

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2290 of 2017

1. Sulochana
2. Selvam

.. Appellants/Claimants

Versus

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Anna Salai,
Chennai -2.

.. Respondent/Defendants

Civil Miscellaneous Appeal filed for enhancement of compensation against the Judgment and decree dated 13.03.2017 in M.C.O.P.No.201 of 2015 on the file of Motor Accident Claims Tribunal, III Additional District Judge, Thiruvallur at Poonamalle.

For Appellants : : Mr.A.N.Viswanatharao

For Respondent : : Mr.S.Siva Kumar

JUDGMENT

The petitioners have filed this appeal for enhancement of compensation against the Judgment and decree dated 13.03.2017 in M.C.O.P.No.201 of 2015 on the file of Motor Accident Tribunal, III Additional District Judge, Thiruvallur at Poonamalle.

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

3. The case of the petitioners is that on 29.03.2015 at about 1.30 p.m the deceased S.Karunakaran was riding his motorcycle from Nemam to Thiruvallur, while he was going Ondikuppam near Petrol Bunk, a bus bearing Regn.No.TN-01-N-8987 belonging to the transport corporation came in the same

direction at high speed in a rash and negligent manner and dashed against the deceased who suffered serious head injuries. Subsequently, inspite of treatment the victim died on the date of accident itself. Hence, the petitioners seek Rs.10,00,000/- as compensation.

4. On the other hand, opposing the petition the respondent transport corporation contends that the driver was driving the bus at minimum speed and the deceased who was riding motorcycle tried to overtake the respondent's bus without noticing the tractor was standing on the left side of the road and when he tried to go in between the bus and the tractor, he lost control and fell down and suffered fatal injuries. Thus, the deceased alone is stated to be responsible for the accident. Hence the respondent seeks dismissal of the petition.

5. The petitioners examined P.W.1 and P.W.2 and produced Ex.P.1 to Ex.P.15 before the Tribunal to prove their claim. On the other hand, the respondent examined the driver of the vehicle as R.W.1 but no document was produced.

6. The Trial Court on the basis of Ex.P.1 FIR and Ex.P.8 Charge sheet and evidence of P.W.2 the eyewitness of the occurrence concluded that the driver of the bus alone is responsible for the accident. The said finding of the Tribunal is not challenged before this court. Hence, the said conclusion has to be upheld.

7. The petitioners state that the deceased was studying second year of BA degree course and he was aged about 20 years. It is evident from Ex.P.6 Death Certificate, Ex.P.7 Postmortem Certificate and Ex.P.12 Birth

Certificate of the deceased person that he was aged about 19 years at the time of his death. It is evident from Ex.P.9 S.S.L.C Mark List and Ex.P.11 Identity card issued by the college the deceased was doing well in his studies. The Tribunal fixed the notional income of the deceased as Rs.5,000/- per month after and deducted 1/3rd amount of Rs.1,665/- towards personal expenses and the loss of income comes to Rs.3,335/- per month and as per the age of the mother of the deceased, multiplier 16 is adopted. Accordingly, the loss of income is calculated as follows:- $\text{Rs.3,335/-} \times 12 \times 16 = \text{Rs.6,40,320/-}$. The details of the compensation awarded by the Tribunal is as follows:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of pecuniary benefits to the dependants of the deceased (Rs.3,335/- x 12 x 16)	Rs.6,40,320/-
2	Love and Affection, Pain and suffering	Rs.1,00,000/-
3	Funeral expenses	Rs.25,000/-
	Total	Rs.8,65,320/-

However, the learned counsel for the petitioners stated that the income fixed by the Tribunal is very low and the same should be fixed at Rs.10,000/- p.m. Considering the fact that the petitioner was doing degree course and age factor it will be appropriate to fix his monthly income at Rs.8,000/- per month. The deceased being 19 years old, towards Future Prospects, 40% of the amount is to be taken into consideration, the loss of earning will be as follows Rs.8,000/- (+) 40% of Future Prospects = Rs.11,200/-. Being a bachelor, 50% of the same has to be deducted towards personal expenses and thus the loss of earning per month will come to Rs.5,600/- The correct multiplier to be applied is 18 and pecuniary loss caused due to the death of the deceased is calculated as Rs.5,600/- x 12 x 18 = Rs.12,09,600/-. 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 estate and funeral expenses, this Court is inclined to modify the compensation as under:-

Loss of Estate = Rs.15,000/-

Funeral Expenses = Rs.15,000/-

Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Pecuniary Loss	Rs.6,40,320/-	Rs.12,09,600/-
2	Love and Affection and Pain and Suffering	Rs.2,00,000/-	
3	Loss of Estate	...	Rs.15,000/-
4	Funeral Expenses	Rs.25,000/-	Rs.15,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
	Total	Rs.8,65,320/-	Rs.12,39,600/- the same is rounded to Rs.12,40,000/-

The award granted by the Tribunal is enhanced to Rs.12,40,000/- from Rs.8,65,320/-.

8. In the result, this appeal is partly allowed and award passed by the Tribunal is modified and enhanced as shown above. The respondent/transport corporation is directed to deposit the award amount with 7.5% from the date of petition till the date of deposit with costs within a period of six weeks from the date of receipt of a copy of this order less the amount, if already deposited. The petitioners are entitled to 50% each of the enhanced award amount. The petitioners/claimants are permitted to withdraw the entire award amount with proportionate interest and costs by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-ii)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
III Additional District Judge,
Thiruvallur at Poonamalle

2. The Section Officer, VR Section,
High Court, Madras. (2 copies)

+4cc to Mr.A.N.VISWANATHA RAW, Advocate, S.R.No. 5559 & 6828

C.M.A.No.2290 of 2017

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TR(06/03/2018)