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C.M.A.No.1162 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.12.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.1162 of 2020

1. Moorthy
2. Meenakshi

... Appellants

Vs.

1. Vivekanandan
2. The Managing Director,
Tamil Nadu State Transport Corporation,
Chennimalai Road, Erode.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 11.04.2018 made in M.C.O.P.No.565 of 2016 on the file of MACT / IV Additional District Court, Bhavani at Erode District.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : M/s.M.Murali Vinoth for R2

JUDGEMENT

Aggrieved by the compensation granted and the negligence fixed by the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani at



C.M.A.No.1162 of 2020

Erode District in M.C.O.P.No.565 of 2016 dated 11.04.2018, the claimants are before this Court.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

(i) On 09.09.2016 at about 7.00 p.m., when the deceased Manikandan was travelling along with one Veeran in a two wheeler bearing Regn.No.TN 36 AT 4223, at that time a bus bearing Regn.No.TN 33 N 2772 driven by the first respondent came in a rash and negligent manner and dashed against the motor cycle in which the deceased and said Veeran was travelling, due to which said Veeran sustained grievous injuries and the deceased succumbed to injuries and died on spot. Claiming compensation in a sum of Rs.15,00,000/- the claimants who are the parents of the deceased have filed the claim petition in M.C.O.P.No.565 of 2016.

3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked Exs.P.1 to Ex.P.12. On the side of respondents



C.M.A.No.1162 of 2020

they examined R.W.1 and marked Exs.R1 and R2. After adjudication, the Tribunal awarded a sum of Rs.7,83,000/- as compensation to the claimants (after deducting 10% contributory negligence on the part of the deceased). As against the quantum of compensation and the negligence fixed on the part of the deceased, the present appeal has been filed by the appellants / claimants.

4. The learned counsel appearing for the appellants / claimants submitted that as regards monthly income fixed by the Tribunal is concerned the Tribunal has awarded only a sum of Rs.7,500/- per month, which is on the lower side, and the same requires to be reconsidered by this Court. He further submits that 40% future prospects has not been added by the Tribunal. Though the negligence is on the part of the Driver of the second respondent Corporation, the Tribunal has erroneously fixed 10% contributory negligence on the part of the deceased which is *per se* unsustainable. That apart, the amount awarded under the head of loss of love and affection is also on the lower side and the same is also not in consonance with the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited***



C.M.A.No.1162 of 2020

Vs. Pranay sethi and others reported in 2017 (16) Supreme Court Cases 680.

WEB COPY

Accordingly, he prays for appropriate enhancement in favour of the appellants.

5. Per contra, the learned counsel appearing for the second respondent/Transport Corporation submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel for the appellants / claimants and the learned counsel appearing on behalf of the second respondent / Transport Corporation and perused the materials available on record.

7. On a perusal of the Tribunal award, it is seen that the Tribunal had fixed 10% contributory negligence against the rider of the two wheeler for the simple reason that he was not in possession of a valid driving licence at the time of accident. Only if there is negligence on the part of the rider of the two



C.M.A.No.1162 of 2020

wheeler, the contributory negligence can be fixed. However, in the present case on hand, it is discernible from the evidence of P.W.2 that due to the rash and negligent driving of the driver of the bus, the said accident occurred. Thereby, the Tribunal has committed serious error, while fixing contributory negligence of 10% as against the driver of the two wheeler. Hence, this Court is not inclined to accept 10% contributory negligence on the part of the deceased, thereby, fixation of liability of 10% on the part of the rider of the two wheeler is set-aside. Therefore, this Court is inclined to fix 100% negligence on the part of the driver of the bus.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellants/claimants is with regard to the quantum of compensation awarded and the contributory negligence fixed on the part of the deceased. It is claimed by the appellants that though the deceased had earned a sum of Rs.15,000/- per month, however, without considering the same, the Tribunal has fixed the notional income at Rs.7,500/-. It has been the view of the courts



that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, fixing a notional income of Rs.10,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.14,000/-. Deducting 1/2nd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.7,000/- per month and the deceased being aged about 22 years, as evidenced from the records, adopting the multiplier of 18 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in **(2009) 6 SCC 121**, the loss of income to the family is arrived at Rs.7,000/- * 12 * 18 = Rs.15,12,000/-, which is worked out as follows :-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	10,000
Add: Future Prospects (Rs.10,000 x 40%) (Per month)	4,000



C.M.A.No.1162 of 2020

WEB COPY

Loss of Income	Amount (in Rs.)
	14,000
Less: Personal expenses (1/2 nd) (Rs.14,000/- x 1/2) (Per month)	7,000
	7,000
Notional income (per annum) (Rs.7,000/- x 12)	84,000
Multiplier	18
Total	15,12,000

9. A sum of Rs.20,000/- has been granted under the head of "loss of love and affection", which is on the lower side and the same is enhanced to a sum of Rs.40,000/- each to the appellants. The Tribunal has awarded a sum of Rs.10,000/- under the head "transportation", since the deceased died on spot, the said amount liable to be set aside. Accordingly, the compensation under the head "transportation" is set aside. The other heads awarded by the Tribunal are just and reasonable and same does not require any interference.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-



WEB COPY



C.M.A.No.1162 of 2020

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Income	8,10,000/-	15,12,000/- (enhanced)
Loss of love and affection	20,000/-	80,000/- (enhanced)
Funeral expenses	15,000/-	15,000/-
Transportation	10,000/-	-
Loss of estate	15,000/-	15,000/-
Total	8,70,000/-	16,22,000/-

11. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount to **Rs.16,22,000/-**. The second respondent-Transport Corporation is directed to deposit the said amount to the credit of M.C.O.P.No.565 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. The said award amount shall be apportioned amongst the appellants/claimants as per the Award of the Tribunal. On such deposit being made, the Tribunal is



C.M.A.No.1162 of 2020

directed to transfer the said amount directly to the bank account of the appellants through RTGS within a period of two (2) weeks thereafter as per the apportionment made by the Tribunal below. There shall be no order as to costs in the present appeal.

12.12.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
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To

- 1.The Motor Accident Claims Tribunal,
IV Additional District Court, Bhavani, Erode District.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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C.M.A.No.1162 of 2020

M.DHANDAPANI,J.,

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C.M.A.No.1162 of 2020

12.12.2023