IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 19.03.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2786 of 2022

S.Deivakanni ... Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
3/137, Salamedu, Vazhuthareddy Post,
Villupuram- 605 602. ...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 21.04.2022 made in M.C.O.P.No.2510 of 2016, on the file of the Motor Accident Claims Tribunal/Special Sub Judge (FAC) Cuddalore.

For Appellant : Mrs.Ramya V. Rao

Respondent : Mr.S.S.Santhosakumar
Standing Counsel

JUDGEMENT

The present Civil Miscellaneous Appeal is preferred by the claimant aggrieved against the quantum of compensation awarded by the Tribunal, in M.C.O.P.No.2510 of 2016 dated 21.04.2022.

2. On 20.04.2016, at 13.00 hours, when the deceased miinor Raghul was proceeding with his mother as a Pillion rider (claimant herein) in a TVS-50- Moped, driven by the father of the deceased viz., Saravanan (who also died in the said accident) at Chidambaram to Kandhankumaran Road, near Thunisiramedu Mandapam Village, the respondent's Transport Corporation Bus bearing Regn.No TN-32-N-2702, came in a rash and negligent manner and dashed against the said two wheeler, due to which, the deceased minor Rahul sustained fatal injuries and died. Hence, the mother of the deceased filed a Petition seeking a sum of Rs.15,00,000/- 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.5,65,000/- as compensation.

3.1 The break up details of the compensation amount awarded by the Tribunal under various heads are as follows:-

i)	**Pecuniary Loss**	**:**	**Rs. 5,10,000/-**
ii)	**Filial Consortium**	**:**	**Rs. 40,000/-**
iii)	**Funeral Expenses**	**:**	**Rs. 15,000/-**
			....
	Total	**:**	**Rs.5,65,000/-**
			....

3.2 The said sum of Rs.5,65,000/- 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 claimant has come forward with the present Appeal, seeking for enhanced compensation on the ground that the Tribunal erred in awarding too low as compensation.

5. As the present Appeal is 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 would submit that due to the accident, which occurred on 20.04.2016, 5 years old Boy passed away leaving behind him his mother and so far as the father of the deceased boy is concerned, he also passed away in the very same accident, that the Tribunal though determined the compensation towards Pecuniary Loss by rightly taking the notional monthly income of the deceased minor Boy at Rs.5,000/-; applying the multiplier of '17' however, made 50% deduction towards his personal expenses, which is incorrect, and awarded only a sum of Rs.5,10,000/- (i.e. 2,500/- x 12 x 17 = Rs.5,10,000/-) 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, deduction of 50% made towards the personal expenditure of the minor victim was set aside

Hence, the learned counsel prayed to re-determine the compensation awarded by the Tribunal towards Pecuniary Loss by setting aside the deduction made towards the Personal Expenditures of the deceased at 50% from the notional monthly income of the deceased. Insofar as the compensation awarded by the Tribunal under other two heads is concerned, the learned counsel fairly submitted that the same is just and fair and prays to confirm the same.

7. Per contra, Mr.S.S.Santhosakumar, learned Standing Counsel for the respondent/Transport Corporation justified the award passed by the Tribunal by contending the same to be just and fair, therefore, he prays for dismissal of the Appeal.

8. Heard the learned counsel appearing for the appellant/claimant and the learned counsel for the respondent/Corporation and perused the materials available on record.

9. Keeping the submissions made on either side and on going through the entire materials placed on record, it is seen that the Tribunal, taking into consideration of the fact that due to the accident, which occurred on 20.04.2016, 5 years old boy passed away, while determining compensation towards Pecuniary Loss though rightly took the notional monthly income of the deceased at Rs.5,000/-, however, committed an error by making deduction of 50% towards his personal expenses. The learned counsel for the appellant also, in support of her case, placed reliance on a decision rendered by this Court in **K.Govindaraj and United India Insurance Co. Ltd.)in C.MA.No.2372 of 2022, dated 22.01.2024,** wherein, deduction of 50% towards the personal expenditure of the victim, was set aside following the decision of the Hon'ble Supreme Court in the case of **Kishan Gopal and another Vs. Lala and others,** reported in **(2013) 2 TNMAC 358 (SC),** therefore, sought for similar benefits in the present case as well.

9.1 Thus, in the light of the decision rendered by the Hon'ble Supreme Court in the case of **Kishan Gopal (cited supra)** following which, this Court has set aside the deduction of 50% made by the Tribunal towards the personal expenditures of the victim in **K.Govindaraj's case (referred supra)** this Court is inclined to apply the same yardstick in the present case as well. Accordingly, this Court holds that the deduction made by the Tribunal towards the personal expenses of the deceased at 50% is not proper, since, the deceased being a 5 years old boy, was admittedly a dependent under his parents, when such being the case, where, comes the question of he, spending 50% of the income, towards his personal expenses. Further, it is seen that the Tribunal has applied multiplier of '17', which is incorrect, and considering the age of the deceased, the right multiplier to be adopted in this case is '15'. Thus, by taking the notional monthly income of the deceased at Rs.5,000/-as rightly taken by the Tribunal, applying the multiplier of 15, the compensation towards Pecuniary Loss is re-determined as follows:-

Rs.5,000/- x 12 x 15 = Rs.9,00,000/-

9.2 Consequently, the sum of Rs.5,10,000/- awarded by the Tribunal under the head 'Pecuniary Loss is hereby modified and enhanced to **Rs.9,00,000/-.**

9.3 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.

9.4 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.

10. 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/-**
			....

10.1 Consequently, the total compensation amount of Rs.5,65,000/- awarded by the Tribunal is hereby modified and enhanced to **Rs.9,70,000/-** which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit.

11. In the result, the Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed on the following terms:-

i) The respondent, Transport Corporation Ltd., is directed to deposit the entire amount awarded by this Court along with 7.5% interest 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, the Tribunal is directed to transfer the award amount to the claimant '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 her whichever is earlier.

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

iv) The claimant is directed to pay the necessary Court fee, if any, on the enhanced award amount.

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

19.03.2024

sd

Index : Yes/no

To

The Special Sub Judge (FAC),

Motor Accident Claims Tribunal, Cuddalore.

Krishnan Ramasamy,J.,
sd

C.M.A.No.2786 of 2022

19.03.2024