

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.07.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1509 of 2017

1.V.Manjula

2.V.Srinithi

3.V.Swathi Priya

(Minor Petitioners rep. by her mother

V.Manjula)

... Appellants/Claimants

...vs...

The Managing Director,

Metropolitan Transport Corporation Ltd.,

Pallavan House, Anna Salai,

Chennai - 2. Respondent/Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 27.02.2014 made in MCOP.No.2827 of 2011 on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai.

For Appellants : Mr.J.Ramkumar

For Respondent : Mr.S.Shivakumar

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 27.02.2014 made in MCOP.No.2827 of 2011 on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai, the present appeal has been filed by the petitioners/claimants for enhancement of the award amount.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3.The case of the petitioners is that on 31.03.2011 at about 19.15 hours, as the deceased Varadharajan was crossing the GST

Road, at Tambaram, the respondent Transport Corporation Bus bearing Registration No.TN-01-N-5583, which was proceeding from Chennai to Guduvancherry, came at high speed, in a rash and negligent manner, dashed against him, causing him grievous injuries, resulting in his death in the Government Hospital, Chennai on 04.04.2011. The accident occurred only due to the negligence of the respondent Transport Corporation bus driver. The deceased was aged 46 years and he was employed in a private concern earning Rs.10,000/- per month. The petitioners who are the wife and children of the deceased were depending on his income. Due to the sudden death of the bread winner of the family, the petitioners are suffering due to want of income. Thus, the petitioners sought for a sum of Rs.15,00,000/- as compensation from the respondent.

4. On the other hand, opposing the claim petition, the second respondent Insurance company filed counter contending that the accident does not occur in the manner alleged by the petitioners. The respondent Transport Corporation bus was proceeding at normal speed and at about 19.15 hours, when the bus was going opposite to SETC ticket counter in GST Road, a male pedestrian suddenly jumped over the 4 feet centre median wall and tried to cross the road from right side to left side of the GST Road and on seeing that the respondent Transport Corporation bus driver applied brake and tried to avoid hitting him. However, the male pedestrian dashed on the front side body of the bus, fell down and sustained fatal injuries. The accident occurred due to the negligence of the deceased only. The claim of the petitioners about the age, avocation and income of the deceased is denied. The amount claimed by the petitioners is highly excessive. The respondent sought for dismissal of the claim petition.

5. Before the Tribunal, the petitioners examined P.W.1 and P.W.2, produced documents Ex.P1 to Ex.P8 to substantiate their claim. The respondent examined R.W.1 but no document was produced.

6. The Tribunal, on the careful analysis of evidence, found the negligence of the respondent Transport Corporation bus driver alone caused the accident, passed an Award for a sum of Rs.11,50,052/- payable by the respondent to the petitioners. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners/claimants have come forward with this present appeal.

7. I have heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the respondent Transport Corporation and perused the materials available on record.

8.The learned counsel appearing for the appellants/claimants contends that the Tribunal failed to provide any amount towards future prospects. The amount awarded by the Tribunal under different heads is very nominal. The petitioners seeks enhancement of the award amount by entertaining the appeal.

9.Per contra, the learned counsel appearing for the respondent Transport Corporation contends that the award passed by the Tribunal itself is on the higher side and there is no need to enhance the same further. Thus, the respondent sought for dismissal of the appeal.

10.It is only quantum appeal. As the respondent Transport Corporation has not preferred any appeal, the conclusion of the Tribunal on the aspects of the negligence has become final. Thus the only issue to be considered is as to whether the award passed by the Tribunal is to be further enhanced.

11.The petitioners states that the deceased was aged 46 years and was employed as Secretary in a private concern earning Rs.10,000/- per month. To prove the age of the deceased, the petitioners produced the copy of the transfer certificate of the deceased as Ex.P7, wherein his date of birth is given as 01.02.1964. The petitioners also produced postmortem certificate and death certificate as Ex.P4 and Ex.P3 respectively. As such, on the basis of Ex.P7 Transfer certificate, the age of the deceased is fixed as 47 years.

12.The petitioners claim that the deceased was earning Rs.10,000/- per month and to prove the same, produced his salary certificate as Ex.P8 wherein, the monthly income of the deceased is stated as Rs.10,000/-. Accordingly, his monthly income was fixed at Rs.10,000/- by the Tribunal. The same is confirmed. However, the Tribunal failed to provide for future prospects. That is not proper and as such the claim of the petitioner to provide for future prospects is to be entertained. As the deceased was aged 47 years, it will be appropriate to provide 25% income towards future prospects. Thus, the total monthly income will be Rs.12,500/-. As the deceased was aged 47 years, the correct multiplier to be applied is 13. Considering the number of dependents three in persons, 1/3rd of the income is to be deducted towards personal expenses of the deceased. Thus, the loss of income is calculated as follows:-

Rs.12,500/- deducted 1/3rd amount of Rs.4,166/- = Rs.8334/-
x 12 = Rs.1,00,008/- x 13 = Rs.13,00,104/- as compensation.

13. Following the Apex Court decision reported in 2017 (2) TN MAG 609 (SC) NATIONAL INSURANCE CO. LTD., Vs. PRANAY SETHI AND OTHERS, towards loss of consortium and funeral expenses,

this Court is inclined to modify the compensation as under:-

Funeral Expenses	=	Rs. 15,000.00
Loss of Consortium	=	Rs. 40,000.00
Loss of Estate	=	Rs. 15,000.00

14.The Tribunal provided a sum of Rs.50,000/- towards loss of love and affection. The learned counsel appearing for the appellants/claimants contended that the petitioners 1 and 2 who are the children of the deceased are at tender age and the amount of Rs.50,000/- awarded by the Tribunal under the head loss of love and affection is very meager and the same has to be enhanced. Considering the same, a sum of Rs.50,000/- awarded by the Tribunal towards loss of love and affection is hereby enhanced to Rs.75,000/-. The amount of Rs.15,000/- awarded by the Tribunal under the head medical expenses is confirmed. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Pecuniary Loss of income	10,40,052.00	13,00,104.00
2.	Loss of consortium	25,000.00	40,000.00
3.	Loss of love and affection	50,000.00	75,000.00
4.	Funeral Expenses	20,000.00	15,000.00
5.	Medical Expenses	15,000.00	15,000.00
6.	Loss of Estate	-	10,000.00
	Total	11,50,052.00	14,55,104.00

Accordingly, the amount of Rs.11,50,052/- awarded by the Tribunal is modified and the same is enhanced to Rs.14,55,104/- and the same is rounded to Rs.14,55,000/-.

16.In the result, the Civil Miscellaneous Appeal is allowed. No costs. The amount of Rs.11,50,052/- awarded by the Tribunal dated 27.02.2014 made in MCOP.No.2827 of 2011 on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai is enhanced to Rs.14,55,000/-. The respondent Transport Corporation is directed to deposit the entire enhanced award amount of Rs.14,55,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. The first appellant/first claimant is entitled to get 40% of the award amount and the appellants 2 and 3/petitioners 2 and 3 are entitled to get 30% each of the award amount. On deposit of the award amount, the first & Second appellant/first and second petitioner is permitted to withdraw her respective share with accrued interest by filing necessary application before the

Tribunal. The appellant 3/petitioners 3 is minor, her share amount shall be deposited in any one of the Nationalized Bank till she attains majority. The first appellant/first petitioner is permitted to withdraw the accrued interest once in three months.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The II Judge,
Small Causes Court,
Motor Accident Claims Tribunal
Chennai.

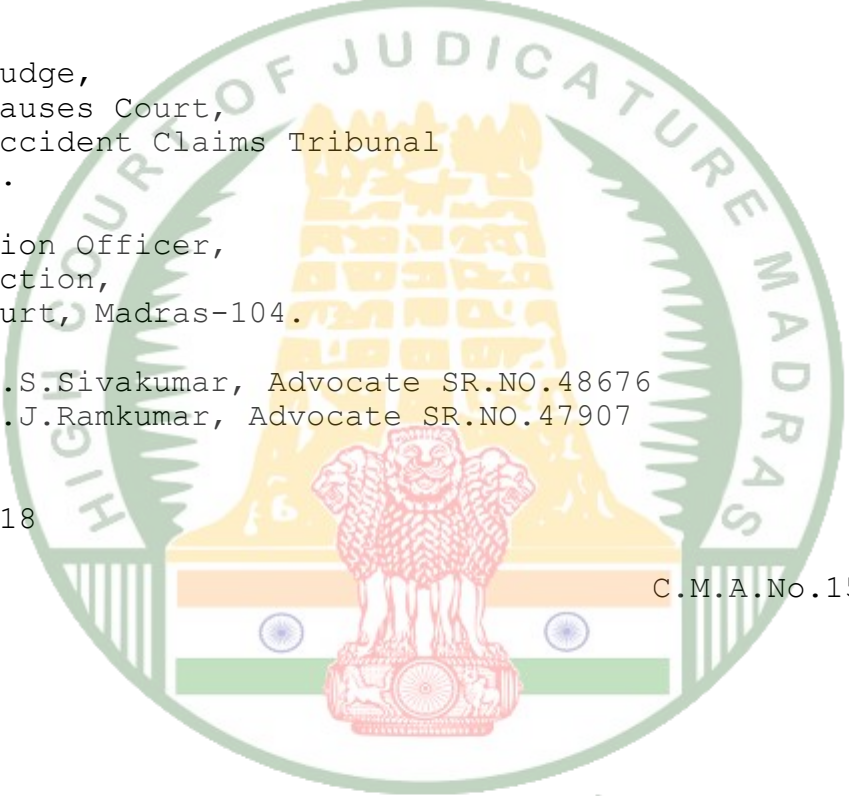
2.The Section Officer,
V.R. Section,
High Court, Madras-104.

+1cc to Mr.S.Sivakumar, Advocate SR.NO.48676

+1cc to Mr.J.Ramkumar, Advocate SR.NO.47907

SV(CO)
sm:28.9.2018

C.M.A.No.1509 of 2017



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