

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2046 of 2013

N. Mahalakshmi

.. Appellant/Claimant

Vs.

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
3/137, Salamedu, Vazhthreddy Post,
Villupuram Taluk.

.. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 23.02.2012, made in M.C.O.P. No. 3905 of 2008, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. K. Varadha Kamaraj

For Respondent : Mr. K.J. Sivakumar

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 23.02.2012, made in M.C.O.P. No. 3905 of 2008, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed 3905 of 2008, on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.6,00,000/- as compensation for the death of one V. Nagarajan, who died in the accident that took place on 13.05.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the respondent-Transport Corporation Bus and directed the respondent to pay a sum of Rs.5,18,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 23.02.2012, made in M.C.O.P. No. 3905 of 2008, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that the deceased was working as a Mason and was earning a sum of Rs.300/- per day but the Tribunal has fixed only a sum of Rs.4,500/- per month as notional income. The deceased was aged 45 years at the time of accident. The Tribunal ought to have applied the multiplier '15'. The Tribunal has not granted any enhancement towards future prospects. The compensation awarded by the Tribunal towards loss of love and affection, loss of consortium and funeral expenses are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that in the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income, which is not meagre. The Tribunal has applied the correct multiplier and awarded compensation. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

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

8.It is the contention of the appellant that the deceased was working as a Mason and was earning a sum of Rs.300/- per day. The appellant failed to prove the same. In the absence of any material evidence to prove the avocation and income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income. The accident is of the year 2008 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,000/- per month is fixed as the notional income of the deceased. As per Ex.P3 - post mortem certificate, the age of the deceased is fixed at 45 years. Hence, the correct multiplier applicable is '15'. The Tribunal has not awarded any enhancement towards future prospects. The appellant is entitled to 25% enhancement towards future prospects. There is only one dependent of the deceased. The Tribunal erroneously deducted

1/3rd towards personal expenses of the deceased, instead of 1/2. Hence, deducting 1/2 towards personal expenses of the deceased, the amount awarded by the Tribunal towards pecuniary loss is modified to Rs.6,75,000/- {[Rs.6,000/- + Rs.1,500/- (25% of Rs.6,000/-)] x 12 x 15 x ½}. The amount awarded by the Tribunal towards loss of consortium and funeral expenses are meagre and hence, the same are enhanced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. The appellant is entitled to a sum of Rs.15,000/- towards loss of estate. The Tribunal has awarded a sum of Rs.25,000/- towards loss of love and affection to the appellant, which is not proper. The appellant is entitled to compensation only towards loss of consortium. Hence, the amount awarded by the Tribunal towards loss of love and affection is hereby set aside.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. The amount awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby 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.	Pecuniary loss	4,68,000/-	6,75,000/-	Enhanced
2.	Loss of love and affection	25,000/-	-	Set aside
3.	Loss of consortium	15,000/-	40,000/-	Enhanced
4.	Funeral expenses	10,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
	Total	5,18,000/-	7,45,000/-	Enhanced by Rs.2,27,000/-

10.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.5,18,000/- is enhanced to Rs.7,45,000/- along with interest and costs. The respondent-Transport Corporation is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, 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. 3905 of 2008. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.2,27,000/-. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa
To

1.The II Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to M/s.K.Varadhakamaraj, Advocate Sr.No. 18117
+1 cc to M/s.k.J.Sivakumar, Advocate Sr.No. 18188

C.M.A. No. 2046 of 2013

VBA (CO)
RMP (03/11/2020)

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