

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-04-2017

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.126 of 2010

1.B.Parameswari

2.V.R.Balasubramaniam (since died) ..Appellants/Petitioner

Vs

Tamil Nadu State Transport Corpn. Ltd.,
[Villupuram Division] rep.by its
Managing Director,
Villupuram.

..Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 29.09.2009, made in M.A.C.T.O.P.No.5537 of 2004, by the learned Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr.N.M.Muthurajan
For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 29.09.2009, made in M.A.C.T.O.P.No.5537 of 2004, by the learned Chief Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2. The first appellant is the mother and the second appellant is the father of the deceased. According to the appellants/claimants, the deceased Sridhar was a taxi driver and on 01.12.2004, at about 10.30 p.m., while he was driving the car from Chennai to Kalasthri, a bus belonging to the transport corporation driven in a rash and negligent manner coming in the opposite direction, dashed against the car. In the said accident, the deceased sustained multiple injuries and died on the spot. At the time of accident, the deceased was aged 29 years and was earning a sum of Rs.7,500/- per month as tourist taxi driver. The appellants who are the dependants of the deceased claimed that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the transport corporation and hence claimed a sum of Rs.11,00,000/- as compensation for the death of their son.

3. The respondents filed counter denying all the averments made by the claimants and submitted that the accident did not take place due to the rash and negligent driving of the driver of the bus belonging to the transport Corporation. The owner and the insurance company of the car in which the deceased was travelling were not impleaded as parties and therefore the claim petition has to be dismissed on the ground of non-joinder of necessary parties and also submitted that the amount claimed by the appellants is very much on the higher side.

4. Before the Tribunal, the first appellant was examined as PW1 and one M.Suresh who is an eye-witness was examined as PW2. Three documents viz. Exs.P1 to P3 were marked on the side of the appellants. The respondent examined one Srinivasan, the driver of the bus as RW1 and no documents were marked on their side.

5. After analysing the oral and documentary evidence, the Tribunal has come to a conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the bus belonging to the transport corporation and awarded a sum of Rs.3,85,000/- as compensation. Not satisfied with the amount of compensation awarded by the Tribunal, the appellants have filed the present appeal for enhancement.

6. The learned counsel for the appellants submitted that the deceased was working as tourist taxi driver and was earning a sum of Rs.7,500/- per month and also stated that nowadays tourist taxi drivers are earning Rs.500/- per day with allowances. It is further submitted that the Tribunal has erred in fixing the income of the deceased at Rs.3,000/- per month and that the amount awarded under the head loss of love & affection is too low. It is also stated that considering the age of the deceased, the Tribunal ought to have awarded amount towards future prospects and thus prayed for enhancement of compensation.

7. Heard the parties and perused the materials available on record.

8. The only point for consideration is whether the appellants are entitled for enhancement of compensation. The deceased was a bachelor aged 29 years and therefore 50% of his income has to be deducted towards his personal expenses. However, the Tribunal had deducted only 1/3rd towards his personal expenses and therefore the said amount has to be

modified accordingly. A perusal of the records would show that the appellants have not produced any documents to substantiate their claim that the deceased was working as a tourist taxi driver and earning a sum of Rs.7,500/- per month. In such circumstances, the Tribunal has fixed the monthly income of the deceased at Rs.3,000/- per month. However, no amount has been added towards future prospects. Considering the age of the deceased who is 29 years old at the time of accident, 50% is required to be added towards future prospects. Thus, if 50% is added to Rs.3,000/-, the loss of monthly income would be Rs.4,500/- (Rs.3000 + 50% = 4500). Since the deceased was a bachelor, 50% has to be deducted towards personal expenses. As rightly pointed out by the learned counsel for the appellants/claimants, the age of the deceased alone has to be taken into consideration for adopting the multiplier. As the deceased was aged 29 years at the time of accident, the appropriate multiplier would be 17. Thus, the loss of income is calculated as follows -

Rs.3000 + 50% = 4500 - 50% = 2250 x 12 x 17 =
Rs.4,59,000/-

9. The amount of Rs.20,000/- awarded by the Tribunal towards loss of love & affection is very low and the same is enhanced to Rs.30,000/-. However, Rs.5,000/- awarded towards funeral expenses is very fair and therefore the same is confirmed. Thus, the award of Rs.3,85,000/- awarded by the Tribunal is hereby enhanced to Rs.4,94,000/-, break-up as follows -

(1) Loss of income	...	Rs.4,59,000/-
(2) Loss of love & affection	...	Rs. 30,000/-
(3) Funeral expenses	...	Rs. 5,000/-
Total		Rs.4,94,000/-

The rate of interest awarded by the Tribunal @ 7.5% remains unaltered.

10. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

11. The respondent/transport corporation is directed to deposit the enhanced award amount alongwith interest and costs, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the first appellant/claimant is permitted to withdraw the enhanced award amount alongwith interest and costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rgr

To

The Chief Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

+ 1 cc to Mr.M. Muthurajan, Advocate Sr.19165

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