

7. Though notice has been served, none has entered appearance on behalf of the first respondent.

8. Mr. M. Murali Vinodh, learned counsel for the second respondent per contra submitted that the appellants have not marked any document to prove the income of the deceased. In the absence of any documentary evidence, the notional income fixed by the Tribunal at Rs.14,000/- per month is not meagre. The compensation awarded by the Tribunal under the other heads are just and reasonable and there is no reason to interfere with the said finding and prayed for dismissal of the appeal.

9. The short question involved in this appeal is whether the appellants are entitled to enhancement of compensation.

10. This Court finds that the only question involved in the instant



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case is whether the notional income fixed by the Tribunal at Rs.14,000/- per month can be increased to Rs.15,000/- per month. At the time of the accident, the deceased was working as a coolie in Tea Estate and aged 48 years. Considering the age, year of accident and the nature of the work done by the deceased, this Court is of the view that the notional income fixed by the Tribunal can be enhanced to Rs.15,000/- per month. Since the deceased was aged 48 years, 25% future prospects had to be added and the multiplier applicable is 13. Since there are four dependants, 1/4th has to be deducted towards personal income. Therefore, the loss of dependency is calculated as follows: Rs.15,000/- + Rs.3,750/-(Rs.15,000 X 25%) = Rs.18750/- x 12 x 13 x 3/4 = Rs.21,93,750/-. The compensation awarded by the Tribunal under the other heads are just and reasonable and hence the same are confirmed. Thus, the award of the Tribunal is modified as follows;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	20,47,500	21,93,750	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Funeral Expenses	15,000	15,000	Confirmed
4.	Loss of Consortium	1,60,000	1,60,000	Confirmed



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Total	22,37,500	23,83,750	Enhanced by Rs.1,46,250/-
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11. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.22,37,500/- is hereby enhanced to Rs.23,83,750/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants are permitted to withdraw their respective shares of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are further directed to pay the requisite court fee, if any, on the enhanced award amount. No costs.

24.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal,
Sub Court,
Sathyamangalam.



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2. The Section Officer,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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