

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2251 of 2012

1.G.Rani

2.G.Ravichandran

3.G.Vasanthi

4.K.Kousalya

... Appellants/Claimants

Vs.

The Metropolitan Transport Corporation,
Chennai Division Ltd.,

Rep. by its Managing Director,
Pallavan Salai,

Chennai - 600 002.

... Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 08.11.2011 made in M.A.C.T.O.P.No.3999 of 2008 on the file of Fast Tack Court No.5, Additional District cum Sessions Judge (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr.N.M.Muthurajan

For Respondent : Mr.K.Moorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 08.11.2011 made in M.C.O.P.No.3999 of 2008 on the file of Fast Tack Court No.5, Additional District cum Sessions Judge (Motor Accidents Claims Tribunal), Chennai.

2. The appellants are the claimants in M.C.O.P.No.3999 of 2008 on the file of Fast Tack Court No.5, Additional District cum Sessions Judge (Motor Accidents Claims Tribunal), Chennai. They filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of the deceased V.Govindarajulu in a road accident that took place on 25.08.2008.

3. The case of the appellants is that on 25.08.2008 at about 8.15 hours, the deceased was riding his cycle from Ayanavaram to K.K.Nagar, from north to south direction, when he was nearing opposite to Reserve Bank Quarters, the bus bearing Registration No.TN-01-N-3554 was driven by its driver in a rash and negligent manner came from behind and dashed against him, due to that impact, he fell down and sustained crush injuries and died on the spot. At the time of accident, the deceased was aged 54 years and working as lorry mechanic and was earning Rs.10,000/- per month. Hence the appellants filed a petition before the Additional District cum Sessions Judge (Motor Accidents Claims Tribunal), Fast Track Court No.5, Chennai claiming a sum of Rs.10,00,000/- as compensation from the respondent.

4. Denying the allegations, the respondent/Transport Corporation has filed a counter affidavit stating that the driver of the respondent-Corporation drove the bus slowly, as Auto rickshaws were parked on both sides of the road. At that time the cyclist, who was proceeding on the left side of the bus grazed against the bus, lost his balance, fell down and sustained injuries and as such this respondent driver is not responsible for the said accident. Moreover, the age, occupation and income of the deceased are denied and the amount of compensation claimed is highly excessive.

5. During the trial before the Tribunal, on the side of the appellants, the appellant herself was examined as PW1 and marked certain documents as Exs.P1 to P7 and two other witnesses were examined as PW2 and PW3. On the side of the respondent one Mr.A.B.Robinson Rose was examined as RW1 and no documents were marked.

6. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving of the driver of the bus and directed the respondent to pay a sum of Rs.3,89,000/- as compensation to the appellants herein. Not being satisfied with the amount awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

7. Heard Mr.N.M.Muthurajan, learned counsel appearing for the appellant and Mr.K.Moorthy, learned counsel appearing for the respondent.

8. On perusal of the award dated 08.11.2011 passed by the tribunal, it is observed that in the absence of any clear documentary evidence with regard to the occupation and income of the deceased, considering the occupation of the deceased as

lorry mechanic, the Tribunal has fixed the notional income of the deceased as Rs.4,500/- per month and after deducting 1/3rd of the same to his personal expenditure, the contribution to the family is taken as Rs.3000/- per month. Considering the age mentioned in the post-mortem report is 55, the apt multiplier taken for calculation is 9 and the loss of dependency is calculated as $9 \times 3000 \times 12 = 3,24,000/-$. Taking into consideration the age and nature of occupation of the deceased and apart from the fact had he been alive, he would earning more than Rs.4,500/- per month. Hence, this Court is inclined to fix the income of the deceased as Rs.6,000/- per month and after deducting 1/3rd of the same to his personal expenditure, the contribution to the family is taken as Rs.4,000/- per month. Accordingly, the loss of dependency is enhanced to Rs.4,32,000/- ($9 \times 4000 \times 12 = 4,32,000/-$). Insofar as the other heads are concerned, this Court is not inclined to interfere with the amount awarded by the Tribunal and the same are confirmed.

9. In view of the above observations made by this Court, 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	3,24,000/-	4,32,000/-	Enhanced
2.	Loss of Consortium	25,000/-	25,000/-	Confirmed
3.	Loss of Love and affection	30,000/-	30,000/-	Confirmed
4.	Funeral and other incidental expenses	10,000/-	10,000/-	Confirmed
	Total	Rs.3,89,000/-	Rs.4,97,000/-	-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,89,000/- is hereby enhanced to Rs.4,97,000/- together along with interest at the rate of 9% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. 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 six weeks from the date of receipt of a copy of this judgment. On such deposit, the

appellants/claimants are permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. The apportionment held by the Tribunal is confirmed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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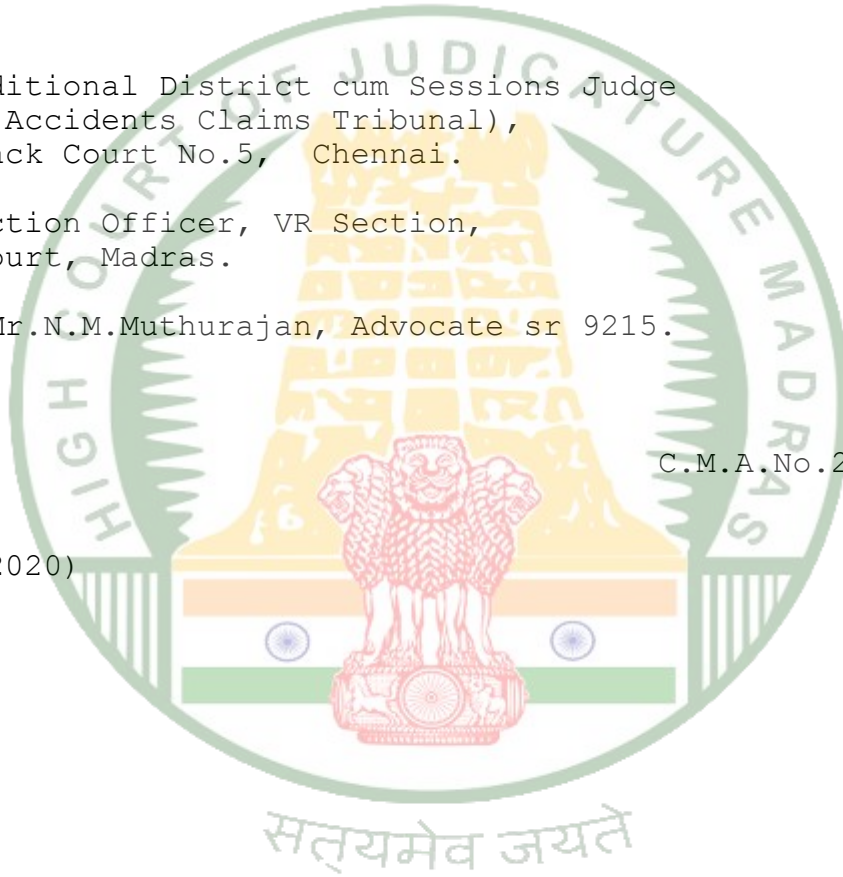
1. The Additional District cum Sessions Judge
(Motor Accidents Claims Tribunal),
Fast Track Court No.5, Chennai.

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

+1 CC to Mr.N.M.Muthurajan, Advocate sr 9215.

C.M.A.No.2251 of 2012

SSI(CO)
SP(18/09/2020)



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