IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.1748 of 2023

1.Parameswari
2.Varun
3.Minor Varsha

...Appellant

Vs

The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam, Tanjavur.

... Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award in MCOP.No.13 of 2020 dated 31.03.2023 on the file of the Motor Accident Claims (II Additional District and Sessions Judge) Chidambaram.

For Appellant : Mr.A.Muthukumar

For Respondent : Mr.M.Murali Vinodh

JUDGMENT

This civil miscellaneous appeal has been filed challenging the quantum of compensation awarded by the Tribunal.

2. The learned counsel for the claimant would submit that on 02.07.2019, while one Sivakumaran was returning home by walking at Chennai-Kumbakonam Road, a Government bus bearing Registration No.TN-68-N-0443 came in a rash and negligent manner and dashed against him, due to which he was died on the spot. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

S.No	***Heads***	***Compensation (Rs.)***
1	Loss of Income	34,12,500
2	Loss of Consortium	40,000
3	Loss of Love and Affection	80,000
4	Loss of Estate	15,000
5	Funeral Expenses	15,000
	Total	35,62,500

3. Mr.A.Muthukumar, learned counsel, who is appearing for the appellants would submit that in the present case, Sivakumaran (deceased) was carrying on his business and also he was looking after his agricultural lands. At the time of death, on behalf of the Proprietorship, the said Sivakumaran had filed the Income Tax Returns, wherein the income was shown as a sum of Rs.3,15,000/- per month. However, the said Proprietorship was closed in entirety after the death of Sivakumaran. Hence, the Tribunal has taken the income of the Proprietorship and awarded the compensation of a sum of Rs.3,15,000/- per month as loss of dependency by adding 25% as future prospects and applying 13 as multiplier and deducting 1/3 towards personal expenses of the deceased.

4. The grievance of the appellant is that the Tribunal has not considered the aspect of income, which the deceased was earning from his agricultural lands and hence, he requests this Court to consider the same. Further, he would contend that no amount was awarded towards “Transportation”.

5. In reply, the learned counsel appearing for the respondent would submit that the compensation awarded by the Tribunal is just and fair and hence, he requests this Court to confirm the same.

6. Heard the learned counsel for the appellant and the respondent and also perused the materials available on record.

7. In the present case, there is no dispute with regard to the occurrence of the accident and the liability fastened against the driver of the bus. The only issue involved in this appeal is with regard to the quantum of compensation awarded by the Tribunal.

8. As far as the loss of dependency is concerned, the Tribunal has taken the entire income of a sum of Rs.3,15,000/- per month based on the Income Tax Returns filed by the deceased. Further, while awarding the compensation towards loss of dependency, the Tribunal had added 25% towards future prospects and applied '13' as multiplier and deducted $1/3^{rd}$ towards personal expenses of the deceased. The main contention of the appellant is about the non-consideration of income, which was earned by the deceased from his agricultural

lands.

9. However, this Court is of the view that since the deceased was a Proprietor of a Plywood Business, in which was earning a sum of Rs.3,15,000/- per month, he should have been completely concentrated in his business and hence, he should have appointed someone else to take care of his agricultural lands. Therefore, the lands should have been took care of the persons, who were engaged by the deceased, in which case, the agricultural activities will automatically continue even after the death of Sivakumaran and the earnings from the said lands will go to the legal heirs of the deceased. Further, no proof of evidence has been produced by the claimants with regard to the earnings from the agricultural lands.

10. That apart, only if it is proved that the Sivakumaran (deceased) had contributed as labour in his agricultural lands, the earnings from the agricultural lands will be taken into consideration, otherwise the same will not be taken. In the present case, it appears that the said Sivakumaran had put his entire efforts in his Plywood business only, in which case, it will be very difficult for him to carry on the agricultural activities in his land without any help of the workers.

Further, after the death of Sivakumaran, the wife of the deceased also can carry on the same agricultural work with the help of supervisor and workers. In such case, the claimants will not lose anything. The only loss of the claimants is the income from the business of the deceased. Hence, the Tribunal had rightly awarded the compensation based on the Income Tax Returns and there is no error or illegality in the loss of dependency awarded by the Tribunal. Thus, the same stands confirmed. However, no amount was awarded towards Transportation and hence, this Court is inclined to award a sum of Rs.10,000/- for Transportation.

11. Accordingly, the compensation awarded by the Tribunal is modified as follows:

S.No.	***Heads***	***Compensation awarded by Tribunal (Rs.)***	***Compensation awarded by this Court (Rs.)***
1	Loss of Income	34,12,500	34,12,500
2	Loss of Consortium	40,000	40,000
3	Loss of Love and Affection	80,000	80,000
4	Loss of Estate	15,000	15,000
5	Funeral Expenses	15,000	15,000
6	Transportation	Nil	10,000
	Total	35,62,500	35,72,500

12. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.35,72,500/-. Accordingly, the award amount stands increased from a sum of Rs.35,62,500/- to Rs.35,72,500/-. In all other aspects, the award of the Tribunal stands confirmed.

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the respondent/Transport Corporation is directed to deposit a sum of Rs.35,72,500/- along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.13 of 2020 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Chidambaram. Upon such deposit, the share of the minor 3rd appellant is directed to be deposited in any one of the Nationalised Bank till she attains majority and the 1st appellant being the mother of the minor is permitted to withdraw the accrued interest once in three months for the welfare of the minor. Further, the Tribunal is directed to transfer the share of the 1st and 2nd appellants to their respective bank accounts, as per the proportion determined by this Court, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details

obtained for the claimant or application for withdrawal from the claimant, whichever is earlier. No costs.

27.02.2024

Index: Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
nsa

KRISHNAN RAMASAMY,J.

nsa

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