IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2725 of 2013

1.Balammal

2.Murugesan .. Appellants/Petitioners

Vs.

The Managing Director
State Express Transport Corporation
(Tamil Nadu) Limited
Pallavan salai
Thiruvallur House
Chennai-600 002. .. Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.06.2009 made in M.C.O.P.No.4121 of 2006 on the file of Motor Accident Claims Tribunal, Chief Judge Small Causes Court, Chennai.

For Appellants: Mr.F.Terry Chellaraja for Mr.V.Velu

For Respondent: Mr.K.J.Sivakumar

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 30.06.2009 made in M.C.O.P.No.4121 of 2006 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai.

2.The appellants are claimants in M.C.O.P.No.4121 of 2006 on the file of Motor Accident Claims Tribunal, Chief Small Causes Court, Chennai. They filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the death of their son viz., Ramesh, who died in the accident that took place on 02.09.2006.

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 bus belonging to the respondent/Transport Corporation and directed the respondent/Transport Corporation to pay a sum of Rs.4,93,000/- 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 aged 24 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as a Homeopathy Doctor. The appellants marked Exs.P2 to P15/educational certificates to prove the same. The Tribunal without considering the same, fixed only a meagre sum of Rs.4,500/- per month as notional income of the deceased and has not granted any enhancement towards future prospects. The Tribunal considering the age of the mother of the deceased, applied multiplier '13', which is not correct and the Tribunal ought to have applied multiplier '18' considering the age of the deceased. The Tribunal has not awarded any compensation towards loss of estate, mental agony, damage to clothes and transportation. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.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.15,000/- per month at the time of accident. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased, which is not meagre. The Tribunal after considering all the materials available on record, has awarded compensation, which is also not meagre. 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/Transport Corporation and perused all the materials available on record.

8.It is the contention of the appellants that the deceased was aged 24 years at the time of accident and was earning a sum of Rs.15,000/- per month by working as a Homeopathy Doctor. Though the appellants have marked Exs.P2 to P15/educational certificates of the deceased, they have failed to substantiate their contention that the deceased was earning a sum of Rs.15,000/- per month at the time of accident. Further the appellants failed to produce Income Tax Returns filed by the deceased. In the absence of any material evidence to prove the income of the deceased, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident is of the year 2006 and the notional income fixed by the Tribunal is meagre. Hence, a sum of Rs.5,500/- per month is fixed as notional income of the deceased. The Tribunal applied multiplier '13' based on the age of the mother of the deceased, which is not correct. As per the judgment of the Hon'ble Apex Court, age of the deceased has to be taken into account for applying multiplier. As per Ex.P19/post-mortem certificate, the deceased was aged 27 years at the time of accident and the multiplier applicable is 17. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 40% enhancement towards future prospects. The Tribunal deducted 1/3rd towards personal expenses, which is not correct. The deceased was bachelor at the time of his death and therefore, 50% has to be deducted towards personal expenses. Thus, the compensation awarded by the Tribunal towards loss of dependency is enhanced to Rs.7,85,400/- (Rs.5,500/- + 2200 [Rs.5,500/- X 40%] X 12 X 17 X 1/2). The sum of Rs.20,000/- and Rs.5,000/- awarded by the Tribunal towards loss of love & affection and funeral expenses are meagre and the same are hereby enhanced to Rs.40,000/- each to the appellants & Rs.15,000/-respectively. The Tribunal has not awarded any compensation towards loss of estate and hence, a sum of Rs.15,000/- is awarded towards loss of estate. 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	4,68,000	7,85,400	Enhanced
2.	Loss of love and affection	20,000	80,000	Enhanced
3.	Funeral expenses	5,000	15,000	Enhanced

4.	Loss of estate	-	15,000	granted
	Total	4,93,000	8,95,400	Enhanced by Rs.4,02,400 /-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,93,000/- is hereby enhanced to Rs.8,95,400/- 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. It is made clear that the appellants/claimants are not entitled for any interest for the delay period on the amount of Rs.4,02,400/- enhanced by this Court as per the order of this Court dated 31.07.2013 in M.P.No.1 of 2013 in C.M.A.SR.No.23332 of 2013. 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 on the basis of apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

+1cc to Mr.V.Velu, Advocate, S.R.No.22929
+1cc to Mr.KJ.Sivakumar, Advocate, S.R.No.22893

LN(CO)
CB(18/08/2020)