

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2262 of 2013

1. P. Sudha
2. B. Subasree (minor) ... Appellants/Petitioners
(Minor rep by mother and next friend
Mrs.P.Sudha)

Vs.

1. Metropolitan Transport Corporation
(Chennai Division -I) Ltd.,
rep by its Managing Director.
2. Hamsa ... Respondents
(2nd Respondent exparte before
the tribunal)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and decree dated 28.03.2008 made in M.C.O.P.No. 3810 of 2006 on the file of Motor Accident Claims Tribunal, (Chief Small Causes Court) Chennai.

For Appellants : Mr. K.Varadha Kamaraj

For Respondent-1 : Mr. S. Siva Kumar

For Respondent-2 : Ex-parte

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants against the decree and Judgment dated 28.03.2008 made in M.C.O.P.No. 3810 of 2006 on the file of Motor Accident Claims Tribunal, (Chief Small Causes Court) Chennai.

2.The 1st appellant is the wife, 2nd appellant is the daughter and 2nd respondent is the mother of the deceased Balamurali.

3.It is the case of the appellants/claimants that on 18.06.2006 at about 9:10 p.m when the deceased was proceeding in his motorcycle, while nearing Muneeswarar Kovil, the Transport Corporation bus came in a rash and negligent manner and knocked down the motorcycle of the deceased. Due to the impact, the deceased sustained multiple injuries all over the body and he was taken to hospital. But, unfortunately he was succumbed to the injuries. Therefore, the legal heirs of the deceased filed a claim petition before the Tribunal seeking Rs.15,00,000/- as compensation.

4.The Tribunal after analysing the oral and documentary evidence awarded a sum of Rs.5,55,000/- as compensation, with 7.5% interest p.a from the date of petition till the date of deposit.

5.Challenging the award passed by the Tribunal, the appellants have come up with this present appeal.

6.Before the Tribunal on the side of the appellants three witnesses was examined viz., P.W.1 to P.W.3 and marked ten documents viz., Ex.P1 to Ex.P10. On the side of the respondent, one witness was examined and no documents was produced by them.

7.The learned counsel for the appellants submitted that due to the sudden demise of the sole bread winner of the family, the other family members are put to indigent circumstances. However, the award amount is very low for a death of a person.

8.The learned counsel for the first respondent/Insurance Company denied the averments in the claim petition. He would further contend that there is no proof that regarding the avocation and income of the injured. In any event the Tribunal has awarded huge amount as compensation.

9.Heard the learned counsel appearing for the appellant and the first respondent and also perused the materials available on record.

10.Though notice was ordered as early as on 11.07.2013, there is no representation for 2nd respondent, either-in-person or through learned counsel. She was set Ex-parte before the Tribunal.

11.With regard to negligence aspect, one Prasad was examined as P.W.2, who deposed that the negligence of the bus

driver is the cause for the accident and the same is corroborated with Ex.P.1/F.I.R. Based on the deposition of P.W.2 and Ex.P.1/F.I.R the Tribunal concluded that the driver of the bus is the cause for the accident. To controvert the same no new fact is forthcoming on the part of the first respondent. Hence, this Court is of the view that the finding of the Tribunal with regard to negligent aspect is based on the weightage of evidence, probabilities of case and settled principles of law and hence the same is confirmed.

12. With regard to quantum, the Tribunal, based on Exs.P.6 to Ex.P.9/Academic records, fixed the monthly income of the deceased as Rs.5,000/- and arrived Rs.60,000/- (Rs.5,000 x 12) as annual income of the deceased and since he being a family man, after deducting $\frac{1}{3}^{\text{rd}}$ (Rs.60,000 x $\frac{1}{3}$ = Rs.20,000/-) towards personal expenses, the Tribunal fixed Rs.40,000/- (Rs.60,000 - Rs.20,000/-) as loss of income and considering the age of the deceased '13' multiplier is applied and arrived Rs.5,20,000/- (Rs.40,000 x 13) towards loss of dependency. Apart from this Rs.5,000/- is being awarded towards transport to hospital, funeral expenses and damages to motorcycle and Rs.15,000/- towards loss of consortium to the 1st appellant. Further the Tribunal has awarded Rs.10,000/- and Rs.5,000/- under the head love and affection for the minor 2nd appellant and II respondent respectively. Thus, quantified Rs.5,55,000/- as total compensation.

13. In view of the above, taking note of the fact that the deceased was working as a computer data entry operator plus part time entry operator, definitely, he would have earned at least Rs.10,500/- per month, hence, this Court is inclined to fix Rs.10,500/- as monthly income of the deceased and by deducting $\frac{1}{3}^{\text{rd}}$ towards his personal expenses, arrived at Rs.7,000/- as monthly income of the deceased and considering the age of the deceased as '37', as evidence in Ex.P.6/Secondary School leaving Certificate and by applying the case of Sarla Verma & Others Vs. Delhi Transport Corporation & Another, reported in (2009) 6 SCC 121, '15' multiplier is applied and awarded a sum of Rs.12,60,000/- (Rs.7,000 x 12 x 15) as loss of income. Apart from this, Rs.10,000/- is added towards funeral expenses and the amount awarded under the head loss of love and affection to the 2nd respondent is enhanced to Rs.10,000/- from Rs.5,000/- The amount awarded under other heads remains unchanged. Thus, the amount awarded by this Court is hereby tabulated:

S.No	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of income	Rs.5,20,000/-	Rs.12,60,000/-

S.No	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
2	Transport, Funeral Expenses and damaged to motor cycle	Rs.5,000/-	Rs.5,000/-
3	Loss of consortium to 1 st appellant	Rs.15,000/-	Rs.15,000/-
4	Loss of love and affection to 2 nd appellant	Rs.10,000/-	Rs.10,000/-
5	Loss of love and affection to second respondent	Rs.5,000/-	Rs.10,000/-
6	Funeral Expenses	Included in S.No.2	Rs.10,000/-
	Total	Rs.5,55,000/-	Rs.13,10,000/-

14. In the result, the Civil Miscellaneous Appeal is partly allowed. The first respondent/Transport Corporation is directed to deposit the amount awarded by this Court along with interest at the rate of 7.5% per annum, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. It is needless for this Court to mention that while numbering the preent appeal, there was a delay of 1670 days, this Court by an order in M.P.No.1 of 2013 in C.M.A.Sr.38195 of 2013 dated 02.07.2013 had made it clear that the appellants 1st and 2nd appellant are not entitled for the interest doing the said delay period. On such deposit being made, the first appellant and the second appellant are permitted to withdraw and disburse the amount, as per the ratio of apportionment made by the Claims Tribunal, less the amount, if any, already withdrawn. The Claimants are further directed to withdraw the amount, by way of filing an appropriate application before the Court concerned. The amount apportioned to the minor claimant/second appellant should be deposited in any of the nationalized banks, till she attain majority and the first appellant is entitled to withdraw the accrued interest once in three months. No costs.

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Chief Small Causes Court, Chennai

Copy To

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

+2cc to Mr.V.Mohana Choudary, Advocate SR.No.14428

C.M.A.No.2262 of 2013

SJ(CO)
GMY(27/04/2021)



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