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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.650 of 2022

and

C.M.P(MD)Nos.5625 of 2022 and 3439 of 2023

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam,
Kumbakonam Division,
Thanjavur District. :Appellant/Respondent

.VS.

1.Selvi

2.Malathi

3.Gunasekar

4.Minor Latha

(Minor fourth respondent is represented by her mother and first respondent herein Selvi) : Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the order passed in M.C.O.P.No.72 of 2019, dated 2.3.2021, on the file of the Motor Accidents Claims Tribunal(Principal District Court), Sivangai.

For Appellant

:Mr.P.M.Vishnuvarthanan



For Respondents :Mr.P.Selvakamatchi
1 to 3

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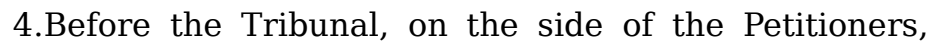
JUDGMENT

Challenging the quantum of compensation fixed by the Tribunal, the present appeal came to be filed by the appellant/Transport Corporation.

2.The brief facts leading to the filing of this appeal is as follows:

The deceased is the husband of the first claimant and father of the claimants 2 to 4 and the deceased was aged 54 years at the time of accident and he was a Painter by profession, earning a sum of Rs.40,000/-p.m. While the deceased travelled as a pillion rider in a tri-cycle at about 00.15 a.m., on 31.01.2019, the bus bearing Registration No. TN 63 N1 1684 driven by its driver in a rash and negligent manner and dashed from behind and as a result, the deceased succumbed to injuries. Hence the claimants have claimed a compensation of Rs.25 lakhs.

3.It is submitted by the respondents that the tricycle has suddenly crossed the road which resulted in the accident.



5. The Tribunal, after considering the entire evidence on record and the evidence of P.W.1, fixed the negligence on the part of the driver of the transport Corporation and awarded a sum of Rs. 3,500/- as compensation with interest at the rate of 7.5% per annum. The appeal has been filed by the transport Corporation challenging the quantum of compensation as awarded by the Tribunal.

6.The learned counsel for the appellant/transport Corporation would submit that the Tribunal fixed the notional income at Rs. 15,000/-p.m.,without any proof. The deceased was aged 54 years at the time of accident and he was a Painter by profession.

7.The learned counsel for the respondents would submit that the deceased was a Painter by profession and it is common knowledge that a Painter can easily get Rs.1,000/- per day as salary and he would further submit that the notional income fixed



by the Tribunal does not call for any interference by this Court.

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8. On the above facts, the point that arose for consideration is as follows:

1. Whether the Tribunal is right in fixing the notional income of the deceased at Rs.15,000/-p.m.?

2. Whether the compensation awarded by the Tribunal is just and reasonable?

9. The present appeal is confined only to the quantum of compensation awarded by the Tribunal.

10. The deceased is 54 years at the time of accident and it is stated by P.W.1 and P.W.2 that the deceased is a Painter by profession, earning a sum of Rs.40,000/-p.m., and no document was filed to prove the nature of income derived by the deceased and the Tribunal also recorded the fact that no exact details available in the bank accounts to the nature of the income derived by the deceased. However, the Tribunal on the premise that the deceased being a Painter by profession, he would easily earn Rs.750/- per day and fixed the monthly income at Rs.15,000/- p.m. It is relevant to note that the deceased is a Painter by profession and it cannot



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be certain that for all 30 days, he can get such job continuously, though it is a skilled work getting income in all days is not certain.

Therefore, the Tribunal fixing the monthly income on mere guess work, cannot be proper. At the most, the Tribunal ought to have fixed the income at Rs.13,000/-p.m., taking note of the minimum wages at the relevant point of time. This Court by fixing the notional income at Rs.13,000/- and by adding 10% towards future prospects and by deducting one fourth towards the personal expenses of the deceased and by adopting '17' as multiplier, the loss of dependency comes to Rs.21,87,900/-.The Tribunal has awarded only a sum of Rs.20,000/- each to the Petitioners 2 to 4 towards loss of love and affection and the same is enhanced to Rs. 40,000/- each totalling to Rs.1,20,000/-.The loss of consortium awarded at Rs.40,000/- is sustained. This Court further awards a sum of Rs.15,000/- towards loss of estate and Rs.5,000/- towards transport expenses and another sum of Rs.15,000/- towards funeral expenses and the award under these heads totalling to Rs. 1,95,000/- and thus the Petitioners/claimants are entitled to a total sum of Rs.23,82,900/-(Rs.21,87,900/- + Rs.1,95,000/-=Rs. 23,82,900/-) with interest at the rate of 7.5% p.a and the same is given below:



S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of dependency	Rs. 16,33,500/-	Rs. 21,87,900/-	enhanced
2	For funeral expenses	Rs.15,000/-	Rs.15,000/-	same
3	For loss of love and affection to the Petitioners 2 to 4	Rs.60,000/- (Rs.20,000/- x3)	Rs. 1,20,000/-	enhanced
4.	For loss of consortium to the first petitioner/wife	Rs.40,000/-	Rs.40,000/-	same
5	For loss of estate	Rs.20,000/-	Rs.15,000/-	Modified
6	For transportation	Rs.5,000/-	Rs.5,000/-	Same
7	Total	Rs. 17,73,500/-	Rs. 23,82,900/-	enhanced

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation is enhanced from Rs.17,73,500/- to Rs.23,82,900/- 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 enhanced award amount with accrued interest and costs, less the award amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. The ratio of apportionment made by the Tribunal is confirmed and the claimants/respondents 1 to 3 herein are permitted to withdraw their respective share in the



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award amount with proportionate accrued interest and costs, less the award amount already withdrawn, if any, by filing proper application before the Tribunal. The fourth respondent, minor, who is aged 16 years at the time of filing claim petition ie., in the year 2019, would have now attained majority and she is also permitted to withdraw her share in the award amount with accrued interest and costs, by filing proper applications before the Tribunal. The claimants are directed to pay the excess court fee towards the enhanced award amount to the credit of the Registry of this Court. Registry is directed to draft the decree only after such Court fee being paid by the claimants. Consequently, connected Miscellaneous Petitions are closed. No costs.

06.04.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Motor Accidents Claims Tribunal
Principal District Court,
Sivagangai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR.,J.

vsn

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