

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2705 of 2013

1. G. Leelavathi

2. P.Peethambaram ... Appellants/Petitioners

vs.

Metropolitan Transport Corporation Ltd.,
Rep. By its Managing Director,
Pallavan House,
Chennai - 2.

...Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.02.2010 made in M.C.O.P. No.4329 of 2005 on the file of the Motor Accidents Claims Tribunal, 2nd Small Causes Court, Chennai.

For Appellant : Mr.K.Suryanarayanan

For Respondent : Mr.S.S.Swaminathan

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the appellants / claimants seeking enhancement of compensation under the impugned award dated 23.02.2010 passed by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai) in MCOP No.4329 of 2005.

2. A person by name, Abilash died on 31.01.2005 as a result of an accident caused by the bus owned by the respondent / Transport Corporation. The appellants / claimants are the legal heirs and dependants of the deceased Abilash. They preferred a claim before the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai in M.C.O.P. No.4329 of 2005 seeking compensation for the death of Abilash.

3. The Motor Accidents Claims Tribunal (Additional District Judge, II Fast Track Court), Chennai under the impugned award directed the respondent / Transport Corporation to pay the appellants / claimants a compensation of Rs.14,00,000/- together with interests and costs, as detailed hereunder :-

Heads	Amount awarded by the Tribunal (Rs.)
Loss of pecuniary benefit	13,20,000
Loss of Estate	10000
Loss of love and affection	20,000
Medical expenses	10,000
Mental agony	20,000
Pain and suffering	10,000
Funeral expenses	10,000
Total	14,00,000

4. The appellants /claimants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking for enhancement.

5. Heard Mr.K.Suryanarayanan, learned counsel for the appellants and Mr.R. Neethiperumal, learned counsel for the second respondent.

6. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

7. Before the Tribunal, the appellants / claimants have filed nine documents which were marked as Exs.P1 to P9 and two witnesses were examined viz., P.Peethambaram, the father of the deceased Abilash as PW1 and K.Babu, an Eye witness to the accident as PW2. On the side of the respondent / Transport Corporation, the Driver of the bus, viz., A.Saravanan was examined as RW1. However, no document was filed on their side before the Tribunal.

8. In the claim petition, the appellants / claimants have pleaded that the deceased Abilash was aged 22 years, working as a Project Engineer at Polaris Software Lab Limited, Chennai - 600 103 and earning Rs.15,000/-p.m. at the time of the accident. In support of their contention, the appellants / claimants have filed the salary certificate of the deceased, which was marked as Ex.P8. The Tribunal has accepted the same and has fixed the monthly income of the deceased at Rs.15,000/-. This Court is in agreement with the said assessment made by the Tribunal. However, the Tribunal has failed to award any compensation towards loss of future prospects, which the appellants / claimants are legally entitled to as per Constitution Bench judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi & others reported in 2017 16 SCC 680. The deceased was aged 22 years at the time of the accident.

For a person aged 22 years, the loss of future prospects payable is 40%. Accordingly, this Court awards 40% towards loss of future prospects to the appellants / claimants.

9. The Tribunal has also erroneously adopted 11 multiplier and has also erroneously deducted 1/3rd towards personal expenses of the deceased. For a person, aged 22 years, the correct multiplier to be adopted as per the decision of the Hon'ble Supreme Court in the case of Sarala Verma & Ors. vs. Delhi Transport Corp. & Anr. reported in 2009 6 SCC 121 is 18 and the correct deduction is 50%, since the deceased was a Bachelor at the time of the accident. Accordingly, the same is modified by this Court.

10. For the foregoing reasons, the loss of dependency is enhanced from Rs.13,20,000 to Rs.22,68,000 as detailed below :-

$$\text{Rs.15,000} \times 40/100 - 50\% \times 12 \times 18 = \text{Rs.22,68,000/-}$$

11. The Tribunal has also erroneously awarded compensation towards mental agony, pain and suffering, medical expenses, which the appellants / claimants are not entitled as the victim Abilash, died on the same day of the accident. No documentary evidence has also been produced by the appellants / claimants before the Tribunal, in support of the said claim. Therefore, the compensation awarded by the Tribunal towards mental agony, pain and suffering and medical expenses are set aside by this Court.

12. The Tribunal has only awarded a meagre compensation towards loss of estate, loss of love and affection and Funeral expenses, which has to be necessarily enhanced in accordance with Pranay Sethi's case referred to supra. Accordingly, the compensation towards loss of estate is enhanced from Rs.10,000/- to Rs.15,000; loss of love and affection from Rs.20,000/- to Rs.40,000/- and funeral expenses from Rs.10,000/- to Rs.15,000/-.

13. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of pecuniary benefit * Rs.10,000 x 12 x 11 #Rs.15,000 x 40/100 - 50% x 12 x 18	13,20,000 *	22,68,000 #

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of Estate	10,000	15000
Loss of love and affection	20,000	40,000
Medical expenses	10,000	-
Mental agony	20,000	-
Pain and suffering	10,000	-
Funeral expenses	10,000	15,000
Total	14,00,000	23,38,000

14. In the result, the appeal filed by the appellants / claimants, stands partly allowed by enhancing the compensation from Rs.14,00,000/- to Rs.23,38,000/- as indicated above. No costs.

15. The respondent / Transport Corporation is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.4329 of 2005 on the file of the Motor Accidents Claims Tribunal, (II Court of Small Causes Court), Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank accounts of the appellants /claimants, as per the same ratio of apportionment made by the Tribunal, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellant/claimant before receiving the copy of this Judgment.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Vsi2

To

1. The II Judge,
II Court of Small Causes,
Motor Accidents Claims Tribunal,

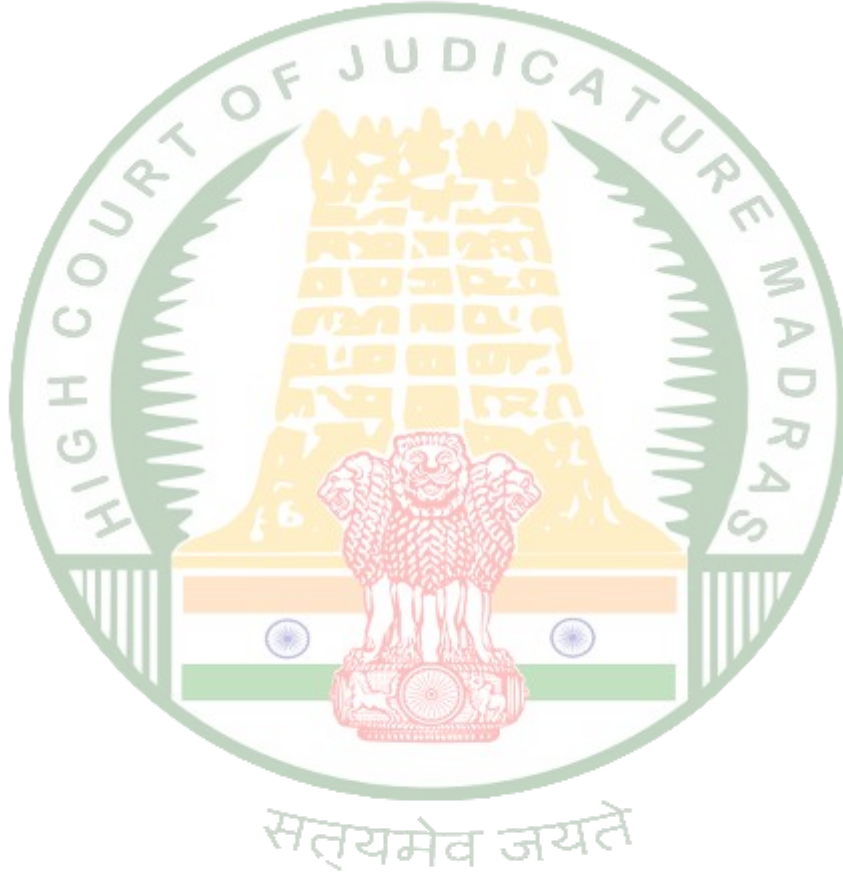
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The Section Officer,
V.R. Section,
Madras High Court.(2 Copies)

+1cc to Mr.K.Surayanarayanan, Advocate, S.R.No.31110
+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No. 31405

C.M.A.No.2705 of 2013

PPA (CO)
GN (08/06/2021)



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