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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30/07/2024

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The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA(MD)No.566 of 2024

1.Rajeswari
2.Sundarsan
3.Minor Vanitha
(Minor appellant rep.
her Mother/next Guardian
the 1st appellant herein) : Appellants/Petitioners

Vs.

Tamilnadu State Transport Corporation
rep. by its Managing Director,
No.2, Thiruvanandapuram Road,
Vannerapettai,
Tirunelveli. : Respondent/Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in MCOP No.1719 of 2019 on the file of the Motor Accident Claims Tribunal (3rd Additional District Judge), Tirunelveli, in MCOP No.1719 of 2019, dated 13/07/2021.

For Appellants : Mr.T.Selvakumaran

For Respondent : Mr.Micheal Heldon Kumar

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking enhancement of compensation passed in MCOP No.1719 of 2019 by the Motor Accident Claims Tribunal (3rd Additional District Judge), Tirunelveli, dated 13/07/2021.

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2.**The facts in brief**:-

On 16/06/2019 at about 08.40 pm, the deceased Mariappan was travelling in a motor cycle bearing registration No.TN-72-BL-5022 as pillion rider on the Tirunelvei-Ambasamudram main road. When he was nearing Keela Munneerpallam Manthai, a Bus bearing registration No.TN-72-N-2080 which belongs to the appellant herein was driven by its driver in a rash and negligent manner and hit the two wheeler behind. As a result of which, the deceased and the rider of the two wheeler were thrown out. The Bus ran over the deceased. As a result of which, he died on the spot.

3.A case in Crime No.224 of 2019 was registered by the Munneerpallam Police Station for the offences under sections 279, 337 and 304(A) IPC against the driver of the Bus. The deceased was aged about 45 at the time of the occurrence and was Mason by profession and earning Rs.18,000/- per month. Claiming compensation of Rs.30,00,000/-, the claim petition was filed by the dependents.

4.The appellant remained ex-parte before the Tribunal.

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5.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 6 documents were marked. No oral and documentary evidence was adduced on the side of the respondent.

6.At the conclusion of the enquiry process, regarding the first aspect of negligence and the manner of the occurrence, the Tribunal concluded that the appellant Bus driver was responsible for the accident.

7.Regarding the compensation amount, the age of the deceased was fixed as 45 as per the postmortem certificate and taken Rs.6,500/- as monthly income, since he was a Mason by profession. Multiplier '14' was adopted. 25% was added as future prospects. 1/3rd was deducted towards personal and living expenses. The Loss of Dependency was fixed at **Rs.9,10,056/-.** To that, conventional amounts were added and finally, it fixed Rs.9,80,0560/- as total compensation as per the tabulation given hereunder:-

Loss of Dependency	Rs.9,10,056/-
Funeral expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-
Total	**Rs.9,80,056/-**

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8.Against which, this appeal is preferred by the claimants for enhancement of compensation.

9.Heard both sides.

10.The learned counsel appearing for the appellants would submit that taking Rs.6,500/- as monthly income is too meagre amount, it must be enhanced.

11.There is no issue with regard to the first aspect of negligence, as indicted by the Tribunal. The respondent has not entered appearance and contested the matter before the Tribunal. Only on the basis of the available of records produced by the claimants, the case was decided. Since there is no counter appeal or cross appeal by the respondent herein, that portion of the finding requires no interference.

12.Regarding the compensation, as stated in the preamble portion, it is contended by the claimants/appellant herein that the deceased was a Mason by profession, naturally we cannot expect any documentary proof to show the profession and the monthly income.

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13.The short point that arises in this appeal is whether the appellants/claimants are entitled for enhancement of compensation. It is not disputed that the deceased was aged about 45 years at the time of the occurrence, he was a Mason. According to the claimants, the deceased was a Mason by profession and was earning a sum of Rs.18,000/- per month. The Tribunal in the absence of any evidence with regard to the income of the deceased, fixed the notional income at Rs.6,500/- per month. No doubt, there is no proof in support of the income of the deceased. In any event, even a daily wager would have earned not less than Rs.350/- per day. So, approximately the notional income of the deceased is fixed at **Rs.10,000/-.** As per the judgment of the Hon'ble Supreme court in National Insurance Company Limited Vs. Pranay Sethi and others (2017)16 SCC 680, 25% is to be added towards future prospects. If 25% is added towards future prospects I.e., Rs.2,500/- (Rs.10,000/- x 25/100), the income would be Rs.12,500/- (Rs.10,000 + 2,500). Since the dependents are 3, 1/3th is to be deducted. If 1/3th is deducted towards personal and living expenses of the deceased, it comes to Rs.8,333/-. The Tribunal was right in applying multiplier '14. Thus the compensation awarded by the Tribunal towards loss of dependency is modified to **Rs.13,99,944/-** (Rs.8,333/= x 12 x 14).

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14.Regarding the conventional amounts, in the light of the decision of the Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi and others (2017(2)TN MAC 609 SC)***, it requires recalculation as per the tabulation given as under:-

Head	Award of the Tribunal	Award of this Court
Loss of Dependency	Rs.9,10,056/-	Rs.13,99,944/-
Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
Loss of estate	Rs. 15,000/-	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-	Rs. 40,000/-
Filial consortium	-	Rs. 80,000/-
Total	Rs.9,80,056/-	**Rs.15,49,944/-**

15.In the result, this Civil Miscellaneous Appeal is **partly allowed**. The award of the Tribunal is modified as Rs.15,49,944/-. The respondent is liable to pay the above said modified amount together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit along with proportion costs. On such deposit, the claimants are entitled to get their respective shares as per the apportionment of the Tribunal. The appellants/claimants are directed to pay the court fee for the enhanced amount. No costs.

Index:Yes/No
Internet:Yes/No
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30/07/2024

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To,

1.The Motor Accident Claims Tribunal/
III Additional District Judge,
Tirunelveli.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.

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