

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.2102 of 2018

1.Dhanalakshmi
2.B.Raja
3.B.Sibi
4.Lakshmi

... Appellant/Petitioner

Vs

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai - 2. ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 02.12.2016 made in M.C.O.P.No.587 of 2014 on the file of Motor Accidents Claims Tribunal (III Additional District Court), Thiruvallur at Poonamallee.

For Appellants : Mr.K.Varadhakamaraj

For Respondent : Mr.S.Sivakumar

JUDGMENT

Assailing the judgment and decree dated 02.12.2016 passed in M.C.O.P.No.587 of 2014 by the Motor Accident Claims Tribunal, III Additional District Court, Poonamallee, the present appeal is filed by the claimants.

2. The claimants are wife, two sons and mother of the deceased. It is the claim of the appellants that on 20.3.2014 at 5.15 PM, when the deceased was riding a motorcycle from Tirumullaivoil to Avadi from east to west direction, while proceeding along CTH Road at Thirumullaivoil, near Prakathi Timber Ship, the bus bearing registration No.TN 01 N 8114 belonging to the respondent Corporation driven in a rash and

negligent manner hit the deceased and caused fatal injuries which resulted in his death. The appellants claimed Rs.25 lakhs as compensation.

3. The respondent Corporation filed a counter statement and opposed the claim petition, inter alia, stating that the deceased, who drove his motorcycle in a rash and negligent manner, was solely responsible for the accident. The respondent Corporation denied the age, occupation and income of the deceased.

4. The Tribunal, considering the oral and documentary evidence adduced on either side, awarded compensation to the tune of Rs.2,75,000/-.

5. Seeking enhancement of the compensation awarded, the present appeal is filed by the claimants.

6. The learned counsel appearing on behalf of the appellants vehemently contended that the Tribunal erred in not awarding any amount towards pecuniary loss and holding that as the appellants are getting pension and, therefore, there is no loss of income. He added that the Tribunal had not awarded any sum towards loss of estate.

7. Per contra, the learned counsel for the respondent Corporation reiterated the reasons that weighed with the Tribunal in passing the impugned award and prayed for dismissal of this appeal.

8. I heard Mr.K.Varadhakamaraj, learned counsel for the appellants and Mr.S.Sivakumar, learned counsel for the respondent and perused the documents available on record.

9. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the appellants and secondly, none of those findings are under challenge by the respondent. Only the quantum alone is under challenge.

10. The deceased in this matter is a retired Inspector of Police and was aged 59 years at the time of accident. In the claim petition, the monthly income of the deceased has been mentioned as Rs.25,000/-. The Tribunal held that there is no proof to show that after retirement, the deceased was working as part-time worker and was earning Rs.25,000/- per month. It was further held that the appellants have admitted that the wife of the deceased is receiving pension. Since there was no peculiar

loss, no amount could be awarded under the head loss of dependency.

11. The learned counsel for the appellants submitted that the Tribunal went wrong in not awarding any amount towards pecuniary loss and the reason given by the Tribunal for not awarding the amount under the head loss of dependency is not acceptable.

12. There is no dispute that the deceased was a retired Government employee. It appears that within 20 days of his retirement, the deceased died due to injuries sustained in the accident. The respondent has not taken any plea that the appellants are not entitled to get compensation under the head loss of dependency.

13. It is to be noted there is every possibility of a retired person to work after retirement and can earn certain amount as his monthly earning. In the present case, how much is the pension sanctioned and/or received by the deceased or his family is not known and there were no particulars qua the same. Considering the facts and circumstances of the case, since the deceased died within 20 days after retirement, it would be appropriate to fix his notional monthly income at Rs.8,000/-. Accordingly, Rs.8,000/- is fixed towards monthly income of the deceased. Had he been alive, the deceased would have earned more. Therefore, this Court considers it to add 10% increase of the notional income towards future prospects. Adding 10% of actual income, the monthly notional income of the deceased is fixed at Rs.8,800/- for the purpose of determining the pecuniary loss. Since the dependent family members are 4 in numbers, it would be appropriate to deduct one-fourth towards personal expenses. Deducting one-fourth towards personal expenses, the monthly contribution to the family is calculated at Rs.6,600/-.

14. At the time of accident, the deceased was aged 59 years. For the age group 56 - 60, the multiplier to be adopted is "9". Adopting multiplier "9", the loss of dependency is calculated at Rs.7,12,800/- ($\text{Rs.6,600} \times 12 \times 9 = \text{Rs.7,12,800/-}$). Accordingly, a sum of Rs.7,12,800/- is awarded towards loss of dependency.

15. The Tribunal awarded Rs.1,00,000/- towards pain and suffering and loss of consortium and Rs.25,000/- towards funeral expenses. With respect to conventional heads the Hon'ble Supreme Court, in National Insurance Company v. Pranay Sethi, reported in (2017) 16 SCC 680, held that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. Following the decisions of the Hon'ble Supreme Court in Pranay Sethi, supra, a sum of

Rs.15,000/- is awarded towards loss of estate; Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses.

16. The Tribunal awarded Rs.50,000/- each towards loss of love and affection to the appellants 2 and 3. Similarly, the Tribunal awarded Rs.50,000/- towards loss of love and affection to the 4th appellant. Considering the age of the appellants, it would be appropriate to award Rs.25,000/- each (i.e., appellants 2 to 4) towards loss of love and affection, as against Rs.50,000/- each awarded by the Tribunal.

17. In view of the above discussion, the total compensation of Rs.2,75,000/- awarded by the Tribunal is enhanced to Rs.8,57,800/- as under:

Loss of dependency	:	Rs.7,12,800.00
Loss of consortium to 1 st appellant	:	Rs. 40,000.00
Loss of love and affection to appellants 2 to 4	:	Rs. 75,000.00
Loss of estate	:	Rs. 15,000.00
Funeral expenses	:	Rs. 15,000.00

Total	:	Rs.8,57,800.00

18. Out of Rs.8,57,800/-, the first appellant is entitled to Rs.3,00,000/-; appellants 2 and 3 are entitled to Rs.2,00,000/- each and the 4th appellant is entitled to Rs.1,57,800/-.

19. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.2,75,000/- awarded by the Tribunal is enhanced to Rs.8,57,800/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The respondent is directed to deposit the modified amount with interest aforesaid within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective shares as aforesaid with accrued interest on filing necessary application before the Tribunal.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

To

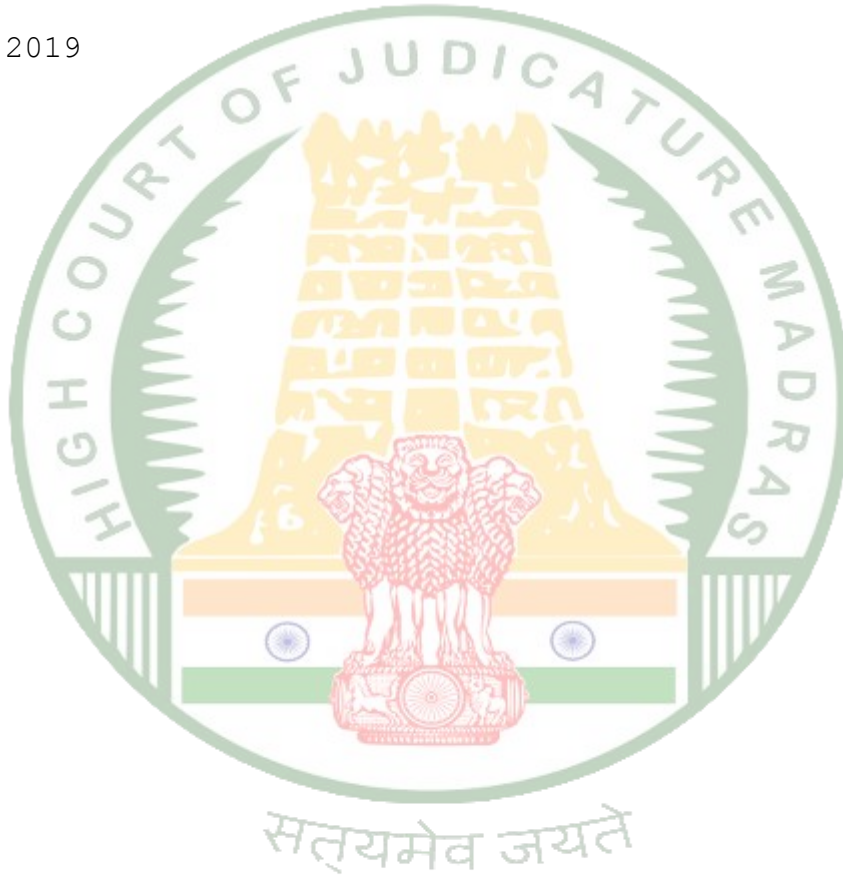
The Motor Accidents Claims Tribunal
(III Additional District Court),
Thiruvallur at Poonamallee.

+1 cc to Mr.K.Varadhakamraj, Advocate Sr.No.64008

+1 cc to Mr.S.Sivakumar, Advocate Sr.No.64001

Civil Miscellaneous Appeal No.2102 of 2018

GJ(CO)
CSL/12.03.2019



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