

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CMA.No.1089 of 2013

1. Dhilshath
2. Velayudham

... Appellants/Petitioners

Vs.

The Managing Director,
Tamil Nadu State Transportation
Corporation, Kancheepuram.

...Respondent/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree made in MCOP No.465 of 1999 dated 30.04.2009 on the file of the Motor Accident Claims Tribunal (Additional Sub Court) Chenglepet.

For Appellants : Mr.S.Udayakumar

Respondent : Mr.S.Sairaman

JUDGMENT

The claimants are the appellants herein. They have filed the claim petition in M.C.O.P.No.465 of 1999 on the file of the Motor Accident Claims Tribunal (Additional Sub Court), Chenglepet, claiming compensation, for the death of their daughter Divya.

2. The Tribunal has awarded Rs.52,000/- as against the total claim of Rs.3,00,000/-. The appellants / claimants, have preferred this appeal for enhancement of compensation.

3. The deceased Divya was 6 years old, at the time of accident, which occurred on 17.10.1999. The first respondent before the tribunal, was the driver of the offending bus and it belongs to Tamilnadu Transportation Corporation, Kancheepuram, the respondent herein. The Tribunal found that the accident occurred only due to the rash and negligent driving of the driver of the bus. There is no appeal by Tamil Nadu State Transportation Corporation.

4. The learned counsel for the appellant submitted that the Tribunal awarded only a meagre sum of Rs.52,000/- for the death of Divya, who was six years old, at the time of accident. The Tribunal awarded Rs.50,000/- under the head love and affection and Rs.2,000/- towards funeral expenses, which was on the lower side.

5. The learned counsel for the Tamil Nadu State Transport Corporation, would submit that the Tribunal has awarded a reasonable compensation and it does not require any interference.

6. Heard the learned counsel for both parties and perused the materials available on record.

7. It is the contention of the learned counsel for the appellants that the trial Court omitted to consider several aspects, while fixing the quantum of compensation and it omitted to award any amount under the head of loss of income. He has further pointed out that the trial Court omitted to award any amount towards transportation of the body.

8. In New India Assurance Company Limited V. Satender and Others, 2006 (2) TN MAC 570 (SC), the Honourable Supreme Court has held as follows:

"In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation."

10. In the case at hand, the Tribunal failed to take note of the future prospects of the child, while awarding compensation. The deceased was aged 6 at the time of accident and was studying II Standard. Therefore, the just quantum of compensation needed to be awarded to the parents. Having regard to the future of the child and the observations of the Supreme Court, I am inclined to award Rs.1,80,000/- towards future prospects of the child. The tribunal omitted to award any amount under the head 'loss of income'. The tribunal awarded Rs.50,000/- under the head love and affection and Rs.2,000/- for funeral expenses. Immediately after the accident the child was taken to Tambaram Hospital and from there, the child was taken to Government Hospital, Chennai. The Tribunal omitted to award any amount under the head of transportation. Therefore, under the head of transport expenses, this Court is inclined to award Rs.12,000/-. The amount awarded under the head 'funeral expenses' is very low. It should be enhanced to Rs.10,000/-. The amount awarded under the head of loss of love and affection appears to be reasonable and it is confirmed.

The compensation is re-assessed as follows:-

Sl.No.	Heads	Calculation
1.	Future prospects	Rs.1,80,000.00 per month
2.	Love and Affection	Rs.50,000/-

Sl.No.	Heads	Calculation
3.	Funeral expenses	Rs.10,000/-
4.	Transportation	Rs.12,000/-
	Total	Rs.2,52,000.00

12. In all the compensation works out to Rs.2,52,000/-. The rate of interest @ 7.5% awarded by the Tribunal, shall remain unaltered.

13. In the result, the Civil Miscellaneous Appeal is partly allowed to the extent as indicated above. The respondent-Transport Corporation is directed to deposit the enhanced award amount of Rs.2,52,000/- [Rupees Two Lakhs Fifty Two Thousand only] with interest @ 7.5% per annum and costs, less the statutory deposit, to the credit of MCOP No.465 of 1999 on the file of the Motor Accident Claims Tribunal (Additional Sub Court) Chenglepet, within a period of six weeks from the date of receipt of a copy of this order. The claimants are permitted to withdraw the enhanced compensation amount awarded by this Court with proportionate interest, less the amount already withdrawn, if any, by making necessary application before the Tribunal. There shall be no orders as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

dpq

To

1.Additional sub Judge,
Motor Accidents Claims Tribunal
Chenglepet

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.Sairaman,Advocate sr.14068

+1cc to Mr.S.Udhayakumar,Advocate sr.14034

CMA.No.1089 of 2013

sj (co)
ss(15/5/2017)