

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2343 of 2018

Smt.Chokkammal

.. Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation
(VPM) Limited, Kancheepuram Region,
Kancheepuram.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 15.09.2016 made in M.A.C.T.O.P.No.688 of 2008 on the file of the Chief Judge, Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chellaraja
for Mr.V.Velu

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 15.09.2016 made in M.A.C.T.O.P.No.688 of 2008 on the file of the learned Chief Judge, Court of Small Causes, Chennai.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellant is claimant in M.C.O.P.No.688 of 2008 on the file of the learned Chief Judge, Court of Small Causes, Chennai. She filed the above claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of his son viz., V.Shankar, who died in the accident that took place on 14.01.2008.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus belonging to the respondent/Transport Corporation and directed the

respondent to pay a sum of Rs.10,52,000/- as compensation to the appellant.

5. Not being satisfied with the award amount granted by the Tribunal, the appellant/claimant has come out with the present appeal for enhancement of compensation.

6. The learned counsel appearing for the appellant/claimant contended that the Tribunal erred in awarding only 50% enhancement for future prospects instead of 100% enhancement. The deceased Shankar was working as a mason and was earning Rs.300/- per day. To prove the income of the deceased, his co-worker viz., Robert Lawser was examined as P.W.3 and he deposed that the deceased was earning Rs.300/- per day. The amount awarded by the Tribunal for loss of love and affection is very low and the same has to be enhanced. The Tribunal has not awarded any amount towards loss of estate. Thus, he prayed for enhancement of compensation.

7. Per contra, the learned counsel appearing for the respondent Transport Corporation contended that as per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) in (National Insurance Company v. Pranay Sethi), the claimant is entitled only 40% enhancement for future prospects and a sum of Rs.70,000/- towards conventional heads. Under the said circumstance, the Tribunal has granted a sum of Rs.80,000/- under the conventional heads and the appellant is not entitled for any enhancement and prayed for dismissal of the appeal.

8. Heard the learned counsel for the appellant as well as the learned counsel for the respondent and perused the materials available on record.

9. The contention of the learned counsel for the appellant is that the deceased was working as a mason and was earning a sum of Rs.300/- per day and the appellant examined P.W.3, who was a co-worker of the deceased. P.W.3 has not stated that all the thirty days, there will be work. The appellant has not let in any evidence to substantiate her case that the deceased was earning a sum of Rs.9,000/- per month except examining P.W.3, who is an interested witness. The Tribunal considering the evidence let in by the appellant and the materials on record, has fixed a sum of Rs.6,000/- per month as the notional income of the deceased and the same is reasonable. The Tribunal has awarded 50% towards future prospects, whereas as per the judgment of the Hon'ble Apex Court relied on by the learned counsel for the respondent, the appellant is entitled only 40% enhancement and a sum of Rs.15,000/- each towards funeral expenses and loss of estate. In the instant case, the deceased was bachelor at the time of death and the Tribunal has rightly deducted 50% towards personal expenses as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme

Court (Sarla Verma vs. Delhi Transport Corporation) and awarded a sum of Rs.9,72,000/- towards loss of pecuniary benefits. The Tribunal further awarded a sum of Rs.50,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.5,000/- towards transportation and the same are excessive. Therefore, the appellant is not entitled to Rs.15,000/- towards loss of estate and the amount of Rs.10,52,000/- awarded by the Tribunal as compensation is hereby confirmed.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed. The respondent Transport Corporation is directed to deposit entire award amount along with accrued interest and costs, less the amount deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the entire award amount, less the amount, if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

krk/kj

To

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

2. The Record Keeper,
VR Section,
High Court, Madras.

+1cc to Mr.V.Velu, Advocate sr.no.77574
+1cc to Mr.K.J.Sivakumar, Advocate sr.no.77976

C.M.A.No.2343 of 2018

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nr 30/01/2019