

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2018

Coram

THE HON'BLE MR. JUSTICE S. BASKARAN

C.M.A.No.1172 of 2016

1. Mangri Murah

2. Rita Murah(minor)

rep. by his mother

First Appellant.

... Appellants/petitioners

Vs.

The Managing Director,

Metropolitan Transport Corporation Ltd.,

Pallavan House, Anna Salai, Chennai 600 002.

... Respondent/Respondent

PRAYER Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decree dated 19/10/2015 in M.C.O.P.No.1030 of 2011 on the file of Motor Accidents Claims Tribunal-III Additional District Judge, Tiruvallur, at Poonamallee for enhancement of the compensation.

For Appellants: :Mr.P.Natarajan

For Respondent :Mr.S.Siva Kumar

J U D G M E N T

The Petitioners have come forward with this appeal against the Order and Decree dated 19.10.2015 passed in M.C.O.P.No.1030 of 2011 on the file of Motor Accidents Claims Tribunal-III Additional District Judge, Tiruvallur, at Poonamallee for enhancement of the compensation.

2.For convenience sake, the parties are referred to hereunder according to their litigative status before the tribunal.

3.The case of the petitioners is that on 30.08.2011 at about 10:15 hours, when the deceased was walking in the Mount Poonamallee high road from west to east near Ambedhkar statue at Porur, the respondent Corporation bus bearing Registration No. TN-01N-9157 came in the same direction at high speed and dashed

against the car bearing Registration No.TN20-AJ-8257 which is coming by the side of the bus and then dashed against the deceased who was walking in the road, which resulted in his death.

4. The accident occurred only due to the negligent driving of the respondent bus driver and he hit two other vehicles also. At the time of accident, the deceased was aged 23 years and he was earning Rs.9,000/- to Rs.12,000/- per month by working as Assistant in a private Food Court Counter. The petitioners who are the mother and sister of the deceased were dependant on the income of the deceased. Hence, the petitioners seek a sum of Rs.10,00,000/- as compensation.

5. On the other hand, opposing the claim of the petitioners, by filing counter the respondent corporation disproves the claim of the petitioners, about the manner in which the accident occurred. The respondent bus bearing Registration No. TN 01N 9157 was coming at normal speed and when the bus approached Iyyappanthangal bus stop, the driver of the bus saw a person walking in a zig zag manner and sounded the horn at that stage. The person who was walking in the road in order to avoid falling into a pit, suddenly moved to his right side and fell down in the road. In spite of best efforts of the bus driver, the bus dashed against the deceased person who suffered fatal injuries. Thus, the negligence of the deceased only caused the accident. The avocation and income of the deceased alleged in the petition is not correct. The claim of the petitioners is very exorbitant. Thus the respondent seeks dismissal of the petition.

6. Before the Tribunal, the petitioner examined PW-1 to 3 and produced documents Exhibits P1-P12, to prove their claim. On the side of the respondent, RW-1 was examined but no document was produced. The Tribunal on the basis of available evidence held that the negligence of the respondent Corporation bus driver alone caused the accident and awarded a sum of Rs.6,55,000/- as compensation. Being not satisfied with the quantum of the award the petitioners/claimants have come forward with the present appeal.

7. The learned counsel for the petitioners contend that the Tribunal wrongly fixed the earnings of the deceased at Rs.5,000/- without considering the evidence properly. The Tribunal ought to have fixed 30% of the income towards future prospects. The tribunal erred in deducting 50% of the income towards personal expenses of the deceased. The correct multiplier to be applied is 18 but the Tribunal wrongly applied

the multiplier is 13. The amount awarded under different heads is very low. Thus, the petitioner seeks to enhance the award amount by entertaining the appeal.

8. Per contra, the learned counsel appearing for the respondent/corporation contended that the tribunal has correctly assessed the negligence and also awarded just and fair compensation on the basis of available materials. Thus, the respondent/corporation contends that no ground is made out for enhancement of the award passed by the Tribunal and sought for dismissal of the appeal.

9. Heard both sides and perused the materials available on record.

10. The petitioners examined eyewitness to the occurrence as PW-2 and he states that on 30.08.2011 at about 10:15 a.m while he was walking along with the deceased and other co-employees in Mount poonamalle High road near the Ambedhkar Statue, Pooniamman Koil Street Junction, the respondent bus came at high speed and dashed against the vehicle bearing reg.No.TN20-AJ-8257 and also the deceased, resulting in his death on the occurrence spot itself. The police have also registered the case against the driver of the respondent bus only as evidenced by Exhibit.P-1 FIR. The petitioners also produced rough sketch of the occurrence spot as Exhibit.P-2. Thus, the petitioners claim, that the negligence of the respondent bus driver alone caused the accident.

11. On the other hand, the employee of the respondent Corporation who deposed as RW-1 stated that the negligence of the deceased alone caused the accident. However as RW-1 did not witness the accident, his evidence cannot be treated as sufficient to contradict the version of PW-2, who witnessed the occurrence in person. Further nothing was elicited in the cross examination of PW-2 to discredit his evidence. On the basis of eyewitness evidence of PW-2 and the contents of Ex.P1 FIR, it is clear that negligence of the respondent bus driver alone caused the accident.

12. The petitioners states that the deceased was aged 23 years and at the time of accident, he was earning Rs.9,000/- to Rs.12,000/- per month by working as Assistant in the Food Court Counter. The birth certificate of the deceased is produced as Ex:P:10 and the Transfer Certificate as Ex.P:7. It is clear from the same that the date of birth of the deceased was 02.03.1989.

As such, the age of the deceased is fixed as 22. The deceased was stated to be employed in Food Court and was earning Rs.150-200 as tips daily. The petitioners had not produced any documents regarding the employment and income of the deceased. As such the Tribunal fixed the notional monthly income of the deceased at Rs.5,000/-.

13. Aggrieved over the same, the petitioners contend that normally income of any person employed in the Restaurant is on higher side and as such the income fixed by the Tribunal has to be enhanced. Under such circumstances taking into consideration the prevailing market conditions, the monthly salary of the deceased who was employed in a Food Court is fixed at Rs.6,000/- p.m. The deceased being 22 years old and employed in a private concern, 40% of his earning is to be added towards future prospectus. The deceased being bachelor 50% of the income to be deducted towards his personal expenses. Thus, the loss of dependency is calculated as follows:-

Monthly Income - Rs.6,000/-

Add: Future Prospects at 40% - 2,400/-

$6,000 + 40\%(2,400/-) = 8,400$

50% deduction towards personal expenses of the deceased

$8,400 - 50\% = 4,200$.

Correct multiplier to be applied is 18. Thus $4,200 \times 12 \times 18 = 9,07,200/-$ is awarded to the petitioners under the head "loss of dependency".

14. The Tribunal has awarded Rs.1,00,000/- for pain and suffering. Further, a sum of Rs.1,50,000/- towards loss of love and affection. The learned counsel for the appellants contended, that as per the decision of the Constitution Bench Judgment of the Supreme Court reported in 2017(2) TN MAC 609(SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others] no such amount can be awarded. As observed in the said ruling, it is clear that the amount provided under the above said two heads viz., Pain and suffering and loss of love and affection is unsustainable. As such, on the available materials, the award passed by the Tribunal is modified as follows.

S.No	Particulars	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of dependency	Rs.3,90,000/-	Rs.9,07,200
2	Loss of mental Shock	Rs.1,00,000/-	-
3	Funeral Expenses	Rs.15,000/-	Rs.15,000/-

S.No	Particulars	Amount granted by the Tribunal	Amount awarded by this Court
4	Loss of love and affection	Rs.1,50,000/-	-
5	Towards Transportation	-	Rs.15,000/-
	Total	Rs.6,55,000/-	Rs.9,37,200/-

15. In the result, the Civil Miscellaneous Appeal is partly Allowed with costs as follows:-

(i) The award of the Tribunal is enhanced to Rs.9,37,200/- from Rs.6,55,000/-

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above modified enhanced award amount, the respondents/Transport corporation is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the petitioners/claimant are permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(v) The amount apportioned as compensation to the 2nd appellant is 50% and the remaining 50% to the 1st appellant is directed to be deposited in a Nationalised Bank till the minor attains majority, however, the mother/first claimant is permitted to withdraw accrued interest once in three months.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

smn

To.

1. The III Additional District Judge
Motor Accident Claims Tribunal
Tiruvallur at Poonamallee.

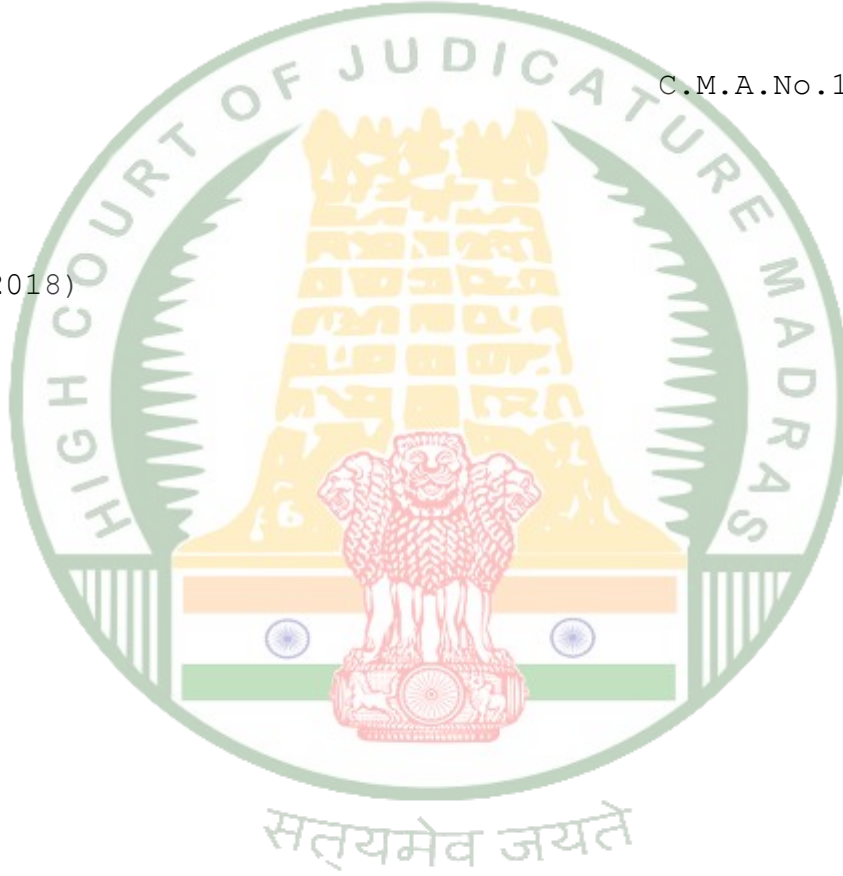
2. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.P. Natarajan, Advocate sr 15847.

+1 CC to Mr.S. Sivakumar, Advocate sr 15848.

C.M.A.No.1172 of 2016

NRI (CO)
SP (02/07/2018)



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