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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.515 of 2014

S.Ponnusamy ... Appellant/Petitioner

Vs.

1. T.John Basco

2. The Managing Director

Tamil Nadu State Transport Corporation

Having its Office

37-Mettupalayam Road

Coimbatore - 43.

... Respondents/Respondents

(R1 was set exparte, hence, notice
in the CMA may be dispensed with)

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act 1988, to enhance the compensation amount awarded in the Judgment and Decree dated 30.04.2013 in M.C.O.P.No.93 of 2012 on the file of Motor Accident Claims Tribunal (II Additional District Court), Erode.

For Appellant : Mr.M.Guruprasad

R1 - Exparte

R2 - Served

No Appearance

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 30.04.2013 made in M.C.O.P.No.93 of 2012 on the file of Motor Accident Claims Tribunal (II Additional District Court), Erode.

2. The appellant is the father of the deceased Saminathan and the first respondent is the driver of the second respondent transport corporation.



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3. The case of the appellant is that on 06.11.2011 at about 08.10 p.m., his son, namely, Saminathan (deceased) was riding in motorcycle bearing Registration No.TN-33-Q-1231 on the Avalpoondurai Road from North to South direction. At that time, the first respondent who drove the bus bearing Registration No.TN-33-N-1933 belonged to the second respondent, proceeding from opposite direction, hit against the Saminathan's motorcycle and caused the accident. On account of which, the Saminathan fell down and sustained grievous injury on his head and other parts of the body. Thereafter, he was taken to Government Hospital, Erode, where he succumbed to the injuries on the same day itself at about 9.35 p.m. At the time of accident, he was aged around 35 years and he was earning Rs.20,000/- per month. As he died in the accident, the father of the deceased Saminathan had filed a Claim Petition in M.C.O.P.No.93 of 2012 under Section 166 of Motor Vehicles Act, claiming Rs.10,00,000/- as compensation under various heads, before the Motor Accident Claims Tribunal (II Additional District Court), Erode.

4. Denying the averments of the appellant/claimant, the second respondent filed a counter affidavit before the Tribunal, wherein, it has been submitted that Section 129 of the Motor Vehicle Act 1988 has specifically stressed that every person riding motor cycle and the pillion shall wear protective helmet while riding in a public place and the Government of Tamilnadu have also amended the TNMV, Rules 1989 in this purpose with effect from 01.07.2007 that every two wheeler rider and pillion rider shall wear helmet while riding motorcycle. But, the injured had not worn the helmet which is against the above said provisions.

5. It has been further submitted in the counter affidavit that the appellant/claimant has not produced any documents to prove the sources of income, occupation and age of the deceased, and has also not produced any documentary evidence to prove his relationship with the deceased. The claim of compensation Rs.10,00,000/- made by the appellant is very high, excessive and without any basis or proof, and the appellant wants to make fortune out of the accident and make it as a permanent source of income for himself by abusing the process of Law. As such, the respondent transport corporation sought for dismissal of the petition filed by the appellant before the Tribunal.

6. During the trial before the Tribunal, on the side of the appellant/claimant, he himself examined as P.W.1 and filed the following documents viz., Exs.P1 to P12.



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- Ex.P1 - Certified copy of the FIR report.
- Ex.P2 - Certified copy of the Model Diagram.
- Ex.P3 - Certified copy of the Mahazar
- Ex.P4 - Certified copy (TN 33 N 1933 bus) of the Motor Vehicle Examiner Report.
- Ex.P5 - Certified copy of the Postmortem Report
- Ex.P6 - Certified copy of the Crime Report
- Ex.P7 - Licence of the deceased Saminathan
- Ex.P8 - Original copy of the Kandhaya receipt which is in the name of deceased Saminathan
- Ex.P9 - Xerox copies of the Weight Slips (8) of Coconut and Dhal sold in the Sale Committee.
- Ex.P10 - Certified copy of the R.C. Book (TN 36 A 1787) which is in the name of deceased Saminathan.
- Ex.P11 - Certified copy of the R.C. Book (TN 72 V 7731) which is in the name of deceased Saminathan.
- Ex.P12 - Legal heir certificate

One Mr.Ramasami was examined as P.W.2 on the side of the appellant. On the side of the respondents, the first respondent himself examined as D.W.1, and no documents were marked.

7. The Tribunal, after considering the oral and documentary evidences, has come to the conclusion that the accident occurred only due to high speed and negligence of the first respondent driver, and after perusal of the documents i.e. Exs.1, 5, 8 and 9 marked on the side of the claimant, the Tribunal has fixed the age of the deceased as 35 and has come to the conclusion that at the time of accident, he owned agricultural land and two Tempos, and he was earning Rs.20,000/- per month by doing cultivation in his own agricultural land and by selling Coconut and Dhal in the Sale Committee. Since the deceased was doing agricultural work, his monthly income was fixed as Rs.3000/-, and in which, only 1500/- was taken into consideration by the Tribunal for calculating annual income of the deceased. Thereby, the annual income of the deceased was fixed as Rs.18,000/- i.e. 1500 x 12. Since the deceased was unmarried at the time of accident, considering his father's age, the Tribunal has concluded that the claimant is entitled to get Rs.1,44,000/- as compensation towards Loss of Income. Besides, the Tribunal has awarded Rs.3000/- towards Funeral expenses and Rs.10,000/- towards Loss of love and affection, to the claimant. As such, the Tribunal by order dated 30.04.2013 in M.C.O.P.No.93 of 2012 has totally awarded a sum of Rs.1,57,000/- as compensation to the claimant with costs of the petition together with interest at the rate of 7.5% p.a. from the date of filing of the petition. Aggrieved by the award, the



claimant/appellant has filed this Civil Miscellaneous Appeal before this Court.

8. The learned counsel for the appellant/claimant would submit that the deceased Saminathan was the owner of two tempos, which had been let out for hire purposes and also he was the owner of landed properties, in which, agricultural activities were being carried out by him. The appellant/claimant had produced proper evidences before the Tribunal and had proved that the deceased was earning Rs.20,000/- per month. While that being so, the Tribunal, without considering the evidences properly, has fixed the monthly income of the deceased as Rs.3,000/- and awarded a meager amount of Rs.1,57,000/- as compensation to the claimant as against the claim of Rs.10,00,000/-. Hence, he seeks to enhance the same.

9. Taking into consideration of the fact that the deceased was having agricultural land, for which, proper evidences (Kandaya receipt, Tax receipt and the receipt issued by the sale committee) have been produced, and the fact that by the sale of Coconut and Dhal in the sale committee, the deceased would have earned some regular income which would have been substantial, and also of the fact that he was owning two tempos which he had been letting out for hire purposes was proved by producing the two R.C. Books which is in the name of the deceased and from the same he would have earned some income, this Court is inclined to enhance the compensation amount awarded by the Tribunal. Accordingly, the monthly income of the deceased is fixed as Rs.6,000/-. Since the deceased was a bachelor, 1/2 share of his monthly income he would have taken for his personal expenses and 1/2 share of the income, he would have given to his family.

10. The multiplier to be adopted as per Sarla Verma and others vs Delhi Transport Corporation and another reported in 2009 ACJ 1298, is 16 for a person aged 35 years, but, the Tribunal has taken the multiplier as 8 in the impugned Award. The amount awarded by the Tribunal towards Funeral Expenses and Loss of Love and Affection is also a meagre.

11. Considering the judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (6) SCC 680, this Court is of the considered view that the compensation will have to be enhanced in favour of the Appellant.



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12. For the aforesaid reasons, this Court is of the considered view that the Award passed by the Tribunal shall be modified in the following manner :

Income to be taken	- Rs.6,000/-
Adding future prospects	- 40%
Income	- Rs.8,400/-
Deductions of 50% for personal expenses	
of the deceased (8400-4200x12x16)	- Rs.8,06,400/-
Funeral Expenses	- Rs.10,000/-
Loss of Love and Affection	- Rs.15,000/-

Rs.8,31,400/-

13. This Court is of the considered view that Rs.8,31,400/- shall be awarded to the Appellant instead of Rs.1,57,000/- awarded by the Tribunal under the impugned Award. Since the Appellant has paid Court fee only for Rs.5,00,000/- in this appeal, this Court directs the the Appellant to pay the Court fee for the enhanced amount, which the Registry shall collect before drafting the decree.

14. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,57,000/- is hereby enhanced to Rs.8,31,400/- with interest at the rate of 6% per annum from the date of petition till the date of deposit. The respondent transport corporation is directed to deposit the enhanced award amount to the Credit of M.C.O.P.No.93 of 2012 on the file of Motor Accident Claims Tribunal (II Additional District Court), Erode, along with interest and costs as 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 being made, the appellant is permitted to withdraw the said sum, less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned. No costs.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar



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To

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1. The II Additional District Court,
The Motor Accident Claims Tribunal
Erode.

Copy to:
The Section Officer,
VR Section,
High Court, Madras

C.M.A.No.515 of 2014

A.SK(22/08/2019)