

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2136 of 2018

1.Vijaya
2.Ranganathan

.. Appellants/ Claimants

Vs.

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Villupuram Division III,
Kancheepuram.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.12.2017 and made in M.C.O.P.No.8156 of 2013, on the file of the Motor Accidents Claims Tribunal, the Chief Judge, Court of Small Causes, Chennai.

For Appellants : Mr.K.Suryanarayanan

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the award dated 20.12.2017 and made in M.C.O.P.No.8156 of 2013, on the file of the Motor Accidents Claims Tribunal, the Chief Judge, Court of Small Causes, Chennai.

2.The appellants are claimants in M.C.O.P.No.8156 of 2013, on the file of the Motor Accidents Claims Tribunal, the Chief Judge, Court of Small Causes, Chennai. They filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of one Vignesh Kumar, who died in the accident that took place on 30.09.2013. The Tribunal considering the pleadings, oral and documentary evidence, held that the driver of the bus and deceased are equally responsible for the accident and fixed 50% negligence on the part of the driver of the bus as well as on the part of the deceased and awarded a sum of Rs.1,80,000/- as compensation and directed the respondent-Transport Corporation to pay a sum of Rs.90,000/- towards 50% of

the compensation awarded by the Tribunal. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal challenging the 50% contributory negligence fixed on the part of the deceased and seeking enhancement of compensation.

3.The learned counsel appearing for the appellants contended that the Tribunal erred in fixing 50% negligence on the deceased relying on the F.I.R which was lodged by the driver of the bus, who is an interested person. The Tribunal ought to have seen that the appellants have examined P.W.2-eye witness to substantiate their contention that accident occurred only due to rash and negligent driving by the driver of the bus. Immediately after the accident the deceased was admitted in the hospital and information about the accident was given to the Padalam Police Station. The driver of the bus gave the complaint only on the next day as per the instruction of his higher officials in order to escape from the liability. The deceased was aged 14 years at the time of accident and was doing milk vending business and was earning a sum of Rs.3,000/- to Rs.4,000/- per month. The Tribunal without properly appreciating the contention of the appellants awarded a meagre amount as compensation and prayed for setting aside the contributory negligence fixed on the deceased and for enhancement of compensation.

4.Per contra, Mr.K.J.Sivakumar, the learned counsel appearing for the respondent-Transport Corporation contended that the accident occurred near to the bus stand and while the driver of the bus was driving the bus slowly, the deceased came from cross-road in bicycle talking with his friend sitting in the back without seeing the bus lost his balance and dashed against the front side of the bus and caused the accident. P.W.2-alleged eye witness has not given any complaint to the Police and no complaint was lodged against the driver of the bus. The Tribunal considering all the materials on record has rightly fixed contributory negligence on the deceased and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent-Transport Corporation and perused the materials on record.

6.From the award of the Tribunal it is seen that P.W.2-eye witness deposed that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent-Transport Corporation. Even though the deceased belonged to the same village, he has not lodged any complaint and he has not made any arrangement for sending the victim to

the hospital. The appellants contended that intimation about the accident was given to the police on the same day of accident. No evidence was produced to substantiate the same. P.W.2-eye witness has not stated whether the deceased came from cross road or not when the accident occurred. On the other hand, it is the specific case of the driver of the bus belonging to the respondent-Transport Corporation that the deceased came from the cross road in bicycle talking to person who was sitting in the back side and dashed against the bus. There is no contra evidence to this evidence. The appellants have not objected to the F.I.R. and not taken any steps to complaint against the driver of the bus. In view of the above materials, finding of the Tribunal in fixing 50% negligence on the part of the deceased does not suffer any error warranting interference by this Court.

7.As far as quantum of compensation is concerned, the deceased was minor aged 14 years at the time of accident. The Tribunal without properly appreciating the judgment of Hon'ble Apex Court reported in 2014 (1) TNMAC 481 Puttamma & Others Vs. K.L.Narayana Reddy & Another fixed a sum of Rs.1,50,000/- towards loss of dependency and a sum of Rs.15,000/- each towards loss of estate and funeral expenses. The Tribunal has not awarded any amount towards loss of love and affection. As per the II schedule, the annual income for non-earning member is fixed at Rs.15,000/- per month. This Court and Hon'ble Apex Court has in number of judgment enhanced the annual income of the minor deceased to Rs.30,000/- and increased up to Rs.45,000/- due to the lapse of time and increase in cost of living. Considering the well settled judicial pronouncement, the annual income of the minor is fixed at Rs.30,000/-. A sum of Rs.4,50,000/- is granted towards loss of income by applying multiplier '15'. A sum of Rs.15,000/- each awarded by the Tribunal towards loss of estate and funeral expenses are confirmed. A sum of Rs.40,000/- is granted towards loss of love and affection. Thus, the amounts granted 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
1.	Loss of Income	1,50,000	4,50,000	Enhanced
2.	Loss of Estate	15,000	15,000	Confirmed
3.	Funeral Expenses	15,000	15,000	Confirmed
4.	Loss of Love and Affection	-	40,000	Granted

Total	1,80,000	5,20,000	Enhanced by Rs.3,40,000/-
50% of the award amount	90,000	2,60,000	

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.90,000/- is hereby enhanced to Rs.2,60,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondent/Transport Corporation is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

rst/gbi

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To

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

+2CCs to Mr.P.Natarajan, Advocate, SR.No.22438
+1cc to Mr.K.J.Sivakumar, Advocate, SR.No.23119

C.M.A.No.2136 of 2018

Kak (31/07/2019)

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