



C.M.A.No.3873 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.3873 of 2019 and
C.M.P.No.22096 of 2019**

The Managing Director,
Tamil Nadu State Transport Corporation,
Trichy. ... Appellant / 2nd Respondent
Vs.

Durai Raj (deceased)
1. Jackulin Rani
W/o.Kirubakaran @ Paul Kirubakaran

2. Minor Shiny Paul
D/o.Kirubakaran @ Paul Kirubakaran

3. Thangam
W/o.Durai Raj ... Respondent 1-3 / Petitioners
1,2&4

4. Selvaraj ... 4th Respondent / 1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.11.2018 made in M.C.O.P.No.1204 of 2011 on the file of the Motor Accidents Claims



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Tribunal, Principal Sub Judge, Tiruppur.

For Appellant : Mr.M.Murali Vinodh
For Respondents : Mr.Ma.Pa.Thangavel for R1 to R3
R4 - Not Ready Notice

J U D G M E N T

The present appeal has been filed against the order passed by the Principal Sub Judge, Motor Accident Claims Tribunal, Tiruppur, in M.C.O.P. No.1204 of 2011, wherein the Tribunal, vide order dated 28.11.2018, passed an award directing payment of compensation of Rs.19,25,000/- by the appellant/Transport Corporation along with interest at 7.5% p.a.

2. It is the case of the claimant that on 03.11.2011, at about 9.30 p.m., when the deceased was riding his motor cycle, the bus belonging to the appellant, bearing Regn.No.TN-45-N-3271, driven by its driver in a rash and negligent manner, hit against the motor cycle driven by the deceased due to which the deceased sustained grievous injuries and died on the spot. Claiming compensation in a sum of Rs.25,00,000/-, on the ground that the deceased was the sole bread winner of the family and he was earning a sum of Rs.15,000/- per month, the claim petition was filed by the claimants, who are the wife, child, mother and father of the deceased. Pending the claim petition, the father of the deceased passed away, which has also been recorded.



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3. Before the Tribunal, the 1st claimant examined herself as P.W.1 and one other witness as P.W.2 and marked Exs.P-1 to P-8. On the side of the Transport Corporation, neither any witness was examined nor any documents were marked. Based on the oral and documentary evidence, the Tribunal, while fixed the negligence on the part of the driver of the appellant Transport Corporation, determined compensation in a sum of Rs.19,25,000/- payable along with interest at 7.5% p.a. from the date of petition till date of deposit along with costs. Aggrieved by the said award, the present appeal has been filed by the appellant.

4. Learned standing counsel appearing for the appellant Transport Corporation submitted that the claimants have not proved the case that it was on account of the negligence of the driver of the appellant Transport Corporation, the fatality had occurred. It is the further submission of the learned counsel that even otherwise, the quantum of compensation awarded by the Tribunal is excessive as the notional income fixed is on the higher side. It is the further submission of the learned counsel that even under head, 'loss of love and affection', the sum of Rs.50,000/- awarded to the child and mother is excessive. Accordingly, he prays for interference with the award of the Tribunal.



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5. Per contra, learned counsel appearing for the claimants submits that the Tribunal, considering Ex.P-1, the first information report, has come to the categorical conclusion that the accident had happened on account of the rash and negligent driving by the driver of the appellant Transport Corporation. It is the further submission of the learned counsel that the compensation awarded by the Tribunal is just and reasonable and by no stretch could be termed to be excessive. Accordingly, he prays for dismissal of the appeal.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the documents filed on behalf of the claimants.

7. A careful perusal of the order passed by the Tribunal coupled with Ex.P-1, the first information report, clearly reveals that the accident had happened on account of the rash and negligent driving of the bus belonging to the appellant Transport Corporation. No contra evidence, either in the form of oral or documentary evidence has been submitted by the appellant Transport Corporation to disprove the same and in the absence of any material, the finding recorded by the Tribunal with regard to the cause of the accident being the bus belonging to the



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appellant Transport Corporation does not require any interference.

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8. Coming to the quantum of compensation awarded by the Tribunal, it is seen that the claimants, though claimed the monthly salary of the deceased to be Rs.15,000/-, however, have not placed any documentary evidence to prove the same, but for the bank pass book. In such a backdrop, considering the fact that the accident had happened in the year 2011, the Tribunal has fixed the notional income of the deceased at Rs.12,000/- by applying the ratio laid down by the Apex Court in *Syed Sadiq & Ors. – Vs – Divisional Manager, United India Insurance Co. Ltd. (2014 (2) SCC 735)*. The Tribunal, for the purpose of fixing the future prospects of the deceased, taking the age of the deceased at 40 years, on the basis of the post mortem certificate, Ex.P-2, applying the ratio laid down in the case of *National Insurance Co. Ltd. – Vs – Pranay Sethi & Ors. (2017 (16) SCC 680)*, fixed the future prospects at 25% and accordingly arrived at the loss of monthly income to the family at Rs.15,000/-. With respect to the above computation of monthly income, there could be no quarrel, as it is based on the ratio laid down in the aforesaid decisions.

9. However, a perusal of the order passed by the Tribunal reveals that



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after fixing the monthly income of the deceased at Rs.15,000/-, while deducting $\frac{1}{4}^{\text{th}}$ towards the personal expenses of the deceased by taking into account the total number of family members at 4, had erroneously taken the monthly income at Rs.13,000/- and deducting $\frac{1}{4}^{\text{th}}$ towards the personal expenses, had arrived at the loss of monthly income to the family at Rs.9,750/-. It is to be pointed out that while the monthly income had been fixed at Rs.15,000/-, the deduction of $\frac{1}{4}^{\text{th}}$ should be from Rs.15,000/-. Therefore, applying the monthly income at Rs.15,000/- and deducting $\frac{1}{4}^{\text{th}}$ towards the personal expenses of the deceased, the loss of monthly income to the family is fixed at Rs.11,250/- (Rs.15,000 – Rs.3,750/- = Rs.11,250/=).

10. To the above sum of Rs.11,250/-, the proper multiplier as fixed in the case of *Sarla Verma & Ors. – Vs – Delhi Transport Corporation & Ors. (2009 (6) SCC 121)* needs to be applied. According to the said decision, the proper multiplier to be adopted is 15. Accordingly applying the multiplier at 15, the compensation under the head 'Loss of Income' to the family is arrived at Rs.20,25,000/= (Rs.11,250 * 12 * 15 = Rs.20,25,000/=).

11. At this juncture, it is to be pointed out that the Tribunal had not



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properly deducted the personal expenses of the deceased from the notional income arrived at including future prospects. After fixing the monthly income at Rs.15,000/-, while at one place, the Tribunal has deducted Rs.2250/- towards the personal expenses of the deceased and fixed the loss of income at Rs.10,750/- and arrived at a sum of Rs.19,35,000/-, however in the tabulated statement, the Tribunal has fixed the loss of monthly income at Rs.9,750/- by adopting the monthly income at Rs.13,000/- and deducting a sum of Rs.3250/- towards the personal expenses of the deceased and arrived at a sum of Rs.17,55,000/- as loss of income to the family. Due to the erroneous calculation at different points in the judgment, the total loss of income arrived at by the Tribunal is wholly flawed, which has resulted in the award of lower compensation under the head loss of income, while the actual compensation under the head 'Loss of Income' should have been Rs.20,25,000/- as determined by this Court above. Therefore, under the head 'Loss of Income' this Court awards a sum of Rs.20,25,000/-.

12. Insofar as the compensation awarded under the head 'Loss of Love & Affection' to the child and mother are concerned, though the Tribunal has awarded a sum of Rs.50,000/- to each of them, but as laid down in ***Pranay Sethi***



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case, the amount that could be awarded under the said head is only Rs.40,000/-, and accordingly, the said amount is reduced to Rs.40,000/- to each of the claimants, viz., the child and mother of the deceased. In view of the fact that pending the claim petition the father of the deceased died, no compensation is awarded to the said claimant under the aforesaid head.

13. Insofar as the compensation awarded under the other heads, viz., 'Loss of Estate', 'Loss of Consortium' and 'Funeral Expenses' are concerned, the amounts awarded are as per the ratio laid down in *Pranay Sethi case* and, therefore, the said compensation does not require any interference.

14. In the above circumstances, the compensation awarded by the Tribunal being erroneous in computation as discussed above, this Court awards the compensation under the following heads by modifying the compensation awarded by the Tribunal :-



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Head of Compensation	Amount awarded by Tribunal	Amount awarded by this Court
Loss of Income	Rs. 17,55,000/=	Rs.20,25000/
Loss of Love & Affection (To Child & Mother)	(Rs.50,000 * 2) Rs.1,00,000/=	(Rs.40,000 * 2) Rs.80,000/=
Loss of Consortium (To Spouse)	Rs.40,000/=	Rs.40,000/=
Loss of Estate	Rs.15,000/=	Rs.15,000/=
Funeral Expenses	Rs.15,000/=	Rs.15,000/=
TOTAL	Rs.19,25,000/=	Rs.21,75,000/=

15. In the result, the appeal is allowed in part by modifying the compensation awarded by the Tribunal from Rs.19,25,000/- to Rs.21,75,000/- along with interest at 7.5% p.a. from the date of petition till the date of deposit. The 1st claimant, wife of the deceased would be entitled to 50% of the compensation and the 4th claimant, viz., the mother of the deceased would be entitled to a compensation of 10% and the balance 40% of the compensation will be payable to the 2nd claimant, viz., the minor daughter of the deceased.



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16. The appellant/Transport Corporation is directed to deposit the entire award amount as modified by this Court above, along with interest and costs as ordered by the Tribunal, less the amount, if any, already deposited, to the credit of MCOP No.1204 of 2011 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Tiruppur, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the major claimants through RTGS as per apportionment ordered by this Court above.

17. Insofar as the 2nd claimant, viz., the minor daughter of the deceased is concerned, if the said claimant is yet to attain majority, the Tribunal is directed to keep her share in deposit in an interest yielding fixed deposit with any one of the Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until the minor attains majority and interest derived from out of the said share of the minor shall be paid to the 1st claimant/mother every quarter to be utilised for the welfare of the said minor. If the minor has since attained majority, upon proper proof being filed substantiating attainment of majority, the Tribunal is directed to transfer the share of the 2nd claimant directly to the Bank account of the



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2nd claimant through RTGS. No costs. Consequently, connected miscellaneous petition is closed.

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

vji / GLN

To

1. The Motor Accidents Claims Tribunal,
Principal Sub Judge, Tiruppur.
2. The Managing Director,
Tamil Nadu State Transport Corporation,
Trichy.
3. The Section Officer,
V.R. Section,
High Court, Chennai.



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