

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4633 of 2019

G.Vijaya

... Appellant/Claimant

Vs.

Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan Salai,
Chennai - 600 002.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.06.2019 made in M.C.O.P.No.1755 of 2015 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Ms.Ramya V.Rao

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 20.06.2019 made in M.C.O.P.No.1755 of 2015 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellant is the claimant in M.C.O.P.No.1755 of 2015 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. She filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the death of her daughter viz.,Gangadevi, who died in the accident that took place on 26.12.2014.

4.The Tribunal considering the pleadings, oral and documentary evidence, fixed 50% negligence on the part of the driver of the bus belonging to respondent/Transport Corporation and 50% negligence on the part of the rider of the motorcycle, in which the deceased was a pillion rider, on the ground that the rider of the motorcycle did not possess valid driving license and also that he was a minor and directed the respondent/Transport Corporation to pay a sum of Rs.5,61,700/- being 50% of the award amount as compensation to the appellant.

5.Challenging the portion of the award fixing 50% contributory negligence on the part of the rider of the motorcycle and also for enhancement of compensation, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing 50% contributory negligence on the part of the rider of the motorcycle on the ground that the rider of the motorcycle was a minor and did not possess valid driving license at the time of accident. The Tribunal ought to have seen that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent/Transport Corporation and that since F.I.R. was registered only against the driver of the bus, ought to have fixed entire negligence on the part of the driver of the bus belonging to the respondent/Transport Corporation. The Tribunal erred in fixing monthly income of the deceased at Rs.7,000/-, which is meagre and the Tribunal ought to have fixed monthly income of the deceased at Rs.10,000/-. In any event, 50% contributory negligence fixed on the part of the rider of the motorcycle is erroneous and the total compensation awarded by the Tribunal is meagre and prayed for setting aside 50% contributory negligence fixed on the part of the rider of the motorcycle and for enhancement of compensation.

7. Per contra, Mr.K.J.Sivakumar, learned counsel appearing for the respondent/Transport Corporation contended that the accident occurred only due to negligent riding by the rider of the motorcycle in which the deceased was a pillion rider and not due to negligence on the part of the driver of the bus belonging to respondent/Transport Corporation. The deceased was a minor girl aged 16 years at the time of accident and the Tribunal has rightly fixed a sum of Rs.7,000/- as notional income of the deceased per month, which is not meagre. The compensation awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

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

9. From the materials available on record, it is seen that the deceased travelled in the motorcycle as a pillion rider and the rider of the motorcycle was a minor and also he did not possess valid driving license at the time of accident. The Tribunal considering the above aspects, held that the rider of the motorcycle might have also contributed to the accident and fixed 50% negligence on the part of the driver of the bus belonging to the respondent/Transport Corporation and 50% negligence on the part of the rider of the motorcycle. There is no error in the above finding of the Tribunal warranting any interference by this Court.

10. As far as quantum of compensation is concerned, the deceased was aged 16 years at the time of accident and was a 10th standard student. The Tribunal fixed notional income of the deceased at Rs.7,000/- per month. The accident took place in the year 2014 and the monthly income fixed by the Tribunal is meagre. Therefore, a sum of Rs.8,000/- per month is fixed by this Court as notional income of the deceased. The Tribunal has rightly granted 40% enhancement towards future prospects and rightly deducted ½ towards personal expenses as the deceased was bachelor at the time of accident. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.12,09,600/- {[Rs.8,000/- + Rs.3,200/- (40% of Rs.8,000/-) X 12 X 18 X ½}]. The Tribunal has not awarded any amount towards loss of estate. Hence, a sum of Rs.15,000/- is granted by this Court towards loss of estate. The amounts awarded by the Tribunal towards loss of love and affection, transportation and funeral expenses are just and reasonable and hence they are confirmed. Thus, the compensation awarded 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 dependency	10,58,400/-	12,09,600/-	Enhanced
2.	Loss of love and affection	40,000/-	40,000/-	Confirmed
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
5.	Loss of estate	-	15,000/-	Granted
	Total	Rs.11,23,400/-	Rs.12,89,600/-	
	50% of award amount	Rs.5,61,700/-	Rs.6,44,800/-	enhanced by Rs.83,100/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,61,700/- is hereby enhanced to Rs.6,44,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-Transport Corporation is directed 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 to the credit of M.C.O.P.No.1755 of 2015 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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

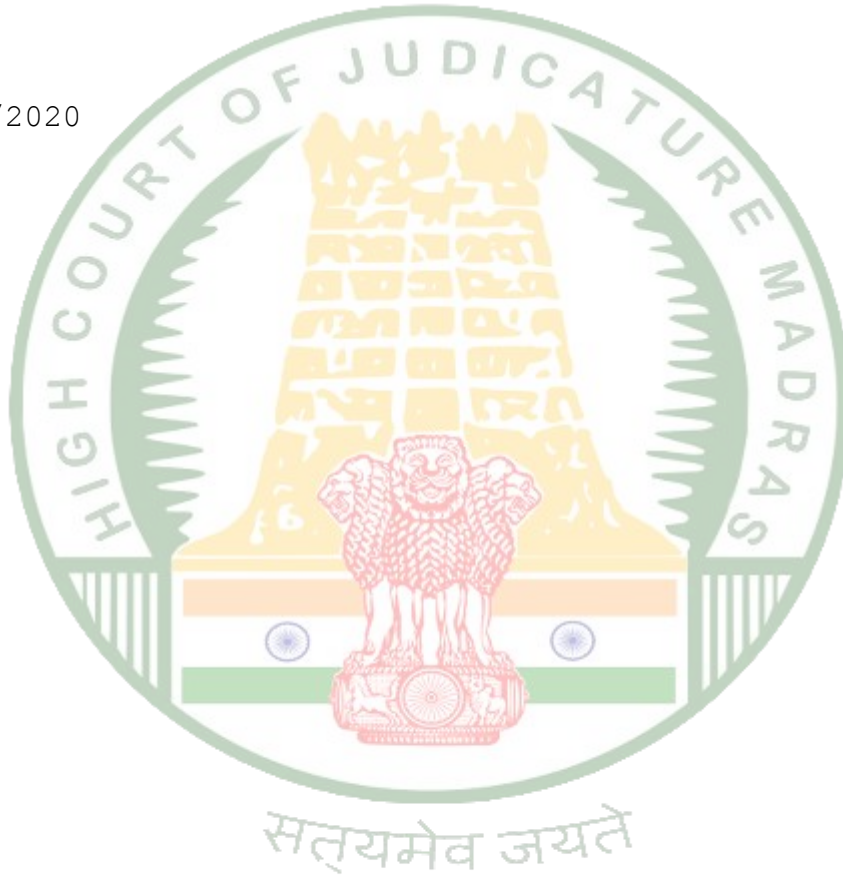
2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to M/s.S.Sivakumr, Advocate Sr.103850

+2cc to M/s.A.N.Viswanatha Rao, Advocate Sr.103364

C.M.A.No.4633 of 2019

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srg 20/08/2020



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