

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.3362 of 2011 and
Cross Objection No. 196 of 2011 and
M.P.No.1 of 2011

Metropolitan Transport Corporation Ltd.,
Rep. by it Managing Director,
No.2, Pallavan Salai,
Chennai - 600 002.

...Appellant/Respondent

Vs.

1.Z.Rekha @ Reshma Begum
2.Minor.Z.Syed Akhil
(Minor rep. by his mother & natural guardian
Z.Rekha Cross Objection)
3.Mahaboob Begum
4.Syed Mazoor

... Respondents/Petitioners

Cross Obj.No.196 of 2011:

1.Z.Rekha @ Reshma Begum
2.Minor Z.Syed Akhil
(Minor rep by his Mother and natural Guardian Z.Rekha)
3.Momaboob Begum
4.Syed Mazoor

...Cross Objectors/Respondents

vs

Metropolitan Transport Corporation Ltd.,
Rep by its Managing Director,
No.2, Pallavan Salai-600.

... Respondent/Appellant

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 31.08.2010 in M.C.O.P.No. 1778 of 2007, on the file of the Chief Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.S.S.Swaminathan

For Respondents : Mr.Mohan Chowdry

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Metropolitan Transport Corporation, challenging, the Judgment and decree passed in M.C.O.P.No. 1778 of 2007, on the file of the Chief Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai. The respondents/claimants have filed Cross Objection seeking enhancement of compensation.

2. The brief case of the respondents/claimants is as follows:

(i) The deceased was aged 28 years on the date of the accident and was working as Office Assistant in Land Mark Dubai U.A.E, earning a sum of Rs.2050/- Dirhams (Rs.25,000/- per month in I.N.R). The claimants are the wife, son and parents of the deceased.

Being facts:

(ii) Brief facts: On 27.01.2007, at about 14.45 hours, when the deceased was travelling as a pillion rider in the motorcycle bearing Registration No. TN 05 M 5641, which was proceeding slowly and cautiously in Perambur Barracks road from north to south, the respondent's bus bearing Registration No. TN 01 N 3749, came rashly and negligently, in the said road, from opposite direction, on wrong side and hit against the said motorcycle, due to which, the deceased sustained multiple injuries and later succumbed to the same. According to the respondents/claimants, the rash and negligent driving of the driver of the said bus was the cause of the accident, and that, since, the said bus belonged to the present appellant, Metropolitan Transport Corporation, they are liable to pay compensation of Rs.30,00,000/- to the them.

3. The Metropolitan Transport Corporation contested the claim petition. The learned Tribunal, after analysing the evidence on record, awarded a compensation of Rs.13,85,000/- together with interest at the rate of 7.5% per annum to the respondents/claimants. Aggrieved over the quantum of compensation awarded by the Tribunal, the Metropolitan Transport Corporation has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. The learned counsel appearing for the appellant -Transport Corporation contended that there is a contributory

negligence on the part of the driver of the said motorcycle. However, the Insurance Company of the motorcycle is not added as a party. The quantum of salary arrived by the Tribunal is without any basis and hence, seeks to set aside the award passed by the Tribunal.

5. Per contra, the learned counsel appearing for the respondents/claimants would contend that necessary non-conventional heads are not properly awarded and 40% should be added towards future prospects of the deceased as per the decision of the Hon'ble Supreme Court in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601.

6. Taking into consideration all the documentary evidence adduced before the Tribunal, it is seen that, on the side of the respondents/claimants, Mr.Syed Nazheerulla (PW2) was examined as an eye witness to the occurrence and as the rider of the motorcycle. He deposed about the occurrence as stated in the claim petition. Further on the side on the respondents/claimants, FIR (Ex.P1), Plan (Ex.P2) and Post mortem certificate (Ex.P5) were marked. In contrary to these exhibits, on the side of the Transport Corporation, Karunakaran (R.W.1), who was the alleged driver of the bus was examined. At the time of cross examination, he deposed that he saw the vehicle coming in front of the bus, at a distance of 5 to 10 feet and the road is straight road for about 1 to 2 furlong. Further, he admitted that he did not see the deceased. He saw only the injured person. Immediately after the accident, the public attempted to assault him, and so, he ran away from the place of occurrence.

7. A perusal of records shows that the accident has taken place only due to the rash and negligent driving of the driver of the Transport Corporation bus and hence, the finding arrived by the Tribunal does not suffer from any irregularity or illegality and does not warrant any interference at this appellate stage.

8. As far as the quantum of compensation is concerned, the learned counsel appearing for the Transport Corporation stated that no acceptable evidence has been produced to prove the employment and the salary of the deceased. Per contra, the learned counsel appearing for the respondents/claimants drew my attention to the Pass port of the deceased (Ex.P6), Employer certificate (Ex.P7) and Bank pass book of Reshma @ Rekha (Ex.P9) and contended that the deceased worked in abroad. After going through the deposition of PW1, Ex.P6, Ex.P7, Ex.P8, it can be concluded that the salary of the deceased was 1700 Dirhams. Accordingly, the Tribunal has fixed Rs.10,000/- per month as the income of the deceased and the same does not warrant any interference. Admittedly, the Tribunal has not awarded any

amount towards future prospects of the deceased. Therefore, considering the age of the deceased, 40% should be added and hence, it would come to Rs.10,000/- + Rs.4,000 (40% of Rs.10,000/-) = Rs.14,000/-. Since there are four legal heirs, 1/4th should be deducted towards the personal expenses of the deceased. The proper multiplier to be adopted in the instant case is 17 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation

Loss of Pecuniary benefits = Rs.14,000/- x 17 x 12 x 1/4 deduction
= Rs.21,42,000/-

9. Apart from the above amount, the first respondent herein, is entitled to a sum of Rs.40,000/- towards 'loss of consortium'. The second respondent herein, who was only 3 months old on the date of the accident is entitled to a sum of Rs.40,000/- towards 'loss of love and affection'. The third and fourth respondents herein, are entitled to a sum of Rs.30,000/- each, towards 'loss of love and affection'. The respondents/claimants are entitled to a sum of Rs. 15,000/- and Rs.15,000/- towards 'loss of estate' and 'funeral expenses' respectively.

10. Accordingly, the award of the Tribunal in M.C.O.P.No. 1778 of 2007 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of pecuniary benefits	Rs.13,60,000/-	Rs.21,42,000/-
2.	Loss of consortium (1 st petitioner)	Rs.10,000/-	Rs.40,000/-
3.	Loss of love and affection (2 nd , 3 rd and 4 th claimant)	Rs.10,000 /-	Rs.1,00,000 /-
4.	Funeral expenses	Rs.5,000/-	Rs.15,000/-
5.	Loss of estate	NIL	Rs.15,000/-
	Total	Rs. 13,85,000/-	Rs.23,12,000/-

Therefore, the quantum of compensation awarded by the Tribunal is enhanced from Rs. 13,85,000/- to Rs.23,12,000/-.

11. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The Cross Objection No. 196 of 2011 is allowed. No costs.

(iii) The quantum of compensation awarded by the Tribunal is enhanced from Rs. 13,85,000/- to Rs.23,12,000/-.

(iv) The respondents/claimants are directed to pay the court fee, if any, and the Registry is directed to draft the decree only after the receipt of court fee.

(v) The present appellant - Metropolitan Transport Corporation is directed to deposit the enhanced compensation i.e., Rs.23,12,000 /- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 1778 of 2007, dated 31.08.2010, on the file of the Chief Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai within a period of twelve weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made by the present appellant, the respondents 1, 3, and 4 herein are at liberty to withdraw the same, as apportioned by the Tribunal, after following due process of law.

(vii) The second respondent herein is a minor, and therefore, his share of compensation amount is ordered to be deposited in any one of the nationalized bank until he attains majority and the first respondent is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minor.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

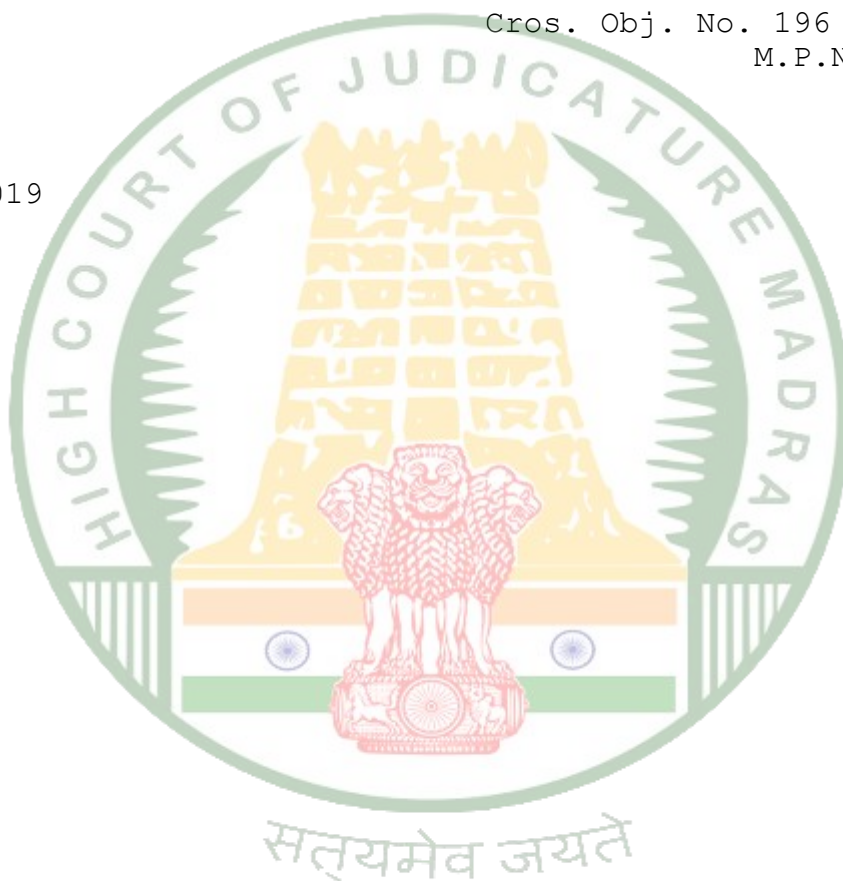
1.The Motor Accidents Claims Tribunal,
The Chief Small Causes Court,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.S.Swaminathan, Advocate Sr.13376
+2cc to Mr.V.Mohan Choudary, Advocate Sr.13303

C.M.A.No.3362 of 2011 and
Cros. Obj. No. 196 of 2011 and
M.P.No.1 of 2011

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srg 8/6/2019



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