



C.M.A.No.3512 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.3512 of 2021

1. T. Kamala
2. Minor Manoj
3. Minor Mahalakshmi
[Minor appellants represented by their mother
T.Kamala, 1st appellant herein]
4. G. Kaliyamoorthy
5. K. Tamilarasi

... Appellants/Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
(Villupuram Division-I),
3/137, Salamedu, Vazhuthareddy,
Villupuram – 605 602.

... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree, dated 03.08.2017 made in M.C.O.P.No.964 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Cuddalore.

For Appellants : M/s. Ramya V. Rao
For Respondent : Mr. S. Santhosa Kumar
[S.Santhosakumar vakalat filed in
SR.No.43501/2023, dated 20.12.2023]



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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimants seeking for enhancement of compensation against the Award passed in M.C.O.P.No.964 of 2015, dated 03.08.2017, on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

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

3. The case of the claimants are as follows:

The claimants are the wife, minor children and parents of the deceased one Thirumurugan. On 04.02.2015 at about 21.15 hours, while the deceased was getting into the Bus bearing Registration No.TN 32 N 3040 on Cuddalore Road, the bus reached near Pandiyan Hotal, driver of the bus drove it in rash and negligent manner the deceased fell down, resulting which, the deceased sustained fatal injuries and died on the spot. A criminal case was also registered against the driver of the bus in Crime No.65 of 2015 under Section 304(A) IPC by the SHO, Panruti Police. Hence, the legal heirs of the deceased filed Claim Petition claiming compensation of



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Rs.40,00,000/- for the death of the deceased Thirumurugan.

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

5. The respondent filed counter and contended that the accident had occurred only due to the negligent act of the deceased since he attempted to board the bus before the bus halted by the driver. The Transport Corporation is not liable to pay any compensation to the claimants. They have also disputed the dependency, age, avocation and income of the deceased and disputed the compensation claimed by the claimants under various heads.

6. Based on the evidences placed on record, the Tribunal has quantified the compensation and awarded a sum of Rs.12,90,000/- as compensation along with interest at the rate of 8% per annum from the date of claim petition till the date of realization.

7. Aggrieved over the quantum of compensation awarded, the



claimants have come out with this appeal seeking enhancement of compensation. The Respondent has not filed any appeal as against the award.

8. The only point arises for consideration in this appeal is that the quantum of compensation is to be enhanced to the claimants herein.

9. The learned counsel for the claimants has submitted that the Tribunal has not properly fixed the notional income of the deceased while awarding compensaiton and also the Tribunal has not properly awarded compensation under other heads also, prays to enhance the compensation.

10. Per Contra, the learned counsel for the Transport Corporation has submitted that the compensation awarded by the Tribunal based on the evidences placed on record and the same is proper and the compensation under some of the heads awarded are also on the higher side, prays to confirm the same and there is no need for further enhancement.

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



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12. The claimants have claimed that the deceased was doing Technical work in BRR Transports Chennai and was earning a sum of Rs.21,000/- per month. However, the claimants have not examined the employer of the deceased to prove his avocation and they have come forward to mark Ex.P6-Salary Certificate, which has been issued by the Proprietor of the Bus-Lorry Body Service Works, Kumabakonam. The Tribunal has held that the employer of the deceased has not been examined and Ex.P6-Salaray Certificate alone is not sufficient to prove the income of the deceased. This Court has also perused the Salary Certificate and this Court is of the view that eventhough it is stated that Rs.21,000/- has been paid and the same has not been substantiated by any doumentary proof or by examining the employer of the deceased, the Tribunal has fixed a sum of Rs.7,500/- as the notional income of the deceased and this Court is of the view the same is on the lower side.

13. This Court has consistently following the Division Bench Judgment of this Court in *Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]* by adopting the cost of index, fixed the notional income of the person who were not able to prove the income. Admittedly, in this case, the deceased was aged about 39 years at the time of

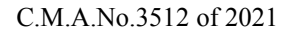


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accident and was a Technical Worker, the Judgment of this Court cited *supra*, the applicable notional income based on the cost of index is as follows:

<i>S.No.</i>	<i>Financial Year</i>	<i>Cost of Inflation Index</i>
<i>1</i>	<i>2001-2002</i>	<i>100</i>
<i>2</i>	<i>2002-2003</i>	<i>105</i>
<i>3</i>	<i>2003-2004</i>	<i>109</i>
<i>4</i>	<i>2004-2005</i>	<i>113</i>
<i>5</i>	<i>2005-2006</i>	<i>117</i>
<i>6</i>	<i>2006-2007</i>	<i>122</i>
<i>7</i>	<i>2007-2008</i>	<i>129</i>
<i>8</i>	<i>2008-2009</i>	<i>137</i>
<i>9</i>	<i>2009-2010</i>	<i>148</i>
<i>10</i>	<i>2010-2011</i>	<i>167</i>
<i>11</i>	<i>2011-2012</i>	<i>184</i>
<i>12</i>	<i>2012-2013</i>	<i>200</i>
<i>13</i>	<i>2013-2014</i>	<i>220</i>
<i>14</i>	<i>2014-2015</i>	<i>240</i>
<i>15</i>	<i>2015-2016</i>	<i>254</i>
<i>16</i>	<i>2016-2017</i>	<i>264</i>
<i>17</i>	<i>2017-2018</i>	<i>272</i>
<i>18</i>	<i>2018-2019</i>	<i>280</i>
<i>19</i>	<i>2019-2020</i>	<i>289</i>
<i>20</i>	<i>2020-2021</i>	<i>301</i>
<i>21</i>	<i>2021-2022</i>	<i>317</i>
<i>22</i>	<i>2022-2023</i>	<i>331</i>
<i>23</i>	<i>2023-2024</i>	<i>348</i>

*for example: (Rs.6,500/- X 240) / 129 = Rs.12,093/-
@Rs.12,000/- (notional income of the deceased)*



<https://www.mhc.tn.gov.in/judis>



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Annual income (Rs.12,000/- x 12) = Rs.1,44,000/-
add Future prospects @ 40% = Rs.57,600/-
Yearly income of the deceased = Rs.2,01,600/-
Yearly contribution to his family
(deduction of 1/4 Rs.50,400/-) = Rs.1,51,200/-
Applicable Multiplier '15'
Total Loss of dependency = Rs.22,68,000/-

16. The Tribunal while awarding compensation under the head loss of consortium, awarded a sum of Rs.1,00,000/- to the first petitioner who is the wife of the deceased and a sum of Rs.50,000/- each to the petitioners 2 and 3 who are the children of the deceased under the head loss of love and affection. The petitioners 4 and 5 who are the parents of the deceased have been awarded a sum of Rs.25,000/- under the head loss of love and affection. As per the Judgment of the Hon'ble Apex Court in *National Insurance Co. Ltd., vs. Pranay Sethi and other* [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680], the head loss of love and affection included under the head loss of consortium and the dependants are entitled to get loss of consortium. Recently, the Hon'ble Apex Court in *United India Insurance Co., Limited vs. Satinder Kaur and Ors.* [MANU/SC/0500/2020



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: (2021) 11 SCC 780] and *Magma General Insurance Co. Ltd., vs. Nanu*

Ram [2018 ACJ 2018] has also confirmed that the claimants are entitled to get Rs.40,000/- under the head loss of consortium. Accordingly, the loss of consortium is modified to Rs.40,000/- each is granted. The Tribunal has awarded a sum of Rs.25,000/- under the head Transport and Funeral Expenses and this Court is of the view the same is on the higher side hence this Court is inclined to reduce a sum of Rs.15,000/- under the head funeral expenses. The Tribunal has not awarded compensation under the head loss of Estate and this Court is inclined to grant a sum of Rs.15,000/- under the head Loss of Estate.

17. The Tribunal has awarded interest at at the rate of 9% per annum on the compensation award from the date of filing of petition till the date of realization. The Hon'ble Apex Court in *Tamil Nadu State Trasport Corporation Ltd., vs. S.Rajapriya and Ors [2005 ACJ 1441]*, has modified the rate of interest to 7.5% per annum based on the prevailing rate of interest in bank deposits. By following the same, 7.5% per annum is fixed as the rate of interest towards the deposit of the compensation amount awarded from the date of filing of claim petition till the date of realization.



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18. Thus the compensation awarded 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 granted
1.	Loss of Dependency	Rs.10,12,500/-	Rs.22,68,000/-	Enhanced
2.	Loss of Consortium to 1 st petitioner/Loss of Consortium-Respondents 1 to 5	Rs.1,00,000/-	Rs.2,00,000/-	Modified
3.	Loss of Love and Affection to petitioners 2 and 3	Rs.1,00,000/-	---	Rejected
4	Loss of Love and Affection to petitioners 4 & 5	Rs.50,000/-	---	Rejected
5	Transport and Funeral Expenses/ Funeral Expenses	Rs.25,000/-	Rs.15,000/-	Modified
6	Loss of Estate	---	Rs.15,000/-	Granted
	Total Compensation	Rs.12,87,500/- @ Rs.12,90,000/-	Rs.24,98,000/-	Enhanced by Rs.12,08,000/-

19. In the result, this Civil Miscellaneous Appeal is partly



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allowed and the compensation awarded by the Tribunal is at Rs.12,90,000/-

is hereby enhanced to Rs.24,98,000/- [Rupees Twenty Four Lakhs and Ninety Eight Thousand 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, excluding the default period if any. The respondent/Transport Corporation 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 six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.964 of 2015, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Cuddalore. On such deposit, the appellants/claimants 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 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. The share of the minor claimants is directed to be deposited in any one of the Nationalized 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



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welfare of the minor claimants. In other aspects, the award of the Tribunal shall stands confirmed. There shall be no order as to costs in the present appeal.

21.12.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

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



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K.RAJASEKAR,J.

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