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C.M.A.No.2999 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.2999 of 2021

and

M.C.O.P.No.3040 of 2018

1. S.Ponmozhi
2. M.Dhivya
3. Minor Kaviya
4. Minor Karthik

... Appellants/Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation (V pm-Divn.I) Ltd.,
No. 3/137 Salamedu,
Vazhuthareddy Post,
Villupuram – 605 401.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to allow the appeal and enhance the compensation in M.C.O.P.No. 3040 of 2018 dated 09.08.2021 on the file of the Motor Accidents Claims Tribunal/I Additional District and Sessions Court, Cuddalore.

For Appellants : Mr. Ramya V.Rao



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For Respondent : Mr.S.S.Santhosakumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P.No. 3040 of 2018 dated 09.08.2021 on the file of the Motor Accidents Claims Tribunal/I Additional District and Sessions Court, Cuddalore.

2. For better appreciation, the parties are referred according to their litigative status before the Tribunal below.

3. The facts leading to filing of the claim petition are as follows :

3.1 The first claimant is the wife of the deceased and second to fourth claimants are the children of deceased Sakkarapani who died in the road accident dated 14.04.2018.

3.2 On 14.04.2018, the deceased travelled as a passenger from Pottavelli to Sathapadi along with his wife in the public transport bus belongs to first respondent. After bus reached Sathapadi Bus Stand, the deceased was getting down from the bus, at that time suddenly the bus was



moved by the driver in a rash and negligent manner which resulted in causing severe injuries to the deceased herein subsequently, he succumbed to the injuries.

3.3 Aggrieved over the same, the claimants have come forward with this claim petition seeking compensation for a sum of Rs. 30,00,000/- by invoking section 166(1) of Motor Vehicles Act.

4. The respondent has filed a counter affidavit and disputed the negligent act alleged against both the driver and the conductor of the bus. According to them, the deceased has suddenly attempted to get down from the front side of the bus which resulted in causing accident.

5. The Tribunal after considering the evidence placed on record, accepted the case of the claimant and awarded compensation for a sum of Rs. 13,70,000/- (Rupees Thirteen Lakhs and Seventy Thousand Only)

6. Aggrieved over the quantum of compensation awarded by



the Tribunal, the claimants have approached this Court seeking enhancement of compensation. The respondent has not come forward with any appeal against the award.

7. The learned counsel for the claimants would submit that the deceased in this case was aged about 42 years and working as a Mason and the Tribunal has fixed monthly notional income as Rs.8,000/- which is not in accordance with law and it is also on the lower side. Hence, the prays to enhance the compensation.

8. The learned counsel for the Transport corporation submitted that the deceased was aged about 42 years, since no income proof was produced the Tribunal has rightly fixed the compensation of Rs. 8,000/- . Hence, prays to confirm the award.

9. I have considered the submissions of either side and perused the entire evidence placed on record.



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10. Admittedly, the deceased herein was a Mason and aged about 42 years. The Tribunal after considering the evidence placed on record has held that the claimants have failed to prove the income of the deceased and thereafter notionally fixed income as Rs. 8000/- per month. The Division Bench judgment of this Court in ***Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]*** has laid down guidelines for fixing the notional income of various categories of persons whose income has not been proved and based on cost of index filed by CBDT, the notional income was permitted to be fixed, based on Apex Court judgement of ***Syed Sadiq Vs. United India Insurance Company [2014 (1) TNMAC 459]***.

11. This Court is of the view that the claimants seeking fixing of notional income to the extent of Rs. 14,000/- which is squarely falls within the cost inflation index followed by this Court for fixing notional income. Accordingly, Rs.14,000/- is fixed as monthly income of the deceased herein.

12. Considering the age of the deceased as 42 years, the



applicable multiplier is 14. Considering the number of dependancy, the applicable deduction for the personal and living expenses of the deceased is 1/4th. The claimants are also entitled for future prospectus to the extent of 25% by following the judgment of the Supreme Court ***National Insurance Co. Ltd. vs. Pranay Sethi and others***, 2017 (2) TN MAC 609 (SC) : 2017 (16) SCC 680. The loss of income to be sum up as follows:-

Annual Income Rs.14,000 x12	= Rs. 1,68,000/-
Future Prospects @ 25%	= Rs. 42,000/-
Yearly income of the deceased	= Rs. 2,10,000/-
After deduction of 1/4.	= Rs. 1,57,500/-
Applicable Multiplier	= 17
Total Compensation (Rs. 1,57,500x17)	= Rs. 26,77,500/-

13. The Tribunal has Awarded Rs. 40,000/- under the head loss of Consortium and also awarded Rs. 10,000/- each to the claimants under the head loss of love and affection. As per the Hon'ble Apex Court in ***United India Insurance Co. Limited v. Satinder Kaur and ors.***



(MANU/SC/0500/2020: (2021) 11SCC 780) and Magma General

Insurance Co.Ltd., Vs. Nanu Ram reported in 2018 ACJ 2018, the

claimants are entitled only for consortium, and the loss of consortium includes loss of love and affection. Hence all the claimants are entitled for Rs. 40,000 each under the loss of Consortium. Accordingly, 4 x Rs. 40,000= Rs. 1,60,000/- is awarded.

14. The Tribunal has awarded Rs.15,000/- each under the head Transport expenses and funeral expenses. However, the compensation awarded under Funeral expenses includes Transport Expenses. Hence the compensation awarded under the Transport Expenses is hereby cancelled. However, the Tribunal has not awarded compensation under the loss of estate. Hence this Court is inclined to award Rs. 15,000/- under the loss of estate.

15. Thus, the compensation awarded by the Tribunal is enhanced from Rs. 13,70,000/- to Rs.28,67,500/- break-up as follows -



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S.No.	Description	Amount Awarded by Tribunal (Rs.)	Amount Awarded by the Court (Rs.)	Award confirmed or enhanced or reduced
1.	Loss of income	12,60,000/-	26,77,500/-	Enhanced
2.	Loss of Consortium	40,000/-	1,60,000/-	Enhanced
3.	Loss of love and affection 10,000x4	40,000/-	-	Cancelled
4.	Transport Expenses	15,000/-	-	Cancelled
5.	Funeral Expenses	15,000/-	15,000/-	Confirmed
6.	Loss of estate	-	15,000/-	Granted
	Total Compensation	Rs. 13,70,000/-	Rs.28,67,500	Enhanced

16. The Transport Corporation is directed to deposit the enhanced amount of Rs.28,67,500/- along with 7.5% interest within a period of six weeks from the date of receipt of copy of this order. On such deposit, the claimants herein are entitle to withdraw the same. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

22.02.2024

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Index:Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To

1.The Motor Accidents Claims Tribunal

I Additional District and Sessions Court, Cuddalore.

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2. The Section Officer,
VR Section, High Court, Madras.

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