



WEB COPY



C.M.A.No.3005 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE K. RAJASEKAR

C.M.A.No.3005 of 2021

and

C.M.P. No.3046 of 2024

1. Anjalatchi
2. Velmurugan
3. Lakshmi
4. Girija

... Appellants

Vs.

The Managing Director
Tamil Nadu State Transport Corporation Limited
(VPM) Villupuram.

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.02.2020 made in M.A.C.T.O.P.No.2231 of 2018 on the file of Motor Accident Claims Tribunal IV Judge, Small Causes Court, Chennai.

For Appellant : M/s.R.Reena

For Respondent : M/s.T.Chandrasekaran



C.M.A.No.3005 of 2021

J U D G M E N T

WEB COPY

This Civil Miscellaneous Appeal has been filed by the claimants for enhancement of the compensation granted by the order dated 25.02.2020 made in M.A.C.T.O.P.No.2231 of 2018, on the file of the Motor Accident Claims Tribunal IV Judge, Small Causes Court, Chennai.

2.The appellants are the claimants in M.A.C.T.O.P.No.2231 of 2018, on the file of the Motor Accident Claims Tribunal IV Judge, Small Causes Court, Chennai. They filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Subramani and appellants 1 to 3 are the wife, daughter and son of the deceased, who died in the accident that took place on 08.03.2018. The parties herein are referred as per their litigative status before the claims Tribunal.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation and directed the respondent-Transport Corporation to pay a sum of Rs.3,90,000/-



C.M.A.No.3005 of 2021

WEB COPY

as compensation to the appellants.

4. Not being satisfied with the amount granted by the Tribunal, the appellants have come out with the present appeal.

5. The learned counsel appearing for the appellants contended that the deceased was a Tamarind Merchant and was earning a sum of Rs.15,000/- per month at the time of accident. The Tribunal fixed a sum of Rs.8,000/- as monthly income of the deceased, which is meagre. The Tribunal has not granted any amount towards consortium to all the claimants and it has rendered a finding that without evidence except wife other claimants are not dependants and the same is liable to be set aside. The learned counsel further submitted that the claimants have separately filed miscellaneous petition to produce the medical bills which were not marked before the Tribunal and those medical bills may be received as evidence and to award compensation.

6. The learned counsel appearing for the respondent-Transport Corporation filed a counter and disputed the manner in which the accident has



C.M.A.No.3005 of 2021

WEB COPY

taken place and they have also contended that the deceased has suddenly crossed the road without minding the oncoming vehicle and invited the accident. Further they have also disputed the income, age of the deceased. Thus, no interference in the impugned award is required and this appeal may be dismissed.

7. Heard both sides and perused the materials available on record.

8. Admittedly, the deceased was 75 years old at the time of accident. The accident took place on 08.03.2018 and the deceased died on 09.03.2018 while undergoing treatment at SRM hospital. Before this Court, the claimants have filed Miscellaneous Petition viz., C.M.P. No.3046 of 2024 seeking permission to receive additional document viz., Medical Bills amounting to a sum of Rs.20,413/-. I have also perused the medical bills and it has been issued by the SRM hospital and also been attested by proper authorities. On perusal of the said medical bills along with various prescriptions, this Court posed a query, why these bills have not been placed before the Tribunal and marked as an Exhibit, for which, the learned counsel appearing for the



C.M.A.No.3005 of 2021

WEB COPY

claimants, on instructions submitted that after the death of the deceased it was misplaced and later the said bills were traced out and produced before this Court by way of filing a miscellaneous petition. This Court being satisfied with the reasons stated supra is inclined to allow this Miscellaneous Petition and C.M.P. No.3046 of 2024 is allowed as prayed for and the medical bills are also treated as an additional exhibit. Accordingly, this Court awards a sum of Rs.20,413/- towards compensation under the head “medical bills”.

9. In the absence of any valid document with regard to avocation and income, the Tribunal considering the age and nature of work done by the deceased, fixed a sum of Rs.8,000/- per month as notional income of the deceased as the accident is of the year 2008. This Court is of the view that fixing the notional income at Rs.8,000/- is proper and the same is hereby confirmed.

10. The Tribunal has not awarded any amount under the conventional head and has deducted 50% of personal and living expenses of the deceased on the ground that the claimants 2 to 4 are married and they are living with



C.M.A.No.3005 of 2021

WEB COPY

their respective families. This Court is unable to accept the reason given by the Tribunal, in view of the observation made in the case of ***[Sarla Verma & others Vs. Delhi Transport Corporation & another]*** reported in ***2009 (2) TNMAC 1 SC Supreme Court at paragraph No.12*** and taking into consideration that there is an evidence placed on record by the claimants that even though the claimants 2 to 4 were married and living separately according to them the deceased supported their family by his income. They are also legal heirs and unless the contrary is proved it can be presumed that they are dependants of the deceased. In this case there is an evidence placed on record by the claimants that all the claimants are dependants on the income of the deceased and this has not been disputed by the respondent while cross examining the witness and have not raised objection for the dependency at the time of cross examination. The Tribunal ought to have accepted the evidence of the claimants with regard to dependency and awarded compensation. Accordingly, 1/3rd deduction has to be deducted as the deceased is a married and not 50%, as erroneously deducted by the Tribunal, which is meant for a bachelor. Thus the loss of dependency is calculated by applying multiplier '5' is arrived at Rs.3,20,040/- i.e., Rs.8,000/- LESS 1/3rd x 12 x 5.



C.M.A.No.3005 of 2021

WEB COPY

11. Insofar as the compensation awarded by the Tribunal, it requires modification for the conventional head of Loss of Consortium and all the claimants are entitled to Rs.40,000/- each. The amount awarded under the heads Funeral Expenses Rs.15,000/- and loss of estate Rs.15,000/- are confirmed. The award of compensation under the head loss of love and affection is modified since love and affection is included in loss of consortium. Transportation charges Rs.5,000/- awarded by the Tribunal is set aside by this Court.

12. Therefore, the award of the Tribunal is hereby enhanced in the



C.M.A.No.3005 of 2021

following manner :

WEB COPY

<i>Heads</i>	<i>Awarded by the Tribunal in Rs.</i>	<i>Awarded by this Court in Rs.</i>
Loss of Dependency Rs.8,000/- LESS 1/3 rd x 12 x 5	2,40,000	3,20,040
Loss of consortium	40,000	1,20,000
Loss of estate	15,000	15,000
Funeral expenses	15,000	15,000
Loss of love and affection	75,000	-
Transportation expenses	5,000	set aside
Medical bills - vide C.M.P. No.3046 of 2024	-	20,413
Total	3,90,000	4,90,453
Rounded off	3,90,000	4,90,460

13. In the result, the appeal filed by the appellants / claimants, stands partly allowed by enhancing the compensation from Rs.3,90,000/- to Rs.4,90,460/-, as stated above. No costs.

14. In view of the enhancement of the compensation amount, the Transport Corporation is directed to deposit the enhanced amount with interest at the rate of 7.5% per annum from the date of claim petition till the



C.M.A.No.3005 of 2021

date of deposit, less the amount, if any, already deposited to the credit of M.A.C.T.O.P.No.2231 of 2018 on the file of Motor Accident Claims Tribunal IV Judge, Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy of the Judgment. On such deposit being made, the Tribunal shall transfer the award amount directly to the bank account of the claimants, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter. The claimants shall pay the necessary court fee for the enhanced compensation amount before receiving the copy of this judgment. No costs.

08.02.2024

Index : Yes / No
Internet : Yes/ No
Speaking/Non Speaking
dpq

K. RAJASEKAR, J.



WEB COPY



C.M.A.No.3005 of 2021

dpq

To

1. The IV Judge, Small Causes Court,
Chennai.
2. The Section Officer,
VR Section,
High Court,
Madras.

C.M.A.No.3005 of 2021

08.02.2024