IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM:

The HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.1528 of 2017

1.K.Lakshmipathy

2.L.Samathi ... Appellants

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd,
Villupuram. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 23.04.2014 made in MACT.No.189 of 2013 on the file of the Special Distirct Judge, Motor Accidents Claims Tribunal, Villupuram.

For Appellants : M/s.C.Munusamy

For Respondent : Mr.S.S.Santhosh Kumar
Standing Counsel for TNSTC

JUDGMENT

This Civil Miscellaneous Appeal is filed for enhancement of compensation in MCOP No.189 of 2013 on the file of the Subordinate District Judge, MCOP case, Villupuram dated 23.04.2011.

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

3. The case of the claimants is as follows:

The petitioners are the parents of the deceased Dinesh who was 3rd year B.Tech student. On 28.10.2011 at about 01.30. p.m., deceased /Dinesh was walking on the left side at Gingee town, at that time, a bus bearing registration TN-No.32 N 2844 belongs to the respondent, driven by its driver in a rash and negligent manner, hit the deceased/Dinesh and ran over the deceased. Due to the accident, he sustained grievous injuries and subsequently succumbed to death on 10.11.2011. For the loss of their son, the claimants have come forward to claim compensation of Rs.20,000,00/-.

4. Before the Tribunal, the respondents have not appeared and failed to contest the claim petition. On the side of the claimants, P.W.1 was examined and exhibits Exs.P.1 to P.5 were marked in support of their claim.

5. Based on the evidence placed on record, Tribunal in Point No.1 has held that the accident was occurred due to the rash and negligent driving of the driver of the first respondent. In Point No.2, the Tribunal has considered the quantum and awarded total compensation of Rs.3,49,000/-. Aggrieved over the compensation awarded, for enhanced compensation, this Appeal has been filed by the claimants.

6. The learned counsel for the claimants would submit that the Tribunal has failed to fix the notional income as per the norms followed by the Tribunals and also failed to award Future Prospects for the loss of income of the deceased and the compensation awarded under other heads are also on lower side, hence prays to enhance the compensation.

7. The learned counsel for the respondent transport corporation would submit that Tribunal has failed to deduct the personal expenses of

the deceased from the compensation of awarded and he has also submitted that compensation under other heads also in accordance with norms and opposed the enhancement of compensation.

8. I have considered the submissions made by the respective learned counsel on both sides and perused the materials placed on record.

9. The Tribunal in point No.2 has considered the notional income of the deceased and has fixed Rs.3,000/- per month as a compensation. Before the Tribunal, the claimants have marked Exs.P.12 and 13 to show that the deceased was a third year B.Tech student, studying at Achariya College at Puducherry. This Court is of the view that fixing Rs.3,000/- per month as notional income for a third year B.Tech student is on the lower side and considering the date of accident, age of the deceased and the qualification, this Court is of the view that fixing Rs.9,000/- as notional income would be appropriate and accordingly notional income is fixed at Rs.9,000/- per month. Further claimants is also entitled for Future Prospects at 40% and as per the judgment of the Hon'ble Apex Court in ***Sarla Verma Vs. Delhi Transport Corporation***, reported in (2009) ACJ 1298 SC, the proper multiplier to be adopted

would be 18. Since the petitioner was a student, 50% has to be deducted towards personal expenses. Accordingly, the amount for loss of income is modified as Rs.9,000/- + 3,600/- (40% of Rs.9,000/-) X 12 X 18 X 50%= Rs.13,60,800/-. For the loss of love and affection, the Tribunal has awarded Rs.10,000/- each petitioners. As per the decision laid down by the Hon'ble Supreme Court in ***National Assurance Company Ltd., vs. Prenay Sethi*** reported in 2017 (4) TAC 673 (S.C.), under the head loss of parental consortium, each of the claimants are entitled for Rs.40,000/-. Tribunal has awarded Rs.5,000/- under the head Funeral expenses and loss of estate and the same is enhanced to Rs.30,000/-.

10. In the light of the above discussion, the award of the Claims Tribunal is 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 Income	3,24,000/-	13,60,800/-	Enhanced
2.	Loss of love & affection	20,000/-	80,000/-	Enhanced
3.	Funeral expenses & loss of estate	5,000/-	30,000/-	Enhanced
	Total	**Rs.3,49,000/-**	**Rs.14,70,800/-**	**enhanced by Rs.11,21,800/-**

11. In the result:

(i) The Civil Miscellaneous Appeal is allowed by enhancing the compensation awarded by the Tribunal to Rs.14,70,800/- from Rs.3,49,000/-.

(ii) The respondents directed to deposit the above said compensation amount together with interest at the rate of 7.5% from the date of petition to the date of realization within a period of four weeks from the date of receipt of copy of this order, less the amount, if any, deposited. On such deposit being made, the claimants shall be entitled to withdraw the same by making appropriate application before the Tribunal.

(iii) The apportionment of the compensation shall be as per the order of the Tribunal.

(iv) There shall be no order as to costs.

09.08.2023

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Index : Yes/No
Neutral Citation : Yes/No

To:

1.

2.The Section Officer,
VR Section,
High Court,
Madras.

K.RAJASEKAR, J.

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