



C.M.A.(MD)No.197 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 18.11.2022

Delivered On : 02.01.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.197 of 2020

The General Manager,

Tamil Nadu State Transport Corporation,

having its office at

Door No.37, Mettupalayam Road,

Coimbatore Town, Coimbatore District.

.. Appellant / Respondent

Vs.

1.Parimala

2.Minor.Lithishkumar

(R2 rep. by his guardian/mother

Parimala)

3.Vellimalai

4.Saraswathi

... Respondents / Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree, dated 05.08.2019, made in M.C.O.P.No.616 of 2017, on the file of the Motor Accident Claims Tribunal – Principal District Court, Dindigul.

For Appellant

: Mr.P.Prabhakaran

For Respondents

: Mr.S.Pugalendhi



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 05.08.2019, made in M.C.O.P.No.616 of 2017, on the file of the Motor Accident Claims Tribunal – Principal District Court, Dindigul. The appellant herein is the respondent, the respondents herein are the claimants in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition, in M.C.O.P.No.616 of 2017, is as follows:

On 20.06.2017, at about 7.45 pm., when the deceased-Vijayakumar was riding his two wheeler bearing Registration No.TN-39-BX-2918 along the Avinasi to Seyyur main road, a bus bearing Registration No.TN-33-N-2289 driven by its driver in a rash and negligent manner, came from the opposite direction, dashed against the two wheeler. The deceased sustained injuries, he was taken to Avinasi Government Hospital and he succumbed to the injuries. The deceased was aged about 34 years and he was working in N.S.C.Spining Mills and was earning Rs.24,000/- per month. The petitioners are his dependants and they claimed a sum of Rs.60,00,000/- as compensation.



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3.A brief substance of the counter filed by the respondent, in M.C.O.P.No. 616 of 2017, is as follows:-

The bus driver stopped the vehicle at the bus stop, to pick up the passengers, at that time, the deceased came from the opposite direction in a rash and negligent manner and he dashed against the bus. The deceased was not having proper driving licence. The bus driver is not responsible for the accident. The respondent is not liable to pay compensation. The claim is excessive.

4. 3 witnesses were examined and 9 documents were marked on the side of the petitioners. 2 witnesses were examined and 1 document was marked on the side of the respondents. The Tribunal after considering both sides, awarded a sum of Rs.41,62,000/- as compensation.

5. Against the award, the Transport Corporation / appellant has preferred this Appeal, on the following grounds:-

The Tribunal failed to fix the entire negligence on the deceased, who rode the two wheeler, in a rash and negligent manner. The wife of the deceased already filed a claim petition in M.C.O.P.No.523 of 2017 before the III Additional District Judge, Tirupattur for the very same accident. The Tribunal is wrong in awarding a compensation of Rs.41,62,000/-, which is excessive. The Tribunal is wrong in



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deducting fixing the monthly income as Rs.20,000/- and adding 40% towards future prospects and adopted multiplier '16'. The Tribunal is wrong in $\frac{1}{4}$ th of the income towards the own expenses. The respondents 3 and 4 are not the dependants of the deceased. The Tribunal awarded Rs.50,000/- towards loss of love and affection, Rs. 40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, Rs.10,000/- towards transport expenses, which are all excessive.

6. On the side of the appellant, it is stated that the F.I.R was registered on the complaint of the wife of the deceased, who was not at all an eye witness. P.W.2-Kathirvel is an interested witness. It was the deceased, who rode the two wheeler in a rash and negligent manner and dashed against the stationed bus. The occurrence witness - Ramachandran mentioned in the F.I.R as an eye witness, was not examined as an eye witness before the Tribunal and that the claimants failed to file copy of the rough sketch, M.V.I report and observation mahazer.

7. On the side of the respondents-claimants, it is stated that P.W.1 was an eye witness. It was the bus, which came from the opposite direction in a rash and negligent manner, dashed against the deceased. F.I.R-Ex.P1 was lodged against the bus driver and that the deceased was not a tort feaser.



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8. On the side of the appellant driver of the bus was examined as R.W.1.

No independent witness was examined on the side of the appellant. Considering the evidence of P.W.1 and P.W.2 and considering Ex.P1, it is decided that the accident has taken place due to the rash and negligent driving of the bus driver.

9. On the side of the appellant, it is stated that the Tribunal fixed the income as Rs.20,000/-, which is exorbitant. Ex.P7 was the salary certificate of the deceased. Ex.P8 and Ex.P9 were the attendance register. On the side of the appellant, it is further stated that the name of the spinning Mill was not mentioned in Ex.P8 and Ex.P9. The statement of accounts pertaining to the spinning mill was not marked. The income was not proved and only notional income is to be fixed.

10. On the side of the respondents-claimants, it is stated that the salary certificate was proved through the evidence of P.W.3. P.W.3 was the Manager in N.S.C.Spining Mills and that the deceased was getting a salary of Rs.24,000/- and that the income is to be fixed as Rs.24,000/- per month.

11. On the side of the respondents-claimants, it is stated that the deceased was working as maintenance supervisor and was earning Rs.24,000/-. For a designer engineer, the Hon'ble Supreme Court has fixed as Rs.45,000/-. A judgment of the



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Hon'ble Supreme Court reported in **2022-1-TNMAC-152 (SC) (K.Anusha V.**

Regional Manager, Shri ram General Insurance Co.Ltd) is cited, wherein, it is stated as follows:-

“The deceased was aged about 32 years, working as Senior Design Engineer in a Company and was earning Rs.45,000/- pm. The Tribunal fixed the Annual income at Rs.2,78,700/- pa. and added 10% towards future prospects holding that the deceased had a bright future.”

12. The above mentioned case is not applicable to the facts of the present case, since the deceased in that case was a qualified designing engineer and hence, this case is not applicable to the facts of the present case.

13. Another judgment of the Hon'ble Supreme Court reported in 2022-1-TNMAC-289 (SC) (R.Valli V. Tamil Nadu State Transport Corporation Ltd.,) is cited, wherein, the monthly income was fixed as Rs.23,062/-, it is stated as follows:-

“ The deceased was aged about 54 years and was working in a company, earning Rs.23,062/- as monthly salary. The deceased being a permanent employment and within age group of 50 to 60 years, 15% of actual income to be added towards future prospects.”



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14. In the above mentioned case, the deceased was aged about 54 years, who was a permanent employee. Considering the experience and age of the deceased, it is decided that in that case this judgment is not applicable to the facts of the present case.

15. A judgment of the High Court of Jharkhand reported in **2022-1-TNMAC-518 (Jhar.)** is cited on the side of the claimants, wherein, the salary of the deceased was fixed at Rs.11,300/- pm.

16. A judgment of this Court reported in **2022-2-TNMAC-6 (DB) (Managing Director, Tamil Nadu Transport Villupuram Ltd., V. Kousalya)** is cited, on the side of the claimants, wherein, the monthly income was fixed as Rs.24,572/- pm.

17. Another judgment of this Court reported in **2022-TNMAC-355 (HDFC Ergo General Insurance Co.Ltd., V. M.Pushpavalli)**, is cited, wherein, the monthly wages was increased up to Rs.15,000/- pm..



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18. Another judgment of this Court reported in **2022-2-TNMAC-542 (B.Vanniyarani V. Managing Director, TamilNadu State Transport Corporation Ltd.)** is cited, on the side of the claimants, wherein, this Court fixed the notional income as Rs.12,000/- pm.

19. The educational qualification of the deceased was not mentioned in the claim petition. No documents as to the Technical qualification of the deceased was filed. Only based on the evidence of P.W.3 and based on the certificate - Ex.P7, the Tribunal fixed the monthly income at Rs.20,000/- which is excessive.

20. Considering the age of the deceased and considering the judgment reported in 2022-TNMAC-355, it is decided that the income of the deceased is to be fixed as Rs.15,000/- per month. After deducting 1/4th of the income towards his own expenses, the deceased might have contributed Rs.11,250/- to his family members.

21. Considering the age of the deceased and considering the fact that the deceased was working in the private institution, it is decided that 40% (Rs.4,500/-) to be added as future expenses. Hence, the monthly loss of income of the deceased is fixed as Rs.15,750/-. Multiplier '16' is applicable. Hence, the total loss of income is calculated as Rs.30,24,000/- (Rs.15,750/ X 12 X13).



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22. On the side of the appellant, it is stated that the Tribunal has awarded Rs.15,000/- towards loss of estate, Rs.50,000/- towards loss of love and affection, Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses, Rs.10,000/- towards transport expenses, which are all excessive.

23. On the side of the respondents-claimants, it is stated that the loss of consortium to be awarded for each of the claimants. The following judgments are cited, on the side of the claimants:

(i) Judgment of this court reported in 2022-1- TNMAC-663 (DB) (Branch Manager, Royal Sundaram Alliance Insurance Co.Ltd., V. Nagarajan)

(ii) Judgment of this Court reported in 2022-1- TNMAC-644 (HDFC Ergo General Insurance Co.Ltd. V. Rani)

(iii) Judgment of this Court reported in 2022-2- TNMAC-297 (DB) (Future General India Insurance Co.Ltd., V. Baby)

24. In view of the above citations, it is decided that the claimants are entitled to Rs.40,000/- each towards loss of consortium.



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25. The total compensation is calculated as follows:-

Loss of income	:	Rs. 30,24,000/-
Loss of estate	:	Rs. 15,000/-
Loss of consortium	:	Rs. 1,60,000/-
Funeral expenses	:	Rs. 15,000/-
Transport expenses	:	Rs. 10,000/-
Total compensation	:	Rs. 32,24,000/-

26. This appeal is partly allowed. No costs. The first claimant, who is wife of the deceased, is entitled to a share of Rs. 14,24,000/- along with proportionate interest and costs, the fourth claimant, who is the mother of the deceased, is entitled to Rs.5,00,000/- along with proportionate interest, the third claimant, who is the father of the deceased, is entitled to Rs.3,00,000/- along with proportionate interest and the second claimant, who is the son of the deceased (minor), is entitled to Rs.10,00,000/- along with proportionate interest.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.41,62,000/- to Rs. 32,24,000/-.

(ii) The appellant - Transport Corporation, is directed to deposit the entire compensation of Rs. 32,24,000/- (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



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with costs, within a period of eight weeks from the date of receipt of a copy of this order. Excess amount, if any, shall be refunded to the appellant / Transport Corporation.

(iii) On such deposit being made by the appellant / Transport Corporation, the respondents 1, 3 & 4 / major claimants are permitted to withdraw their share amount as apportioned by this Court with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them.

(iv) The Tribunal is directed to deposit the share of the minor claimant / second respondent herein in any one of the Nationalised Banks, in a Fixed Deposit scheme, till he attains majority. The first respondent, who is the mother and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minor. The claimants are not entitled for interest for the default period, if there is any.

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R. THARANI, J.

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To

1.The Principal District Judge,
Motor Accident Claims Tribunal
Dindigul.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
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