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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1159 of 2013

1.B.Ganesan
2.G.Elumalai
3.Annakili
4.V.Chithra

... Appellants/Claimants

Vs.

The 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 23.03.2011 made in M.C.O.P.No.400 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.II, Chennai.

For Appellants : Mr.T.G.Balachandran

For Respondent : Mr.S.Sivakumar

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 23.03.2011 made in M.C.O.P.No.400 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.II, Chennai.

3.The appellants are the claimants in M.C.O.P.No.400 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.II, Chennai. They filed the above said claim petition claiming a sum of Rs.3,50,000/- as compensation for the death of one G.Kuppammal, who died in the accident that took place on 04.12.2005.



4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to respondent-Transport Corporation and directed the respondent-Transport Corporation to pay a sum of Rs.1,20,020/- as compensation to the appellants.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

6.The learned counsel appearing for the appellants contended that the deceased was aged 50 years at the time of accident and was working as a Fruit Vendor and was earning a sum of Rs.3,000/- per month. The Tribunal erroneously fixed age of the deceased at 60 years and fixed a meagre sum of Rs.2,500/- per month as notional income of the deceased. The Tribunal ought to have fixed a sum of Rs.3,000/- per month as notional income of the deceased. The appellants are entitled to 10% enhancement towards future prospects. The multiplier '5' adopted by the Tribunal is not correct. The Tribunal ought to have adopted multiplier '9'. As per Ex.P5/death certificate, the deceased G.Kuppammal has taken treatment in the hospital as in-patient for three days and the Tribunal has not awarded any amount towards pain and sufferings, transportation, extra nourishment, damage to clothes and loss of expectation of life. There are four dependants of the deceased and the Tribunal erroneously deducted $1/3^{\text{rd}}$ instead of deducting $1/4^{\text{th}}$. The amounts awarded by the Tribunal towards loss of consortium, loss of love and affection, funeral expenses are meagre. The Tribunal has not awarded any amount towards loss of estate and prayed for enhancement of compensation.

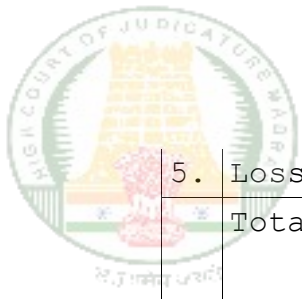
7.Per contra, Mr.S.Sivakumar, learned counsel appearing for the respondent-Transport Corporation contended that the appellants have not prove the age, avocation and income of the deceased. In the absence of any material evidence with regard to age, avocation and income of the deceased, the Tribunal fixed the age of the deceased as per the age mentioned in postmortem report and fixed the notional income of the deceased at Rs.2,500/- per month and applied multiplier '5' and awarded compensation. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

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



9. From the materials available on record, it is seen that it is the contention of the appellants that the deceased was working as Fruit Vendor and was earning a sum of Rs.3,000/- per month. They failed to prove the said contention. In the absence of any material evidence with regard to avocation and income of the deceased, the Tribunal fixed a sum of Rs.2,500/- per month as notional income of the deceased. The accident occurred in the year 2005 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.3,000/- per month, as claimed by the appellants is fixed as notional income of the deceased. The Tribunal fixed the age of the deceased as 60 years, as mentioned in Ex.P3/postmortem certificate. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the appellants are entitled to 10% enhancement towards future prospects. The multiplier '5' applied by the Tribunal is not correct. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarala Verma & others Vs. Delhi Transport Corporation & another], the correct multiplier applicable is '9'. There are four dependants of the deceased and the Tribunal erroneously deducted 1/3rd towards personal expenses instead of deducting 1/4th. In view of the above, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.2,67,300/- {Rs.3,300/- [(Rs.3,000/- + Rs.300/- (10% of Rs.3,000/-)] x 12 x 9 x 3/4}. The Tribunal has awarded a sum of Rs.5,000/- towards loss of consortium to the 1st appellant, Rs.10,000/- towards loss of love and affection to appellants 2 to 4 and Rs.5,000/- towards funeral expenses, which are meagre. Considering the date of accident, the amounts awarded by the Tribunal towards loss of consortium to 1st appellant, loss of love and affection to appellants 2 to 4 and funeral expenses are enhanced to Rs.25,000/-, Rs.30,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.10,000/- towards loss of estate. 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	1,00,020/-	2,67,300/-	Enhanced
2.	Loss of love and affection to appellants 2 to 5	10,000/-	30,000/-	Enhanced
3.	Funeral expenses	5,000/-	10,000/-	Enhanced
4.	Loss of consortium to 1 st appellant	5,000/-	25,000/-	Enhanced



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5.	Loss of estate	-	10,000/-	Granted
	Total	Rs.1,20,020/-	Rs.3,42,300/-	Enhanced by Rs.2,22,280/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,20,020/- is hereby enhanced to Rs.3,42,300/-. The enhanced award amount shall carry interest @ 7.5% per annum from the date of petition till the date of deposit. The respondent-Transport Corporation is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount if any already deposited, 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.400 of 2006 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.II, Chennai. On such deposit, the appellants are permitted to withdraw the respective share of the award amount, now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.II,
Chennai.

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

C.M.A.No.1159 of 2013

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srg 26/08/2021