



C.M.A.No.3284 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3284 of 2024

1.Shantha
2.Lakshmi

... Appellants

Vs.

1.The Managing Director,
Karnataka State Transport Corporation Ltd.,
Bangalore Division,
KH Road, Shanthi Nagar, Bangalore – 560 027.

2.S.C.Venkatesan,
Sri Venkateswara Service, SIPCOT Post,
Dharga, Hosur, Krishnagiri District.

3.The Manager,
The New India Assurance Company Ltd.,
No.14/7, KG Complex, Bagalur Road, Hosur,
Krishnagiri District – 635 109.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking for enhancement of the award and decree of Motor Accidents Claims Tribunal, Krishnagiri made in M.C.O.P.No.304 of 2019 dated 30.11.2020.



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For Appellants : Mr.L.Munisamy

For Respondents : Mr.T.Thiyagarajan [R1]
Notice dispensed with [R2]
Mr.R.Rajesh [R3]

JUDGEMENT

Assailing the fair and decreetal order passed by the Tribunal, in and by which, the Tribunal had awarded lower compensation, the present appeal has been filed by the claimants/appellants seeking enhancement of compensation.

2. The appellants are the wife and mother of the deceased Ganesha. On 29.07.2018, the deceased was proceedings as a passenger in a SVS Private Bus bearing Regn.No.TN-70-C-5499, belonging to the 2nd respondent, which was insured with the 3rd respondent, the driver of the bus has driven the same in a rash and negligent manner with high speed. On that date, about 07.30 hours, while the private bus was proceeding opposite to Bhandarapalli Saravanabava Hotel, the driver of the private bus had suddenly applied brake rashly and negligently. Due to that sudden impact,



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the deceased who was seated in the back side of the said bus had fallen down from the bus. At that time, a KSRTC bus bearing Regn.No.KA-01-F-9128, belonging to the first respondent, driven by its driver in a rash and negligent manner with high speed, without following any rules of the road, without keeping proper distance from the flying vehicle on the busy road and ran over the deceased, who had fallen down from the private bus. Due to which, the back wheel of the KSRTC Bus tyre ran over the deceased's head and the deceased had sustained crush injury on the head and various fatal injuries in the vital organs and died on the spot. Therefore, the claimants have filed a claim petition under Section 166 of Motor Vehicles Act, 1988, claiming compensation of Rs.35,00,000/- before the Tribunal for the death of the deceased in the said accident.

3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked 13 documents viz., Ex.P.1 to Ex.P.13. On the side of the 1st respondent, two witnesses viz., R.W.1 and R.W.2 were examined and marked 1 document viz., Ex.R.1. No witnesses were



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examined nor any documents were marked on the side of the 2nd respondent.

On the side of the 3rd respondent, one witness viz., R.W.3 was examined and no document has been marked. After adjudication, the Tribunal, allowed the petition in part and awarded a sum of Rs.9,87,500/- as compensation to the claimants by fixing 30% : 70% liability on the 1st respondent and the respondents 2 and 3. Not satisfied with the compensation awarded by the Tribunal, the present appeal has been filed by the appellants/claimants seeking enhancement.

4. Learned counsel appearing for the appellants/claimants submitted that the monthly income fixed by the Tribunal is on the lower side, which requires to be reconsidered by this Court. Further, he submitted that the Tribunal had erred in deducting 50% towards personal expenses instead of 1/3rd even though there are two dependants. Accordingly, he prays for appropriate enhancement in favour of the appellants.

5. Learned counsel appearing for the 1st respondent/Karnataka State



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Transport Corporation Ltd. submitted that, the accident had occurred due to the rash and negligent driving of the driver of the 2nd respondent's private bus, however, the Tribunal has fastened 30% negligence on the driver of the first respondent's vehicle and directed the 1st respondent to pay 30% of the compensation arrived by the Tribunal to the appellants, which is wholly unsustainable. Further, he submitted that, the Tribunal has awarded the compensation under various heads, by considering all the relevant documents, which are just and reasonable and the same does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. Learned counsel appearing for the 3rd respondent/insurance company submitted that the deceased himself jumped from the bus and he was so rash and negligent inspite of warning made by the fellow passengers. Further, he submitted that the criminal case registered by the law enforcing agency as against the drivers of the 1st respondent and 2nd respondent was closed as Mistake of Fact. Hence, he submitted that the entire rash and negligence was only due to the deceased and therefore, the 3rd respondent is



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not liable to indemnify the 2nd respondent. However, the Tribunal had fastened 70% liability on the respondents 2 and 3, which is wholly unsustainable. Accordingly, he prays for appropriate orders.

7. Heard the learned counsel appearing for the appellants/claimants, the learned counsel appearing for the 1st respondent/KSRTC and the learned counsel appearing for the 3rd respondent/Insurance Company and also perused the materials available on record.

8. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. Even though the respective learned counsel appearing for the 1st respondent and 3rd respondent made their submissions relating to negligence and liability aspect, however, the present appeal is filed by the appellants seeking enhancement. Therefore, on that point, no interference is warranted and the finding recorded by the Tribunal is confirmed.



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9. The only grievance of the appellants/claimants is with regard to the quantum of compensation awarded by the Tribunal. To compute the income under the head loss of income, no document in support of proof of the income of the deceased has been filed. However, it is claimed by the claimants that the deceased was a fruit businessman and earned a sum of Rs.15,000/- per month. It has been the view of the courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, fixing a notional income of Rs.15,000/- and adding future prospects at 10%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.16,500/-. Deducting 1/3rd towards the personal expenses of the deceased, the notional income of the deceased is arrived at



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Rs.11,000/- per month and the deceased being aged about 50 years, as evidenced from the records, adopting the multiplier of 13 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in *(2009) 6 SCC 121*, the loss of income to the family is arrived at Rs.11,000/- * 12 * 13 = Rs.17,16,000/-, which is worked out as follows:-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	15,000
Add: Future Prospects (Rs.15,000 x 10%) (Per month)	1,500
	16,500
Less: Personal expenses (1/3 rd) (Rs.16,500/- x 1/3 rd) (Per month)	5,500
	11,000
Notional income (per annum) (Rs.11,000/- x 12)	1,32,000
Multiplier	13
Total	17,16,000

10. Further, the Tribunal had awarded a sum of Rs.15,000/- towards loss of estate; Rs.15,000/- towards funeral expenses and Rs.80,000/- towards loss of consortium. This Court finds that the compensation awarded under the said heads are just and reasonable and the same are confirmed.



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11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

S. No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Loss of dependency	8,77,500/-	17,16,000/- (enhanced)
2	Loss of Estate	15,000/-	15,000/-
3	Funeral Expenses	15,000/-	15,000/-
4	Loss of Consortium	80,000/-	80,000/-
	Total	9,87,500/-	18,26,000/-

12. In the result, the Civil Miscellaneous Appeal is partly allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.9,87,500/-** to **Rs.18,26,000/-**. The 1st appellant is entitled to Rs.13,00,000/- together with subsequent interest and proportionate cost and the 2nd appellant is entitled to Rs.5,26,000/- together with subsequent interest and proportionate cost. The 1st respondent-KSRTC and the 3rd respondent/Insurance company are directed to deposit 30% : 70% of the modified compensation amount to the credit of M.C.O.P.No.304



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of 2019 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank of the appellants/claimants through RTGS as per the apportionment made above, within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants/claimants. The appellants/claimants are directed to pay necessary additional Court fee on the enhanced compensation amount. It is made clear that the appellants/claimants are not entitled to any interest for the delay period. There shall be no order as to costs in the present appeal.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

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To

The Motor Accidents Claims Tribunal/Special District Court for Motor



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