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C.M.A. No. 547 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 547 of 2021

1. Munusamy
 2. Alamelu
- ... Appellants / Petitioners

Vs.

The Managing Director,
M.T.C (Chennai Division),
Having its office at Anna Salai,
Chennai – 2.

... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 16.04.2019 passed in M.A.C.T.O.P. No. 519 of 2016 on the file of the IV Additional District Judge, Motor Accident Claims Tribunal, Ponneri.

For Appellants : M/s. K.M. Ramesh

For Respondent : M/s. A. Vinothraj



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JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation awarded in M.A.C.T.O.P. No. 519 of 2016, dated 16.04.2019 on the file of the IV Additional District Judge, Motor Accident Claims Tribunal, Ponneri, wherein the Tribunal has awarded compensation for a sum of Rs.11,40,000/- along with the interest @ 7.5% per annum from the date of filing of petition till the date of realization.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The case of the claimants is that on 24.04.2016 at about 11:00AM, their son namely Kaviraj was riding a two wheeler bearing Registration No.TN-22-CZ-8141 near Medur Petrol Bunk, Medur, Ponneri Taluk from West to East, at that time, a bus bearing Registration No.TN-01-N-5691 belonging to the respondent herein driven by its driver in rash and negligent manner came on the left side of the deceased motor cycle and courted the accident. Due to which, the rider of the two wheeler has



sustained grievous injuries and died on the spot. The deceased Kaviraj was aged about 21 years at the time of accident and he has worked as a temporary worker in a Private company at Gummidipoondi and earned Rs.10,000/- per month. Due to loss of their son, the claimants have come forward with a claim petition seeking compensation for a sum of Rs.20,00,000/- under section 166 of the Motor Vehicles Act.

4. The respondent - Transport Corporation has filed a counter and contested that the accident was happened due to the negligent act on the part of the driver of the two wheeler and appealed that the bus driver has driven the bus with due care and caution. The respondent also stated that the bus driver in order to allow the tractor to pass on the opposite direction, he has turned the bus to the left hand side and at that time the rider of the two wheeler along with two pillion drivers came from opposite direction and attempted to overtake the tractor, on seeing the irresponsible act of the deceased, the driver of the bus applied sudden brake and stopped the bus. But, the deceased came and dashed against the stationed bus, which resulted in accident. Hence, the bus driver is not responsible for the accident and prays to dismiss the claim petition.



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5. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 to P.10 were marked, on the side of the respondent, the driver of the bus was examined as R.W.1 and no exhibits were marked.

6. Based on the documents placed on record, the Tribunal in point No.1, has held that the negligent act on the part of the driver of the bus is responsible for the accident. In point No.2, the Tribunal has quantified and granted compensation for a sum of Rs.11,40,000/- along with the interest @ 7.5% per annum from the date of petition till the date of realisation to the claimants.

7. Aggrieved over the quantum of compensation granted, the claimants have come forward with this appeal seeking enhancement of compensation. The Transport Corporation has not preferred any appeal in challenging the award passed by the Tribunal.

8. The learned counsel appearing for the claimants has submitted



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that the Tribunal after appreciating the evidences placed on record has awarded compensation but failed to consider the future prospectus while calculating loss of dependency and also not properly awarded compensation under the head loss of estate and consortium. Therefore, only for the purpose of seeking enhancement of compensation under the head future prospectus, loss of estate and consortium this appeal has been filed.

9. The learned counsel for the Transport Corporation has contented that the age of the deceased was not properly established before the Tribunal, stated that the deceased was aged about 34 years at the time of the accident and contended that the Tribunal without any proper evidence has fixed the notional income of the deceased and awarded compensation, which is also on the higher side, hence prays to dismiss the appeal.

10. Heard the submissions made on both sides and perused the materials placed on record:

11. In this case, the claimants have marked Ex.P.8 - driving licence and Ex.P.9 - S.S.L.C mark sheet of the deceased, which establish the fact



that the deceased was aged about 21 years at the time of accident and not 34 years as claimed by the Transport Corporation. Before the Tribunal, the temporary identity card issued by the employer of the deceased is marked as Ex.P.10, which shows that the deceased had worked in a institution called Royal Associates. However, the Ex.P.10 is not sufficient to prove the income of the deceased and the Tribunal has taken note of the same and fixed the notional income of the deceased as Rs.10,000/- per month and by following the Hon'ble Apex Court Judgment in *Sarala Verma Vs. Delhi Transport Corporation*, the Tribunal has fixed the multiplier as '18'. This Court finds no infirmity in the above finding since at the date of occurrence, the notional income fixed for the person aged about 21 years is Rs.10,000/- and the multiplier adopted is 18 and same is confirmed. Since, the deceased was a bachelor, the Tribunal has deducted 1/2 of his income for his personal expenditure and assessed loss of dependency as: (Rs.10,000/- X 1/2 (Deduction) x 12 x 18) **Rs.10,80,000/-**.

12. However, the Tribunal has not granted compensation under the head future prospectus, as per *National Insurance Co. Ltd., vs. Pranay Sethi case* reported in *2017(2) TN MAC 609 (SC)*, it is held that even the



person who are not having permanent employment are also entitled for future prospectus. Hence, considering the same and the age of the deceased, this Court is inclined to award 40% under the head future prospectus on the total loss of dependency fixed by the Tribunal. Hence, the compensation under future prospectus is assessed as follows:

$$\text{Future prospectus (Rs.10,80,000/- x 40\%)} = \mathbf{Rs.4,32,000/-}$$

13. It is also a settled law that the claimants are entitled for loss of estate and funeral expenses. The Tribunal has awarded Rs.10,000/- each under the heads loss of estate and funeral expenses. This Court is of the view that the compensation awarded under loss of estate and funeral expenses are on the lower side and inclined to modify the same as Rs.15,000/- under each heads.

14. The Tribunal has not awarded any compensation under the head filial consortium but in the award of Tribunal, under the head loss of love and affection the Tribunal has awarded Rs.40,000/-. As per the judgment of the Hon'ble Apex Court in *Magma General Insurance Co. Ltd., vs Nanu Ram* reported in *2018 ACJ 2018*, this Court is of the view that the Tribunal



ought to have awarded the compensation under filial consortium instead of loss of love and affection to each of the claimants, hence, this Court is inclined to modify the same and award Rs.40,000/- to each of the claimants, who are the parents of the deceased under the head filial consortium.

15. Accordingly, the award passed by the Tribunal under various 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 reduced
1.	Loss of dependency	10,80,000/-	10,80,000/-	Confirmed
2.	Loss of estate	10,000/-	15,000/-	Enhanced
3.	Funeral Expenses	10,000/-	15,000/-	Enhanced
4.	Loss of love and affection / Filial consortium	40,000/-	80,000/-	Enhanced
5.	Future prospectus	---	4,32,000/-	Granted
	Total Compensation	11,40,000/-	16,22,000/-	Enhanced

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,40,000/- is hereby enhanced to **Rs.16,22,000/- [Rupees Sixteen Lakhs and Twenty Two**



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Thousand only] together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of realization of compensation amount, excluding the default period, if any. The respondent - Transport Corporation is directed to deposit the amount awarded 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.A.C.T.O.P. No.519 of 2016 on the file of the IV Additional District Judge, Motor Accidents Claims Tribunal, Ponneri. On such deposit, the claimants/ appellants herein are permitted to withdraw the award amount now determined by this Court along with interest and costs as per the apportionment fixed by the Tribunal. There shall be no order as to costs in the present appeal.

06.10.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The IV Additional District Judge,
Motor Accident Claims Tribunal,
Ponneri.
2. The Section Officer,



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V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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