



C.M.A.(MD) No.302 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.09.2024

PRONOUNCED ON : 12.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

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1. Mumtaj
 2. Abdul Raheem
 3. Aameena Beevi
 4. Nabeesa Beevi (Minor)
 5. Gajamohideen (Minor)
 6. Avvammal
- ... Appellants

Vs.

1. Formerly M/s. Cholan Transport Corporation, Kumbakonam, rep. by its Managing Director, now State Transport Corporation, Kumbakonam, by its Managing Director.
 2. K.P.Ramachandran
 3. The Branch Manager, United India Insurance Co. Ltd., Pudukkottai.
- ... Respondents



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[Cause title accepted as per order of Court dated
25.01.2002 made in CMP No.21306 of 2001 by
ARMJ]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award passed in M.C.O.P.No.17 of 1993 on the file of the Motor Accident Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Pudukkottai, dated 01.12.1999.

For Appellants : Mr.G.Sridharan
For R1 : Mr.P.Prabhakaran
For R2 : No Appearance
For R3 : Mrs.Vijayakumari Natarajan

J U D G M E N T

The appellants in the instant appeal seek enhancement of compensation awarded by the Motor Accident Claims Tribunal (Additional District Judge-cum-Chief Judicial Magistrate), Pudukkottai, *vide* its Judgment and Decree dated 01.12.1999.

2. The appellants filed the claim petition stating that when the deceased was travelling along with other passengers in the bus belonging



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to the first respondent-Corporation, the driver of the bus, drove the same in a rash and negligent manner and dashed against the lorry belonging to the second respondent herein, as a result of which, the deceased and few other passengers sustained fatal injuries.

3. The first respondent filed a counter stating that the accident took place only due to the negligence of the lorry driver and hence, they are not liable to pay compensation and that in any case, the compensation claimed was excessive.

4. The second and third respondents submitted that the accident took place only due to the negligence of the bus driver and therefore, they are not liable to pay compensation.

5. The injured and the legal representatives of the deceased in the accident filed different claim petitions and the tribunal tried all the claim petitions together. Before the tribunal, on behalf of the appellants herein, PW3-Mumtaj (the first appellant) was examined out of 10 witnesses examined by all the claimants. They marked Ex.P1 to P35. The first respondent examined RW1.



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6. The tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the negligence of the bus driver and hence, the first respondent was liable to pay compensation. The tribunal had awarded a compensation of Rs.48,190/-.

7. The learned counsel for the appellants submitted that the deceased herein sustained grievous injuries and died two years after the accident. He further submitted that the tribunal had held that the appellants had established that there was nexus between the accident and the death and having held so, awarded a meagre compensation under all heads on the ground that the appellants had not sought for amendment in the claim petition filed by the deceased and have not prayed for compensation for the death, which is erroneous. The learned counsel therefore, submitted that the tribunal ought to have awarded the compensation under the head 'loss of income' and other conventional heads for the death of the deceased.

8. The learned counsel for the first respondent, who is the contesting party submitted that the award of the tribunal is just and



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reasonable and in any case, the claimants had restricted their appeal for a sum of Rs.2,00,000/- and hence, even if this Court considered grant of enhanced compensation, the same has to be restricted to Rs.2,00,000/-.

9. The only point for consideration in the instant appeal is whether the compensation awarded by the tribunal is just and reasonable?

10. The tribunal, based on the medical records, viz., the discharge summary, the wound certificate [Ex.P11] and the disability certificate [Ex.P15] held that though the deceased died two years after the accident, the appellants had established that the deceased died due to the injuries sustained in the accident and therefore, the nexus between the accident and death was established. Having held so, the tribunal had awarded compensation only for the injuries suffered by the deceased, on the sole ground that the appellants had not sought for amendment of the claim petition and prayed for compensation for the death. This approach is erroneous. The tribunal ought to have awarded just and reasonable compensation for the death, having come to the conclusion that the nexus between accident and the death was established.



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11. The deceased was aged 35 years at the time of accident. PW3 had deposed that the deceased was working as a driver abroad. However, since, the appellants had not produced any proof to show that the deceased was employed abroad except for marking the passport [Ex.P14], the tribunal disbelieved the statement of PW3. However, considering the avocation, age of the deceased, oral evidence of PW3 and the year of the accident, besides the fact that he had a passport to go abroad, this Court is of the view that a notional income of Rs.2,000/- can be fixed for the deceased. The age of the deceased as per the evidence adduced and the finding of the tribunal was 40. At the time of the accident, the deceased was survived by six dependents. The multiplier applicable is '15' and 25% of the monthly income has to be added towards future prospects. Hence, the compensation under the head loss of income is arrived at **Rs.3,37,500/-**.

[(Rs.2000/- + 500/-) x 12 x 15 x 3/4 (1/4 has to be deducted towards the personal expenses of the deceased)].

12. Considering the year of the accident, all the claimants would be entitled to Rs.10,000/- each towards loss of consortium. The medical expenses as revealed from Ex.P13 comes to Rs.39,190/-, which the



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claimants are entitled to. The claimants would be entitled to Rs.3,000/- towards funeral expenses; Rs.3,000/- towards transportation charges; and Rs.5,000/- towards loss of estate. The compensation awarded by the tribunal under the other heads i.e., nutrition and pain & suffering, are set aside. Thus, the total compensation awarded by the Tribunal is modified as follows:

<i>Sl. No</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or reduced</i>
1	Medical Expenses	Rs.39,190/-	Rs. 39,190/-	Confirmed
2	Pain and Suffering	Rs. 6,000/-	-	Set aside
3	Nourishment	Rs. 3,000/-	-	Set aside
4	Loss of Income	-	Rs.3,37,500/-	Awarded
5	Loss of consortium to the claimants	-	Rs. 60,000/-	Awarded
6	Funeral expenses	-	Rs. 3,000/-	Awarded
7	Transport Expenses	-	Rs. 3,000/-	Awarded
8	Loss of estate	-	Rs. 5,000/-	
Total		Rs.48,190/-	Rs.4,47,690/-	Enhanced by Rs.3,99,500/-

13. Though the rate of interest fixed by the Tribunal was 12% per annum, this Court is of the view that it would be appropriate to reduce the same to 7.5% per annum.



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14. The first respondent is directed to deposit the enhanced compensation, together with interest at 7.5% per annum from the date of filing the claim petition, till the date of realization (except for the default period) and costs, after deducting the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellants shall be permitted to withdraw the same along with interest and costs, as per the apportionment fixed by the tribunal. It is noticed that all the minor claimants would have now attained majority and they are permitted to file a petition to declare their majority and withdraw their shares.

15. The appellants shall pay necessary court fee for the enhanced amount of compensation.

16. In the result, this Civil Miscellaneous Appeal is Allowed. No costs.

12.09.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

ARS/JEN



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WEB COPY Copy To:

- 1.The Additional District Judge-cum-Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Pudukkottai.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court, Madurai.



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SUNDER MOHAN, J.

ARS/JEN

Pre-delivery Judgment in
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