



C.M.A(MD)No.1090 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1090 of 2011

- 1.Omana
- 2.Minor Anusha

... Appellants

(Minor is represented by her mother and natural guardian the 1st appellant herein)

Vs.

- 1.Tamil Nadu State Transport Corporation
(Madurai) Limited,
Division – V,
Virudhunagar,
Through its Managing Director.

- 2.Subbiah Asari (Died)
- 3.Sorimuthu
- 4.Murugan
- 5.Selvi
- 6.Mupudathi
- 7.Chinnammal
- 8.Suresh

... Respondents

(Respondents 3 to 8 are brought on record as LRs of the deceased 2nd respondent, vide Court order, dated 19.02.2024 made in C.M.P.(MD) No.7971 of 2017 in C.M.A.(MD)No.1090 of 2011)



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against fair and decreetal order passed in M.C.O.P.No.233 of 2005, dated 07.09.2009, on the file of Motor Accident Claims Tribunal (Additional Subordinate Court), Tenkasi.

For Appellants	: Mr.D.Srinivasaraghavan
For R1	: Mr.K.A.Thirumalaiappan
R2 and R6	: Died
For R3 to 5, 7 and 8	: No appearance

JUDGMENT

The claimants have preferred this Civil Miscellaneous Appeal.

2.It is a case of fatal. The claimants herein are wife and minor daughter the deceased / victim Ayyappan. The contention of the claimant is that the deceased Ayyappan had married first claimant and out of the marriage the 2nd claimant had born, but the said marriage was not accepted by the father of the deceased. After the demise of the said Ayyappan, his father Subbaiah had filed M.C.O.P.No.1013 of 2004 and the said petition was allowed by the Tribunal on 08.09.2005 awarding Rs.82,500/-. It is not known whether any Civil Miscellaneous Appeal is preferred against the said M.C.O.P.



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3. Thereafter, the wife of the deceased has filed M.C.O.P.No.233 of 2005 and the Tribunal has taken all the facts into consideration and has rendered a finding that the claimants are the wife and daughter of the deceased. However, the Tribunal has declined to grant compensation on the sole ground that already the father was granted compensation for the same accident and has held that the claimants are not entitled to compensation.

4. It is seen that the claimants can be granted compensation, if the appropriate notional income is fixed to the deceased. Therefore, this Court is proceeding to consider the same. It is an admitted fact that the deceased was working as Mason. The accident took place in the year 2004 but the Tribunal has not taken the notional income of the deceased. It is seen that only Rs.82,500/- was fixed as compensation, while granting compensation to the father. This Court is of the considered opinion that the Tribunal has fixed a lesser amount.

5. Therefore, it would be appropriate to fix the notional income as Rs. 4,500/- per month. The deceased was 39 years old at the time of accident. Applying multiplier '15' and after deducting $1/3^{\text{rd}}$ of personal expenses, the loss of



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income comes to Rs.5,40,000/-. For loss of consortium this Court is granting Rs. 40,000/- for each claimant which comes to Rs.80,000/-. For funeral expenses, this Court is awarding Rs.10,000/- and for loss of estate, this Court is awarding Rs. 10,000/-. Therefore, the petitioner is entitled to the above said compensation after deducting Rs.82,500/- which was granted to the father of the deceased.

6.The modified award amount granted by this Court is as under:

Monthly income of the deceased	Rs.4,500/-
Deduction of 1/3 rd of income towards personal expenses	- Rs.1,500/-
After deduction	Rs.3,000/-
Loss of Income (Rs.3,000/- * 12 *15)	Rs.5,40,000/-

Sl. No.	Heads	Award granted by Tribunal	Award granted by this Court	Enhanced / Confirmed / Reduced
1.	Loss of Income	Nil	Rs.5,40,000/-	Enhanced
2.	Loss of Estate	Nil	Rs.10,000/-	Enhanced
3.	Funeral Expenses	Nil	Rs.10,000/-	Enhanced
4.	Loss of Consortium	Nil	Rs.80,000/-	Enhanced
	Total	Nil	Rs.6,40,000/-	Enhanced
	Deduction	Nil	-Rs.82,500/-	
	Total	Nil	Rs.5,57,500/-	Enhanced



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Thus, the amount would come to Rs.5,57,500/-. However, the appeal is filed restricting the claim to Rs.5,00,000/-. Hence, this Court is awarding Rs.5,00,000/- as total compensation to the claimants.

7.The 1st respondent Transport Corporation is directed to deposit Rs. 5,00,000/- (Rupees Five Lakh only) with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their shares (the claimants 1 and 2 are entitled to Rs.3,00,000/- and Rs. 2,00,000/- respectively) with proportionate accrued interests and costs, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. The Tribunal is directed to deposit the share of the minor child in a nationalized bank until the child attains majority. The first appellant herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months. Once the minor claimant attains majority, the claimant is permitted to withdraw her share with accrued interests.



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8. With the above said observation, the Civil Miscellaneous Appeal is allowed. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To
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- 1.Motor Accident Claims Tribunal
(Additional Subordinate Court), Tenkasi.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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