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C.M.A.No.3877 of 2019

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 11.06.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.3877 of 2019

1.Gayathri
2.Minor V.Sivagiri
3.Minor V.Madhana
4.K.Raman
5.Thulasi

.. Appellants

Vs

1.N.Jayaprakash
2.The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division) Ltd.,
Coimbatore – 43.

.. Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 14.02.2011 passed in MCOP.No.141 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Perundurai.

For Appellants

: Ms.D.Jeevitha
for R.Nalliyappan

For R1
For R2

: No Appearance
: Mr.M.Muralivinoth



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JUDGMENT

This appeal has been filed by the claimants seeking for enhancement of compensation.

2. The Tribunal, under the impugned award, has directed the second respondent Transport Corporation to pay the claimants a compensation of Rs.6,79,000/-, on account of death of one Vellingiri, due to the accident caused by a vehicle owned by the second respondent Transport Corporation on 05.11.2009, as detailed hereunder:-

Loss of earning capacity	- Rs.5,04,000/-
Transport expenses	- Rs.5,000/-
Funeral expenses	- Rs.10,000/-
Loss of consortium	- Rs.50,000/-
Loss of love and affection	- Rs.1,00,000/-
Pain and suffering	- Rs.10,000/-
Total	- Rs.6,79,000/-

3. At the time of accident, the deceased was aged about 25 years. In the claim petition, the appellants/claimants have claimed that the deceased was a painter by profession. The Tribunal, under the impugned award, has fixed the notional monthly income of the deceased at Rs.4,000/-, which is too low, considering the fact that the accident



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happened in the year 2009 and the deceased was a painter by profession.

Though the appellants/claimants have not produced any documentary evidence to prove the monthly income of the deceased, even on notional basis, fixing of the monthly income of the deceased at Rs.4,000/- for an accident that happened in the year 2009, is too low. This Court, after giving due consideration to the age and avocation of the deceased, as well as the year of the accident, hereby fixes the monthly notional income of the deceased at Rs.6,500/-.

4. The Tribunal has erroneously adopted multiplier '14' by taking into consideration the age of the mother of the deceased. It is settled law that multiplier to be adopted is based upon the age of the accident victim and it cannot be based upon the age of the mother of the accident victim. Therefore, since the age of the deceased was 25 years at the time of the accident, this Court modifies the multiplier to be adopted for assessing the loss of earning capacity from '14' to '18'.

5. The Tribunal has also failed to award any compensation towards loss of future prospects, which the appellants/claimants are legally



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entitled as per the decision of the Hon'ble Supreme court in ***National***

Insurance Co.Ltd Vs. Pranay Sethi [2017 (16) SCC 680] and

accordingly, by following the said decision, this Court hereby awards

40% towards future prospects as the deceased was aged about 25 years at

the time of the accident. Since the dependents are his parents, wife and

two children, 1/4th should be deducted towards his personal expenses.

Accordingly, Rs.5,04,000/- awarded by the Tribunal towards loss of

earning capacity is modified as detailed hereunder:-

Monthly income	-- Rs.6,500/-
40% of future prospects	-- Rs.2,600/-
Total	-- Rs.9,100/-
(-) 1/4 th towards personal expenses	-- Rs.2,275/-

Loss of earning capacity	
= 6825 x 12 x 18	-- Rs.14,74,200/-

6. Since the deceased died leaving behind his parents, wife and two children, who are five in number, each of the claimants are entitled to Rs.40,000/- as compensation towards loss of love and affection, and in all put together, the claimants are entitled to Rs.2,00,000/- towards loss of love and affection. Since the wife of the deceased is also added while computing compensation towards loss of love and affection, this Court is



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not awarding compensation towards loss of consortium separately.

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7. The Tribunal has also erroneously failed to award any compensation towards loss of estate, which the claimants are legally entitled to. Accordingly, this Court hereby awards a compensation of Rs.15,000/- towards loss of estate. Towards funeral expenses, the Tribunal has awarded a sum of Rs.10,000/-, which is increased to Rs.15,000/-. The Tribunal has surprisingly awarded a sum of Rs.10,000/- towards pain and suffering; and Rs.5,000/- towards transport expenses. Being a fatal accident, the question of payment of compensation towards pain and suffering; and towards transport expenses does not arise. Hence, the compensation awarded by the Tribunal under the heads of pain and suffering; and transport expenses, are set aside by this Court.

8. For the foregoing reasons, the award passed by the Tribunal is re-worked in the following manner:-

Loss of earning capacity	-- Rs.14,74,200/-
Funeral expenses	-- Rs.15,000/-
Loss of estate	-- Rs.15,000/-
Love and affection	-- Rs.2,00,000/-



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Total compensation

-- Rs.17,04,200/-

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9. In the result, the Civil Miscellaneous Appeal is partly allowed and the impugned award passed by the Tribunal in M.C.O.P.No.141 of 2009, dated 14.02.2011 is modified by directing the second respondent Transport Corporation to deposit the entire award amount of Rs.17,04,200/- together with interest at 7.5% per annum from the date of claim petition till the date of realization, to the credit of M.C.O.P.No.141 of 2010 on the file of Motor Accident Claims Tribunal, Sub-Court, Perundurai, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. The second respondent Transport Corporation is directed to not deposit interest for the default period as observed by this Court vide its order dated 01.10.2019. On such deposit, the Tribunal is directed to transfer the entire award amount as ordered in this judgment along with accrued interest therein through RTGS/NEFT transfer to the bank account of the claimants. No Costs.

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Index: yes/no

Neutral citation: yes/no

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To

1. Motor Accident Claims Tribunal,
Sub-Court, Perundurai.

ABDUL QUDDHOSE,J.

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