



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.52 of 2015

1.S.Rasheeda Bee
2.S.A.Abdul Rashim
3.S.Mohamed Rafi
4.S.Bashir Ahamed
5.S.Rahamath
6.S.Husmathulla
7.S.Noorjahan
Appellants/Petitioners

..

Vs

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

..

Prayer:-

This Civil Miscellaneous Appeal is filed against the Judgement and Decree, dated 11.10.2014, made in MCOP.No.4523 of 2012 on the file of the III Court of Small Causes (MACT) Chennai.

For Appellant : Mr.A.A.Venkatesan

For Respondent : Mr.S.Sivakumar

JUDGEMENT

This Civil Miscellaneous Appeal is filed against the judgement and decree, dated 11.10.2014, made in MCOP.No.4523 of 2012 on the file of the III Court of Small Causes (MACT) Chennai, in and by which, a sum of Rs.2,00,000/- was awarded by the Tribunal, as total compensation to the 1st Appellant/1st Petitioner, who is the wife of the deceased, K.Shajahan, who died in a road accident on 30.8.2012.

2. According to the Appellants, on 30.8.2012, when the deceased, K.Shajahan, who was the husband of the 1st Appellant/1st claimant and father of the Appellants 2 to 7/ claimants 2 to 7, was crossing the Parthasarathy Over Bridge, Old Washermanpet,



from South to North direction, the bus, bearing Reg.No.Tn 01 N 5710, belonging to the Respondent Corporation, came in a rash and negligent manner from East to West and hit against the deceased and he succumbed to grievous injuries on 01.09.2012.

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3. The Appellants/ claimants, who are the wife, sons and daughters of the deceased, had filed the claim petition before the Tribunal, claiming a sum of Rs.6,00,000/- as compensation, from the Respondent Corporation.

4. The Respondent/ Corporation had filed a counter before the Tribunal, denying the allegations of the Appellants and stating that there was no negligence on the part of the Respondent Transport Corporation and therefore, the Appellants were not entitled for the compensation as claimed in the claim petition.

5. The Tribunal, considering the evidence of PW.1 and PW.2 and Ex.P1 to Ex.P6, marked on the side of the Appellants/ claimants and also the evidence of RW.1 on the side of the Respondent Corporation, found that the deceased K.Shajahan was taken to the Government Stanely Hospital and he died on 01.09.2012. On the basis of Ex.P4, it was found by the Tribunal that the deceased had sustained injuries on his chest and there was no dispute regarding the death of the deceased due to the injuries sustained in the accident.

6. Further, the Tribunal also found that there was no evidence placed before the Tribunal to show the age of the deceased, but, however, considering the post mortem certificate, the Tribunal had fixed the age of the deceased as 74. The Tribunal had further taken the monthly income of the deceased as Rs.3,000/- p.m. as notional income and adopted the multiplier of 5 for arriving at the compensation. After deducting 1/3rd from the monthly income towards the personal expenses of the deceased, the Tribunal had arrived at the monthly income at Rs.2,000/- and thus, calculated the pecuniary loss at Rs.1,20,000/- (Rs.2000 x 12 x 5).

7. Apart from that, the Tribunal had awarded a sum of Rs.15,000/- towards loss of consortium, a further sum Rs.50,000/- towards loss of love and affection and another sum Rs.15,000/- towards funeral expenses. In all, the Tribunal had awarded a sum of Rs.2,00,000/- with interest at 7.5% p.a. The compensation was directed to be paid to the 1st Appellant/ 1st claimant being the wife of the deceased since the Appellants 2 to 7 / claimants 2 to 7 are not dependent on the award amount. As against the same, this appeal had been filed, seeking



enhancement of compensation.

8. In this appeal also, the Appellants 2 to 7 have not disputed the entire compensation amount being awarded to the 1st Appellant and hence, this appeal is being considered in respect of the 1st Appellant alone.

9. The learned counsel for the Appellants would submit that the monthly income taken by the Tribunal at Rs.2000/- is very meagre. The learned counsel would further submit that the Tribunal ought to have fixed the monthly income of the deceased at Rs.10,000/- as he was assisting in the business of the Petitioners. The learned counsel also disputed the 1/3rd deduction from the monthly income of the deceased and therefore submitted that the entire award passed by the Tribunal is erroneous and to be enhanced.

10. On the other hand, the learned counsel for the Respondent Corporation would vehemently submit that there is no evidence or documents placed before the Tribunal to prove that the deceased K.Shajahan had a monthly income of Rs.10,000/- at the time of the accident. Hence, in the absence of evidence, the Tribunal had rightly fixed the monthly income of the deceased at Rs.3,000/- p.m. as notional income and therefore, there is no error or illegality in the award passed by the Tribunal.

11. This Court carefully considered the submissions of the learned counsel on either side and also perused the materials placed on record.

12. On perusal of the award passed by the Tribunal, the Tribunal had fixed the monthly income of the deceased at Rs.3,000/- in the absence of any documents to show such monthly income before the Tribunal. Further, though there is no evidence to show the age of the deceased, on the basis of Ex.P4, post mortem certificate, the Tribunal had taken the age of the deceased as 74.

13. On perusal of the records, it is further seen that there is no evidence placed before the Tribunal to prove that the Petitioners are running the business as claimed in the claim petition, but there is no dispute that the deceased was assisting the said business and was earning more than Rs.4,000/-



p.m. The said fact is not seriously disputed by the Respondent Corporation. Hence, it is just and proper for this court to fix the monthly income of the deceased at the time of the accident at Rs.4,500/- p.m.

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14. It is the further contention of the Appellants that the 1/3rd deduction had been wrongly applied by the Tribunal and the proper deduction shall be 1/5th. In this regard, it is an admitted fact that the Appellants had jointly filed the claim petition, but the Tribunal had passed the award to the 1st Appellant alone since the other Appellants 2 to 7 did not challenge the order passed by the Tribunal by claiming their rights for entitlement of the compensation amount. Hence, as per the impugned award, the 1st Appellant alone is entitled for the compensation awarded by the Tribunal. Therefore, the Tribunal had rightly applied 1/3rd deduction for arriving at the aforesaid award amount.

15. In view of the above discussions, this Court has calculated and awarded the compensation as follows:-

(a) Taking the monthly income of the deceased at Rs.4,500/- and after deducting 1/3rd towards personal expenses and applying the multiplier of 5, the loss of dependency would come to Rs.1,80,000/- (Rs.3000 x 12 x 5).

(b) In so far as the amount of compensation of Rs.15,000/- awarded towards loss of consortium is concerned, it is enhanced to Rs.20,000/-.

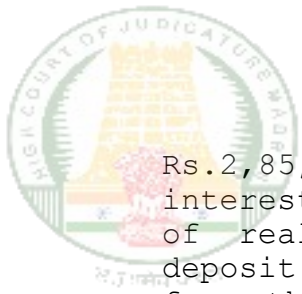
(c) The amounts of compensation of Rs.50,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses awarded by the Tribunal are unaltered and the same are confirmed..

(d) In addition to the above, a further compensation of Rs.20,000/- towards loss of estate is awarded.

(e) In all, a sum of Rs.2,85,000/- is awarded as total compensation to the 1st Appellant.

(f) The total compensation shall carry interest at 7.5% p.a. from the date of the petition till the date of realization.

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the impugned award is modified and enhanced from Rs.2,00,000/- to Rs.2,85,000/- as stated above. The 1st Appellant/1st claimant is entitled to a total compensation of



Rs.2,85,000/- (Rupees two lakhs eighty five thousand only) with interest 7.5% p.a. from the date of the petition till the date of realisation. The Respondent/ Corporation is directed to deposit the enhanced award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the 1st Appellant/1st claimant is entitled to withdraw the entire award amount with interest, by filing appropriate application before the Tribunal for such withdrawal. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Srcm/Kmm

To:

1. The III Court of Small Causes (MACT) Chennai

CMA.No.52 of 2015

RJ(CO)
CS/11/09/18