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C.M.A.No.2879 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2879 of 2022

Baskaran (Died)

1.B.Geetha

2.B.Srinivasan

... Appellants / Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.12, Ramakrishna Road,
Salem – 636 007.

... Respondent / Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 29.04.2019 passed in M.C.O.P.No.705 of 2018 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Salem.

For Appellants : Mr.S.P.Yuvaraj

For Respondent : Mr.D.Nitin
Standing Counsel for TNSTC

JUDGMENT



C.M.A.No.2879 of 2022

WEB COPY

This Civil Miscellaneous Appeal filed by the claimants seeking enhancement of compensation awarded for the death of the claimant's mother in M.C.O.P.No.705 of 2018 dated 29.04.2019 passed by the Motor Accidents Claims Tribunal, II Additional District Judge, Salem.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The appellants are the claimants filed this appeal seeking enhancement of compensation awarded for the death of their mother in the road accident. The appellant's mother namely Kala was travelling along with her son as a pillion rider in a two-wheeler on 18.09.2017 around 9.00 a.m near Thalaivasal Market on the Salem to Kallakurichi Road, at that time, the Transport Corporation Bus bearing Registration No.TN 30 N 0358 belonging to the respondent came in the opposite direction in a high speed and hit on the two-wheeler, which resulted in causing severe injuries to the claimant's mother and subsequently, died in the hospital. Originally, the claimants including their father have filed the claim petition seeking compensation of Rs.30,00,000/- by invoking section 166 of the Motor Vehicles Act.



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4. The claim was resisted by the respondent on the ground that the claim made herein is on the higher side and that the accident had taken place due to the negligent driving of the deceased while riding the two-wheeler hence prays to dismiss the claim.

5. Based on the pleadings and evidence placed on record, the Tribunal held that both the driver of the respondent-Transport Corporation Bus and the deceased both are responsible for the accident and fixed the ratio of negligence 85% on the bus driver and 15% on the deceased. Further the Tribunal has quantified and awarded compensation of Rs.7,98,955/- to the claimants with interest at the rate of 7.5% from the date of filing of claim petition till the date of realisation.

6. Not satisfied with the compensation awarded, the claimants have come forward with this appeal.

7. The learned counsel for the appellants submitted that the age of the deceased has not been properly fixed by the Tribunal. Though, there is no



C.M.A.No.2879 of 2022

dispute regarding the age, the Tribunal based on the Postmortem Certificate, wrongly fixed the age of the deceased as 48 years. The learned counsel further claimed that the notional income fixed and the compensation awarded under other heads are also on the lower side and prays to enhance the same.

8. The learned counsel for the respondent-Transport Corporation submitted that based on the evidence place on record, the Tribunal has properly fixed the notional income of the deceased and the compensation awarded under other heads is on the higher side. Hence prays to confirm the same.

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

10. With regard to the negligent aspect, the Tribunal has given elaborate reasons for fixing 15% contributory negligence on the deceased. Based on the evidence placed on record, more particularly, relying on the evidence of P.W.1, the Tribunal held that the deceased, had also contributed to the accident to the extent of 15% and this Court finds no reason to interference and the same is acceptable. The claimants have also not able to



substantiate their claim that there is no contributory negligence, hence, the finding regarding negligence is hereby confirmed.

11. With regard to the quantum of compensation, the Tribunal fixed the notional income of the deceased as Rs.7,000/- per month. According to the claimants, the deceased was running a vegetable shop and was earning Rs.20,000/- per month however, they were not able to produce any documents or any evidence to prove the income. Admittedly, the accident had taken place in the year 2017 and considering the norms followed by this Court, the notional income of the deceased herein is fixed as Rs.13,000/-.

12. Next contention raised is that, age of deceased was not properly fixed. In the claim petition as well as in the evidence of P.W.1, they claimed that the age of the deceased was 45 years at the time of accident. The claimants also relied on the Death Certificate of the deceased, which was issued by the Government officials.

13. The Tribunal without considering the Death Certificate of the deceased, based on the age recorded in the Postmortem Certificate, fixed the age of the deceased as 48 years. Either Postmortem Certificate or First Information Report the age of the deceased is recorded based on the oral



C.M.A.No.2879 of 2022

statement made by the defacto complainant, while lodging police complaint to initiate criminal proceedings. The above documents could not be considered as proper documents. However, in the absence of any document, age mentioned in postmortem certificate may be relied on for awarding compensation under the Motor Vehicles Act, 1988. However, in this case, the death certificate of deceased has been marked by the claimants. The Tribunal has not given any reason for not accepting the age mentioned in death certificate. The Death Certificate issued by the Statutory Authority i.e., Salem Municipality Corporation is to be given more probative value than the Postmortem Certificate since same was issued after enquiry. Hence, the age fixed based on the Postmortem Certificate without considering the age mentioned in death certificate is acceptable in this case. If any evidence is placed on record to show that the age mentioned in death certificate is not reflecting the real age of deceased, than further enquiry in to the proof of age is necessary and the same shall be determined in facts of each case.

14. In this case, the claimants claimed that the deceased was aged only 45 years and there evidence is contributed by the oral evidence of P.W.1 and death certificate issued by the officials, except the postmortem certificate, no contra evidence to disprove the age also not produced, hence the age stated in death certificate is acceptable in this case. Accordingly, the age of the



C.M.A.No.2879 of 2022

deceased is fixed as 45 years.

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15. The Tribunal by considering the age of the deceased and following the dictum laid down by the Hon'ble Apex Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]*** and ***National Insurance Co. Ltd., vs. Pranay Sethi and other*** reported in ***[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]*** had rightly fixed the multiplier as '14' as future prospects as 25%. Considering the number of dependants 1/3 deducted towards personal and living expenses of the deceased. Accordingly, the loss of income is calculated as follows: [13000 + 3250 (25% of 13000) 16250 x 12 x 14 x 1/3] = Rs.18,20,000/-.

16. As per the Judgment of the Apex Court in ***Magma General Insurance Co. Ltd., vs. Nanu Ram and Others [2018 (18 SCC 130 : MANU/SC/1012/2018)]*** and ***United India Insurance Co., Limited vs. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780]***, each of the claimants are entitled for Rs.40,000/- under the head loss of consortium and the same is hereby awarded. As far as the other conventional heads such as Funeral Expenses and Loss of Estate are concerned, the same are reasonable and the same are hereby confirmed.



C.M.A.No.2879 of 2022

WEB COPY 17. 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 Income	Rs.9,09,948/-	Rs.18,20,000/-	Enhanced
2.	Loss of Consortium	---	Rs.80,000/-	Granted
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
	Total Compensation	Rs.9,39,948/-	Rs.19,30,000/-	Enhanced by Rs.9,90,052/-

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,39,948/- is hereby enhanced to Rs.19,30,000/- [Rupees Nineteen Lakhs and Thirty Thousand only] along 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 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.705 of 2018 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Salem. On such



C.M.A.No.2879 of 2022

deposit, the appellants are permitted to withdraw the award amount now 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 claimants. The Insurance Company is permitted to withdraw the amount, if any, lying in the credit of M.C.O.P.No.705 of 2018 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Salem. There shall be no order as to costs in the present appeal.

13.11.2024

ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The II Additional District Judge,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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C.M.A.No.2879 of 2022

K. RAJASEKAR, J.

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C.M.A.No.2879 of 2022



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C.M.A.No.2879 of 2022

13.11.2024