IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2601 of 2018

Pappa .. Appellant

Vs.

1.Saravanan

2.The Manager,
Tamilnadu Transport Corporation,
Ramakrishna Road, Salem -7,
Salem District. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 24.07.2018 made in M.C.O.P.No.93 of 2015, on the file of Sub Court, Mettur.

For Appellant : Mr.Yuvaraj S.P.
For R2 : Mr.D.Venkatachalam

J U D G M E N T

This Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the award dated 24.07.2018 made in M.C.O.P.No.93 of 2015, on the file of Sub Court, Mettur.

2.Mr.D.Venkatachalam, learned counsel takes notice for the second respondent/Transport Corporation and by consent of both the parties, this appeal is taken up for final disposal at the admission stage itself.

3.The appellant is claimant in M.C.O.P.No.93 of 2015, on the file of Sub Court, Mettur. She filed the said claim petition claiming a sum of Rs.14,00,000/- (amended vide Court order dated 25.10.2018 made in C.M.P.No.18742 of 2018 in C.M.A.SR.No.112404 of 2018) as compensation for the death of her son Kumar @ Veeramuthu, who died in the accident that took place on 02.08.2015.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident took place only due to the rash and negligent driving by the driver of the bus belonging to the second respondent/Transport Corporation and directed the second respondent to pay a sum of Rs.5,63,000/- as compensation to the appellant.

5.Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of the same.

6.The learned counsel appearing for the appellant contended that the deceased was aged 35 years and was working as a coolie. The Tribunal erred in fixing the notional income of the deceased at Rs.5,500/- per month, which is very low. The Tribunal has not awarded any amount towards future prospects. The mother of the deceased is the claimant, hence the Tribunal ought to have deducted only 1/3rd instead of deducting 50% from his income. The amounts awarded by the Tribunal under different heads are very low and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the second respondent/Transport Corporation contended that the appellant has not proved that the deceased was working as coolie and was earning a sum of Rs.12,000/- per month. The Tribunal in the absence of any evidence, with regard to income of the deceased, fixed Rs.5,500/- as notional income of the deceased, which is proper. The deceased being a bachelor, 50% of his income has to be deducted for his personal expenses. The amounts awarded by the Tribunal under different heads are not meager and prayed for dismissal of the appeal.

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

9.The contention of the learned counsel for the appellant is that the deceased was a coolie and was earning a sum of Rs.12,000/- per month. In absence of any evidence to prove the income, the Tribunal fixed daily wage of coolie at Rs.275/- per day, calculated the income for 20 days, fixed notional income of the deceased at Rs.5,500/- and the same is meager. Thus, the notional income fixed by the Tribunal is enhanced to Rs.300/- per day for 20 days and the same is fixed as Rs.6,000/- per month. The deceased was 35 years at the time of accident. Hence, the appellant is entitled to 40% enhancement for future prospects. The deceased was unmarried at the time of his death and the Tribunal has rightly deducted 50% towards his personal expenses. The contention of the learned counsel appearing for the appellant that the mother being the claimant, only 1/3rd has to be deducted from the income of the deceased, is without merits. The loss of income is modified as follows:

Rs.6,000/- + 2400 (40% X 6000) X 12 X 16 X 1/2 = Rs.8,06,400/-

10.As far as compensation awarded by the Tribunal under conventional heads are concerned, a sum of Rs.25,000/- granted by the Tribunal towards loss of love and affection and a sum of Rs.5,000/- granted by the Tribunal towards funeral expenses are meager and they are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and therefore, a sum of Rs.15,000/- is granted towards loss of estate. The amount awarded by the Tribunal towards transportation is just and reasonable and the same is hereby 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 income	5,28,000	8,06,400	enhanced
2.	Transportation	5,000	5,000	confirmed
3.	Funeral expenses	5,000	15,000	enhanced
4.	Loss of love and affection, mental agony	25,000	40,000	enhanced
5.	Loss of estate	-	15,000	awarded
	Total	5,63,000	8,81,400	Enhanced by Rs.3,18,400/-

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,63,000/- is hereby enhanced to Rs.8,81,400/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Transport Corporation is directed to deposit the enhanced award amount with interest now determined by this Court, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

krk/kj

To

The Subordinate Judge
Mettur.

+1cc to Mr.Yuvaraj S.P. , Advocate SR.No.79263

+1cc to Mr.D.Venkatachalam, Advocate SR.No.79103

CMA.No.2601 of 2018

A.SK(23/01/2019)