IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2017

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A. No.1542 of 2017

1.K.Rosy
2.Minor. K. Johnsy
3.Minor. K. Altrine
(Appellants 2 and 3 were declared as major and the first appellant was discharged from her guardianship vide order dated 06.10.2016 passed in CMP No. 9440 of 2016 in CMA Sr No. 34735 of 2016) .. Appellants

versus

The Managing Director
Metropolitan Transport Corporation
Palavan Nagar, Anna Salai
Chennai. .. Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to enhance the Award and Decree dated 30.08.2010 made in M.C.O.P.No.879 of 2007 on the file of Motor Accident Claims Tribunal/Chief Small Causes Court, at Chennai.

For Appellants : Mr. J. Ramkumar
For Respondent : Mr. K.S. Suresh

JUDGMENT

The wife and two children of the load Rickshaw puller have filed the claim petition before the Tribunal seeking compensation for the death of the deceased Kannan. The deceased was aged 40 years, who was the husband of the first claimant and father of second and third claimants died in the accident on 21.11.2006. In the claim petition, it is stated that the Rickshaw puller was earning a sum of Rs.3,000/- p.m. and on account of his untimely death, the family has lost the bread winner.

2. The Tribunal has taken the age of the deceased, as 40 years, which is based on Ex.P4, Death certificate and Ex.P5, Postmortem certificate. So far as the income of the deceased is concerned, the deceased stated to be earning a sum of Rs.3,000/-

by using three wheeler load Rickshaw. The Tribunal, after deducting 1/3rd amount towards his personal living expenses has arrived at the monthly contribution of the deceased to his family at Rs.2,000/- per month and Rs.24,000/- per year. By adopting multiplier '15' loss of dependency has been arrived at at Rs.3,60,000/-.

3. The Tribunal has also awarded a sum of Rs.10,000/- as loss of consortium to the wife. Further, a sum of Rs.10,000/- was awarded to the second and third claimants towards loss of love and affection and Rs.5,000/- for funeral expenses. Thus, a total sum of Rs.3,85,000/- was awarded as compensation.

4. The learned counsel for the appellants submitted that at the time of accident, the wife/first claimant was aged 35 years and the second and third claimants, minors, were aged 15 years and 10 years respectively. Thus, at the prime age of the minors, they have lost the financial and moral support of their father/deceased.

5. According to the learned counsel appearing for the appellant deduction of 1/3rd amount is unjustifiable especially when the deceased was earning his livelihood by pulling rickshaw and had a liability to maintain two minor children. It is further contended that the Tribunal failed to consider the future prospective increase in income of the deceased, considering his age as 40. This contention is correct. As the children grow, the expenses would be more in maintaining them, especially for educating the children. When expenses are more and the money to be earned is by rickshaw pulling, the deceased cannot think of spending 1/3rd for his personal expenses. Thus, even though the claimants/appellants have contended that the deceased was earning Rs.3,000/- per month, the Tribunal, without any basis, has deducted 1/3rd amount towards his personal expenses.

6. The deceased was aged 40 years at the time of his death. Therefore, the future prospects of the deceased to earn more could be considered. However, even as per the claim petition, the deceased was earning Rs.3,000/- per month as a Rickshaw puller. Therefore, 50% increase would be Rs.4,500/- and deducting Rs.1,000/- towards personal expenses, the contribution to the family would be Rs.3,500/-. Applying multiplier 15 as adopted by the Tribunal, the loss of income of the deceased could be arrived at Rs.6,30,000/- (Rs.3,500/- 15 x 12). Having regard to the young age of the first appellant at the time of the death of her husband, the loss of consortium is awarded at Rs.40,000/-. Similarly, for loss of the support of the father at the prime age, the appellants 2 and 3 are entitled to a sum of Rs.1,00,000/- each. For funeral expenses the amount awarded

by the Tribunal is very loss. Therefore, a sum of Rs.20,000/- is awarded towards funeral and transportation expenses. Accordingly, the award passed by the Tribunal is enhanced as follows:-

Loss of income	:	Rs.6,30,000.00
Loss of consortium to 1st appellant	:	Rs. 40,000.00
Loss of love and affection to appellants 2 and 3	:	Rs.2,00,000.00
Funeral expenses	:	Rs. 10,000.00
Transportation expenses	:	Rs. 10,000.00
		Rs.8,90,000.00

7. The respondent / transport corporation is directed to deposit the enhanced compensation as determined by this Court less the amount already deposited, if any along with interest @ 7.5% per annum, from the date of petition till the date of deposit within a period of four weeks from the date of receipt of copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank accounts of claimants through RTGS within a period of two weeks thereafter, as per the apportionment given below :

7.2 The first appellant is entitled for a sum of Rs.4,00,000/- and the appellants 2 and 3 are entitled for a sum of Rs.2,45,000/- each.

7.3 The appellants are directed to pay the court fee towards the enhanced compensation amount, if any, payable by them.

8. Hence, the appeal is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Chief Small Causes Court at Chennai.
2. The Section Officer,
   V.R. Section,
   High Court, Madras - 104.

+1cc to MR.J.RamKumar, Advocate SR.No.46676

C.M.A. No.1542 of 2017

KJ(CO)
sm:23.11.2017