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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3129 of 2014

1.J. Rajamani

2.Selvaraj

... Appellants/Claimants

Vs.

The Managing Director,
Metropolitan Transport Corporation,
Chennai.

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree dated 22.08.2014, made in M.C.O.P. No.3213 of 2010, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellants : Mr. L.P. Shanmuga Sundaram

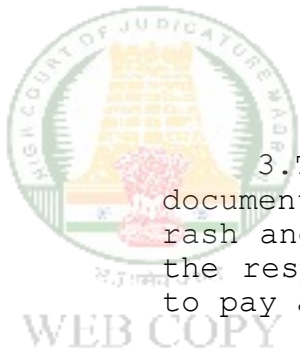
For Respondent : Dr.S.S.Swaminathan

J U D G M E N T

This matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the Tribunal by the common award dated 22.08.2014, made in M.C.O.P. No.3213 of 2010, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellants along with one deceased V. Valliammal filed M.C.O.P. No.3213 of 2010, on the file of the III Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.20,00,000/- as compensation for the death of V.Jayaraman who died in the accident that took place on 14.08.2010. Pending claim petition, the said V. Valliammal (3rd claimant) died.



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.8,90,000/- as compensation to the appellants.

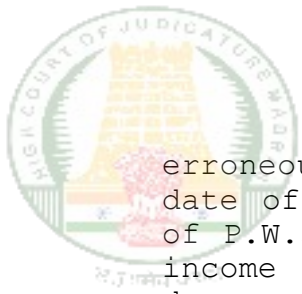
4.Not being satisfied with the amounts awarded by the Tribunal by the common award dated 22.08.2014, made in M.C.O.P. No.3213 of 2010, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the deceased was working as Production Controller in Jayadevi Films and was earning a sum of Rs.15,000/- per month. The appellants examined the Proprietor of Jayadevi Films as P.W.3 and marked Salary Certificate as Ex.P13 and proved the avocation and income of the deceased. The Tribunal without giving any reason, erroneously fixed meagre sum of Rs.6,000/- per month as notional income of the deceased. The deceased was aged 44 years at the time of accident. The Tribunal has not awarded any enhancement towards future prospects of the deceased. The Tribunal failed to award any amount towards transportation charges. The total compensation awarded by the Tribunal is meagre and prayed for allowing the appeal.

6.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the deceased was aged 44 years at the time of accident. The Tribunal considering the age and nature of work done by the deceased, fixed the monthly income at Rs.6,000/- per month, which is not meagre. The Tribunal inspite of awarding compensation towards loss of consortium to the 1st appellant, has awarded compensation towards loss of love and affection to the 1st appellant along with the 2nd appellant. The amounts awarded by the Tribunal towards loss of love and affection, loss of consortium and funeral expenses are excessive and hence, they are not entitled for any enhancement 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 materials available on record.

8.From the materials on record, it is seen that it is the contention of the appellants that the deceased was working as a Production Controller in Jayadevi Films and was earning a sum of Rs.15,000/- per month. The appellants examined one Jayadevi as P.W.3 and marked Salary Certificate as Ex.P15. The Tribunal without considering the evidence of P.W.3 and Ex.P15, fixed the income of the deceased only at Rs.6,000/- per month. The same is



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erroneous. The accident is of the year 2010. Considering the date of accident, nature of work done by the deceased, evidence of P.W.3 and Ex.P15, it will be just and proper if the notional income of the deceased is fixed at Rs.10,000/- per month. The deceased was aged 44 years at the time of accident. The Tribunal has not awarded any enhancement towards future prospects. As per the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others], the appellants are entitled to 25% enhancement towards future prospects. There are two dependents of the deceased. Hence, deducting $\frac{1}{3}$ rd towards personal expenses of the deceased and applying the multiplier '15', the amounts granted by the Tribunal towards loss of dependency is modified to Rs.15,00,000/- {[Rs.10,000/- + Rs.2,500/-(25% of Rs.10,000/-)] x 12 x 15 x $\frac{2}{3}$ }. The Tribunal has excessively granted a sum of Rs.50,000/- to the 1st appellant towards loss of consortium and hence, the same is reduced to Rs.40,000/-. In addition to loss of consortium, the Tribunal has granted a sum of Rs.1,00,000/- towards loss of love and affection to both the appellants 1 and 2. The 1st appellant is not entitled to any amount for loss of love and affection, except loss of consortium. In view of the same, the amounts granted by the Tribunal towards loss of love and affection is reduced to Rs.40,000/- to the 2nd appellant. The sum of Rs.20,000/- granted by the Tribunal excessively to the appellants towards funeral expenses is excessive and the same is reduced to Rs.15,000/-. The Tribunal failed to award any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- 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
1.	Loss of pecuniary benefits	7,20,000/-	15,00,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	50,000/-	40,000/-	Reduced
3.	Loss of love and affection to appellants 1 and 2	1,00,000/-	-	Set aside



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4.	Loss of love and affection to the 2 nd appellant	-	40,000/-	Granted
5.	Funeral expenses	20,000/-	15,000/-	Reduced
6.	Loss of estate	-	15,000/-	Granted
	Total	8,90,000/-	16,10,000/-	Enhanced by Rs.7,20,000/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.8,90,000/- is enhanced to Rs.16,10,000/- along with 7.5% interest per annum from the date of petition till the date of deposit. The respondent-Transport Corporation is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, 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.3213 of 2010. On such deposit, the appellants are permitted to withdraw their share of the award amount along with proportionate interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The III Small Causes Judge,
(Motor Accident Claims Tribunal),
Chennai.



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

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+1cc to Mr.S.S.Swaminathan, Advocate Sr.39042

+1cc ot Mr.L.P.Shanmugasundaram, Advocate Sr.39601

C.M.A.No.3129 of 2014

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srg 26/08/2021