

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.859 of 2015

1.G.Maragatham
2.K.Gandhinathan

... Appellants/Petitioners

Vs.

The Managing Director,
State Express Transport
Corporation Limited,
Pallavan Salai,
Chennai.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.10.2012 made in M.C.O.P.No.538 of 2010 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

For Appellants : Mr.A.Saravanan

For Respondent : Mr.K.J.Sivakumar
Standing Counsel

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 30.10.2012 made in M.C.O.P.No.538 of 2010 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

2.The appellants are claimants in M.C.O.P.No.538 of 2010 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur. They filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of their son G.Senthilvel, who died in the accident that took place on 04.07.2010.

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 respondent-Transport Corporation bus and directed the respondent to pay a

sum of Rs.6,52,000/- as compensation to the appellants/claimants.

4. Not being satisfied with the award of the Tribunal dated 30.10.2012 made in M.C.O.P.No.538 of 2010, 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 erred in not accepting Ex.P5/salary certificate issued by the employer of the deceased to the effect that the deceased was paid a sum of Rs.7,500/- per month. A sum of Rs.4,500/- fixed by the Tribunal as the notional income of the deceased is very meager. The learned counsel appearing for the appellants further contended that the Tribunal has not awarded any amount towards future prospects and amounts awarded by the Tribunal under different heads are very low and prayed for enhancement of compensation.

6. Per contra Mr.K.J.Sivakumar, learned counsel appearing for the respondent-Transport Corporation contended that the appellant failed to prove the avocation and income of the deceased. The Tribunal has rejected Ex.P5, as no supporting documents were produced by the appellants to prove the same. The notional income fixed by the Tribunal is correct in the absence of any document to prove the income of the deceased. The deceased was a bachelor. The Tribunal ought to have deducted 50% towards personal expenses and the Tribunal erred in deducting 1/3rd towards personal expenses and amounts awarded by the Tribunal are not meager and the appellants are not entitled for any enhancement of the appeal.

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

8. From the materials on record it is seen that the appellants have contended that the deceased was working as salesman in Balaji Agencies, Tiruchi and was earning a sum of Rs.7,500/- per month. They have produced Ex.P5/salary certificate to substantiate their contention. The appellant have not examined the Proprietor of Balaji Agencies and have not produced salary register to support Ex.P5. In view of the same, the Tribunal did not accept Ex.P5 and has fixed notional income of the deceased at Rs.4,500/- per month. The accident occurred only in the year 2010. The deceased was aged about 29 years at the time of the accident. A sum of Rs.4,500/- fixed by the Tribunal as the notional income of the deceased is very low and

a sum of Rs.6,500/- is fixed as the notional income of the deceased. The deceased was aged 29 years as per Ex.P2/postmortem report at the time of the accident. The appellants are entitled to 40% enhancement towards future prospects. The deceased was a bachelor and hence 50% of the income fixed is to be deducted towards personal expenses. The amount awarded by the Tribunal towards loss of income is modified as follows:

i.e., Rs.6,500 + Rs.2600/- (40% of Rs.6,500/-) X 12 X 17 X 1/2 = Rs.9,28,200/-

A sum of Rs.20,000/- awarded by the Tribunal towards loss of love and affection is meager and the same is enhanced to Rs.40,000/-. A sum of Rs.5,000/- awarded by the Tribunal towards funeral expenses is enhanced to Rs.15,000/-, a sum of Rs.10,000/- awarded by the Tribunal towards loss of estate is enhanced to Rs.15,000/-. A sum of Rs.5,000/- awarded by the Tribunal towards transportation is hereby confirmed. Thus, the compensation awarded by the Tribunal is enhanced as follows:

SL No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of Income	6,12,000/-	9,28,200/-	enhanced
2.	Love and Affection	20,000/-	40,000/-	enhanced
3.	Transportatio n	5,000/-	5,000/-	confirmed
5.	Funeral Expenses	5,000/-	15,000/-	enhanced
6.	Loss of Estate	10,000/-	15,000/-	enhanced
	Total	Rs.6,52,000/-	Rs.10,03,200/-	Enhanced by Rs.3,51,200/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,52,000/- is hereby enhanced to Rs.10,03,200/- with interest

at the rate of 7.5% per annum from the date of petition till the date of realization. The respondent/Transport Corporation is permitted 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 enhanced award amount as per the ratio of apportionment fixed by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge,
The Motor Vehicles Accident Claims Tribunal,
Perambalur.

Copy to

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

+lcc to Mr.A.Saravanan, Advocate Sr.6271

+lcc to Mr.K.J.Shivakumar, Advocate Sr.5693

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