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C.M.A.No.2291 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.2291 of 2022

S.Vijayabala

.. Appellant

Vs.

The Managing Director,
TNSTC Ltd.,
Kumbakonam Division-II,
Collector Office Road, Trichy – 1.

.. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to allow this appeal and pleased to enhance the amount awarded in M.C.O.P.No.2701 of 2016 dated 31.03.2021 on the file of Motor Accident Claims Tribunal, (In the Court of the Principal Special Judge, Special Court under E.C. & NDPS Act), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent : Mr.Murali Vinodh

J U D G M E N T

The claimant not being satisfied with the quantum of compensation



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awarded by the Motor Accident Claims Tribunal, (In the Court of the Principal Special Judge, Special Court under E.C. & NDPS Act), Chennai, in M.C.O.P.No.2701 of 2016 dated 31.03.2021 has filed the present appeal seeking for enhancement of compensation.

2.The case of the claimant is that her husband R.Sreenivasan, was involved in the process of shifting his house from Chennai to Tirumangalam. All the household articles were transported in a TATA Ace lorry on 26.08.2012 and when the vehicle was going near Southpakkam at Madurantagam Taluk, at about 03.30 A.M., the offending vehicle which was proceeding in the same direction, dashed on the TATA Ace vehicle and as a result, the husband of the claimant sustained grievous head injuries and unfortunately succumbed to the injuries. Under these circumstances, the wife filed claim petition claiming for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver belonging to the respondent



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Corporation. After having rendered such a finding, the Tribunal attributed 30% contributory negligence on the ground that he was traveling in the vehicle along with the household articles and he should not have traveled in the goods vehicle. Thus, only 70% negligence was attributed against the respondent Corporation.

4.The Tribunal thereafter fixed the total compensation at Rs.8,07,000/- in the following manner:

1.Loss of Dependency	-	Rs.6,72,000.00
2.Loss of consortium	-	Rs.1,00,000.00
3.Funeral expenses	-	Rs.25,000.00
4.Transportation	-	Rs.10,000.00

		Rs.8,07,000.00

5.Out of the above compensation amount, 70% namely viz., Rs.5,64,900/- (rounded off to Rs.5,65,000/-) was directed to be paid with 7.5% interest per annum.

6.The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has chosen to file the present



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appeal before this Court seeking for enhancement of compensation.

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7.Heard the learned counsel for the appellant and the learned counsel for the respondent Corporation.

8.This Court has carefully considered the submissions made on either side and the materials available on record.

9.This Court has also carefully gone through the award passed by the Tribunal.

10.In the considered view of this Court, the Tribunal after having rendered a categoric finding that the entire negligence is attributable only against the offending vehicle, ought not to have attributed contributory negligence against the deceased to the tune of 30% just because he was traveling in the same vehicle. It is common knowledge that whenever the residence is shifted from one place to another, one of the family member travels along with the vehicle to ensure that the household articles are taken safely to the proper destination. This reality should not be lost sight of and the Tribunal went wrong in finding as if the deceased traveled



unauthorizedly in a goods vehicle. That concept should not have been applied in the facts of the present case. In any event, the deceased having traveled along with the household articles, has not in any way contributed towards the accident. Therefore, the finding of the Tribunal by deducting 30% towards contributory negligence is liable to be interfered by this Court. Accordingly, 30% contributory negligence fixed by the Tribunal on the part of the deceased is hereby set aside.

11.It is also seen that the Tribunal has deducted 1/2 of the amount towards personal expenditure of the deceased. In the instant case, the deceased was married and the Hon'ble Supreme Court in ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr., [2009 (2) TNMAC 1 (SC)]*** has held as follows:

*“14.Though in some cases the deduction to be made towards Personal and Living Expenses is calculated on the basis of units indicated in **Trilok Chandra**, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards Personal and Living Expenses of the deceased, should be one-third ($1/3^{rd}$) where the number of dependant family members is 2 to 3, one-fourth*



(1/4th) where the family member of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.”

12.It is clear from the above that the deduction towards personal and living expenses of the deceased should be 1/3.

13.In view of the above judgment, the finding of the Tribunal by deducting 1/2 towards the personal and living expenses is liable to be interfered and it has to be modified as 1/3.

14.The Tribunal has also not granted any compensation towards future prospects. Considering the fact that the deceased was aged about 45 years, he is entitled for 25% future prospects.

15.In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

1.Loss of Dependency	-	Rs.11,20,000.00
2.Loss of consortium	-	Rs.40,000.00
3.Funeral expenses	-	Rs.15,000.00
4.Loss of estate	-	Rs.15,000.00

Rs.11,90,000.00



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16.The compensation awarded by the Tribunal at Rs.5,65,000.00 is hereby enhanced to Rs.11,90,000/-. The respondent-Transport Corporation is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of copy of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

17.In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

15.04.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

N.ANAND VENKATESH, J.

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To

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- 1.The Principal Special Judge,
Special Court under E.C. & NDPS Act,
Motor Accident Claims Tribunal,
Chennai.
- 2.The Section Officer,
VR Section,
Madras High Court, Chennai.

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