

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3477 of 2011

1. Y.Deiva
2. Y.Gabriel

... Appellants/Petitioner

... Vs ...

Metropolitan Transport Corporation Ltd.,
Rep. by Managing Director,
Pallavan Salai,
Chennai - 2.

... Respondent/Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 15.02.2011 made in M.C.O.P.No.2704 of 2007 on the file of the Motor Accidents Claims Tribunal (Chief Judge), Court of Small Causes, Chennai.

For Appellants : Mr.G.Balaji Prasad

For Respondent : Mr.S.V.Vasantha Kumar

JUDGMENT

The claimants have come forward with this appeal for enhancement of the compensation awarded by the Motor Accidents Claims Tribunal (Chief Judge), Court of Small Causes, Chennai, in M.C.O.P.No.2704 of 2007, dated 15.02.2011.

2. The short facts that are essential for the disposal of this appeal is that on 19.06.2007 at about 09.30 hours, the deceased was travelling as a passenger on the front foot board of M.T.C. bus bearing Registration No.TN-01-N-3100 along with other co-passengers and while the said bus was proceeding from north to south on Anna Salai, Chennai, the driver of the said bus drove the same in a rash and negligent manner on the said road in front of Bajaj Electrical Shop very close to the iron post erected on the road without giving sufficient space and as a result of which, the deceased, who was travelling on the front food board collided with the iron post and was thrown out of the

bus causing grievous injuries and later succumbed to the same in the hospital and the accident was due to rash and negligent driving of the driver of the respondent's bus. The deceased was aged 20 years and was working as subordinate staff in Life Insurance Corporation of India, Anna Salai, Chennai and earned Rs.5,000/- per month. The petitioners, who are the parents of the deceased, have filed a claim petition claiming a sum of Rs.8,50,000/- as compensation from the respondent.

3. Before the Tribunal, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and Exs.P.1 to P.5 were marked. The driver of the bus was examined as R.W.1 and no document was marked on the side of the respondent before the Tribunal.

4. The Tribunal, after considering both oral and documentary evidence adduced on either side, has come to a conclusion that the accident has taken place due to the rash and negligent driving of the driver of the respondent-Transport Corporation bus and awarded a sum of Rs.4,20,000/- together with interest at 7.5% per annum from the date of the claim petition till the date of payment. Having not satisfied with the award passed by the learned Chief Judge, (Motor Accidents Claims Tribunal), Court of Small Causes, Chennai, in M.C.O.P.No.2704 of 2007, dated 15.02.2011, the appellants, who are the parents of the deceased, have preferred this appeal before this Court seeking enhancement of compensation.

5. On the point of quantum, this Court has heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the respondent/Transport Corporation.

6. Based upon Ex.P.2-Post mortem Certificate, the age of the deceased was fixed as 20 years and taking into consideration the ratio laid down at the relevant point of time, it appears that the Tribunal has taken the age of the mother for fixing compensation. However, as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), the age of the deceased has to be taken into consideration and accordingly, following the decision of the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation [2009 (2) TN MAC 1 (SC)], multiplier of 18 has to be adopted.

7. It appears from the evidence of P.W.1 that the deceased was working as Assistant in the Life Insurance Corporation of India and received a sum of Rs.5,000/- per month. The Tribunal has fixed the salary of the deceased as Rs.4,500/- per month. Taking note of the salary structure of the employee, this Court

is of the considered view that a sum of Rs.5,000/- may be accepted and also taking note of the fact that at the time of the accident, the deceased was aged 20 years, following the decision of the Pranay Sethi case (cited supra), a sum of Rs.2,000/- towards future prospects has to be added and since the deceased was a bachelor died before marriage, 50% has to be deducted towards his personal expenses. Accordingly, annual dependency is calculated as follows:-

$$\text{Rs.3,500/-} \times 12 \times 18 = \text{Rs.7,56,000/-}.$$

8. The Tribunal has awarded a sum of Rs.10,000/- to the claimants under the head of loss of love and affection and mental agony. This Court is of the view that it is just and necessary to award a sum of Rs.25,000/- to each claimants (totally Rs.50,000/-) under the said head of loss of love and affection and mental agony. Under the head of funeral expenses, the Tribunal has awarded a sum of Rs.5,000/- only and this Court is of considered view that it is just and necessary to award a sum of Rs.15,000/- under the said head. In all, the appellants/claimants are entitled to a sum of Rs.8,21,000/- as total compensation.

9. Accordingly, the award of the Tribunal stands enhanced as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Loss of pecuniary benefit on account of the death of the deceased	Rs.4,05,000/-	Rs.7,56,000/-
2.	Loss of love and affection and Mental Agony to both claimants	Rs. 10,000/-	Rs. 50,000/-
3.	Funeral expenses	Rs. 5,000/-	Rs. 15,000/-
	Total	Rs.4,20,000/-	Rs.8,21,000/-

10. In the result,

I. This Civil Miscellaneous Appeal is partly allowed enhancing the compensation from Rs.4,20,000/- to Rs.8,21,000/- with proportionate costs.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III.The respondent-Transport Corporation is directed to deposit the enhanced amount within a period of twelve weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV.On such deposit being made, the appellants/claimants are permitted to withdraw the entire award amount with proportionate interest, as apportioned by the Tribunal, less the amount already withdrawn, if any,.

V. The appellants/claimants shall pay necessary Court fee, if any, on the enhanced compensation.

VI.No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jr1

To

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

+1cc to Mr.G.Balaji Prasad, Advocate, S.R.No.11092

+1cc to Mr.S.V.Vasanth Kumar, Advocate, S.R.No.10735

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CS/08/08/2019

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