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C.M.A. No.1974 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.1974 of 2021

1.K. Ramadhash
2.R. Vijayarani
3.R.Vinith Kumar

... Appellants / Petitioners

Vs.

1. M. K. Sheik Abdul Kadher

2. The New India Assurance Co., Ltd.,
No.99/C-3, 1st Floor,
Opp. New Bus Stand, Perambalur,
Rep. by its Branch Manager,
Policy No.7109001170100008139.

3. The Managing Director,
M/s. Tamil Nadu State Transport Corporation, (VPM) Ltd.,
No.3/37, Salamedu Vazhuthareddy Post,
Villupuram – 605 602.
/Respondents

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 25.02.2021 passed in M.C.O.P. No.756 of 2018 on the file of the Motor Accident Claims Tribunal, Sessions Judge, Mahila Court, Perambalur.



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For Appellants : Mr. C. Vidhusan
For R1 : No appearance
For R2 : Mr. C. Ramesh Babu
For R3 : Mr. Santhosa Kumar

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No.756 of 2018, dated 25.02.2021 on the file of the Motor Accident Claims Tribunal, Sessions Judge, Mahila Court, Perambalur.

2. The parties are referred hereunder according to their litigative status and ranking before the Tribunal.

3. The claimants herein, who are the parents and brother of the deceased namely Vigneshkumar. He was a Certificate Holder of Food Production and was working in Food Processing Unit. On 03.08.2018, he was travelled as a passenger in the Public Transport Bus bearing Registration No.TN 32 N 3629 belongs to the third respondent from Chennai to Trichy at about 1.15 a.m., the bus was stopped near Sengurichi Bus Stop on the extreme left side of the road with due indication of parking



lights and that the deceased along with other passengers have got down from the bus and waiting near the bus. At that time, a Private Tourist Bus belongs to the first respondent came from the very same direction and hit on the Public Transport Bus, which resulted in causing severe injuries to the deceased in this case and subsequently, he succumbed to death. The claimants as dependents of the deceased have come forward with the claim petition seeking compensation for a sum of Rs.40,00,000/- by invoking Section 166 of the Motor vehicles Act.

4. The first respondent is the owner of the Private Tourist Bus has not contested the claim and was remained ex-parte. The second respondent is the insurer of the Tourist Bus has contested the claim and contended that the driver of the Transport Bus belongs to the third respondent has parked the vehicle in the middle of the road which resulted in accident. They have also disputed the age, income, avocation and dependency of the deceased.

5. The third respondent – Transport Corporation filed counter and contended that the Transport Bus was parked with due care and caution



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and all the passengers have also been standing away from the road, the Tourist Bus driven by its driver, the first respondent has reached extreme left side of the road and dashed on the bus as well as the passengers. In this regard, a criminal case was immediately registered against the driver of the Tourist Bus in Crime No.748 of 2018, under Sections 279, 337 & 304 (A) IPC on the file of Ulundurpet Police Station. Hence prays to dismiss the claim petition.

6. The Tribunal after considering the pleadings and evidences placed on record has held that the driver of the Tourist Bus belongs to the first respondent is the tortfeasor and that the first and second respondents are liable to pay the compensation and absolved the third respondent from paying any compensation.

7. The claimants have filed this appeal seeking enhancement of compensation, aggrieved over the quantum of compensation fixed under the head loss of income.

8. The learned counsel for the claimants has submitted that the



deceased in this case was aged about 19 years and was a technical person.

He was working in Food Processing Unit and his Pay Slip was marked as Ex.P6 to prove the income and the same has not been properly appreciated by the Tribunal and prays to award compensation under the head loss of income based on Ex.P6-Pay Slip.

9. The learned counsel for the respondents opposed the appeal on the ground that already the Tribunal taking note of the educational qualification and avocation of the deceased has rightly fixed the notional income of the deceased and also awarded compensation under various heads and there is no ground for enhancing the compensation.

10. I have considered the rival submissions made on both sides and also perused the records available.

11. The claimants have not examined any of the employer of the deceased in this case. According to them, the deceased was employed in a Private Company which involved in Food Processing and he was earning a sum of Rs.16,500/- per month. Ex.P6 is the Pay Slip said to have been



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issued by the Private Company but they have not examined any of the employer to corroborate Ex.P6. It is only a Pay Slip which has been considered by the Tribunal and has rejected the same on the ground that it has no proper authentication and also no corroborative materials produced to support it. Ex.P12 is the Original Certificate issued to prove that the deceased has undergone Industrial Training. Based on the evidence of Exs.P6 and P12, income of the deceased could not be decided.

12. In the absence of examination of employer or any other corroborative material to show that he was regularly working in a private concern and was earning a sum of Rs.16,500/- per month, this Court is of the view that the Tribunal has rightly rejected Ex.P6 - Pay Slip. However, taking note of the fact that he is a technical person, the notional income fixed for the deceased who was died in the accident taken place in the year 2018 is to be fixed as Rs.14,000/- per month as per the Division Bench Judgment of this Court in *Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]*. Since the deceased in this case is a bachelor, the personal expenses to be deducted is 50% and as per the Judgment of the



Apex Court in *National Insurance Co. Ltd., vs. Pranay Sethi and other*

[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680] added 40% of monthly pay as future prospects. Since the age of the deceased is 19 years, the applicable multiplier is '18' as per the Judgment of the Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]*. Hence the compensation awarded under the head loss of income is modified as follows: $[14000 + 5600 (40\% \text{ of } 14000) = 19600 \times 12 \times 18 \times 1/2] = \text{Rs.}21,16,800/-$.

13. The claimants are also entitled to get each a sum of Rs.40,000/- under the head loss of consortium. As far as the conventional heads such as Funeral Expenses and Loss of Estate a sum of Rs.15,000/- each awarded.

14. Accordingly, the Award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of Dependency	Rs.16,12,800/-	Rs.21,16,800/-	Enhanced



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
2.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of Consortium	---	Rs.1,20,000/-	Granted
	Total Compensation	Rs.16,42,800/- -	Rs.22,66,800/- -	Enhanced to Rs.6,24,000/- -

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,42,800/- is hereby enhanced to Rs.22,66,800/- [Rupees Twenty Two Lakhs Sixty Six Thousand and Eight Hundred only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount now awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.756 of 2018 on the file of the Motor Accidents Claims Tribunal, Sessions Judge, Mahila Court, Perambalur. On such deposit, the appellants/claimants are permitted to withdraw the award amount now



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determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. In other aspects the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

22.01.2024

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Sessions Judge, Mahila Court,
Motor Accident Claims,
Perambalur.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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