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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.101 of 2023

1.Noor Nisha

2.Asanammal

3.Syed Ali

4.Minor Reema

(Minor fourth appellants represented through her mother and next guardian, the first appellants herein Noor Nisha)

:Appellants/Petitioners

.VS.

The Tamil Nadu State Transport Corporation Limited,
through its Managing Director,
Office at Bypass Road,
Madurai.

:Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.269 of 2016, dated 5.8.2019, on the file of the Motor Accidents Claims Tribunal(Special Sub Judge), Tirunelveli.

For Appellants

:Mr.T.Selvakumaran

For Respondent

:Mr.K.A.Thirumalaiappan



JUDGMENT

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Unsatisfied with the quantum of compensation arrived at by the Tribunal, the present Civil Miscellaneous Appeal came to be filed by the claimants/appellants seeking enhancement of compensation.

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

The deceased was aged 24 years at the time of accident and driver by profession and AC Mechanic and earning a sum of Rs. 20,000/-p.m. On 10.12.2015, at about 3.00 a.m., while the deceased was driving a car bearing Registration No. TN 72 BA 8397 from Nagercoil to Tirunelveli along with one Maharaja Sankaran and at that time, the bus belonging to the respondent Transport Corporation bearing Registration No. TN 58 N 1830 coming from the opposite direction, was driven by its driver in a rash and negligent manner and in a high speed and dashed against the car, in which the deceased was travelling and the deceased sustained injuries and rushed to the hospital and admitted as inpatient from 10.12.2015 to 15.12.2015 and ultimately he died on 21.12.2015. A crime was registered against the offending vehicle driver. Hence the compensation has been claimed.



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3.It is the case of the respondent that bus was driven by its driver in a cautious manner and the accident had happened only due to the rash and negligent driving of the driver of the car and opposed the claim.

4.Before the Tribunal, on the side of the Petitioners, P.W.1 and P.W.2 were marked and Ex.P1 to ExP14 were marked. On the side of the respondent, R.W.1 was examined and no document was marked.

5.The Tribunal after considering the evidence of P.W.1 and P.W.2, held that the driver of the offending vehicle was negligent in driving the bus and caused the accident and considering the other aspects, the Tribunal awarded a sum of Rs.22,77,200,- as tabulated below:

1.For loss of income	- Rs.20,41,200
2.For loss of consortium	-Rs.40,000/-
3.For loss of estate	-Rs.15,000/-
4.For funeral expenses	-Rs.15,000/-
5.for medical expenses	-Rs.1,66,000/-

total	-Rs.22,77,200/-

6.It is the contention of the learned counsel for the appellants that the Tribunal has fixed the notional income at Rs.



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9,000/-p.m.,which is very low. The deceased was aged 24 years which has been established in the manner known to law. According to him, he has a valid driving licence at the time of accident and Ex.P4 Certificate to prove that he is an AC Mechanic and the Tribunal ought to have fixed the notional income at Rs.15,000/-p.m.,whereas, the learned counsel for the respondent would submit that as there is no evidence for salary, the Tribunal has rightly fixed the notional income at Rs.9,000/-p.m., and the same is just and reasonable.

7.In the light of the above facts, the points that arose for consideration in this appeal is as follows:

Whether the compensation awarded by the Tribunal is just and reasonable and whether it requires enhancement?

8.The deceased is aged 24 years at the time of accident, which is not disputed. It is the contention of the appellants that the deceased is having a valid driving licence and an AC Mechanic and earning a sum of Rs.20,000/- per month. However, the Tribunal, without any evidence to prove the same, fixed Rs.9,000/-p.m as notional income. It is relevant to note that being an AC mechanic,



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which has been established by Ex.P10, that apart, the deceased is also having a driving licence. If the deceased engaged in such work, certainly he would earn more amount. Even applying the Minimum Wages Act, he will be entitled to more than Rs.12,000/- p.m. Considering the fact that the accident took place in the year 2015 and that the deceased was aged 24 years at the time of accident, in order to award a just and reasonable compensation, the notional income has to be fixed at Rs.12,000/-p.m and accordingly, this Court fixed the notional income at Rs.12,000/-p.m., and after adding 40% of income towards future prospects, the income comes to Rs.16,800/- and after deducting 1/4th towards the personal income of the deceased, the monthly income comes to Rs. 12,600/- and thus the loss of income is $\text{Rs.12,600/-} \times 12 \times 18 = \text{Rs. 27,21,600/-}$. The other conventional heads of loss of consortium at Rs.40,000/-, loss of estate at Rs.15,000/-, for funeral expenses at Rs.15,000/- and for medical expenses at Rs.1,66,000/- stands confirmed. Thus the total compensation payable to the claimants is arrived at Rs.29,57,600/- which is tabulated as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of income	Rs. 20,41,200	Rs.27,21,600/-	enhanced



2	For loss of consortium	Rs.40,000/-	Rs.40,000/-	same
3	For loss of estate	Rs.15,000/-	Rs.15,000/-	same
4.	For funeral expenses	Rs.15,000/-	Rs.15,000/-	Same
5	For medical expenses	Rs. 1,66,000/-	Rs. 1,66,000/-	Same
6	Total	Rs. 22,77,200/-	Rs. 29,57,600/-	enhanced

with interest at the rate of 7.5% pa., from the date of claim petition till the date of realization.

9.In the result, the Civil Miscellaneous Appeal is partly allowed enhancing the compensation from Rs.22,77,200/- to Rs. 29,57,600/- with interest at the rate of 7.5%p.a., from the date of claim petition till the date of realization. The respondent Transport Corporation is directed to deposit the enhanced award amount with accrued interest and costs, less the award amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first claimant/wife is entitled to a sum of Rs.13 lakhs and fourth claimant/minor child is entitled to a sum of Rs.15 lakhs and second and third claimants/parents are totally entitled to a sum of Rs.,1,57,600/- with proportionate accrued interest and costs and



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the major claimants 1 to 3 are permitted to withdraw their respective shares in the award amount by filing necessary application of the Tribunal. The Tribunal is directed to deposit the share of the minor fourth appellant/claimant, in an interest bearing fixed deposit, in any one of the nationalized bank, initially for a period of three years, renewable thereafter, till the minor attains majority. The first appellant/mother and guardian of the minor fourth claimant/appellant is permitted to withdraw interest from the said deposit, once in three months, directly from the bank and utilize the same for the welfare of the child. The appellants/claimants are directed to pay the excess Court fee towards the enhanced award amount, as ordered by this Court. Only on such deposit being made, Registry is directed to draft the decree in this appeal. No costs.

24.04.2023

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

1.The Motor Accidents Claims Tribunal,
(Special Sub-Judge),
Tirunelveli.

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2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.101 of 2023

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