



C.M.A(MD)No.431 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.431 of 2021

and

C.M.P.(MD) No.3895 of 2021

The Managing Director,
Tamil Nadu State Express Transport Corporation,
Chennai. ... Appellant

.VS.

1.Allis

2.Sonia Christy

3.Allwin Raja

4.Nagaraja ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree made in MCOP.No.222 of 2012 dated 27.02.2020 on the file of the Motor Accident Claims Tribunal/Additional Sub Court, Tenkasi.

For Appellant	:Mr.P.Prabhakaran
For R1 to R3	:Mr.T.Selvakumaran
For R4	: Given up



C.M.A(MD)No.431 of 2021

JUDGMENT

WEB COPY

This Civil Miscellaneous Appeal is filed challenging the award passed in MCOP.No.222 of 2012 on the file of the Motor Accident Claims Tribunal/Additional Sub Court, Tenkasi.

2.The learned counsel for the appellant/Transport Corporation challenges this appeal on the grounds of i) liability and ii) quantum. It is the submission of the learned counsel for the appellant that P.W1, the wife of the deceased, alone was examined as a witness to speak about the accident. Even as per the averments made in the claim petition, it is not specifically stated that the first petitioner/wife had seen the accident. It is averred that she was dropped by her husband at a place and then, he moved away and met with an accident. In that case, it was not possible for P.W1 to see the accident. Another submission is that the accident had happened due to sudden crossing of the deceased in his cycle and he contributed to the accident.

3.With regard to quantum, it is submitted that the learned Tribunal fixed the monthly income of the deceased at Rs.8,000/- without any



C.M.A(MD)No.431 of 2021

basis. Assuming that this amount is right, it fixed the future prospects at Rs.2,000/- and Rs.8,000/- and then again ordered Rs.2,000/-. It is patently wrong. The monthly income adopted at Rs.12,000/- for the deceased is not correct and in accordance with law. The Tribunal had awarded Rs.40,000/- towards loss of consortium and again awarded Rs. 90,000/- towards loss of love and affection. This is also wrong and excessive. On these grounds, the learned counsel for the appellant challenges the award.

4.In response, the learned counsel appearing for the respondents 1 to 3 submitted that the accident happened due to rash and negligent driving of the Driver of the respondent Corporation. P.W1 had really seen the accident and therefore, she was examined as a witness. The claim that the deceased has suddenly crossed the road is not correct. The accident had happened because of the rash and negligent driving of the transport Corporation's Driver. The future prospects was given taking into consideration the 10% increase once in 3 years. It is his submission that every petitioner is entitled for loss of consortium.

5.Considered the rival submissions and perused the records.



C.M.A(MD)No.431 of 2021

6.It is seen from the pleadings and submissions of the learned counsel appearing for the parties that on 26.12.2011, the deceased had travelled in his bicycle along with his wife/the first respondent. He dropped his wife near Sastha temple and proceeded further in Tirunelveli to Tenkasi road from west to east on the left side of the road. At that point of time, the Driver of the bus, bearing Reg.No. TN 01 N 6928 had come from the opposite direction in a rash and negligent manner and hit against her husband. As a result of which, he sustained injuries and died. Her husband was earning a sum of Rs.15,000/- per month by working in a Beedi Company. The claimants/respondents 1 to 3 are dependant on the income of the deceased for their living. Because of the sudden death of the deceased, they find difficulty to make a living. Thus, the claim petition was filed.

7.As already stated, the claim petition was resisted by the appellant/respondent stating that the deceased had also contributed to the accident and that the quantum is excessive. This Court perused Ex.B1, FIR and Ex.B5, Rough Sketch. It is seen from the allegations made in the FIR and the Rough Sketch that the accident had happened on the northern extreme of west to east road. As per the case of the claimants,



C.M.A(MD)No.431 of 2021

the deceased after dropping her wife near Sastha temple proceeded from west to east keeping the left side of the road ie., northern side of the road.

The place of the Sastha temple is also shown in the Rough Sketch. From that, it is possible to see the accident site. Therefore, it is possible that P.W1 could have witnessed the accident.

8.This is evidence that when the deceased was going keeping left side of the road from west to east direction, the Driver had driven the bus bearing Reg.No TN 01 N 6928 in a rash and negligent manner hit against her husband. It is apparent that the Driver of the aforesaid bus had driven the bus to the wrong side of the road and hit against the deceased head on. Though P.W1 was examined with regard to the accident and she filed proof affidavit narrating how the accident had happened, except the bald suggestion that she had not seen the accident, no question is asked penetrating her evidence with a view to raise doubts in her evidence with regard to the manner in which the accident had happened. Therefore, this Court is of the view that the Tribunal had rightly found that the accident had happened because of the rash and negligent driving of the Driver of the bus bearing Reg.No. TN 01 N 6928. The submissions of the learned counsel for the appellant in this regard are rejected.



C.M.A(MD)No.431 of 2021

9. With regard to quantum, the Tribunal had taken Rs.8,000/- towards monthly income of the deceased. The accident had happened in 2011. The sum of Rs.8,000/- cannot be considered as excessive for a person aged about 47 years at the time of accident. However, this Court finds that after taking 25% of Rs.8,000/- towards future prospects, again Rs.2,000/- was ordered to arrive at a monthly income of Rs.12,000/- on the reason that for every 3 years 10% increase can be given. For arriving this conclusion, no reason has been given. Therefore, this part of the finding of the learned Tribunal is not correct and set aside. Taking the deceased monthly income at Rs.8,000/- with 25% towards future prospects, the monthly income of the deceased is fixed at Rs.10,000/-. From this 10,000/-, 1/3rd of the amount has to be deducted towards personal expenses of the deceased and it comes to Rs.3,333/- and thus, the monthly income of the deceased is fixed at Rs.6,666/-. The deceased was aged about 47 years at the time of accident. Therefore, the proper multiplier for computing loss of dependency is 13 and when calculated, it comes to Rs.10,39,896/-. Thus, the loss of dependency fixed at Rs.12,48,000/- is modified as Rs.10,39,896/- (6,666 x 12 x 13). With regard to loss of consortium, the Hon'ble Apex Court in *National Insurance Company Limited Vs. Pranay Sethi and others* reported in 2017(2) TN



C.M.A(MD)No.431 of 2021

MAC 609 (SC) has found that the claimants are entitled for consortium of Rs.40,000/-. Thus, this Court is of the view that the petitioners are entitled for loss of consortium at Rs.40,000/- each. When they are awarded compensation under the head of loss of consortium, they are not entitled for compensation under the head of loss of love and affection. Thus, a sum of Rs.90,000/- awarded under the head of loss of love and affection is set aside.

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

S.No	Head	Awarded by the tribunal	Awarded by this Court	Enhanced
1	Loss of Income	Rs.12,48,000/-	Rs.10,39,896/-	Reduced
2	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
3	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4	Loss of Consortium	Rs.40,000/-	Rs.1,20,000/- (Rs.40,000/- each petitioner)	Enhanced
5	Loss of Love and Affection	Rs.90,000/-	-	-
Total		Rs.14,08,000/-	Rs.11,89,896/-	Rs.2,18,104/-



C.M.A(MD)No.431 of 2021

WEB COPY

11.In fine, this Civil Miscellaneous Appeal is partly allowed reducing the compensation from Rs.14,08,000/- to Rs.11,89,896/- with interest at the rate of 7.5% p.a.from the date of claim petition till the date of realization. The appellant/Transport Corporation is directed to deposit the modified enhanced award amount with accrued interest and costs, less the award amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are entitled to withdraw their share amount along with proportionate accrued interest and cost, less the amount already withdrawn, if any by filing proper petition before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No
Speaking :Yes/No

10.10.2023

mm

To

The Additional Subordinate Judge,
Tenkasi.

8/9



WEB COPY



C.M.A(MD)No.431 of 2021

G.CHANDRASEKHARAN,J.

mm

C.M.A(MD)No.431 of 2021

10.10.2023