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C.M.A.No.3469 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No. 3469 of 2019

1.Mahadevamma
2.Mahadevappa

... Appellants

Vs.

1.Devaraj
2.The Managing Director,
Tamil Nadu State Transport Corporation,
Coimbatore Pvt II Ltd., Chennimalai Road,
Erode District.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 04.04.2013 made in M.C.O.P.No.244 of 2010 on the file of the Court of Motor Accident Claims Tribunal/Subordinate Judge, Sathyamangalam.

For Appellants : Mr.V.K.Gowtham

For Respondents : R1- Not ready in notice
No appearance for R2



C.M.A.No.3469 of 2019

WEB COPY

J U D G M E N T

The claimants are the appellants before this Court and the Award and decree dated 04.04.2013 passed in M.C.O.P.No.244 of 2010 on the file of the Court of Motor Accident Claims Tribunal/Subordinate Judge, Sathyamangalam, is under challenge in this present appeal.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The first claimant is the mother and the second claimant is the father of the deceased Shivakumar. The case of the claimants/appellants before the Tribunal was that on 13.08.2009 at about 7.30 a.m., while the deceased Shivakumar was proceeding in his Company TVS Suzuki motorcycle bearing Registration No.TN-38-L-7809 from Metalvadi to Thalavadi from West to East direction, near Metalvadi to Thalavadi Road at Papathikadu Bhimrajpuram Nalroad at about 8.00 a.m., a TNSTC Bus bearing Registration No.TN-33-N-1771, belonging to the second respondent/Corporation coming from the South direction in a rash and



C.M.A.No.3469 of 2019

negligent manner with uncontrollable speed dashed against the said two wheeler, due to which, the deceased sustained head and multiple injuries.

After getting information, uncle of the deceased made arrangements for vehicle to admit the deceased at Thalavadi Government Hospital and subsequently, he was admitted in the Sathyamangalam Government Hospital and thereafter, he was taken to Coimbatore Medical College for further treatment, however, the deceased died at 3.45 p.m on the same day.

4. It is the further case of the claimants that the deceased was working as a Machine Operator and Manager in the Management of Classic Granites and was earning a sum of Rs.10,000/- per month. The deceased was the sole breadwinner of the family and due to his sudden demise, the claimants are suffering for their livelihood. Hence, they filed a claim petition claiming a sum of Rs.15,00,000/- as compensation.

5. The first respondent, who is driver of the said bus remained *ex-parte* before the Tribunal.

6. The claim petition was resisted by the Transport Corporation



C.M.A.No.3469 of 2019

by filing a counter denying the manner of accident as projected by the claimants in the claim petition. They also denied the avocation and income mentioned in the claim petition. Thus, they sought for dismissal of the claim petition.

7. To substantiate the case on the side of the claimants, P.W.1 to P.W.4 were examined and Ex.P1 to Ex.P10 were marked. On the side of the Insurance Company, the first respondent/driver of the said Transport Corporation was examined as R.W.1 and material documents were marked.

8. The Tribunal, after analysing the entire evidence, had come to the conclusion that there is negligence on the part of the deceased as well as the driver of the Transport Corporation. Thus, the Tribunal fixed 50% negligence on the part of the deceased and 50% on the part of the driver of the bus. By coming to such conclusion, the Tribunal has passed an award for a sum of Rs.2,85,500/- as compensation to the claimants and directed the respondents 1 and 2 therein to pay the compensation jointly or severally



C.M.A.No.3469 of 2019

to the claimants. The break-up details of the amount awarded by the Tribunal under various heads are as follows :

S. No.	<i>Heads under which the amount is awarded by the Tribunal</i>	<i>Amount awarded by the Tribunal in Rs.</i>
1.	Loss of dependency	5,04,000
2.	Loss of love and affection	20,000
3.	Transport expenses	6,000
4.	Funeral Expenses	5,000
5.	Loss of Estate	36,000
	Total	5,71,000

9. Challenging the liability and quantum of compensation awarded by the Tribunal, the claimants have filed the present appeal.

10. The learned counsel for the appellants/claimants submitted that P.W.3, who is the eye witness, has clearly stated that the accident had occurred only due to the rash and negligent driving of the driver of the Transport Corporation and there is no negligence on the part of the deceased, however, the Tribunal failed to appreciate the evidence of P.W.3



C.M.A.No.3469 of 2019

fixed contributory negligence on the deceased. He further submitted that the age of the deceased, at the time of accident is only 21 years, which was proved by marking Ex.P5/Post-mortem report and Ex.P8/Legal heirship certificate and also his income was proved through P.W.4/employer of the deceased and Ex.P9/Salary Certificate, however, the Tribunal failed to consider the same and erroneously fixed monthly income of the deceased at Rs.4,500/- and "14" multiplier was applied and after deducting 1/3rd amount towards personal expenses, the Tribunal awarded the amount under the head loss of dependency, which is against the law and the same is very low. He further submitted that the Tribunal ought to have awarded compensation under the head of future prospects, but the Tribunal has violated the principles laid down by the Hon'ble Apex Court. It is his further submission that very meagre amounts are awarded under conventional head and therefore, compensation fixed by the Tribunal may be enhanced.

11. Heard the learned counsel for the appellants and perused the materials available on record.



C.M.A.No.3469 of 2019

12. Though respondents 1 and 2 have been served and their names are being printed in the cause list, they have not entered appearance either through counsel or in person.

13. The main contention raised by the learned counsel for the appellants is that the accident had occurred only due to the rash and negligent driving of the driver of the Transport Corporation.

14. P.W.3, who is stated to be an eye witness has stated that the accident had occurred nearby his agricultural land and at the relevant point of time, he was standing in his land and saw the accident about 50 feet distance and he has also stated that the accident had occurred only due to rash and negligent driving of the driver of the Transport Corporation. However, during the cross examination, he has admitted that no documents were produced to prove that he was standing in his land, which is situated nearby the accident place and also stated that no statement was recorded by the police, at the relevant point of time. Even Ex.P2/rough sketch shows that the accident had taken place in the middle of the road and P.W.3's land is



C.M.A.No.3469 of 2019

not situated near the place of occurrence. Therefore, the Tribunal has rejected the evidence of PW.3. However, the Transport Corporation examined the eye witness to the accident as R.W.1/driver of the Transport Corporation and through him, they have proved the manner of the accident and also the negligence on the part of the deceased. The evidence of R.W.1 is not rebutted by the claimants by adducing any admissible evidence. Further, the claimants/P.W.1 and P.W.2 themselves admitted that the deceased did not possess any valid driving licence at the time of the accident. Therefore, considering the entire materials, the Tribunal found that the accident had occurred only in the middle of the road and the deceased did not possess any valid driving licence and hence, fixed 50% contributory negligence on the part of the deceased.

15. This Court as a final Court of fact finding re-appreciated the entire materials and finds that the deceased, who is aged about 21 years, did not possess any valid driving licence at the time of the accident. Due to the rash and negligent driving of the driver of the bus and the deceased, the accident had occurred. While driving, if the deceased or the driver of bus



C.M.A.No.3469 of 2019

are vigilant they would have averted the accident. Therefore, the liability has to be fixed on both sides in ratio, i.e., 50% on the part of the deceased and 50% on the driver of Transport Corporation.

16. So far as the quantum of compensation is concerned, this Court finds that the deceased was working as a Machine Operator and Manager in the Management of Classic Granites and was earning a sum of Rs.10,000/- per month and to prove the same, the salary certificate of the deceased was marked as Ex.P9 and also P.W.4/owner of the Granite company was examined and he has stated that the deceased was working in his company as Machine Operator and Manager. However, the claimants have not produced any document to prove the ownership of P.W.4. There was lack of materials to prove the employment and earning capacity of the deceased. Therefore, the Tribunal has fixed a sum of Rs.4,500/- as notional income and this Court do not find any perversity in fixing a sum of Rs.4,500/- as notional Income and the same is confirmed.

17. As per the judgment of the Hon'ble Supreme Court reported in 2009(2) *TNMAC I*, the Tribunal applied "14" multiplier based



C.M.A.No.3469 of 2019

on the age of the mother of the deceased/first claimant, and awarded the compensation under the head loss of dependency. However, as per the latest decisions of *National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680]*, the age of the deceased should be taken for applying multiplier method. Though the claimants have not produced any direct evidence i.e, birth certificate, school leaving certificate or age proof certificate to prove the age of the deceased, the postmortem certificate and legal heir certificate shows that the age of the deceased was 21 years, at the time of accident. In the absence of any contra evidence to prove the age of the deceased, this Court finds that the age of deceased was 21 years at the time of accident and the proper multiplier would be "18".

18. Considering the age and occupation of the deceased and the year of the accident, the Tribunal rightly fixed Rs.4,500/- as notional monthly income of the deceased and as per the decision of the Supreme Court in *National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680]* 40% of the same is added towards future prospects and multiplier '18' is applied, since the deceased is bachelor



C.M.A.No.3469 of 2019

personal expenses would be 1/2. Thus, the Loss of dependency is re-calculated as follows :

Monthly income	: Rs.	4,500/-
Add Future prospects 40%	: Rs.	1,800/-
		
	: Rs.	6,300/-
Annul Income (6,300x12)	: Rs.	75,600/-
Deduct 1/2 personal expenses	: Rs.	37,800/-
Multiplier "18" (37,800x18)	: Rs.	6,80,400/-

19. Thus, the sum of Rs.5,04,000/- awarded by the Tribunal under the head of Loss of Dependency is hereby enhanced to Rs.6,80,400/-.

20. The amounts awarded by the Tribunal under all the other heads are fair and reasonable and hence, they are confirmed.

21. Thus, the total compensation payable to the appellants/claimants are re-calculated and modified as under :



C.M.A.No.3469 of 2019

<i>S.N o.</i>	<i>Heads under which amount is awarded by the Tribunal</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court in Rs.</i>
1.	Loss of Dependency	5,04,000	6,80,400
2.	Pain and Suffering	10,000	10,000
3.	Transportation	6,000	6,000
4.	Funeral Expenses	5,000	5,000
5.	Loss of Estate	36,000	36,000
	Total	5,71,000	7,37,400
	Less Contributory negligence (50%)	2,85,500	3,68,700
	Compensation payable	2,85,500	3,68,700

22. Thus, the total compensation of Rs.**2,85,500/-** awarded by the Tribunal is hereby enhanced to Rs.**3,68,700/-**[**Less Contributory negligence (50%) 7,37,400 – 3,68,700**] which shall carry interest at 7.5% from the date of claim petition till the date of payment. The second respondent/Transport Corporation is directed to deposit the total compensation awarded by this Court before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective shares. The apportionment of shares as fixed by the Tribunal to the claimants is hereby confirmed. The



C.M.A.No.3469 of 2019

appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation.

23. With the above observations and directions, the Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

19.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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C.M.A.No.3469 of 2019

To

1.The Motor Accident Claims Tribunal,
Subordinate Judge,
Sathyamangalam.

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



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C.M.A.No.3469 of 2019

P.VELMURUGAN, J.

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C.M.A.No.3469 of 2019

19.09.2023