

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2939 of 2014

1.S.Priya
2.S.Shasthiri

.. Appellants/Petitioners

Vs.

The Managing Director
Tamil Nadu State Transport Corporation
(Vizhupuram Division - II) Ltd.
Rangapuram, Vellore-9.

.. Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 23.12.2011 made in M.C.O.P.No.122 of 2010 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Vellore.

For Appellants : Mr.M.Sivakumar
for Mr.C.Prabakaran

For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 23.12.2011 made in M.C.O.P.No.122 of 2010 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Vellore.

2.The appellants are the claimants in M.C.O.P.No.122 of 2010 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Vellore. They filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of their son viz., Venkat, who died in the accident that took place on 28.10.2009.

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 to pay a sum of Rs.1,60,000/- 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 contended that the deceased was aged 12 years at the time of accident. The Tribunal ought to have fixed notional income of the deceased minor taking into consideration the judgment of the Hon'ble Apex Court reported in 2013 (2) TNMAC 358 SC (Kishan Gopal and another vs. Lala and others). The consolidated amount of Rs.1,00,000/- awarded by the Tribunal towards loss of income is meagre. The Tribunal failed to award any enhancement towards future prospects. The amounts awarded by the Tribunal under different heads are also meagre and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the respondent/Transport Corporation contended that the deceased was aged 12 years at the time of accident and he was a non-earning member. The Tribunal after considering all the materials available on record, 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 respondent/Transport Corporation and perused the entire materials available on record.

8. It is the contention of the appellants that the deceased was aged 12 years at the time of accident. The Tribunal awarded consolidated amount of Rs.1,00,000/- towards loss of income without fixing notional income of the deceased. The Hon'ble Apex Court in the judgment reported in 2013 (2) TNMAC 358 SC (Kishan Gopal and another vs. Lala and others), held that fixing a sum of Rs.30,000/- per annum will be reasonable amount for the deceased minor. This Court has fixed notional income of the deceased minor as Rs.45,000/- to Rs.60,000/- per annum in some cases, considering the passage of time, after enactment of II Schedule of the Motor Vehicles Act. In the present case, the accident is of the year 2009 and the deceased was aged 12 years at the time of accident. In view of the above, a sum of Rs.30,000/- per annum is fixed as income of the deceased. As per the II Schedule of the Motor Vehicles Act, the multiplier applicable is '15'. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.4,50,000/- (Rs.30,000/- X 15). A sum of Rs.50,000/- awarded by the Tribunal

towards loss of love and affection to the appellants is not meagre and hence, the same is hereby confirmed. A sum of Rs.10,000/- awarded by the Tribunal towards funeral expenses is meagre and hence, the same is hereby enhanced to Rs.15,000/-. 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.

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 or reduced
1.	Loss of income	1,00,000	4,50,000	Enhanced
2.	Loss of love and affection to the appellants	50,000	50,000	Confirmed
3.	Funeral expenses	10,000	15,000	Enhanced
4.	Loss of estate	-	15,000	Granted
	Total	1,60,000	5,30,000	Enhanced by Rs.3,70,000/-

10.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,60,000/- is hereby enhanced to Rs.5,30,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee on the enhanced compensation. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.3,70,000/- enhanced by this Court as per the order of this Court dated 24.09.2014 in M.P.No.1 of 2014 in C.M.A.SR.No.71635 of 2014. 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 if any, already deposited,

within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Kj

To

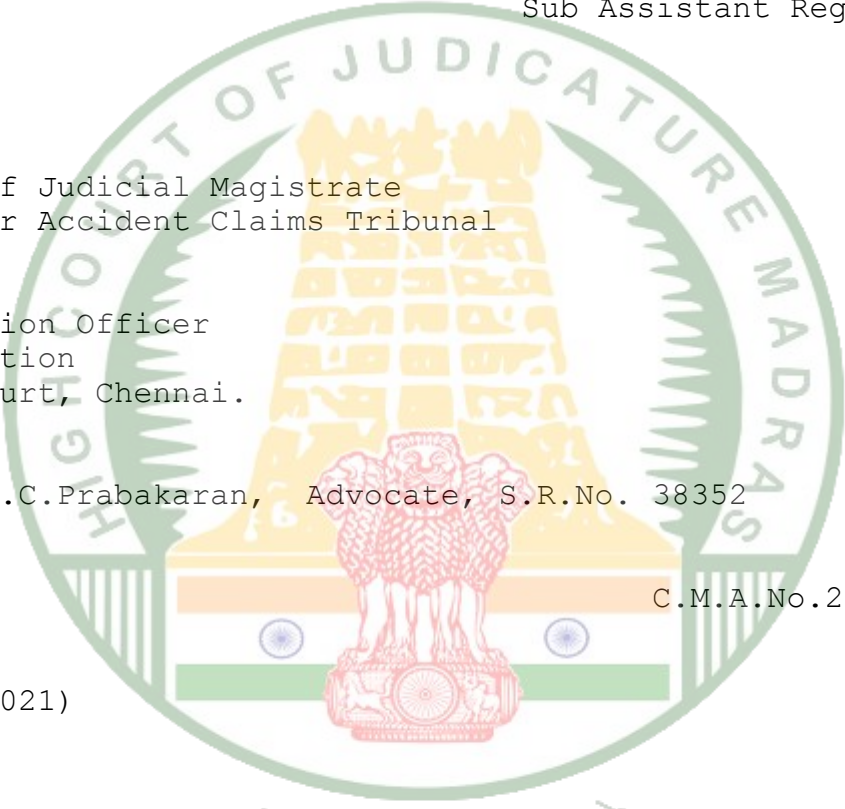
1.The Chief Judicial Magistrate
The Motor Accident Claims Tribunal
Vellore.

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

+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 38352

C.M.A.No.2939 of 2014

KJ (CO)
GN(16/04/2021)



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