

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1224 of 2011

1.P.L.Rajeswari
2. R.Loganathan

.. Appellants/Petitioners

Vs.

Metropolitan Transport Corporation
[Chennai Division] Ltd.,
rep. by its Managing Director,
Pallavan Salai,
Chennai - 600 002. .. Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 03.11.2010 made in MACT.O.P.No.1503 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accident Claims Tribunal) Chennai.

For Appellants : Mr.Kalai Arasan

For Respondent : Mr.S.Sivakumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree 03.11.2010 made in MACT.O.P.No.1503 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

2. The parents of the deceased L.Sundharrajan have filed this appeal claiming enhancement of compensation awarded by the Tribunal, on being not satisfied with the award passed in MACT.O.P.No.1503 of 2007.

3. During the pendency of the present appeal, the second appellant in CMA No. 1224 of 2011 namely R.Loganathan died on 05.01.2018, leaving behind the first appellant namely P.L.Rajeswari as his only legal heir. To that effect, a memo was filed along with death certificate of the deceased, which was recorded by this Court on 04.12.2018.

4. The appellants herein have preferred the claim petition before the Tribunal alleging that on 24.03.2007 at about 22.15 hours, the deceased was crossing GST Road, at Pedestrian Cross beneath MIT over bridge, Chrompet, in West to East direction. At that time, the Bus TN-01-N-4249 which was driven in a rash and negligent manner came along GST Road, in south to north direction and hit against the pedestrian in which he died on the spot. The accident is solely due to the rash and negligent driving of the driver of the Bus bearing registration No.TN-021-N-4249. The deceased was aged 34 years and he was working as Associate Consultant in M/s.Wipro Technologies, Sozhinganallur and was earning Rs.37,500/- per month. The petitioners are the parents of the deceased and they claim a compensation of Rs.40,00,000/- from the respondent.

5. Before the Tribunal, the claimants examined P.W.1 to P.W.3 on their side and Exhibits P1 to P17 were marked. On the side of the respondent, the driver of the vehicle was examined as R.W.1 and no documents were marked on their side.

6. On the side of the claimants have examined one P.W.2 Ashok Kumar as eye-witness to the occurrence and also marked Ex.P1 F.I.R., Ex.P2 Sketch, Ex.P3 Death Report, Ex.P4 Post mortem report, Ex.P10 identity card of P.W.2. On perusal of the oral evidence of P.W.2 it reveals that the accident has occurred due to the rash and negligent driving of the driver of the respondent bus as described in the petition. Further, criminal case is also registered against the bus driver.

7. On perusal of the averments in the F.I.R, Ex.P2 Sketch reveals that the accident occurred only due to rash and negligent driving of the respondent's bus. R.W.1 driver of the respondent's bus has admitted that the criminal case has been filed as against him and it is pending before the Magistrate Court. Further, he admitted that he saw the deceased 50 feet before. He attempted to stop the vehicle, but unfortunately, the accident has happened. From the reading of the above said evidence of R.W.1 also reveals that the accident occurred only due to rash and negligent driving of the respondent bus driver.

8. Accordingly, based upon the oral and documentary evidences the Tribunal has fixed the responsibility on the part of the respondent's bus driver. Hence, the Tribunal finds that the accident taken place due to rash and negligent driving by the driver of the respondent is hereby confirmed.

9. Heard both sides and perused the materials available on record.

10. It is seen from the records based upon Ex.P5 Birth certificate, in which the date of birth of the deceased is mentioned as 19.11.1972. As such, the deceased was aged 35 years at the time of the accident. As per Ex.P16 the deceased was working at Wipro Technologies as Associate Consultant and earned Rs.33,334/- per month and Ex.P7 is the Bank Statement. P.W.3 one T.K.Lakshmanan, who is working as Manager in Wipro Technologies, the employer of the deceased deposed the salary particulars of the deceased based upon Ex.P16.

11. The monthly income fixed by the Tribunal is at Rs.33,334/- i.e., and the annual income comes to Rs.4,00,008/-, rounded off to Rs.4,00,000/- [Rs.33,334 x 12]. The Tribunal has not awarded any amount towards future prospects and hence as per the Judgment of the Honourable Supreme Court case of (National Insurance Company Limited Vs. Pranay Sethi), reported in 2017-13 SCALE 12, the deceased is entitled to 40% towards future prospects. After deducting 40% towards future prospects, the annual income comes to Rs.5,60,000/- [400000 x 40/100]. After deducting 20%, i.e., Rs.1,12,000/- [5,60,000 x 20/100] towards income tax, the annual income comes to Rs.4,48,000/-. Considering the age of the deceased, '16' multiplier is adopted and hence the amount comes to Rs.71,68,000/- [4,48,000 x 16]. Since the deceased died as a bachelor, 50%, i.e., Rs.35,84,000/- (71,68,000 x 50/100) is deducted towards his personal expenses. Accordingly a sum of Rs.35,84,000/- is fixed as loss of income. The amount awarded by the Tribunal towards loss of love and affection is meager and the same is enhanced to Rs.20,000/-, a sum of Rs.10,000/- awarded towards funeral expenses is enhanced to Rs.15,000/-. The tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is awarded under this head. Thus, the compensation awarded by the Tribunal is modified as follows:-

Heads under which the amount is awarded	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of Income	Rs.17,60,000/-	Rs.35,84,000/-
Loss of estate	--	Rs.15,000/-
Loss of love and affection	Rs.10,000/-	Rs.20,000/-
Funeral Expenses	Rs.10,000/-	Rs.15,000/-
Total	Rs.17,80,000/-	Rs.36,34,000/-

12.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,80,000/- is hereby enhanced to Rs.36,34,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant is directed to pay necessary Court fee if any, on the enhanced compensation. The respondent/ Transport Corporation is directed to deposit the enhanced award amount along 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 judgment. On such deposit, the appellant/claimant is permitted to withdraw the amount along with interest and costs, after adjusting the amount if any already withdrawn. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Chief Judge,
The Motor Accident Claims Tribunal,
Small Causes Court, Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to M/s.R.Kalai Arasan, Advocate, Sr.No. 23097
+1 cc to M/s.S.Sivakumar, Advocate, Sr.No. 23382

CSL/04.07.2019

सत्यमेव जयते C.M.A.No.1224 of 2011

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