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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.240 of 2023

1.Nangaiyarkarasi,

2.Petchi

3.Arasi

4.Paramajothi

5.Minor Ponrakshitha

(minor fifth appellant represented through her mother and next guardian,the first appellant herein Nangaiyarkarasi)

:Appellants/Petitioners

/vs/

The Tamil Nadu State Transport Corporation Limited,
through its Managing Director,
Office at No.2, Trivandrum Road,
Vannarpettai,
Tirunelveli.

:Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award made in M.C.O._P.No.566 of 2018, dated 31.8.2021, on the file of the Motor Accidents Claims Tribunal(Special Sub-Court dealing with M.C.O.P. Cases), Tirunelveli.



For Appellants :Mr.T.Selvakumaran

For Respondent :Mr.S.Michael Heldon Kumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed seeking enhancement of compensation.

2.The parties are referred to herin as per their ranking before the Tribunal.

3.The Tribunal has passed the following award :

1.Loss of dependency	- Rs.19,27,800/-
2.Loss of Consortium to to the first petitioner	- Rs.40,000/-
3.Loss of Estate	-Rs.15,000/-
4.Funeral expenses	-Rs.15,000/-

total	-Rs.19,97,800/-

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

The deceased was aged 28 years at the time of accident and he was driver by profession. On 15.2.2018, at about 8.50 a.m, the



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deceased was riding his motor cycle bearing Registration No. TN 72 AQ 9266 from east to west on Tirunelveli-Tuticorin main road and at that time, the bus bearing Registration No. TN 72 N 1581 belonging to the respondent Transport Corporation came from east to west just behind of the deceased in a rash and negligent manner and hit the motor cycle from behind. As a result, the deceased succumbed to injuries. The deceased was earning a sum of Rs.25,000/- at the time of accident through his profession as Driver and Electrician. Hence the legal heirs of the deceased filed the claim petition claiming compensation.

5.It is the stand of the respondent Transport Corporation that the deceased on seeing the car coming in a high speed from behind the bus and being shocked, hit the bus and fell down and caused the accident. Hence he opposed the claim petition.

6.Before the Tribunal, on the side of the Petitioners, P.W.1 to P.W.3 were marked and Ex.P1 to Ex.P14 were marked. On the side of the respondent, no witness was examined and no documents were marked.

7.The Tribunal, after considering the evidence of the



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witnesses adduced on the side of the Petitioners and the documents marked, held that the driver of the transport Corporation bus drew the vehicle in a rash and negligent manner and hit the bus from behind. The respondent has not challenged the findings of the Tribunal. Now the appeal has been filed seeking enhancement of compensation by the claimants.

8.The learned counsel for the Petitioners would submit that the deceased was aged 28 years at the time of accident and he was earning a sum of Rs.15,000/- p.m as a driver in a private car centre. Though the salary certificate has been filed before this Court, it has not been filed as per the procedure and hence the same not given any importance. The learned counsel for the appellants would further submit that the accident took place in the year 2018 and the deceased was earning a sum of Rs.15,000/- at the relevant point of time.

9.In reply, the learned counsel for the respondent transport Corporation would submit that no proof has been filed to show that he was earning a definite income before the Tribunal. Hence the respondent opposed the appeal.



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10. In the light of the above facts, now the point that arose for consideration is as follows:

1. Whether the Tribunal is right in fixing the notional income of the deceased at 9,000/-p.m.?

11. The deceased was aged 28 years which is not disputed and his profession as driver is also not disputed. The Tribunal has fixed Rs.9,000/- as notional income. This Court is of the view that the age of the deceased is 28 years at the relevant point of time and his profession was a driver and he would have at least earn a sum of Rs.12,000/-p.m., at that point of time. Even if Minimum Wages Act is applied, the monthly income is more than Rs.12,000/-p.m. In such view of the matter, this Court fixed the notional income of the deceased at Rs.12,000/-p.m and if 40% is added towards future prospectus, the monthly income comes to Rs. 16,800/- and if 1/4th amount is deducted towards the personal expenses of the deceased, the monthly income comes to Rs.12,600/- and if 17 multiplier is applied for the age group of the deceased, the total loss of dependency comes to Rs.12,600/- x 12 x 17 = Rs. 25,70,400/-. Further, the Tribunal has not awarded any amount towards loss of love and affection to the Petitioners 2 to 5 and this



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Court awards a sum of Rs.40,000/- each towards the said head and the same comes to Rs.1,60,000/-. The award of loss of consortium to the first petitioner at Rs.40,000/- and loss of estate at Rs. 15,000/- and for funeral expenses at Rs.15,000/- stand confirmed. The interest rate at 7.5% p.a., also stand confirmed and thus the compensation is arrived is arrived as follows:

S.No	Name of the heads	Awarded by the Tribunal	Awarded by this Court	Remarks
1	For loss of dependency	Rs. 19,27,800/-	Rs. 25,70,400/-	enhanced
2	For loss of consortium to the first Petitioner/wife	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 loss of love and affection to the Petitioners 2 to 5	----	Rs. 1,60,000/- (Rs.40,000/- each)	Newly awarded
6	Total	Rs. 19,97,800/-	Rs. 28,00,400/-	enhanced

Thus the total compensation payable to the Petitioners is Rs. 28,00,400/- rounded off to Rs.28,00,000/- with interest at the rate of 7.5% from the date of claim petition till the date of realization.



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12. In the result, the Civil Miscellaneous Appeal is allowed enhancing the compensation from Rs.19,978,800/- to Rs. 28,00,000/-/- 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 above said modified enhanced award amount with accrued interest and costs, less the award amount already deposited, if any, to the credit of claim petition before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first petitioner is entitled to a sum of Rs.10 lakhs and fifth Petitioner/minor child is entitled to a sum of Rs.12 lakhs and Petitioners 2,3 and 4 are each entitled to a sum of Rs.2 lakhs, with proportionate accrued interest and costs, less the award amount, if any already withdrawn, by filing necessary application before the Tribunal. The share of the minor fifth Petitioner is directed to be deposited in any one of the nationalized bank in an interest bearing fixed deposit till the minor attains majority and the first petitioner/mother is permitted to withdraw the interest from the said deposit once in three months and utilize the same for the welfare of the child. The Petitioners/claimants are directed to pay the excess court fee, if any, towards the enhanced award amount to the credit of Registry. Only on such payment being made, Registry



is directed to draft the decree in the appeal. No costs.

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

To

1.The Motor Accidents Claims Tribunal,
(Special Sub-Court dealing with M.C.O.P Cases),
Tirunelveli..

2.The Section Officer,
V.R.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.240 of 2023

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