



C.M.A.(MD).No.264 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.264 of 2019

1. Veerammal
2. Kottayammal
3. Mayan
4. Karuppiah
5. Palaniammal

.....Appellants/Petitioners

-VS-

The General Manager,
Tamil Nadu State Transport Corporation,
Madurai Road,
Virudhunagar District.

..... Respondent/ Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the Motor Vehicle Accidents Claims Tribunal and Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur in M.C.O.P.No.51 of 2018 on 12.12.2018.

For Appellants : Mr.M.Jothibasu

For Respondent : Mr.K.Sudalaiyandi



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J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of award passed in M.C.O.P.No.51 of 2018 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputtur.

2. According to the claimants, when the deceased, who was a passenger, was alighting from bus belonging to the Transport Corporation, the bus conductor had carelessly whistled and at once, the driver had rashly and negligently started the bus even without seeing the side mirror. Therefore, the deceased had fallen down and sustained grievous injuries and he died on spot.

3. According to the claimants, the deceased was aged about 65 years. He was a coolie earning a sum of Rs.10,000/- (Rupees Ten Thousand only) per month. They have prayed for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) towards compensation.

4. The Transport Corporation had filed a counter disputing the manner of accident, the liability and also quantum as prayed for by the claimants.



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5. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the accident had taken place only due to the rash and negligent driving on the part of the driver of the Transport Corporation. The Tribunal fixed the notional income of the deceased at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month after deducting 1/4th towards personal expenses. The Tribunal, applying multiplier of '7 ', and arrived at Rs.4,09,500/- (Rupees Four Lakhs Nine Thousand and Five Hundred only) towards loss of income. The Tribunal has awarded a sum of Rs.15,000/- (Rupees Fifteen Thousand only) towards funeral expenses, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) towards loss of estate, a sum of Rs.60,000/- (Rupees Sixty Thousand only) towards loss of love and affection and a sum of Rs.3,000/- (Rupees Three Thousand only) towards damages to cloths and articles. Totally, a sum of Rs.5,02,500/- (Rupees Five Lakhs Two Thousand and Five Hundred only) was awarded by the Tribunal. This award is under challenge in the present appeal.

6. According to the learned counsel appearing for the appellants, the Tribunal had erroneously fixed the notional income at Rs.6,500/-, but it ought to have fixed the notional income at Rs.9,000/- per month. He further relied upon the judgment of the Hon'ble Supreme Court reported in **2014 (1)**



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TNMAC 459 (SC) (Syed Saduq etc., Vs. Divisional Manager, United India Insurance Company Ltd.,) to contend that a sum of Rs.6,500/- towards notional monthly income was fixed in the year 2014. In the case on hand, the accident had been taken place in the year 2016. The Tribunal ought not to have followed the said amount of Rs.6,500/- and it should have fixed Rs.9,000/- (Rupees Nine Thousand only) as notional monthly income.

7. The learned counsel appearing for the appellants further relied upon the judgement of the Hon'ble Division Bench of our High Court reported in ***2018 (2) TNMAC 634 (Managing Director, Tamil Nadu State Transport Corporation (Coimbatore Division -II) Limited Vs. P Jaganathan and others)***, where the Hon'ble Court was pleased to hold that the Tribunal should follow the inflation index and accordingly increase the notional monthly income.

8. The learned counsel appearing for the appellants further contended that the Tribunal had awarded only a sum of Rs.60,000/- (Rupees Sixty Thousand only) towards loss of love and affection to the five claimants, who are the children of the deceased. Hence, he prayed for enhancement of the award amount under these two heads.



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9. Per contra, the learned counsel appearing for the respondent had contended that the Tribunal has rightly fixed the notional income at Rs.6,500/- (Rupees Six Thousand and Five Hundred only), when the accident has taken place in the year 2016. He further contended that the total compensation award of the Tribunal is already on the higher side, therefore, no enhancement is called for. Hence, he prayed for confirming the award passed by the Tribunal.

10. I have carefully considered the submissions made by the learned counsel on either side.

11. The claimants have contended that the deceased was a Coolie and he was earning a sum of Rs.10,000/- (Rupees Ten Thousand only) per month, while he met with an accident in the year 2016. However, the Tribunal has found that no records have been placed with regard to the actual income of the deceased person and fixed the notional income at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month.



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12. The judgment of the Hon'ble Division Bench of our High Court relied upon by the learned counsel appearing for the appellants relates to the case of an Engineering Graduate, who was aged about 22 years. However, in the present case, even as per the case of the claimants, the deceased was doing Coolie work and therefore, this Court is not inclined to accept the case of the appellants for any enhancement of notional income fixed by the Tribunal.

13. The Tribunal has awarded a sum of Rs.60,000/- (Rupees Sixty Thousand only) for all the claimants towards loss of love and affection. However, in view of the judgment of the Hon'ble Supreme Court, each one of the claimants is entitled to Rs.40,000/- (Rupees Forty Thousand only) towards loss of love and affection being children of the deceased person. Therefore, the award of the Tribunal under the head of loss of love and affection is hereby enhanced from Rs.60,000/- to Rs.2,00,000/- (Rupees Two Lakhs only). The award of the Tribunal under the other heads are confirmed.



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14. Therefore, this Court is of the view that the said award amount is modified to the extent as stated below:

Loss of Income	: Rs. 4,09,500/-
Loss of Love and Affection	: Rs. 2,00,000/-
Loss of Estate	: Rs. 15,000/-
Funeral Expenses	: Rs. 15,000/-
Damages cloths and articles	: <u>Rs. 3,000/-</u>
Total	: Rs. 6,42,500/-

15. In view of the above said deliberations, the total award of the Tribunal is modified and it is enhanced from Rs.5,02,500/- to Rs.6,42,500/- (Rupees Six Lakhs Forty Two Thousand and Five Hundred only). The enhanced award will carry interest at the rate of 7.5% from the date of filing of the claim petition. The claimants shall share the award amount equally. The Transport Corporation is directed to deposit the enhanced compensation amount within a period of eight weeks from the date of receipt of a copy of this order.



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16. Accordingly, this Civil Miscellaneous Appeal is allowed to the extent as sated above. There shall be no order as to costs.

09.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accident Claims Tribunal and
Chief Judicial Magistrate Court,
Virudhunagar District at Srivilliputtur.
2. The General Manager,
Tamil Nadu State Transport Corporation,
Madurai Road,
Virudhunagar District.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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