

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.711 of 2016

1.A.Subaida Begum

2.A.Ayisha Parveen

3.Minor A.Arshiya Parveen

Minor rep. by her mother and
next friend A.Subaida Begum

...

Appellants/Petitioners

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 award dated 08.08.2011 passed in M.C.O.P.No.2238 of 2007 by the Motor Accidents Claims Tribunal (III Small Causes Court), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondent : Mr.S.Sivakumar

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.9,10,145/- awarded by the Tribunal for the death of the deceased Ansar Sheriff in the road accident, the appellants have preferred the present Civil Miscellaneous Appeal seeking enhancement of compensation.

2. The appellants, who are wife and daughters have filed the claim petition claiming compensation of Rs.12,00,000/- for the death of the deceased Ansar Sheriff in the accident occurred on 10.11.2006.

3. I heard Mr.K.Varadhakamaraj, learned counsel for the appellants and Mr.S.Sivakumar, learned counsel for the respondent.

4. The case of the appellants is that on 10.11.2006 at about 7.20 hours, the deceased Ansar Sheriff was riding a TVS Scooty bearing registration No.TN-05 P 1919 at the junction of PEVR Salai and EVK Sampath Salai along with his daughter. At that time, a Metropolitan Transport Corporation bus bearing registration No.TN-02 N 0156 driven by its driver in a rash and negligent manner endangering to public safety hit the deceased vehicle. Due to the impact, the deceased sustained grievous injuries. Immediately, he was admitted in Government General Hospital, Chennai and succumbed to injuries on 14.11.2006. Stating that the accident occurred due to the rash and negligent driving of the driver of the respondent bus, the appellants have filed the above claim petition.

5. It is not necessary for this Court to narrate entire facts in detail qua negligence and liability. It is for the reasons that these things are recorded by the Tribunal that the respondent is liable to pay the compensation to the appellant. Since the aforesaid finding of the Tribunal is based on evidence and also none of these findings are under challenge, this Court is of the considered view that the finding of the Tribunal that the respondent to pay the compensation is confirmed.

6. The only point that arises for consideration in this appeal is whether the appellants are entitled to get enhanced compensation and if so, to what extent.

7. According to the appellants, on 10.11.2006 at about 7.20 hours, the deceased Ansar Sheriff was riding a TVS Scooty bearing registration No.TN-05 P 1919 at the junction of PEVR Salai and EVK Sampath Salai along with his daughter. At that time, a Metropolitan Transport Corporation bus bearing registration No.TN-02 N 0156 driven by its driver in a rash and negligent manner endangering to public safety hit the deceased vehicle. Due to the impact, the deceased sustained grievous injuries. Immediately, he was admitted in Government General Hospital, Chennai and succumbed to injuries on 14.11.2006. At the time of accident, the deceased was aged 50 years and was earning Rs.12,500/- per month by working as Mechanical Fitter in Southern Railway, Chennai. Due to the death of deceased, the entire family suffering lot.

8. The wife of the deceased was examined as P.W.1. Through her Ex.P4-post mortem certificate was marked. To prove the monthly income of the deceased, the appellants have produced Ex.P10-salary slip. In Ex.P10, the date of birth of the

deceased has been mentioned as 21.12.1954. On the basis of Ex.P10, the Tribunal fixed the age of the deceased at 52 years. There was no quarrel over Ex.P10 by the respondent. Therefore, the Tribunal was right in fixing the age of the deceased at 52 years based on Ex.P10.

9. Coming to the monthly income of the deceased, based upon Ex.P10-salary slip, the Tribunal had taken the monthly income of the deceased at Rs.9,352/-. Since the monthly income of the deceased at Rs.9,352/- taken by the Tribunal is based on the documentary evidence, the same is maintained.

10. It is pertinent to note that while determining the loss of dependency, the Tribunal has not given any addition towards future prospects. Admittedly, the deceased was a Railway employee and was working in a permanent job. As per the decision of the Hon'ble Supreme Court in National Insurance Co. Ltd. v. Pranay Sethi, reported in 2017 (2) TN MAC 609 (SC), in case the deceased was between the age of 50 to 60 years, the addition should be 15% towards future prospects. Following the decision of the Hon'ble Supreme Court in Pranay Sethi, supra, if 15% addition is given on the actual salary i.e., Rs.1,402/-, the monthly income of the deceased would come to Rs.10,754/-. Deducting one-third towards personal expenses, the contribution to the family would come to Rs.7,169/- per month, i.e., Rs.86,028/- per annum.

11. As stated supra, at the time of accident, the deceased was aged 52 years. For the age group 51 - 55 years, the multiplier to be adopted is "11". Adopting multiplier "11", the loss of dependency is calculated at Rs.9,46,308/-, rounded off to Rs.9,46,350/-. Thus, a sum of Rs.9,46,350/- is awarded towards loss of dependency, against Rs.8,23,020/- awarded by the Tribunal.

12. As far as the conventional damages are concerned, the Tribunal awarded Rs.10,000/- towards funeral expenses; Rs.25,000/- towards loss of consortium to the first appellant and Rs.25,000/- towards loss of love and affection each to appellants 2 and 3. The Tribunal has not awarded any amount towards loss of estate.

13. In Pranay Sethi, supra, the Hon'ble Supreme Court set out various amounts to be awarded as compensation under the conventional heads in case of death. The relevant portion of the decision reads thus:

"Therefore, we think it seems to fix reasonable sums. It seems to us 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. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years."

14. Following the decision of the Hon'ble Supreme Court in *Pranay Sethi*, supra, Rs.15,000/- is awarded towards loss of estate. Rs.25,000/- awarded by the Tribunal towards loss of consortium is enhanced to Rs.40,000/- to the 1st appellant. Similarly, Rs.10,000/- awarded towards funeral expenses is enhanced to Rs.15,000/-.

15. As stated supra, the Tribunal awarded Rs.50,000/- towards loss of love and affection to the appellants 2 and 3. Since Rs.25,000/- each awarded by the Tribunal towards loss of love and affection is reasonable, the same is maintained.

16. The Tribunal has awarded Rs.2,125/- towards medical expenses. Since Rs.2,125/- awarded by the Tribunal is based on documentary evidence (Ex.P11), the same is maintained.

17. Thus, the total compensation of Rs.9,10,145/- awarded by the Tribunal is enhanced to Rs.10,68,475/- as under:

Heads	Rs.
Loss of dependency	9,46,350.00
Loss of estate	15,000.00
Loss of consortium to 1 st appellant	40,000.00
Loss of funeral expenses	15,000.00
Loss of love and affection to appellants 2 and 3	50,000.00
Medical expenses	2,125.00
Total	10,68,475.00

18. Out of total compensation of Rs.10,68,475/-, the first appellant is entitled to get Rs.4,68,475/- and the appellants 2 and 3 are entitled to get Rs.3,00,000/- each.

19. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of

Rs.9,10,145/- awarded by the Tribunal is enhanced to Rs.10,68,475/- payable with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit. The respondent is directed to deposit the modified amount with interest as aforesaid before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1 and 2 are permitted to withdraw their respective shares along with accrued interest on filing proper application before the Tribunal. As far as third appellant is concerned, she would have attained majority. The third appellant is permitted to withdraw her share along with accrued interest after declaring her as major and discharging guardian.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
III Court of Small Causes,
Chennai.

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

+lcc to Mr.K.Varadha Kamaraj, Advocate sr.no.59069

+lcc to Mr.S.Sivakumar, Advocate sr.no.58643

Civil Miscellaneous Appeal No.711 of 2016

ad(co)
nr 28/02/2019

WEB COPY