

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:21.09.2020

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2006 of 2016

1.R.Shanthi

2.S.Raji

.. Appellants/Petitioner

/versus/

The Managing Director,
Metropolitan Transport Corp.Ltd.,
Pallavan House, Pallavan Road,
Chennai-2.

.. Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 14.07.2009 made in M.C.O.P.No.10 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court (II Fast Track Court), Poonamallee.

For Appellants :Mr.K.Varadha Kamaraj

For Respondent :Mr.S.Sivakumar

JUDGMENT

(This case has been heard through Video Conference)

This appeal is filed for enhancement of compensation, being aggrieved by the award passed by the Tribunal.

2.The appellants are the parents of the deceased minor boy Sivakumar, aged 11 years. On 30.08.2007, while the deceased minor boy travelling in the respondent's Corporation bus, tried to alight at Thriuverkadu bus stand. The driver of the bus rash and negligently drove the vehicle, without ensuring safe exist of the passengers. The minor boy was thrown out from the bus and fell down. He sustained injury also died on the spot. The parents of the deceased being legal heirs of the deceased boy have filed the claim petition seeking compensation for Rs.4,00,000/-.

3.The Tribunal, after considering the evidence placed

before it, has held that the accident had occurred due to

negligence of the driver of the transport corporation bus and hence, the transport corporation is vicariously liable to compensate the loss. While computing compensation, the Tribunal has awarded a consolidated amount of Rs.1,25,000/-.

4.The learned counsel appearing for the appellants would submit that the said award is less and the Hon'ble Supreme Court and the High Courts have considered the cases of child death and had awarded a consolidated sum of Rs.5,00,000/- and above, based on the age of the victim and the dependency of the claimants. In this case, the claimants had lost their only son in the accident and therefore, sought for enhancement of compensation.

5.Learned counsel appearing for the respondent would submit that the victim at the time of accident was only 11 years old and the father of the deceased was working as security in the private firm and the mother of the deceased was a home-maker. Taking note of these facts, the Tribunal has awarded a consolidated compensation of Rs.1,25,000/- as per norms prevailing at the time of the award.

6.The learned counsel appearing for the appellants relying upon the judgment of the Hon'ble Supreme Court in Krishna Gopal and Another v. Lala and others reported in [2013 (2) TNMAC 358], would submit that after the amendment to the Motor Vehicles Act in the year 1994 as per Section 163A of the Motor Vehicle Act, which provides for structured compensation as per Schedule II of the Act, a boy up to age of 15 is entitled for compensation on the basis of the multiplier and the multiplier '15' has to be applied in this case.

7.Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent.

8.On considering the submissions made by the learned counsels on either side and the facts of this case, this Court finds that the first claimant is the mother of the deceased and the 2nd claimant is the father of the deceased, who is the second class heir. The Tribunal has declined to award compensation to the 2nd claimant/father. Taking into account that the appellants herein have lost their only son at the age '11', the award has to be just and fair. The death is of the year 2007, a sum of Rs.1,25,000/- for loss of only son is not adequate and fair. Hence, the award of the Tribunal requires modification.

9.In view of this Court, a consolidated sum of Rs.4,50,000/- to the first claimant/1st appellant, who is the mother of the deceased, with interest at the rate of 7.5% p.a. from the date of petition, till the date of deposit will be fair and adequate. For the 2nd claimant/2nd appellant, who is

the father of the deceased, who has lost his son, a sum of Rs.50,000/- with interest at the rate of 7.5% p.a from the date of petition, till the date of deposit, is awarded towards loss of love and affection. The enhanced award amount shall be paid by the respondent/Corporation within a period of 12 weeks from the date of receipt of a copy of this order. The claimants/appellants shall withdraw their respective share amount on filing appropriate application before the tribunal.

10.In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To:

1. The Additional District and Sessions Judge,
The Motor Accident Claims Tribunal,
(II Fast Track Court), Poonamallee.
2. The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.K.Varadha Kamaraj, Advocate SR.No.30843

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