



C.M.A.No.1541 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.03.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

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- 1.Fathima Rishana @ Fathima Shana
- 2.Minor Syed Abthahir
(Minor represented by Natural guardian mother
Fathima Rishana @ Fathima Shana)
- 3.Sainath Beevi @ Sainath
- 4.Thasthagir

...Appellants

Vs.

The Managing Director,
Tamilnadu State Transport Corporation Ltd,
Villupuram Division-I, Villupuram

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying to allow the appeal and enhance the compensation in MCOP.No.54 of 2015 dated 10.10.2018, on the file of the Motor Vehicle Claims, Principal District Judge, Cuddalore.

For Appellants : M/s.Ramya V. Rao
For Respondent: M/s.J.Tamil Selvi



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JUDGMENT

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The appeal is filed by the claimants challenging the Judgment and Decree in M.C.O.P.No.54 of 2015 dated 10.10.2018, on the file of the Motor Vehicle Claims Tribunal, Principal District Judge, Cuddalore.

2. The brief facts of the case are that, while the deceased was traveling in the two wheeler as pillion rider, the bus belonging to the respondent/Transport Corporation, which was driven by its driver in a rash and negligent manner, dashed against the two wheeler, resulting in the death of both the rider as well as the pillion rider of the two wheeler.

3. According to the claimants, the deceased was aged about 30 years at the time of accident and earning a sum of Rs.20,000/- per month by doing foreign goods business. The claimants therefore filed claim petition seeking compensation for a sum of Rs.30,00,000/-.

4. The respondent herein/Transport Corporation filed a counter before the Tribunal denying all the averments made in claim petition on negligence and quantum.



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5. Before the claims Tribunal, the claimant examined herself as P.W.1.

The claimant in the connected M.C.O.P.No.55 of 2012 was examined as P.W.2.

The eye witness to the accident was examined as P.W.3. The claimant filed Ex.P.1 to Ex.P.11 in support of the claim. The respondent/Transport Corporation neither examined witness nor marked any documents.

6. The claims Tribunal, on an assessment of the entire evidence on record, found that the accident occurred only due to the negligence of the Transport Corporation driver and therefore awarded a sum of Rs.13,08,000/- as compensation to the claimants. Not satisfied with the compensation awarded by the Tribunal, the claimants have filed above appeal seeking enhancement of compensation.

7. The learned counsel for the appellants submitted that the Tribunal miserably erred in assessing the notional income of the deceased as Rs.6,500/- per month, over looking the fact that the deceased was a Foreign Goods Dealer and in support of the same, Ex.P.6/Passport was marked as document.

8. According to the learned counsel for the appellants, adopting the principles laid down by the Division Bench of this Court in the case *Managing*



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reported in 2016 ACJ 1790, the income of the deceased should be assessed at Rs.12,000/- per month. As far as addition towards future prospects and deduction towards personal expenses are concerned, the counsel submits that the Tribunal has rightly deducted 30% towards personal expenses of the deceased and added 40% towards future prospects. The counsel further submits that, as far as Filial and Parental consortium are concerned, the Tribunal has not awarded any amount to the mother and the minor child of the deceased and therefore the mother and the minor child are entitled to 40,000/- each towards Filial and Parental consortium, as per the Judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi* reported in 2017(16) SCC 680.

9. The learned counsel for the respondent/ Transport Corporation on the other hand submitted that the assessment of income and the compensation awarded by the Tribunal is just, fair, and reasonable and does not call for any interference by this Court. The counsel further submits that there are no merits in the appeal and same deserves to be dismissed.



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10. I have heard both the learned counsel for the appellants and the learned counsel for the respondent and perused the materials on record.

11. The undisputed facts are that, the accident occurred on 26.08.2014 and the deceased left behind his widow aged about 20 years, mother aged 55 years and new born child.

12. In my view, the assessment of income by the Tribunal at Rs.6,500/- per month is disproportionate to the nature of business carried on by the deceased at the time of the accident. The deceased was a trader in foreign goods and the passport/Ex.P.6 was also filed in support of his business.

13. I am therefore of the view that the monthly income of the deceased can be fixed at Rs.12,000/- per month. 40% (i.e. Rs.4,800/-) is added towards future prospects (i.e Rs.16,800/- per month). The income of the deceased would thus work out to $\text{Rs.16,800} \times 12 \times 17 \times \frac{2}{3} = \text{Rs.22,84,800/-}$.

14. The counsel for the appellant is justified in her contention that the new born child and the mother of the deceased are both entitled to Filial and Parental Consortium of Rs.40,000/- each.



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15. In view of the above discussion, the award of the Tribunal is modified as follows.

<i>S.No</i>	<i>Various Heads</i>	<i>Award by the Tribunal</i>	<i>Award by this Court</i>
1.	Pecuniary loss	Rs.12,37,600/-	Rs.22,84,800/-
2.	Filial and Parental	Nil	Rs.80,000/- Rs.40,000 each
3.	Loss of Consortium	Rs.40,000/-	Rs.40,000/-
4.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
5.	Funeral expenses	Rs.15,000/-	Rs.15,000/-
Total		Rs.13,08,000/-	Rs.24,49,800/- Enhanced amount is Rs.11,41,800/-

16. The appellants are entitled to Rs.24,49,800/- as compensation along with 7.5% interest from the date of claim petition till the date of deposit. The mother of the deceased is entitled to Rs.4,49,800, the widow/wife is entitled to Rs.12,00,000/- (Twelve Lakhs Only) and The minor child is entitled to Rs.8,00,000/- (Eight Lakhs Only). The share of the minor shall be deposited in any of the Nationalized Banks fetching interest. The Transport Corporation is directed to deposit the enhanced compensation of Rs.11,41,800/- along with 7.5% interest within a period of eight (8) weeks from the date of receipt of a copy the order.



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17. The first and the third appellant are permitted to withdraw their share by filing appropriate application before the Tribunal. Accordingly, the appeal is partly allowed.

18. It is made clear that the appellants shall pay the necessary Court fee for the enhance compensation awarded by this Court. The registry is directed to draft the decree only after the payment of the Court fee on the enhanced compensation.

With the above observations and directions, the appeal is partly allowed.

No costs.

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dsn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

1. Principal District Judge, Cuddalore.
Motor Accidents Claim Tribunal.

2. The Section Officer
V.R.Section,
High Court, Madras.



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N.MALA.J.,

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