IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4668 of 2019

V.Bhuvana ... Appellant/Claimant

Vs.

The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai, Anna 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 23.09.2019 made in M.C.O.P.No.5721 of 2016 on the file of the Special Court Under EC & NDPS Act, Motor Accident Claims Tribunal, Principal Special Court, Chennai.

For Appellants : Mr.Amar Dineshbhai Pandiya

For Respondent : Mr.S.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 23.09.2019 made in M.C.O.P.No.5721 of 2016 on the file of the Motor Accident Claims Tribunal, Principal Special Court, (Special Court under E.C. & NDPS Act) Chennai.

2. The appellant is the claimant in M.C.O.P.No.5721 of 2016 on the file of the Motor Accident Claims Tribunal, Principal Special Court, (Special Court under E.C. & NDPS Act) Chennai. She filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of her son viz.,V.Vignesh, who died in the accident that took place on 25.07.2016.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligence on the part of the deceased as well as the driver of the bus belonging to respondent/Transport Corporation and fixed 25% negligence on the part of the deceased and 75% on the part

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of the driver of the bus belonging to the respondent/Transport Corporation and awarded a sum of Rs.3,94,000/- as total compensation and directed the respondent/Transport Corporation to deposit 75% of the compensation, i.e.,Rs.2,95,500/- as compensation to the appellant.

4. Challenging the portion of the award fixing 25% negligence on the part of the deceased and not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal.

5. The learned counsel appearing for the appellant contended that the Tribunal erroneously fixed 25% contributory negligence on the part of the deceased while the same was not raised while framing issues. The deceased was working as fishing vessel luskar and was earning a sum of Rs.25,000/- per month. But the Tribunal fixed a sum of Rs.3,000/- as monthly income of the deceased, which is meagre. The deceased was aged 26 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The Tribunal has awarded a sum of Rs.3,24,000/- towards loss of dependency, which is meagre. The amount awarded by the Tribunal towards loss of love and affection is meagre. The Tribunal failed to grant any amount towards loss of estate. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of compensation.

6. Per contra, Mr.S.Sivakumar, learned counsel appearing for the respondent/Transport Corporation contended that three persons were riding in the motorcycle including the deceased at the time of accident. Hence, 25% contributory negligence fixed by the Tribunal on the part of the deceased is proper. The appellant has not produced any material evidence to prove that the deceased was earning a sum of Rs.25,000/- per month. In the absence of any material evidence, the Tribunal rightly fixed a sum of Rs.3,000/- as monthly income of the deceased and granted a sum of Rs.3,24,000/- towards loss of dependency, which is not meagre. The correct multiplier applicable is '17' and the Tribunal erroneously applied multiplier '18'. The Tribunal has granted an excess amount of Rs.20,000/- towards funeral expenses and Rs.50,000/- towards loss of love and affection. In view of the excess amount granted by the Tribunal, the appellant is not entitled to any enhancement towards future prospects and the amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7. Heard the learned counsel for the appellant as well as the respondent and perused the entire materials on record.

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8. From the award passed by the Tribunal, it is seen that three persons were riding in a motorcycle including the deceased at the time of accident. Therefore, the Tribunal fixed 25% contributory negligence on the part of the deceased, which is proper. The appellant has contended that the deceased was working as fishing vessel luskar and was earning a sum of Rs.25,000/- per month at the time of accident. The appellant failed to prove the said contention. In the absence of material evidence with regard to avocation and income of the deceased, the Tribunal fixed notional income of the deceased at Rs.3,000/- per month. The accident occurred in the year 2016 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.9,000/- is fixed by this Court as monthly income of the deceased. The deceased was aged 26 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The appellant is entitled to 40% enhancement towards future prospects. The correct multiplier applicable is '17' as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, Sarla Verma & others vs. Delhi Transport Corporation & another and not '18' as applied by the Tribunal. Applying the multiplier '17' and after deducting ½ towards the personal expenses of the deceased, as the deceased being a bachelor, the compensation granted by the Tribunal towards loss of dependency is modified to Rs.12,85,200/- {[Rs.9,000/- + Rs.3,600/- (40% of Rs.9,000/-)] X 12 X 17 X ½}. The Tribunal has awarded a sum of Rs.20,000/- towards funeral expenses, Rs.50,000/- towards loss of love and affection which are excessive and the same are hereby reduced to Rs.15,000/- and Rs.40,000/- respectively. The Tribunal has not granted any amount towards loss of estate. Hence, a sum of Rs.15,000/- is granted by this Court towards loss of estate. Thus the compensation awarded by the Tribunal is modified as follows:

सत्यमेव जयते

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	3,24,000/-	12,85,200/-	Enhanced
2.	Funeral expenses	20,000/-	15,000/-	Reduced

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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
3.	Loss of love and affection	50,000/-	40,000/-	Reduced
4.	Loss of estate	-	15,000/-	Granted
	Total	Rs.3,94,000/-	Rs.13,55,200/-	
	75% of compensation	Rs.2,95,500/-	Rs.10,16,400/-	enhanced by Rs.7,20,900/-

25% of negligence fixed by the Tribunal on the part of the deceased is hereby confirmed and 75% of the total award amount comes to Rs.10,16,400/-.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,95,500/- is hereby enhanced to Rs.10,16,400/- (75% of total compensation) 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.5721 of 2016 on the file of the Motor Accident Claims Tribunal, Principal Special 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

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Sub Assistant Registrar

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To

The Special Court under EC & NDPS Act,
Principal Special Judge,
Motor Accident Claims Tribunal,
Chennai.

+1cc to Mr.S.Sivakumar, Advocate Sr.103849
+1cc to M/s.Amar D.Pandiya, Advocate Sr.103847

C.M.A.No.4668 of 2019

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