

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1686 of 2015

1.B.Avayambal
2.B.Arivazhagan
3.B.Sekar
4.R.Mohana
5.N.Arulmozhi ... Appellants/ Petitioners

Vs.

1.The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai, Chennai - 600 002.

2.Gnanavel ... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2014 made in M.C.O.P.No.3580 of 2012 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellants : Mr.A.Shanmugaraj

R1 : Mr.S.V.Vasanthakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellants/claimants seeking enhancement of compensation granted by the Tribunal in the award dated 30.01.2014 made in M.C.O.P.No.3580 of 2012 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.3580 of 2012 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai. They filed the said claim petition claiming a

sum of Rs.4,00,000/- as compensation for the death of one N.Balan, who died in the accident that took place on 14.07.2011.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the 1st respondent/Transport Corporation and directed the 1st respondent/Transport Corporation to pay a sum of Rs.2,27,000/- as compensation to the appellants.

4.Not being satisfied with the amount 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 contended that the Tribunal failed to consider the evidence of PW3 (Co-worker) of the deceased, who deposed that the deceased was earning a sum of Rs.350/- per day. The Tribunal has failed to consider the judgment of Hon'ble Supreme Court reported in 2013 (2) TNMAC 358 (SC) (Kishan Gopal and another vs. Lala), wherein it has been held that the amount fixed under Section 163A of Motor Vehicles Act was in the year 1994 and subsequently the rupee value has come down drastically from the year 1994 and fixed notional income of non-earning member at Rs.30,000/- instead of Rs.15,000/- per annum. The Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses of the deceased. The 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 1st respondent contended that the appellants failed to prove the avocation and income of the deceased. In the absence of any material, the Tribunal fixed Rs.3,300/- as monthly income of the deceased. The amounts awarded under different heads are excessive 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 1st respondent/Transport Corporation and perused all the materials on record.

8.From the materials available on record, it is seen that the appellants have filed claim petition under Section 163 A of Motor Vehicles Act. In view of the same, the Tribunal has held that the negligence need not be proved by the appellants. The appellants claimed that the deceased was working as a driver and was earning a sum of Rs.5,000/- per month. They have marked driving licence as Ex.P5 to prove the same. Apart from marking driving licence and examining co-worker as PW3 to prove that the deceased was earning a sum of Rs.350/- per day, the appellants

have not produced any documents to substantiate the same. The Tribunal considering the age of the deceased and Ex.P5, fixed notional income of the deceased at Rs.3,300/- per month. There is no error in fixing the monthly income of the deceased at Rs.3,300/- by the Tribunal. As per Section 163 A of Motor Vehicles Act, the persons who are earning a sum of Rs.40,000/- per annum or less, only can file claim petition under Section 163 A of Motor Vehicles Act. The contention of the learned counsel appearing for the appellants that the Tribunal ought to have fixed monthly income of the deceased at Rs.5,000/-, is without any merits, as the appellants have failed to substantiate the said contention. The judgment relied on by learned counsel for appellants is not applicable to the facts of present case as the same relates to a minor, a non earning member. As per Second Schedule of Section 163 A of Motor Vehicles Act, the Tribunal has rightly deducted 1/3rd towards personal expenses from monthly income fixed. As per the Second Schedule, the appellants are entitled to only Rs.5,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate, however, the Tribunal has granted excessive amounts under different heads. In the above circumstances, the appellants are not entitled for any enhancement.

9. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.2,27,000/- awarded by the Tribunal as compensation to the appellants/claimants, along with interest and costs is confirmed. The 1st respondent/Transport Corporation is directed to deposit the 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 appellants and the 2nd respondent are permitted to withdraw their respective share of the award amount, on the basis of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mtl

To

1.The III Judge,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

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

+1cc to Mr.A.Shanmugaraj , Advocate SR.No. 105146

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A.SK(21/09/2020)



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