



C.M.A.(MD)No.393 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 09.02.2023

Delivered On : 28.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.393 of 2020

1. Sudha

2.Minor.Karthika

3.Minor.Nithiya

(Minor appellants rep. through their
mother, next friend and guardian, the
first appellant herein)

4.Sekar

5.Jeyalakshmi

... Appellants /claimants

Vs.

The Managing Director,

Tamil Nadu State Transport Corporation Ltd.,

Dindigul.

... Respondent / Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree order passed by the Motor Accident Claims Tribunal – VI Additional District Judge, Madurai, in M.C.O.P.No. 1222 of 2017, dated 20.08.2019.



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For Appellants

: Mr. V.Sakthivel

For Respondent

: Mr.K.Sudalaiyandi

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed by the Motor Accident Claims Tribunal – VI Additional District Judge, Madurai, in M.C.O.P.No.1222 of 2017, dated 20.08.2019. The appellants herein are the claimants and the respondent herein is the respondent in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.1222 of 2017 , is as follows:-

On 05.05.2017, at about 9.00 am., when the deceased-Karthic was travelling in a bus bearing Registration No.TN-57-N-2320, the driver drove the vehicle in a rash and negligent manner and dashed against a stationed lorry bearing Registration No.TN-59-AR-8889. The deceased sustained multiple injuries and he died. The petitioners are his dependants and they claim a sum of Rs.16,00,000/- as compensation.

3. A brief substance of the counter filed by the respondent, in M.C.O.P.No. 1222 of 2017, is as follows:-



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The bus driver drove the vehicle in a slow and cautious manner, observing the traffic rules and by keeping the extreme left side of the road, at that time, all of a sudden, an aged person try to cross the road and to avoid hitting the aged person, the driver of the bus turned the vehicle to the right side, a lorry was parked on the left side of the road, without any indicatory or road blocks, the driver of the bus applied a sudden brake, even then, the bus hit the lorry. The accident has happened only due to the driver of the lorry, who parked the vehicle, without any indicator. The age, income and profession of the deceased are all denied. The claim is excessive.

4. In the same accident, a person, by name, Manikandan sustained injuries and he filed a petition in M.C.O.P.No.1858 of 2017, on the file of the VI Additional District Judge, Madurai. In both the cases, a joint trial was conducted and a common judgment was pronounced by the Tribunal.

5. In the joint trial, Two (2) witnesses were examined and 11 documents were marked on the side of the petitioners. One (1) witness was examined and no document was marked on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs. 16,00,000/- as compensation.



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6. Against the award, the claimants / appellants have filed this Appeal on the following grounds:-

The Tribunal has failed to note that even though the claimants are claiming lesser amount as compensation, it is the duty of the Tribunal to award a reasonable and just compensation. The Tribunal ought to have fixed the income of the deceased as Rs.15,000/- per month and should have added 40% towards future prospects.

7. On the side of the appellants - claimants, it is stated that there is no appeal on the side of the respondent and the liability fixed by the Tribunal is to be confirmed. P.W.2 was examined as an eye witness. Copy of the F.I.R was marked as Ex.P1. Considering the evidence of P.W.1 and P.W.2 and considering Ex.P1 and considering the fact that the bus hit the lorry from behind, it is decided that the bus driver is responsible for the accident. Hence, it is decided that the respondent is liable to pay compensation.

8. On the side of the appellants - claimants, it is stated that the deceased was working as a Painter cum Pawn broker. The accident was of the year 2017, even



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in the Sayed Sadiq case, the income was fixed as Rs.6,500/- for an accident that happened in the year 2008, even this Court has passed an order fixing the income as Rs.9,000/- for a mason, who met with an accident in the year 2017. On the side of the respondent – Transport Corporation, it is stated that there is no evidence for the income of the deceased and the notional income fixed by the Tribunal is reasonable.

9. A perusal of the records reveals that the Tribunal fixed the notional income as Rs.6,500/-. Considering the date of accident and considering the fact that there is no proof for the income, it is decided that the notional income fixed by the Tribunal is reasonable. Considering the age of the deceased, the Tribunal has added 40% (Rs.2600/-) towards future prospects, which is reasonable.

10. Considering the number of dependants, the Tribunal has deducted only 1/5th (Rs.1,850/-) of the income towards the own expenses of the deceased, the Tribunal fixed the loss of income as Rs.15,72,418/- (Rs.7,280/- X 12 X 18).

11. On the side of the appellants - claimants, it is stated that the award amount to be enhanced and that the Court is having the power to enhance the compensation, even when a lesser amount was claimed by the claimants.



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12. On the side of the respondent – Transport Corporation, it is stated that the claimants restricted the claim, in their claim petition and the amount asked for in the petition, was awarded by the Tribunal. The appellants cannot approach this Court for enhancement of compensation, without claiming the same in the original claim petition.

15. It is seen that the original claim petition was made for a sum of Rs.16,00,000/-. The Tribunal calculated the loss of income as Rs.17,64,480/-. Since the appellant restrict the claim to Rs.16,00,000/-, the award amount was fixed as Rs.16,00,000/-. The appellants have not chosen to file any petition to amend the claim petition, they straight away filed this appeal, without modifying the original claim petition, the appellants cannot claim for an enhanced compensation, when the amount claimed for was already awarded by the Tribunal.

16. In the above circumstances, it is decided that the amount of compensation fixed by the Tribunal is reasonable. For the reasons stated above, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, this Appeal is dismissed. No costs.



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(i) The compensation awarded by the Tribunal is hereby confirmed.

(ii) The respondent herein - Transport Corporation, is directed to deposit the entire compensation of **Rs.16,00,000/-** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the appellants / claimants are permitted to withdraw the award amount as apportioned by the Tribunal, on filing proper petition before the Tribunal, less any amount, if already withdrawn by them. The Tribunal is directed to deposit the share amount of the minor claimants /appellants 2 & 3 herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till they attain majority. The mother of the minor claimants – first appellant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors. The Claimants are not entitled for interest for the default period, if there is any default. No costs.

28.03.2023

NCC : Yes/No
Index : Yes/No



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Internet : Yes/No

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R. THARANI, J.

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To

- 1.The Motor Accident Claims Tribunal –
VI Additional District Judge,
Madurai,
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.393 of 2020

28.03.2023