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C.M.A.Nos.2777 & 2778 of 2022

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 19.03.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.Nos.2777 & 2778 of 2022

1. M.Ganesamoorthy
2. Minor M.Pransika
3. Minor Haniya
(minor Appellants 2 and 3 rep. by their father and natural guardian
M.Ganesamoorthy)

... Appellants 1 to 3 in C.M.A.No.2777 of 2022

M.Ganesamoorthy

Sole Appellant in C.M.A.No.2778 of 2022

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram – 605 401.

...Respondent in both Appeals.

Common Prayer :-

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the common judgment and decree, dated 04.04.2022 made in M.C.O.P.Nos.3257 & 3258 of 2018 on the file of the Motor Accident Claims Tribunal/Special Sub Judge Cuddalore.



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Appearance of the counsel in both C.M.As.

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For Appellants : Mrs.Ramya V.Rao

Respondent : Mr.S.S.Santhosakumar
Standing Counsel

COMMON JUDGEMENT

Both these Civil Miscellaneous Appeals are preferred by the claimants aggrieved against the quantum of compensation awarded by the Tribunal.

2. On 25.04.2018, at 14.30 hours when the deceased (Jansi) was travelling in a two wheeler, viz., Start Sport, bearing Regn.No.TN-51-P-6680 along with her daughter (minor harini, deceased in C.MA.No.2778 of 2022) ridden by her husband (Ganesamoorthy/claimant in both Appeals) from South to North on extreme left of Chidambaram to Cuddalore Road, near Fisal Mahal situated near Bye pass road junction, the respondent's Transport Corporation Bus bearing Regn.No.TN-32-N-2867 came from behind and dashed against the said two wheeler (Start Sport), due to which, the deceased Jansi along with her minor child, (Harini) sustained fatal



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injuries and died on the spot. Hence, Ganesamoorthy, being the husband of the deceased wife filed a Claim Petition in M.C.O.P.No.3257 of 2018 claiming a sum of Rs.25,00,000/- as compensation and he along with two minors daughters also filed another Claim Petition in M.C.O.P.No.3258 of 2018, seeking a sum of Rs.10,00,000/- as compensation.

3. The Tribunal based on oral and documentary evidence came to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the bus belonging to the Transport Corporation. By coming to such a conclusion, the Tribunal made the calculation under different heads and passed an award for a sum of Rs.18,78,600/- in M.C.O.P. No.3257 of 2018 and insofar as M.C.O.P.No.3258 of 2018, a sum of Rs.3,25,000/- has been awarded.

3.1 The break up details of the compensation amount awarded by the Tribunal under various heads in M.C.O.P. No.3257 of 2018 are as follows:-



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i)	Loss of Dependency	:	Rs. 17,13,600/-
ii)	Loss of Estate	:	Rs. 16,500/-
iii)	Loss of Consortium to husband Filial Consortium (claimants 2 and 3	}	Rs. 1,32,000/-
iv)	Funeral Expenses	:	Rs. 16,500/-
Total			Rs.18,78,600/-

3.2 The said sum of Rs.18,78,600/- was directed to be paid together with interest at 7.5% per annum from the date of numbering the Claim Petition till the date of deposit.

3.3 The break up details of the compensation amount awarded by the Tribunal under various heads in M.C.O.P. No.3258 of 2018 are as follows:-

i)	Pecuniary Loss	:	Rs. 2,70,000/-
ii)	Filial Consortium	:	Rs. 40,000/-
iii)	Funeral Expenses	:	Rs. 15,000/-
Total			Rs.3,25,000/-



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3.4 The said sum of Rs.3,25,000/- was directed to be paid together with interest at 7.5% per annum from the date of numbering the Claim Petition till the date of deposit.

4. As already stated above, the claimants have come forward with the present Appeals, claiming for enhanced compensation on the ground that the Tribunal erred in awarding too low and inadequate amount as compensation.

5. As the present Appeals are filed only questioning the quantum of compensation awarded by the Tribunal, this Court is not traversing into the other aspects of the award passed by the Tribunal.

6. Mrs.Ramya V.Rao, learned counsel appearing for the appellant in C.M.A.No.2777 of 2022 would submit that the Tribunal, while determining the compensation towards 'Loss of Dependency', fixed the notional monthly income of the deceased at Rs.9,000/- which is meager. The learned counsel would submit that at the time of the accident, the



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deceased was aged about 26 years, Self Employed (doing Tailoring and Textile works); earning Rs.20,000/- per month, and married leaving behind her husband and two children as dependants, whereas, the Tribunal, in the absence of income proof, fixed the notional income of the deceased only at Rs.9,000/-, which has resulted in awarding inadequate compensation of Rs.17,13,600/- under the said head. The learned counsel further submitted that this Court, in number of cases, where, there is no income proof, used to fix notional monthly income at an average of Rs.15,000 to Rs.18,000/- depending on the nature of occupation of the deceased by following the law down by the Hon'ble Division Bench of this Court in **Andal and others Vs. Avivan Kannan and another**, reported in **2019(1) TN Mac 54 (DB)** and therefore, requested to fix a sum of Rs.14,000/- as notional monthly income of the deceased

6.1 Insofar as the Appeal filed in C.M.A.No.2778 of 2022 Mrs.Ramya V.Rao, learned counsel appearing for the appellant would submit that due to the accident, which occurred on 25.04.2018, 2 ½ years old child passed away leaving behind her father, and two minor siblings



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and so far as the mother of the child is concerned, she also passed away in the very same accident, (as stated supra) but, the Tribunal determined the compensation towards Pecuniary Loss by taking the notional monthly income of the deceased minor child at Rs.18,000/- and applied the multiplier of '15' and awarded only a sum of Rs.2,70,000/- (i.e. 18,000/- x 15 = Rs.2,70,000/-) under the said head. The learned counsel also, in support of her case, relied on a decision rendered by this Court in the case of **Lakshmi and another Vs. K.Govindaraj and United India Insurance Co. Ltd.) in C.MA.No.2372 of 2022, dated 22.01.2024**, wherein, a sum of Rs.5,000/- is fixed as notional monthly income of the injured child, who was aged about 10 years at the time of the accident. Hence, the learned counsel prayed to re-determine the compensation awarded by the Tribunal towards Pecuniary Loss by fixing the said sum of Rs.5,000/- as notional monthly income of the deceased child.

7. While, according to the learned counsel appearing for the appellants/claimants, the quantum of compensation awarded by the Tribunal under the heads Loss of Dependency (insofar as C.M.A.No.2777 of 2022 is



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concerned) and Pecuniary Loss (So far as C.M.A.No.2778 of 2022 is concerned) is too low, the learned counsel appearing for the respondent/Transport Corporation would defend the correctness of the award of the Tribunal by stating that only based on the available evidence on record, the compensation was fixed and the same requires no enhancement.

8. Heard the rival submissions by both sides.

9. There is no dispute with regard to the occurrence of the accident, fixation of negligence and fastening of liability in both the Appeals, however, the dispute in C.MA.No.2777 of 2022 is only with regard to the fixation of notional monthly income by the Tribunal at Rs.9,000/- for the purpose of determining compensation under the head, 'Loss of Dependency', which according to the learned counsel appearing for the appellants/claimants is low, and in support of his contention, the learned counsel relied on a decision rendered by the Hon'ble Division Bench of this Court in **Andal and others Vs. Avivan Kannan and another**, reported in



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2019(1) TN Mac 54 (DB) and prayed that a sum of Rs.14,000/- may be taken as notional monthly income of the deceased. Similarly, in C.M.A.No.2778 of 2022, the dispute is only with regard to quantum of compensation awarded by the Tribunal towards Pecuniary Loss.

i) C.M.A.No.2777 of 2018

10. Insofar as this Appeal is concerned, it is seen that the accident occurred in the year 2018 and at the time of the accident, the deceased Jansi was 26 years old, doing Tailoring and Textile business and earning Rs.20,000/- p.m. Therefore, this Court, having regard to the year of the accident, age, nature of avocation of the deceased and in the light of the decision rendered by the Hon'ble Division Bench of this Court in the case of **Andal and others (cited supra)**, is inclined to fix a sum of Rs.14,000/- as notional monthly income of the deceased, inasmuch as, the deceased Jansi, who was doing the Tailoring Job and Textile work would have perhaps earned the said income per month. Thus, by fixing the notional monthly income of the deceased at Rs.14,000/-; adding 40% towards future



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prospects; deducting 1/3 towards her personal expenses (since the dependents are three in numbers) and by applying right multiplier of '17' (since the deceased was aged 26 years), the compensation towards Loss of Dependency is calculated as under:-

Notional Monthly income + 40% future prospects
(i.e. **Rs.14,000/- + Rs.5,600**) = **Rs.19,600/-**

(Deduction of 1/3 x (Multiplier of '17')
towards personal expenses)
19,600/- x 2/3 x 12 x 17 = Rs.26,65,600/-

10.1 Consequently, the sum of Rs.17,13,600/- awarded by the Tribunal under the head of 'Loss of Dependency' is hereby modified and enhanced to **Rs.26,65,600/-**.

10.2 Insofar as the compensation awarded by the Tribunal under all other heads are concerned, this Court finds the same to be just and proper and is hereby confirmed.



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11. Thus, the total compensation payable to the appellants/claimants

under various Heads is as hereunder:-

i)	Loss of Dependency	:	Rs. 26,65,600/-
ii)	Loss of Estate	:	Rs. 16,500/-
iii)	Love and Affection /Loss of Consortium	:	Rs. 1,32,000/-
iv)	Funeral Expenses	:	Rs. 16,500/-
			
Total		:	Rs.28,30,600/-
			

11.1 Consequently, the total compensation amount of Rs.18,78,600 awarded by the Tribunal is hereby modified and enhanced to **Rs.28,30,600/-** which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit, out of which, first appellant, husband of the deceased is entitled to a sum of **Rs.4,30,600/-** together with proportionate interest and the appellants 2 & 3, minor children of the deceased are entitled to a sum of **Rs.12,00,000/-** each together with proportionate interest.



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i) **C.M.A.No.2778 of 2018**

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12. Insofar as the above Appeal is concerned, it is seen that the accident occurred in the year 2018, at the time of the accident, the deceased Harini was 2 ½ years old child. Therefore, this Court, taking into consideration of the fact that in similar case, where, the injured was 10 years old at the time of the accident (2018), fixed a sum of Rs.5,000/- as notional monthly income, is of the view that said sum may be taken as notional income of the deceased child in the present case as well. Thus, by fixing the notional monthly of the deceased child at Rs.5,000/- and applying the multiplier of '15' (since the deceased child was aged 2 ½ years) the compensation towards Pecuniary Loss is determined as follows:-

$$\text{Rs.5,000/-} \times 12 \times 15 = \text{Rs.9,00,000/-}$$

12.1 Consequently, the sum of Rs.2,70,000/- awarded by the Tribunal under the head of 'Pecuniary Loss is hereby modified and enhanced to **Rs.9,00,000/-**.



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12.2 It is seen that the Tribunal has failed to award compensation towards Loss of Estate, hence, this Court is inclined to award a sum of Rs.15,000/- under the said head.

12.3 Insofar as the compensation awarded by the Tribunal under all other heads are concerned, this Court finds the same to be just and proper and is hereby confirmed.

14. Thus, the total compensation payable to the appellant/claimant under various Heads is as hereunder:-

i)	Pecuniary Loss	:	Rs. 9,00,000/-
ii)	Filial Consortium	:	Rs. 40,000/-
iii)	Funeral Expenses	:	Rs. 15,000/-
iv)	Loss of Estate	:	Rs. 15,000/-
			
Total :			Rs.9,70,000/-
			

14.1 Consequently, the total compensation amount of Rs.3.25,000 awarded by the Tribunal is hereby modified and enhanced to **Rs.9,70,000/-**



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which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit.

15. In the result, both the Civil Miscellaneous Appeals filed by the claimants are partly allowed on the following terms:-

(i) The respondent, Transport Corporation Ltd., is directed to deposit the entire amount awarded by this Court in both Appeals along with 7.5% interest from the date of Petition till the date of deposit and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any. However, it is made clear that in case of any delay in representing the Appeal papers/delay in payment of deficit Court fee/delay in filing the Appeal, the Transport Corporation is not liable to pay any interest for such delayed period, as the case may be.

ii) On such deposit being made by the respondent, Transport Corporation, in both Appeals, the Tribunal is directed to transfer the award



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amount to the claimant M.Ganesamoorthy's bank account, directly, by way of RTGS, within a period of three weeks thereon or from date on which, the RTGS particulars are furnished by him, whichever is earlier.

iii) The claimant, M.Ganesamoorthy is entitled to withdraw the entire award amount, less the amount already withdrawn, if any, by making necessary applications before the Tribunal.

iv) As regards the award amount to be disbursed to the minor claimants, viz., second and third appellants in C.M.A.No.2777 of 2022 is concerned, on deposit of the award amount being made by the respondent/Transport Corporation, Tribunal shall invest the entire award amount belonging to the minors, in their respective names in any of the Nationalized Banks in fixed deposits with cumulative effect till the minors attain majority and the interest accrued thereon shall also be retained in their account, and once the minors attained Majority, Tribunal shall take steps to settle the award amount to the claimants in accordance with law.



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v) The claimant M.Ganesamoorthy is directed to pay the necessary Court fee, if any, in both Appeals on the enhanced award amount.

vi) However, there shall be no order as to costs.

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INDEX ; Yes/No

To

The Special Sub Judge,
Motor Accident Claims Tribunal, Cuddalore.



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Krishnan Ramasamy,J.,
sd

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