IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2025

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.3111 of 2023,
C.M.A.No.918 of 2024 and
C.M.P.No.8512 of 2024

C.M.A.No.3111 of 2023

1. Saranya
2. Minor Elakkiya
3. Rajammal ... Appellants / Petitioners

-vs-

1. Sundarrajan

2. The Managing Director,
   Tamil Nadu State Transport Corporation Ltd.,
   No.12, Ramakrishna Road,
   Salem-636 007. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to allow the Civil Miscellaneous Appeal and enhance the award amount in the order dated 03.10.2023 made in M.C.O.P.No.615 of 2022 on the file of the Motor Accident Claims Tribunal / Special District Court, Salem.

For Appellants	:	Mr.C.Paraneedharan For Mr.T.S.Arthanareeswaran
For R1	:	No Appearance
For R2	:	Mr.D.Nitin

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C.M.A.No.918 of 2024

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
No.12, Ramakrishna Road,
Salem. ... Appellant/2nd Respondent

-vs-

1. Saranya
2. Minor Elakkiya
3. Rajammal ... Respondent 1 to 3/ Petitioners 1 to 3
4. Sundarrajan ... 4th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree passed in M.C.O.P.No.615 of 2022 passed by the Motor Accident Claims Tribunal / Special District Court, Salem on 03.10.2023.

For Appellant : Mr.D.Nitin
For R1 to R3 : Mr.C.Paraneedharan
For Mr.T.S.Arthanareeswaran
For R4 : No appearance

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COMMON JUDGMENT

(By J.Nisha Banu,J.)

Feeling aggrieved by the Award dated October 3, 2023 passed by the Motor Accident Claims Tribunal / Special District Court, Salem. ['Tribunal' for short] in M.C.O.P.No.615 of 2022, the petitioners/claimants have preferred C.M.A.No.3111 of 2023 praying to enhance the award amount, while the second respondent therein – Transport Corporation therein has filed C.M.A.No.918 of 2024, praying to set aside the Award. This Common Judgment will now decide both Civil Miscellaneous Appeals.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array before the Tribunal in the Motor Claims Original Petition.

Petitioner's case:

3. On September 29, 2021 at about 02.00 p.m., while the deceased Sudhagar was riding a two-wheeler bearing Regn.No.TN-37-DB-4920 in Salem-Covai main road opposite to Sai Krishna Hotel in the over bridge first lane on his left from west to east, the bus bearing Regn.No.TN-30-N-2010, driven by its Driver in a rash and negligent manner endangering to the public safety, hit behind the two-wheeler, due to which, the deceased Sudhagar sustained grievous injuries all over the body and died on the spot. The 1st respondent is the Driver of the bus involved in the accident. The 2nd respondent is the Transport Corporation, represented by its Managing Director. At the time of accident, the petitioner was aged about 39 years and he was the Managing Director / Owner of a Garment Company and was earning a sum of Rs.70,000/- per month. According to the petitioners/claimants, the accident occurred only due to the rash and negligent driving of the driver of the 2nd respondent's bus and hence, both the respondents are liable to pay compensation to the petitioners/claimants. Accordingly, the petitioners/claimants filed the Claim Petition before the Tribunal seeking compensation of Rs.1,00,00,000/- (Rupees One Crore only) along with interest and costs.

<u>1st Respondent's case</u>

4. The 1st respondent remained absent before Tribunal and therefore, he was set *ex-parte.*

<u>2nd Respondent's case</u>

5.The second respondent – Transport Corporation filed a counter merely denying all the petition averments. It is averred in the counter that the deceased was riding the two-wheeler in a careless manner and fell on the road and the back wheel of the bus, which ran over him. The petition is bad for non-joinder of the owner and insurer of the two-wheeler and the claim of the petitioners/claimants was stoutly opposed as highly excessive and sought to dismiss the petition. In short, the Counter is nothing more than a formal denial, whereby the second respondent sought for dismissal of the Claim Petition.

6. At trial, on the side of the petitioners, the 1st petitioner / 1st claimant was examined as P.W.1 and Ex-Ps.1 to Ex-P.23 were marked. Neither any witness was examined nor any document was marked on the side of the second respondent-Transport Corporation.

7. The Tribunal, after analysing the oral and documentary evidence adduced before it, partly allowed the Claim Petition and accordingly, awarded compensation as hereunder:

Sl.No.	Head	Amount
1	Loss of income (Rs.20,000/-x12x15-1/3)	Rs.24,00,000/-
2	Loss of Love and Affection (20,000 x 3)	Rs.60,000/-
3	Loss of Consortium	Rs.40,000/-
4	Funeral Expenses	Rs.25,000/-
	Total	Rs.25,25,000/-

8. Feeling aggrieved by the said Award, the petitioners / claimants have preferred the Civil Miscellaneous Appeal praying to enhance the Award amount.

9. Dissatisfied with the Award amount, the second respondent – Transport Corporation has preferred the Civil Miscellaneous Appeal.

Arguments

10. The learned Counsel for the petitioners/claimants argued that the Tribunal failed to take into consideration the Ex.P20 Income Tax Returns. For the assessment year 2019-2020, the gross total income of the deceased was Rs.2,78,543/- and for the year 2020-2021, the deceased had shown a sum of Rs.2,86,140/- as total income and Rs.3,92,980/- was the total income of the deceased for the year 2021-2022. The Tribunal, without considering the Income Tax Returns, had simply taken Rs.20,000/- as monthly income, which is erroneous. Further, the Tribunal failed to apply Future Prospects as per ***Pranay Sethi's*** case and thus, prays for enhancement of the award amount.

11. Per contra, learned Counsel for the Transport Corporation submitted that the Income Tax Return of the year 2021-2022 was submitted after the accident and hence, the sum of Rs.3,92,980/- cannot be construed as an annual dependency. He further submitted that the petitioners/claimants did not substantiate the income of the year 2019-2020 and 2020-2021 through any evidence and therefore, the fixation of Rs.20,000/- as monthly income by the Tribunal is also on the higher side and is liable to be set aside. Accordingly, he prays to allow the appeal filed by the Transport Corporation.

Discussion

12. This Court has considered the submissions on either side and perused the materials available on record.

13. There is no dispute with regard to the factum of the accident and involvement of the motorcycle bearing Regn.No.TN-37-DB-4920 and the bus bearing Regn.No.TN-30-N-2010. The core contention of the 2nd respondent before the Tribunal was that the deceased was solely responsible for the accident, who drove the vehicle in a rash and negligent manner. On a perusal of the FIR (Ex.P1), it was registered as against the 1st respondent / driver of the bus and therefore, an inference was drawn that the driver of the 2nd respondent's bus was alleged to be the main cause for the accident, which had not been controverted by the 2nd respondent. Thus, the Tribunal rightly arrived at a decision that the accident happened due to the rash and negligent driving of the 1st respondent bus.

14. As regards quantum, the petitioners/claimants averred that the Tribunal failed to apply future prospects. The law is now well settled in Pranay Sethi's case that the furture prospects should be added with the income depending upon the age. The deceased was 39 years old at the time of accident and as per Paragraph No.59.4 of ***Pranay Sethi's case***, 40% future prospects should be added with the income. Considering the costs of living prevailing in the year 2021, and the fact that at the time of accident the deceased was 39 years old, applying 40% increase for future prospects and applying multiplier of 15 and deducting 1/3rd for personal expenses of the deceased, as per the judgments of the Hon'ble Supreme Court in ***Sarla Verma and Others vs. Delhi Transport Corporation and another***, reported in ***2009 (6) SCC 121***, this Court arrives at a sum of Rs.33,60,060/- as compensation under the head 'loss of income'.

15. The Tribunal awarded Rs.40,000/- towards loss of consortium to the 1st petitioner and Rs.20,000/- each towards love and affection to the petitioners/claimants. In terms of the judgment of the Apex Court reported in ***2017(2)TNMAC 609 (SC) in (National Insurance Company v. Pranay Sethi),*** the petitioners / claimants are entitled to Rs.44,000/- each under the heads spouse consortium, filial consortium and parental consortium respectively and there is no compensation required separately for loss of love and affection. To that extent, the award of the Tribunal is modified. Since the Tribuanl failed to grant compensation under the head 'loss of estate', it would be justified to grant a sum of Rs.16,500/- for the same.

16. Accordingly, the petitioners/claimants are entitled to get enhanced compensation of Rs.35,25,000/-. The revised compensation is as detailed below:-

Sl.No.	Head	Amount
1.	Loss of income (Rs.20,000/-+40%x12x15-1/3)	Rs.33,60,000/-
2.	Loss of Spousal Consortium P1	Rs.44,000/-
3.	Loss of Filial Consortium for P2	Rs.44,000/-
4.	Loss of Parental Consortium for P3	Rs.44,000/-
5.	Loss of Estate	Rs.16,500/-
6.	Funeral Expenses	Rs.16,500/-
	Total	Rs.35,25,000/-

17. Therefore, the 2nd respondent / Transport Corporationis directed to deposit the enhanced award amount of **Rs.35,25,000/-** (Rupees Thirty Five Lakhs Twenty Five Thousand only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P.No.615 of 2022 on the file of the Motor Accident Claims Tribunal / Special District Court, Salem, less the amount if any already deposited, within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit being made, the claimants are entitled to withdraw 50% of the award amount as per award of Tribunal and remaining 50% of the award amount is ordered to be invested in anyone of Nationalized Banks until 2nd minor petitioner attains majority, the same by filing proper application. The share apportioned by the Tribunal is unaltered. Further, the petitioners/claimants are entitled for proportionate costs and Advocate fees as per Rules. The petitioners/claimants are directed to pay necessary Court fee for the enhanced compensation, if any.

18. In the result, C.M.A.No.3111 of 2023 filed by the appellants / claimants is allowed in part with proportionate costs as per modified Award passed in detailed above. C.M.A.No.918 of 2024 preferred by the Transport Corporation is dismissed. Consequently, connected Miscellaneous Petition is closed.

(J.N.B.J.,) (R.S.V,J.,)
23.01.2025

Index: Yes / No
Internet: Yes / No
Speaking Order/ Non Speaking Order
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To:

The Motor Accident Claims Tribunal
/ Special District Judge, Salem.

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

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