

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2282 of 2018

1.P.Lakshmi

2.M.Parthasarathy

.. Appellants

Vs.

Metropolitan Transport Corporation Ltd.,
Rep. By its Managing Director,
Pallavan House,
Chennai 600 002.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 06.12.2017 made in M.C.O.P.No.2441 of 2011, on the file of V Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.V.Chandrakanthan
For Respondent : Mr.S.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the award dated 06.12.2017 made in M.C.O.P.No.2441 of 2011, on the file of V Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

2.The appellants are the claimants in M.C.O.P.No.2441 of 2011, on the file of V Judge, Small Causes Court, (Motor Accidents Claims Tribunal), Chennai. They filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of their son, P.Dillibabu, who died in the accident that took place on 24.08.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, came to the conclusion that both the deceased and driver as well as conductor of the bus belonging to the respondent-Transport Corporation, contributed negligence and fixed 50% on the part of the deceased and 50% on the part of the driver and conductor of the bus and directed the respondent to

pay Rs.2,44,000/- (50% on Rs.4,88,000/-, award amount) as compensation to the claimants.

4.The appellants have come out with the present appeal, challenging the portion of the award fixing 50% negligence on part of the deceased and for enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in fixing 50% contributory negligence on the part of the deceased. P.W.2, eye-witness has deposed that due to the rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation, the deceased who was standing on the foot board fell down and sustained injuries and died. The Tribunal erroneously fixed 50% contributory negligence based on the false evidence of R.W.1, conductor of the bus. The Tribunal ought to have fixed the entire negligence on the part of the conductor and driver of the bus. The learned counsel for the appellants further contended that the Tribunal erred in fixing notional income of the deceased minor at Rs.2,500/- per month. The Tribunal ought to have awarded 50% enhancement for future prospects, instead of 40%. The Tribunal ought to have awarded Rs.3,00,000/- for loss of love and affection, Rs.50,000/- for funeral expenses and Rs.1,50,000/- for pain and suffering and more compensation under different heads and prayed for setting aside the portion of the award fixing 50% contributory negligence on the deceased and for enhancement of compensation.

6.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the accident occurred only due to the negligence on the part of the deceased. The deceased was hanging on the back side of the foot board of the bus along with some others. They did not get into the bus inspite of the driver and conductor asking them to get into the bus. Thus, the deceased only is responsible for the accident. The Tribunal ought to have fixed the entire negligence on the part of the deceased and contended that the amounts awarded by the Tribunal is not meager and prayed for dismissal of the appeal.

7.Heard the learned counsel for the appellants as well as the learned counsel appearing for the respondent and perused the materials on record.

8.From the materials on record, it is seen that admittedly the deceased was standing in the foot board of the bus. R.W.1 has stated that the deceased and others did not get into the bus even after being asked by the driver and himself. From the FIR and evidence of P.W.2 and R.W.1, it is evident that the deceased was not inside the bus, but was on the back side of the bus on foot board. It is the deposition of P.W.2 that the bus was over

crowded and there was no place inside the bus. Considering all the materials on record in entirety, the Tribunal has held that the deceased also contributed negligence for the accident. There is no error in the said reasoning of the Tribunal warranting interference.

9.As far as the quantum of compensation is concerned, the Tribunal has fixed the notional income of the deceased at Rs.2,500/- per month, amounting to Rs.30,000/- per year. Considering the increase in cost of living, the said amount is liable to be enhanced and the same is enhanced to Rs.45,000/- per year. Adding 40% towards future prospects, the annual income of the deceased would be Rs.63,000/- (Rs.45,000/- + 40% thereof). Deducting 50% towards personal expenses of the deceased, the loss of dependency would amount to Rs.31,500/-. Adopting the multiplier of '18', the total loss of dependency would be Rs.5,67,000/- (Rs.31,500 x 18). The contention of the learned counsel for the appellants that the Tribunal failed to award a sum of Rs.1,50,000/- towards pain and suffering is concerned, since the deceased died on the spot, the question of awarding compensation for pain and suffering does not arise. The amounts awarded by the Tribunal under different heads are not meager and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of pecuniary benefits	3,78,000/-	5,67,000/-	enhanced
2.	Loss of love and affection	80,000/-	80,000/-	confirmed
3.	Loss of estate	15,000/-	15,000/-	confirmed
4.	Funeral expenses	15,000/-	15,000/-	confirmed
	Total	4,88,000/-	6,77,000/-	Enhanced by Rs.1,89,000/-
	Appellants are entitled to 50% on Rs.6,77,000/-			Rs.3,38,500/-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is enhanced to Rs.6,77,000/- with proportionate interest and costs. The

appellants are entitled to Rs.3,38,500/- (50% of the award amount). The respondent-Transport Corporation is directed to deposit the enhanced award amount, with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw their share with accrued interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

gsa

To

1.The V Judge,
Small Causes Court,
(Motor Accidents Claims Tribunal), Chennai.

2.The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House,
Chennai 600 002.

3. The Section Officer
VR Section, High Court, Madras 104

+1 CC to Mr.B.Gopalakrishnan, Advocate sr 79074

+1 CC to Mr.S.Sivakumar, Advocate sr 80243.

+1 CC to Mr.V.Chandrankanthan, Advocate sr 81144.

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CMA.No.2282 of 2018

PP(CO)
SP(11/04/2019)

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