



C.M.A.No.1051 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1051 of 2017

1. Chellammal
W/o.Late Ponnusamy

2. Sumathi
D/o.Late Ponnusamy

... Appellants / Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Salem - 7.

... Respondent / Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.08.2016 made in M.C.O.P.No.1470 of 2009 on the file of the Motor Accidents Claims Tribunal-cum-Special Subordinate Court No.2, Salem.



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For Appellants : Mr.C.Kulanthaivel

For Respondent : Mr.D.Nitin

J U D G M E N T

Aggrieved by the compensation awarded by the Tribunal in M.C.O.P.No.1470 of 2009, the claimants / petitioners have come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. It is the case of the claimants that, on 19.02.2009, at about 8.30 a.m., while the deceased was walking in the road, a bus belonging to the respondent / Transport Corporation bearing Registration No.TN-30-N-0659 driven by its driver in a rash and negligent manner, hit against the deceased, due to which, the deceased sustained grievous injuries and died on 26.10.2009. Claiming compensation in a sum of Rs.10,00,000/- on the ground that, the deceased was the sole bread winner of the family and he was earning a sum of Rs.10,000/- per month, the claim petition was filed by the claimants, who are the wife and the daughter of the deceased.



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3. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P1 to P7 were marked. The Transport Corporation did not let in any evidence either orally or documentary. The Tribunal, after analysing the oral and documentary evidence available on record, awarded a compensation of Rs.40,000/ to the claimants. Further, fixing 15% towards the contributory negligence on the part of the deceased, the Tribunal awarded a sum of Rs.34,000/- as compensation to the claimants and directed the respondent to pay the same to the appellants / claimants.

4. The learned counsel appearing for the claimants / petitioners submitted that the Tribunal has erred in fixing 15% contributory negligence on the part of the deceased when there was no specific charge has been made against him in the criminal case and in the absence of any documentary evidence. Further, the deceased was admitted in the Government Hospital on the same day of the accident on 19.02.2009 and discharged on 24.03.2009 and thereafter, he died on 26.10.2009. The Tribunal has also failed to consider that Ex.P5 which is a clear medical



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certificate for the cause of death signed by the doctor of the Government Hospital, Salem where the deceased has taken treatment and further the same is clearly indicates the cause of death as 'old intertrocharteric fracture left hip and due to old RTA'. Hence, it is proved from the above document viz., Ex.P5 itself that the cause of death is only due to the injuries sustained by him arising out of the accident. Further, the Tribunal ought to have fixed the notional income and accordingly, should have given future prospects. The claimants have lost their only hope and breadwinner and they were dependent on the deceased, therefore, the claimants are entitled to be compensated for the loss of love and affection. Further, the learned counsel prayed for setting aside 15% contributory negligence fixed on the part of the deceased and for enhancement of compensation.

5. Per contra, the learned counsel appearing for the respondent / Transport Corporation submitted that when the bus was about to move after getting green signal, all of a sudden, a pedestrian, i.e., deceased tried to cross the road. On seeing him, the driver stopped the bus. The pedestrian



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fell down and sustained simple injuries and scratches. This was purely due to the pedestrian crossing the road without seeing the signal and hence, the driver was not negligent and hence, the Tribunal fixed 15% contributory negligence on the part of the deceased, which cannot be faulted. Though the claimants have claimed that the injuries have caused the death of the deceased, no additional evidence has been filed before this Court to prove the same. Hence, the Tribunal has rightly come to the conclusion that the deceased has not died due to the accident.

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.

7. The factum of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded and the contributory negligence.



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8. A careful perusal of the order passed by the Tribunal coupled with Ex.P5, medical certificate, clearly reveals that the cause of death was due to the old intertrochanteric fracture in left hip of the deceased and due to old RTA and so, the cause of death was the accident which had happened, due to the rash and negligent driving of the driver of the respondent. No contra evidence either in the form of oral or documentary evidence has been submitted by the respondent to disprove the same and in the absence of any material, the finding recorded by the Tribunal with regard to the cause of death and contributory negligence on the part of the deceased requires interference.

9. Coming to the quantum of compensation awarded by the Tribunal, it is seen that the claimants though claimed that the monthly salary of the deceased to be Rs.10,000/-, however, have not placed any documentary evidence to prove the same. In such a backdrop, considering the fact that the accident had happened in the year 2009, this Court is inclined to fix the notional income of the deceased at Rs.5,000/- by applying



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the ratio laid down by the Apex Court in ***Syed Sadiq & Ors. Vs. The Divisional Manager, United India Insurance Co. Ltd (2014 (2) SCC 735)***.

For the purpose of fixing the future prospects of the deceased, taking the age of the deceased at 45 years and by applying the ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi & others (2017 (16) SCC 680)***, this Court fixes the future prospects at 25% and accordingly arrive at the loss of monthly income to the family at Rs.6,250/- [Rs.5,000/- + Rs.1250 (25% of Rs.5,000/-)] .

10. Applying the monthly income at Rs.6,250/- and deducting 1/3rd towards personal expenses of the deceased, the loss of monthly income to the family is fixed at Rs.4,197/- (Rs.6,250/- - Rs.2,083/-).

11. To the above sum of Rs.4,197/-, the proper multiplier as fixed in the case of ***Sarla Verma & Others. Vs. Delhi Transport Corporation & Others (2009 (6) SCC 121)*** needs to be applied. According to the said decision, the age of the deceased at the time of his death, i.e., 45 years,



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therefore the proper multiplier to be adopted is '14'. Accordingly, applying the multiplier at 14, the compensation under the head loss of income to the family is arrived at Rs.7,00,056/- (Rs.4167 * 12 * 14).

12. Insofar as the compensation under the head loss of consortium and love and affection is concerned, though the Tribunal has not awarded any compensation under the said heads, this Court is inclined to award a sum of Rs.40,000/- each to the mother and the daughter as per the decision laid in *Pranay Sethi* case.

13. When there is no evidence with regard to contributory negligence on the part of the deceased, the 15% contributory negligence fixed on him is liable to be set aside and is hereby set aside.

14. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads is modified as under:



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<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Transportation Charges	Rs.5,000/-	Rs.5,000/-
2	Extra Nourishment	Rs.20,000/-	Rs.20,000/-
3	Attender Charges	Rs.15,000/-	Rs.15,000/-
4	Loss of Income	-	Rs.7,00,056/-
5	Loss of Love and Affection	-	Rs.40,000/-
6	Loss of Consortium	-	Rs.40,000/-
7	Loss of Funeral Expenses	-	Rs.10,000/-
	Total	Rs.40,000/-	Rs.8,30,056/-

15. In the result, this civil miscellaneous appeal is allowed in part and the compensation awarded by the Tribunal at Rs.40,000/- is hereby enhanced to Rs.8,30,056/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The respondent / Transport Corporation is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of



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receipt of a copy of this judgment, to the credit of M.C.O.P.No.1470 of 2009 on the file of the Motor Accidents Claims Tribunal-cum-Special Subordinate Court No.2, Salem. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn fixed by the Tribunal by making proper application before the Tribunal. No costs.

12.10.2023

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

1. The Motor Accidents Claims Tribunal
-cum-Special Subordinate Court No.2,
Salem.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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