IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.03.2019

Pronounced on : 19.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.10 & 11 of 2011

CMA.No.10 of 2011:

1.K.Kumar
2.K.Divya (minor)
3.K.Vidya (minor)
(Minor rep by her father & Next friend the 1st Petitioner)
... Appellants/Petitioners

CMA.No.11 of 2011:

1.K.Kumar
2.K.Divya (minor)
3.K.Vidya (minor)
4.Saroja
5.S.Pattabi Raman (died)
(Minor rep by her father a Next Friend 1st Petitioner) ... Appellants

[5th Appellant died, appellants 1 to 4 are LRs of the deceased, filed a Memo dt.27.09.2018 vide Court order dt.28.09.2018 in CMP.17336 of 2018 in CMA.No.11 of 2011]

Versus

Tamil Nadu State Transport Corporation [Division - I], Ltd.,
rep.by its Managing Director,
Villupuram District. ... Respondent /Respondent
(in both CMA's)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.07.2010 made in MACT.O.P.No.190 & 337 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.R.Kalai Arasan

For Respondent : Mr.K.J.Sivakumar

JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellants/claimants challenging the common award dated 30.07.2010 made in MACT.O.P.No.190 & 337 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai and seeks for enhancement of the compensation amount.

2.The appellants in CMA.No.10 of 2011 are the Claimants 1 to 3 in MCOP.No.190 of 2007 and the appellants in CMA.No.11 of 2011 are the Claimants 1 to 5 in MCOP.No.337 of 2007. During the pendency of the present appeal, the fifth respondent in CMA No. 11 of 2011 namely S.Patabiraman died on 16.06.2018, leaving behind the remaining four appellants as his legal heirs. To that effect, a memo was filed along with death certificate of the deceased and it was recorded by an earlier order dated 27.09.2018, by this Court.

3.It is the case of the appellants/claimants in CMA.Nos.10&11 of 2011 that on 30.12.2006 at 11.15 hours, Ms. Vishnu Gandhi was riding TVS Scooty TN-22-F-0533 along with her son Mukilan, who was riding pillion. When the vehicle was proceeding from Adambakkam to R.Venkataraman Nagar, Chennai-83 along the Jawaharlal Nehru (100 feet road) from south to north direction. near Poonamallee Salai, at Ekattuthangal Junction, the Bus bearing Regn. No.TN-32-1974, which was driven by its driver, in a rash and negligent manner came from behind and dashed against the TVS Scooty, due to which, the above said rider and the pillion rider sustained fatal injuries. For the death of Vishnu Gandhi, MCOP.No.190 of 2007 was filed by the father and sisters of the deceased one Mukilan and MCOP.No.337 of 2007 was filed by the husband, children and parents of the deceased one Vishnu Gandhi. The fourth and fifth claimants are dependents of the deceased in this claim petition. Therefore, the claimants preferred two claim petitions in MCOP.Nos.190 & 337 of 2007 before the Tribunal, claiming a sum of Rs.7,00,000/- and Rs.14,00,000/- respectively as compensation.

4.The learned counsel appearing for the Transport corporation, opposed the claim petitions of the claimants by filing a separate counter affidavit contending that the accident had occurred only due to the reckless riding of the rider of the TVS Scooty. Further, he submitted that at the time of accident three persons were travelling in that two wheeler, which is a violation of policy condition. Hence, the Transport corporation is not liable to pay compensation to the victims.

5.A Joint trial was conducted and common evidence was recorded by the Tribunal in MCOP.Nos.190 & 337 of 2007. In order to prove their case, the first claimant examined himself as P.W.1 besides one eye witness was examined as P.W.2 and 12 documents were marked as Ex's.P1 to P12 among them Ex.P1 is the First Information Report, Ex.P2 is the sketch drawn by the traffic investigation wing and Ex.P3 is the Death certificate of deceased Mukilan and Ex.P4 is the Post mortem certificate of Mukilan. On the respondents side, the driver of the Transport corporation was examined as RW.1 but no document was marked.

6.After analyzing the oral and documentary evidences the Tribunal has passed a common award awarding a sum of Rs.1,30,000/- in MCOP.No.190 of 2007 and a sum of Rs.7,90,000/- in MCOP.No.337 of 2007 respectively as total compensation under various heads to the claimants. Not being satisfied with the quantum of compensation awarded towards the death of his son and wife, the appellants/claimants have come forward with the present appeal seeking enhancement of compensation.

CMA No. 10 of 2011 (MACTOP No. 190 of 2007)

7.The learned counsel for the appellant contended that the deceased in MCOP.No.190 of 2007 was aged 9 years, studying in V standard at M/s.G.K.Shetty Hindu Vidyalaya, Adambakkam. Taking note of age of the deceased Mukilan on the date of accident, the Tribunal ought to have awarded appropriate amount as compensation, but what was awarded is meager and not in consonance with the decision of this Court rendered in the case of G.Sumathy Vs. K.Anbazhagan reported in 2018 (2) TN MAC 238. In the saiid decision, this Court, following the decision of the Honourable Apex Court concluded that the notional income of the minor boy aged 6 years shall be fixed at Rs.40,000/- per annum. Further, in the said Judgment, by applying multiplier 16, this Court enhanced the total amount of compensation awarded by the Tribunal from Rs.1,70,000/- to Rs.7,20,000/-. But in the present case, the Tribunal without taking note of the above decision rendered by this Court, has awarded only a lumpsum compensation of Rs.1,30,000/- which is not proper.

8.Considering the aforesaid decision of this Court, this Court fix the annual notional income of the minor deceased Mukilan at Rs.40,000/- and by adopting multiplier 16, a sum of Rs.6,40,000/- shall be awarded as compensation. Further, this Court is inclined to award compensation under the heads love and affection in a sum of Rs.25,000/- for three claimants, funeral expenses in a sum of Rs.15,000/-, Loss of estate of Rs.15,000/-. Hence, the award of the Tribunal at Rs.1,30,000/- is enhanced and modified to Rs.7,45,000/-, the break-up details of the award amount in MCOP.No.190 of 2007 in CMA.No.10 of 2011 is as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Lumpsum award	Rs.1,30,000/-	-
Pecuniary loss to family	-	Rs.6,40,000/-
Love and affection for each (Rs.25,000/- x 3)	-	Rs.75,000/-
Funeral expenses	-	Rs.15,000/-
Loss of Estate	-	Rs.15,000/-
Total	Rs.1,30,000/-	Rs.7,45,000/-

CMA No. 11 of 2007 (MACTOP No. 337 of 2007)

9.The deceased in MCOP.No.337 of 2007 was aged 33 years and she was running a beauty Parlour and creche under the name and style of M/s. Jupitor Beauty Clinic, Adambakkam, Chennai, in which, she was earning a sum of Rs.10,000/- per month. In order to prove her avocation, Ex.P10, copy of SSI Registration Certificate was produced before the Tribunal besides Ex.P12/Diploma certificate was also produced. But, the Tribunal taking her notion income as Rs.6000/- per month arrived at a sum of Rs.72,000/- per annum as her income. After deducting 1/3 rd of income towards personal and living expenses, the annual actual loss of income was fixed at Rs.48,000/- and by adopting multiplier 16, a sum of Rs.7,68,000/- was awarded towards loss of income. For loss of consortium to the first claimant a sum of Rs.10,000/- was awarded. For loss of love and affection a sum of Rs.10,000/- and Rs.2,000/- for funeral expenses and transportation were awarded. Thus, a total sum of Rs.7,90,000/- was awarded as compensation to the claimant. This compensation awarded by the Tribunal, according to the counsel for the appellant is meager and required to be enhanced. According to the counsel for the appellant, the Tribunal did not consider the future prospects of the deceased in MCOP.No.337 of 2007, especially when she was self-employed and there are lot of prospects for her to earn in future.

10.I find force in such submission of the counsel for the appellant. It was established that the deceased was self-employed and there is scope for the deceased to earn substantially had she been alive. Therefore, the Tribunal ought to have awarded some amount towards future prospects, but it was not awarded. Even if the amount of Rs.6,000/- is taken as the monthly income of the deceased, if 40% of the amount is awarded, the monthly income of the deceased can be fixed at Rs.8,400/- (Rs.6000 + 2400). Out of the sum of Rs.8,400/- 1/4th amount shall be deducted towards personal income of the deceased instead of 1/3rd amount deducted by the Tribunal. By applying multiplier, a sum of Rs.12,09,600/- (6000 + 2400 x 1/4 x 12 x 16) shall be awarded towards loss of income of the deceased, which would be the just and fair compensation amount.

11.Under the head of Love and affection a sum of Rs.10,000/- was awarded by the Tribunal. Taking into account the young age at which the deceased died leaving behind the claimants, the award under the head Loss of Love and Affection is hereby enhanced to Rs.5,000/- to each claimants. Taking into consideration of the death of two persons, the funeral expenses awarded by the Tribunal is very minimal and the same is hereby enhanced to Rs.15,000/-. The Tribunal did not award any amount under the head loss of estate, which is awarded at Rs.15,000/-. Consequently, the total compensation amount of Rs.7,90,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.13,94,600/-, the break up details of the enhanced compensation amount are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of income	Rs.7,68,000/-	Rs. 12,09,600/-
Loss of consortium	Rs.10,000/-	Rs.30,000/-
Love and affection for each (Rs.25,000/- x 5)	Rs.10,000/-	Rs.1,25,000/-
Funeral expenses & Transportation	Rs.2,000/-	Rs.15,000/-
Loss of estate	-	Rs.15,000/-
	Rs.7,90,000/-	Rs.13,94,600/-

12.In the result, the Civil Miscellaneous Appeals are allowed and the compensation amounts of Rs.1,30,000/- and Rs.7,90,000/- awarded in MCOP.Nos.190 & 337 of 2007 respectively, awarded by the Tribunal are hereby enhanced to Rs.7,45,000/- and Rs.13,94,600/- respectively, with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. The Transport corporation/respondent is directed to deposit the enhanced award amounts along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the appellants/claimants are permitted to withdraw the amount along with interest and costs, after adjusting the amount if any, already withdrawn. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

klt
To

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

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to M/S.N.M.Muthurajan, Advocate Sr.25757

CMA.Nos.10 & 11 of 2011

cnr[co]
srg 28/05/2019