

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2872 of 2015

1.Selvi
2.Nirmala
3.Velu

.. Appellants /Petitioners

Vs.

The Managing Director
Metropolitan Transport Corporation Limited
Chennai-2.

.. Respondent/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.07.2015 made in M.C.O.P.No.1563 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai.

For Appellants : Ms.A.Subadra for Ms.M.Malar

For Respondent : Mr.S.S.Swaminathan

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 10.07.2015 made in M.C.O.P.No.1563 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai.

2.The appellants are claimants in M.C.O.P.No.1563 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai. They filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Sakthivel, who died in the accident that took place on 13.03.2014.

3.The Tribunal considering the pleadings, oral and

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documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent/Transport Corporation and directed the respondent to pay a sum of Rs.6,93,000/- as compensation to the appellants.

4. Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellants/claimants contended that the deceased was working as a building maistry-cum-fish cart rider and was earning a sum of Rs.20,000/- per month. The Tribunal without considering the same, has fixed only a sum of Rs.6,000/- per month as notional income of the deceased, which is meagre. The deceased was aged 47 years at the time of accident. The Tribunal ought to have applied multiplier '13' instead of multiplier '11'. The Tribunal has not awarded any enhancement towards future prospects. There are three dependants of the deceased and the Tribunal ought to have deducted 1/4th instead of 1/3rd towards personal expenses. The Tribunal has not awarded any amount towards transportation, damage to clothes, loss of estate and mental agony. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the appellants have not produced any document to prove that the deceased was earning a sum of Rs.20,000/- per month. In the absence of any material evidence with regard to income of the deceased, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the deceased and the same is not meagre. The Tribunal after considering the materials available on record, has awarded just compensation. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

8. From the materials available on record, it is seen that the appellants have contended that the deceased was working as a building maistry-cum-fish cart rider and was earning a sum of Rs.20,000/- per month. The appellants have not substantiated the said contention by marking any document. In the absence of any material evidence to prove the avocation and income of the

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deceased, the Tribunal has fixed a sum of Rs.6,000/- per month as notional income of the deceased. The accident is of the year 2014 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.8,000/- is fixed as monthly income of the deceased. According to the appellants, the deceased was aged 47 years at the time of accident. The Tribunal considering Ex.P2/Post-mortem certificate and Ex.P3/death certificate, fixed age of the deceased as 50 years and applied multiplier 11. The multiplier 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 (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier is 13. The Tribunal has not granted any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi), 25% enhancement is granted towards future prospects for the age group between 40 and 50 years. In the present case, the deceased was aged 50 years. Therefore, the appellants are entitled to 25% enhancement towards future prospects. There are three dependants of the deceased and the Tribunal has deducted 1/3rd towards personal expenses, which is proper. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.10,40,000/- (Rs.8,000/- + 2000 [Rs.8,000/- X 25%] X 12 X 13 X 2/3). A sum of Rs.50,000/- awarded by the Tribunal towards loss of consortium is excessive and the same is hereby reduced to Rs.40,000/-. The Tribunal has not awarded any amount towards loss of estate and this Court awards a sum of Rs.15,000/- towards loss of estate. The amounts awarded by the Tribunal towards funeral expenses and loss of love & affection are just and reasonable and 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 or reduced
1.	Loss of dependency	5,28,000	10,40,000	Enhanced
2.	Funeral expenses	15,000	15,000	Confirmed
3.	Loss of consortium	50,000	40,000	Reduced

4.	Loss of love and affection	1,00,000	1,00,000	Confirmed
5.	Loss of estate	-	15,000	Granted
	Total	6,93,000	12,10,000	Enhanced by Rs.5,17,000 /-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,93,000/- is hereby enhanced to Rs.12,10,000/- together with interest at the rate of 7.5% 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 1st appellant being wife of the deceased is entitled to a sum of Rs.6,66,000/- and the appellants 2 & 3 being daughter & son of the deceased are entitled to a sum of Rs.2,72,000/- each as 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 twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw their respective share of the award amount now determined by this Court along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj

To

1.II Judge

The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2.The Section Officer

V.R.Section
High Court, Chennai.

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+1cc to Mr.S.S.Swaminathan, Advocate SR.1283
+1cc to Ms.M.Malar, Advocate SR.1230

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