



C.M.A.(MD)No.1497 of 2013

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Dated: 05.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1497 of 2013

1.Krishnamma,

2.Minor.Idhayarani,

(Through her mother & next Guardian
1st appellant herein)

3.Karuppasamy

4.Sakkammal

... Appellants/ Petitioners

Vs.

Tamil Nadu State Transport Corporation Ltd.,

Through its Managing Director,

Bye Pass Road, Madurai.

... Respondent /Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.437 of 2010 on the file of the Motor Accident Claims Tribunal - 1st Additional District Judge (in-charge) – Sessions Judge / Mahila Court, Tirunelveli, dated 17.12.2012.

For Appellants : Mr. T.Selvakumaran

For Respondent : Mr. P.Prabhakaran



C.M.A.(MD)No.1497 of 2013

JUDGMENT

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This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.437 of 2010 on the file of the Motor Accident Claims Tribunal - 1st Additional District Judge (in-charge) – Sessions Judge / Mahila Court, Tirunelveli, wherein the appellants / petitioners herein have filed the claim petition for a sum of Rs.10,00,000/-. The Tribunal has awarded a sum of Rs.6,52,000/- as compensation.

2. Being aggrieved by the above said order of the Tribunal, the petitioners have filed this Civil Miscellaneous Appeal.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

4. The brief facts of the petition averments are as follows:

On 21.02.2010, at about 04.00 p.m., when the deceased – Chinnadurai was riding a motorcycle bearing Registration No.TN-02-Z-5962 from Tirunelveli to Madurai main Road, near Gangaikondan Petrol Bulk, at that time, a bus bearing Registration No.TN-58-N-0697, belonged



C.M.A.(MD)No.1497 of 2013

WEB COPY

to the respondent, came in the opposite direction in a rash and negligent manner and dashed against the motorcycle. Due to which, the deceased - Chelladurai sustained injuries all over the body and was taken to Tirunelveli Medical College Hospital at Palayamkottai, where he died in the Hospital. At the time of accident, the deceased was aged about 32 years and he was working as Driver and was earning Rs.13,000/- per month. The accident took place due to the negligence on the part of the respondent's driver. Hence the petitioners, who are the legal heirs of the deceased, have filed the claim petition for claiming compensation for a sum of Rs.10,00,000/-.

5. The brief facts of the counter filed by the respondent are as follows:

The accident took place only due to the negligence on the part of the deceased. The respondent denied the age, income and occupation of the deceased. Since the accident took place due to the negligence on the part of the deceased, the respondent is not liable to pay compensation to the petitioner. Hence, this Petition is liable to be dismissed.



C.M.A.(MD)No.1497 of 2013

WEB COPY

6. In order to prove the case of the petitioners, the first petitioner examined herself as P.W.1 and one other witness- Mani was examined as P.W.2 and 8 documents were marked as Exs.P.1 to Ex.P.8 and on the side of the respondents, no oral or documentary evidence was adduced.

7. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.6,52,000/- towards compensation with interest of 7.5 % pa.

8. As against the award passed by the Tribunal, the claimants have preferred this appeal for enhancing the compensation amount, on various grounds.

9. The learned counsel appearing for the appellants / petitioners would contend that the accident took place due to the rash and negligence on the part of driver of the respondent and the deceased was aged about only 32 years and he was earning a sum of Rs.13,000/- per month by working as Driver. In order to prove the case of the appellants, they have examined P.W.1 and P.W.2 and marked Ex.P1 to Ex.P8 and no contra



C.M.A.(MD)No.1497 of 2013

WEB COPY

evidence adduced by the respondent, thereby, the appellants / petitioners proved the age, occupation and income of the deceased. But, the Tribunal has only taken a sum of Rs.4,500/- as monthly income of the deceased and the same is not a fair compensation, hence, the order of Tribunal is liable to be modified by enhancing the award amount and the Appeal is liable to be allowed.

10. The learned counsel appearing for the respondent would contend that the Tribunal awarded a just and fair compensation. The petitioners have not examined any witnesses to prove the salary of the deceased and the Tribunal had taken the monthly income of the deceased as Rs.4,500/- and the same is reasonable. Therefore, the order of the Tribunal is correct and the present Appeal is liable to be dismissed.

11. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i) whether the appeal is liable to be allowed or not?



C.M.A.(MD)No.1497 of 2013

WEB COPY

12. In this case, according to the appellants / claimants, the accident took place due to the negligence on the part of the driver of the respondent and the Tribunal after taking into consideration of the plea and evidence adduced on either side, fastened the negligence on the part of the driver of the respondent. The respondent also not disputed the negligence and there is no appeal preferred by the respondent, in the aspect of negligence and thereby, the findings of the Tribunal was accepted by the parties. The appellants / petitioners are only disputing the quantum of compensation.

13. According to the appellants / petitioners, the deceased was aged about 32 years on the date of accident and he was working as a Driver and was earning a sum of Rs.13,000/- per month. But the Tribunal has accepted the occupation of the deceased and only taken an amount of Rs.4,500/- pm. and awarded the compensation amount. In order to prove the occupation and the income of the deceased, no independent witnesses were examined, one of the petitioners / appellants examined as witness. However, the petitioners / appellants produced the Driving Licence of the



C.M.A.(MD)No.1497 of 2013

deceased, which was marked as Ex.P8. P.W.1, who is the wife of the deceased also stated that the deceased was working as a Driver and thereby, he was earning Rs.13,000/- p.m.. There is no contra evidence adduced by the respondent, in respect of occupant of the deceased.

14. Taking into consideration of the nature of work of the deceased, this Court has taken a sum of Rs.6,000/- as monthly income, including the future prospects. Considering the dependents of the deceased (4 members), $1/4^{\text{th}}$ (ie.Rs.1,500/-) of the income has to be deducted for personal expenses of the deceased. Considering the age of the deceased (32 years), the proper multiplier is '16', but, the Tribunal has wrongly adopted multiplier at '17'. By adopting multiplier '16', the appellants / petitioners are entitled to Rs.8,64,000/- (Rs.4,500/- X 12 X 16) towards loss of income. As per the decision of the Hon'ble Supreme Court in ***Pranay Sethi's*** case, the appellants / petitioners are entitled to Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium.



C.M.A.(MD)No.1497 of 2013

15. In total, the petitioners / appellants are entitled to Rs.9,34,000/- and the same is rounded off to Rs.9,30,000/-. The appellants / petitioners are entitled for compensation as follows:

1.	Loss of income	Rs. 8,64,200/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of estate	Rs. 15000/-
4.	Loss of Consortium	Rs. 40,000/-
	Total	Rs. 9,34,000/- the same is rounded off to Rs. 9,30,000/-

16. In fine, the appellants / petitioners are entitled to a sum of Rs.9,30,000/- towards compensation.

17. In the result this Civil Miscellaneous Appeal is partly allowed and the order passed by the Tribunal in M.C.O.P.No.437 of 2010 is modified to the effect that the petitioners / appellants are entitled for a sum of Rs.9,30,000/- as compensation with interest at the rate of 7.5% per annum. The respondent /Corporation is directed to deposit the enhanced award amount with interest at the rate of 7.5% per annum and costs, from the date of claim petition till the date of realization, within period of two



C.M.A.(MD)No.1497 of 2013

months from the date of this judgment, after deducting the amount already deposited, if any. On such deposit being made, the petitioners / appellants are permitted to withdraw their share amount as apportioned by the Tribunal, by filing application before the Tribunal. No costs.

05.02.2024

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

To:

1.The Motor Accident Claims Tribunal -

1st Additional District Judge (in-charge) –
Sessions Judge / Mahila Court,
Tirunelveli.

2.The Record Keeper,

Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.1497 of 2013

P. DHANABAL,J.

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C.M.A.(MD)No.1497 of 2013

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