



WEB COPY

C.M.A.No.1661 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1661 of 2022

1.Santhaseelan

2.Neela

3.Minor Gokulraj (14 years)

...Appellants

(Minor appellant represented
by his N/F Father Santhaseelan)

Vs.

The Manager,

Tamil Nadu State Transport Corporation Salem Liited,

No.12 – Ramakrishna Road,

Salem 7, Regional Office Bharathipuram,

Salem Road, Dharmapurti.

... Respondent

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 07.12.2019 in M.C.O.P.No.1211 of 2018 on the file of the Motor Accident Claims Tribunal and Special District Court, for Motor Accident Claim Cases, Krishnagiri.

For Appellants : Mr.S.P.Yuvaraj

For Respondent : Mr.D.Nitin



J U D G M E N T

WEB COPY

The Civil Miscellaneous Appeal is filed for enhancement of compensation awarded by the Tribunal dated 07.12.2019 made in M.C.O.P.No.1211 of 2018 on the file of Motor Accident Claims Tribunal and Special District Court for Motor Accident Claim Cases, Krishnagiri.

2. The appellants are the claimants in M.C.O.P.No.1211 of 2018 on the file of Motor Accident Claims Tribunal and Special District Court for Motor Accident Claim Cases, Krishnagiri. They filed the claim petition claiming a sum of Rs.35,00,000/- as compensation for the death of Rajesh, who died in the accident that took place on 29.03.2017.

3. According to the appellants, on the date of accident i.e., on 29.03.2017 at about 18.15 hours, while the deceased was riding his motorcycle bearing Registration No.TN-24-D-5098, the driver of the bus belonging to the respondent/Transport Corporation bearing Registration No. TN-29-N-2261 drove the same in a rash and negligent manner without observing Traffic Rules and dashed against the two wheeler of the deceased. Due to the impact, the deceased suffered injuries and succumbed to death. The deceased who was aged about 21 years, was working as a call driver and he was a sole bread



winner of his family. Hence, the respondent/Transport Corporation is liable to pay Rs.35,00,000/- as compensation.

4. The respondent/Transport Corporation filed counter statement denying all the averments made in the claim petition and stated that the accident had not happened due to rash and negligent of the driver of the respondent/Transport Corporation. In any event, the compensation claimed by the claimants is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellants examined P.W.1 and P.W.2 and marked Exs.P1 to P10. On the side of the respondent/Transport Corporation, the driver of the bus was examined as RW1 and one document marked as Ex.R1.

6. The Tribunal considering the pleadings, oral and documentary evidence held that the deceased died due to the rash and negligent the act of the driver of the respondent/Transport Corporation and directed the respondent/ Corporation to pay a sum of Rs.11,94,000/- as compensation to the appellants.

7. The learned counsel for the appellants submitted that the accident took place in the year 2017 and the deceased who was aged about 21 years at the time accident, was working as a call driver. He was earning a sum of



Rs.20,000/-p.m. at the time of accident. However, the Tribunal fixed only at Rs.7,500/- as monthly income which is very meagre. The learned counsel further submitted that the Tribunal awarded Rs.30,000/- as compensation under the head “Loss of Love and Affection”; that the claimants 1&2 are the parents and the 3rd claimant is the brother of the deceased; and that therefore, the Tribunal ought to have awarded Rs.40,000/- each towards “loss of love and affection”

8. Per contra, the learned counsel for the respondent/Transport Corporation submitted that the Tribunal has awarded compensation which is just, fair and reasonable and hence, there is no necessity to interfere with the award passed by the Tribunal. Hence, he prayed for dismissal of the above appeal.

9. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent/Insurance Company and perused all the materials available on record.

10. This Court finds that the evidence of PW1 shows that the deceased was working as a call driver. However, no documents have been produced to



substantiate the income earned by the deceased. Eventhough the claimants have not produced any proof of income of the deceased, the notional income fixed by the Tribunal at Rs.7,500/- is meagre. Since, the accident was of the year 2017 and it is the matter of common knowledge that the salary of the drivers had increased substantially, this Court is of the view that it would be reasonable to fix the notional income of the deceased at Rs12,000/-, in the facts of this case. The deceased was a bachelor. Hence, half of his income has to be deducted towards his personal expenses. He is further entitled to 40% future prospects as he was aged 21. The multiplier applicable is 18. Hence, the compensation under the head "Loss of income" has to be $[Rs.12,000/- \times 1/2 = Rs.6,000/- + Rs.2400/- (40\% \text{ future prospects}) = Rs.8,400/- \times 12 \times 18 = Rs.18,14,400/-]$.

11. That apart, this Court finds that the Tribunal had awarded a sum of Rs.30,000/- towards "loss of love and affection". The claimants 1&2 are the parents and the 3rd claimant is the brother of the deceased. They are entitled to a sum of Rs.40,000/- each towards "Loss of Love and Affection" Hence, the compensation under the head of "Loss of Love and Affection" is enhanced to Rs,1,20,000/- (40,000 X 3).



12. Thus, the compensation awarded by the Tribunal is modified as follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	11,34,000	18,14,400	enhanced
2.	Loss of Estate	15,000	15,000	confirmed
3.	Funeral Expenses	15,000	15,000	confirmed
4.	Loss of love and affection	30,000	1,20,000	enhanced
	Total	11,94,000	19,64,400	Enhanced to a sum of Rs.7,70,400

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,94,000/- is hereby enhanced to **Rs.19,64,400/-** together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. On such deposit, the claimants 1&2 are permitted to withdraw their share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by



filing necessary applications before the Tribunal. The shares of the minor/3rd claimant is directed to be deposited in any one of the Nationalized Bank, till he attains majority. The 1st claimant being the father of the 3rd claimant is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs.

07.07.2023

Index: Yes/No

Internet: Yes/No

Neutral Citatiaon : Yes/No

gba

To

1.The Motor Accident Claims Tribunal /
Special District Court for Motor Accident Claims cases,
Krishnagiri.

2.The Section Officer
VR Section
High Court of Madras
Chennai – 600 104



WEB COPY

C.M.A.No.1661 of 20



SUNDER MOHAN,J.

gba

C.M.A.No.1661 of 2022

07.07.2023