

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2254 of 2015

1.K.Rajeswari
2.K.Mary
3.David
4.Selvi
5.Manju

.. Appellants/Claimants

Vs.

The Managing Director
Metropolitan Transport Corporation Limited
Pallavan house
Anna salai, Chennai-600 002. .. Respondent/ Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.11.2012 made in M.C.O.P.No.3693 of 2009 on the file of Motor Accident Claims Tribunal, XVII Additional District and Sessions Court, Chennai.

For Appellants : Mr.F.Terry Chellaraja

For Respondent : Mr.S.S.Swaminathan

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 28.11.2012 made in M.C.O.P.No.3693 of 2009 on the file of Motor Accident Claims Tribunal, XVII Additional District and Sessions Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.3693 of 2009 on the file of Motor Accident Claims Tribunal, XVII Additional District and Sessions Court, Chennai. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of one S.M.Kumar, who died in the accident that took place on 27.04.2004.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to 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.4,19,400/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellants/claimants contended that the deceased was running tiffin centre and was earning Rs.500/- per day. The Tribunal erred in fixing only a sum of Rs.3,600/- per month as notional income of the deceased. The deceased was aged 45 years and no enhancement was granted by the Tribunal towards future prospects. Due to the accident, the deceased sustained crush injury and his left leg was amputated and he died three months after the accident. The Tribunal has not awarded any amount towards medical expenses. The Tribunal ought to have awarded compensation towards loss of estate and mental agony. The total amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that in the absence of any material with regard to income of the deceased, the notional income fixed by the Tribunal is not meagre. The Tribunal after considering the materials available on record, has awarded compensation, which is not meagre. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent/Transport Corporation and perused all the materials available on record.

8.From the materials available on record, it is seen that the appellants have contended that the deceased was aged 45 years at the time of accident and was earning a sum of Rs.500/- per day by running a tiffin centre. In the absence of any evidence to prove the income of the deceased, the Tribunal has fixed a sum of Rs.3,600/- per month as notional income of the deceased. The accident is of the year 2004 and the notional income fixed by the Tribunal is meagre. A sum of Rs.4,500/- per month is fixed as notional income of the deceased. According to the appellants, the deceased was aged 45 years at the time of

accident. As per Ex.P2/Accident Register copy and Ex.P3/discharge summary, age of the deceased was mentioned as 40 years. In the claim petition, age of the appellants 1 and 4, who are wife and daughter of the deceased, were mentioned as 42 and 22 years respectively. As per Ex.P7/legal heir certificate, age of the 1st appellant was mentioned as 49 years. The accident occurred in the year 2004. Therefore, the Tribunal held that the age of the 1st appellant given in the claim petition cannot be true. In the absence of any evidence to prove the age of the deceased, the Tribunal has fixed age of the deceased as 55 years and applied multiplier 11 by considering Ex.P5/photos of the deceased produced by the appellants. The Tribunal has not awarded any enhancement towards future prospects. The deceased was aged 55 years and the appellants are entitled to 10% enhancement towards future prospects. After deducting 1/4th towards personal expenses, loss of income awarded by the Tribunal is modified to Rs.4,90,050/- (Rs.4,500/- + 450 (Rs.4,500/- X 10%) X 12 X 11 X 3/4). According to the appellants, due to crush injury, the left leg of the deceased was amputated. To prove the same, the appellants have not produced any medical documents. A sum of Rs.5,000/- and Rs.15,000/- awarded by the Tribunal towards funeral expenses and loss of consortium are meagre and the same are enhanced to Rs.15,000/- and Rs.40,000/- respectively. The Tribunal has not awarded any amount towards loss of estate and this Court awards a sum of Rs.15,000/- towards loss of estate. The amounts awarded by the Tribunal under all the other heads are just and reasonable and the same are 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 or reduced
1.	Loss of income	3,56,400	4,90,050	Enhanced
2.	Funeral expenses	5,000	15,000	Enhanced
3.	Loss of love and affection	40,000	40,000	Confirmed
4.	Transportation	3,000	3,000	Confirmed
5.	Loss of consortium	15,000	40,000	Enhanced

6.	Loss of estate	-	15,000	Granted
	Total	4,19,400	6,03,050	Enhanced by Rs.1,83,650/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,19,400/- is hereby enhanced to Rs.6,03,050/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellants/claimants shall not be entitled for any interest for the delay period on the amount of Rs.1,83,650/- enhanced by this Court as per the order of this Court dated 22.09.2015 in M.P.No.1 of 2015 in C.M.A.SR.No.87056 of 2014. The 1st appellant being wife of the deceased is entitled to a sum of Rs.2,56,130/- and the appellants 2 to 5, daughters and son of the deceased are entitled to a sum of Rs.86,730/- each as compensation. The respondent/Transport Corporation is directed to deposit the enhanced award amount now determined by this Court 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 appellants/claimants are permitted to withdraw their respective share of the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.XVII Judge

The Motor Accident Claims Tribunal

The Additional District and Sessions Court

Chennai.

2.The Section Officer

V.R.Section,High Court, Chennai.

+1cc to M/s.M.Malar , Advocate SR.No. 101895

+1cc to Mr.S.S.Swaminathan , Advocate SR.No. 101517

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VBA CO

A.SK(24/07/2020)