

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 2963 of 2013

Prema .. Appellant/1st Petitioner

Vs.

1.Saroja ..1st Respondent/2nd petitioner

2.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Salem. ..2nd Respondent/2nd respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 08.03.2011, made in M.C.O.P. No. 1 of 2008, on the file of the District Court, (Motor Accident Claims Tribunal), District Judge, Thiruvannamalai.

For Appellant : Mr. F. Terry Chellaraja

For Second Respondent: Mr. D. Venkatachalam
(For R2)

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the award dated 08.03.2011, made in M.C.O.P. No. 1 of 2008, on the file of the District Court, (Motor Accident Claims Tribunal), Thiruvannamalai.

2.The appellant and 1st respondent filed M.C.O.P. No. 1 of 2008, on the file of the District Court, (Motor Accident Claims Tribunal), Thiruvannamalai, claiming a sum of Rs.10,00,000/- as compensation for the death of one Panneerselvam, who died in the accident that took place on 15.11.2007.

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 2nd respondent-Transport Corporation and directed the 2nd respondent to pay a sum of Rs.3,63,000/- as compensation to the appellant. The Tribunal dismissed the claim petition as against the 1st respondent.

4. Not being satisfied with the amounts awarded by the Tribunal in the award dated 08.03.2011, made in M.C.O.P. No. 1 of 2008, the appellant has come out with the present appeal.

5. Learned counsel appearing for the appellant contended that the 1st respondent has admitted that she has 6 other issues apart from the deceased, hence, she was not dependent of the deceased. Whereas the appellant being the wife of the deceased was solely dependent of the deceased. The deceased was running a Grocery Shop and was earning a sum of Rs.8,000/- per month. The Tribunal fixed only a sum of Rs.4,500/- per month as notional income of the deceased. The deceased has taken treatment in Thiruvannamalai Government Hospital and then at CMC Hospital, Vellore and was referred to Government General Hospital, Chennai. The amounts awarded by the Tribunal towards transportation and damage to clothes are meagre. The Tribunal has not awarded any amount towards loss of estate and mental agony and prayed for enhancement of the compensation.

6. Per contra, the learned counsel appearing for the 2nd respondent-Transport Corporation contended that the Tribunal in the absence of any material evidence to prove the avocation and income of the deceased, fixed a sum of Rs. 4,500/- per month as notional income, which is not meagre. The deceased was aged 44 years at the time of accident. The Tribunal erroneously applied the multiplier '15', instead of '14'. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

8. It is the contention of the appellant that the deceased was running a Grocery Shop and was earning a sum of Rs.8,000/- per month. She failed to prove the same. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the deceased. The accident is of the year 2007 and the monthly income fixed by the Tribunal is meagre. This Court fixes a sum of Rs.6,500/- per month as notional income of the deceased. The Tribunal has not granted any enhancement towards future prospects. The deceased was aged 44 years at the time of accident. Considering the age and avocation of the deceased, the appellant is entitled to 25% enhancement towards future

prospects. The Tribunal has erroneously applied the multiplier '15', whereas the correct multiplier applicable is '14'. There are two dependents of the deceased viz., the appellant and 1st respondent. Hence, after deducting 2/3rd towards personal expenses of the deceased and applying the multiplier '14', the amount awarded by the Tribunal towards pecuniary loss is modified to Rs.9,10,000/- {[Rs.6,500/- + Rs.1,625/- (25% of Rs.6,500/-)] x 12 x 14 x 2/3}. From the said amount, as per the ratio of apportionment fixed by the Tribunal, the appellant is entitled to a sum of Rs.6,06,667/- towards pecuniary loss. The amount awarded by the Tribunal towards funeral expenses is meagre and hence, the same is enhanced to Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of consortium and loss of estate. The appellant having lost her husband, is entitled to a sum of Rs.40,000/- towards loss of love and affection and Rs.15,000/- towards loss of estate. The amount awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.

9.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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
1.	Loss of earning	3,60,000/-	6,06,667/-	Enhanced
2.	Loss of consortium	-	40,000/-	Granted
3.	Transportation	500/-	500/-	Confirmed
4.	Funeral expenses	2,000/-	15,000/-	Enhanced
5.	Loss of estate	-	15,000/-	Granted
6.	Damage to clothes	500/-	500/-	Confirmed
	Total	3,63,000/-	6,77,667/-	Enhanced by Rs.3,14,667 /-

10. In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.3,63,000/- is enhanced to Rs.6,77,667/- along with interest and costs. The 2nd respondent-Transport Corporation is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of twelve weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 1 of 2008. On such deposit, the appellant is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.3,19,667/-. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa
To

To

The District Judge,
(Motor Accident Claims Tribunal),
Thiruvannamalai.

Copy to:
The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to Ms.M.Malar Advocate sr23446
+1 cc to Mr.D.Venkatachalam Advocate sr23353

C.M.A. No. 2963 of 2013

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