IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2020

CORAM:

THE HON'BLE **Mr.JUSTICE R.MAHADEVAN**

Civil Miscellaneous Appeal No.1338 of 2017

1. A.Rahmathnisha
2. A.Shahil Akthar (minor)
3. A.Lai Usha Asika (minor)
4. A.Rahima Beevi
   (minors rep by her mother and next friend
   the 1st appellant) ... Appellants

..vs..

Metropolitan Transport Corporation (Chennai) Ltd.,
rep by its Managing Director,
Pallavan Salai, Chennai-600 002. ... Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.02.2015 MACT.OP.No.3 of 2012, on the file of the Chief Small Causes Court, (Motor Accidents Claims Tribunal), Chennai.

For Appellants : Mr. N.M.Muthurajan

For Respondent : Dr. S.S.Swaminathan

JUDGMENT

The wife, son, daughter and the mother of the deceased A.Abdul Rahim are the appellants before this Court. They have filed a claim petition claiming a sum of Rs.20,00,000/- before the Tribunal. The Tribunal, upon considering the materials available on record, has awarded a sum of Rs.9,11,000/- as total compensation payable to the claimants / appellants by the respondent, along with 7.5% interest per annum from the date of petition. Dissatisfied with such award, the appellants are before this Court.

2.The case of the appellants / claimants is that on 19.12.2011 at about 21.15 hours, when the deceased was pedaling the cycle from Tsunami Quarters to Perumbakkam near Chettinadu Quarters compound, the driver of the respondent's corporation bus bearing Regn.No.TN-01-N-5027 drove the same in a rash and negligent manner and dashed against the cyclist and due to the said impact, the deceased died on the spot. A case was registered on the file of Semmencherry Police Station. The respondent / transport corporation, being the owner of the bus, is vicariously liable to pay compensation to the claimants/appellants. Based on the documents and evidence, the tribunal has fixed the negligence on the part of the driver of bus and ultimately awarded a sum of Rs.9,11,000/- as total compensation along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

3. Heard both sides.

4. The learned counsel for the appellants / claimants submitted that the monthly income taken by the tribunal at Rs.6,000/- for the deceased is too low, since the accident was of the year 2011 and the deceased was aged 44 years, earning Rs.20,000/- by selling furnitures and by doing timber merchant works. He further submitted that the evidence of the co-employee P.W.3- Raja Mannar has been filed to the effect that the deceased was earning Rs.20,000/- at the time of accident, but the tribunal has brushed aside such evidence and has taken only Rs.6,000/- as monthly income, which is against the evidence on record. He further submitted that Ex.P-5-Bank Pass book of P.W.1 has also been filed, which would prove that the deceased was earning Rs.20,000/- at the time of accident. He also submitted that the amount awarded

under other heads are also too low and they need significant enhancement.

5. Per contra, the learned counsel for the respondent / transport corporation submitted that the tribunal has taken the monthly income of the deceased at Rs.6,000/- per month which is perfectly valid, since in the year 2011 the unskilled workers or timber merchant would be earning Rs.6,000/- as monthly income. He further submitted that the evidence of the co-employee was well considered by the tribunal and thereafter only the amount of Rs.6,000/- was fixed; in fact, the tribunal has deducted only ¼th of the amount towards personal expenses of the deceased considering the large dependents to be taken care of by the deceased; the amount awarded under other heads by the tribunal are also based on the settled principles of law laid down by this Court and also by the Supreme Court and hence the quantum arrived at by the Tribunal does not require any interference at the hands of this Court.

6. This Court has considered the said submissions made by

the learned counsel for both sides and perused the materials available on record.

7. The evidence of P.W.3 was to the effect that the deceased was doing timber business and also making and selling the furnitures for the past 17 years and the deceased was earning Rs.20,000/- per month. Though the evidence was to the said effect, no documentary evidence was produced to prove the income or avocation of the deceased. A perusal of Ex.P.5 reveals that the bank account was in the name of wife of deceased / first appellant herein. Hence basing reliance on a decision reported in **2015 STPL (Web)33 SC (Neeta Vs Divisional Manager, MSRTC, Kolhapur)**, the tribunal has taken the monthly income and has arrived at Rs.6,000/- as income of the deceased and ultimately has awarded a sum of Rs.7,56,000/- under the head 'loss of dependency'. At the same time, it is not in dispute that the deceased was doing carpentry work and the carpentry work is a skilled work, though the income of the deceased was not proved by documentary evidence, it is common that the deceased being the head of the family would have stretched to earn more to maintain

his family, which consists of four members. Therefore, in the absence of proof for avocation and income, considering the evidence of P.W.3 and also the facts and circumstances of case, this Court is of the view that it would be appropriate to fix the income of the deceased at Rs.9,000/-. If Rs.9,000/- is taken, the loss of dependency would be (Rs.9,000/- x ¾ x 12 x 14) Rs.11,34,000/-. Hence, the loss of dependency is fixed at Rs.11,34,000/-, instead of Rs.7,56,000/- .

8. Further, the amounts awarded under the heads 'Loss of Consortium' and 'Loss of Love and Affection' at Rs.25,000/- and Rs.1,00,000/- are perfectly valid, since they are awarded based on the settled principles of law. The amounts awarded under Funeral Expenses at Rs.25,000/- is on the higher side, but the amount awarded towards Travelling Expenses at Rs.5,000/- is meager and hence the amounts under these heads would offset each other, accordingly awarding a sum of Rs.15,000/- towards each of these heads, would be reasonable and the same are hereby awarded.

9. In the result, this Civil Miscellaneous Appeal is partly

allowed, by enhancing the total amount of compensation to Rs.12,89,000/- from Rs.9,11,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

10. The respondent/transport Corporation shall deposit the enhanced compensation amount, as awarded by this Court, along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of six weeks, from the date of receipt of a copy of this judgment. The second appellant-minor would have attained majority by now. Hence, on such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Accounts of the major claimants, ie., appellants 1, 2 and 4, within one week thereafter, through RTGS, as per the ratio of the apportionment made by the Tribunal. With regard to the share of the minor claimant, ie., the third appellant herein, the same shall be deposited, in any one of the nationalized banks in an interest bearing Account initially for a period of three years and renewed periodically till she attains majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant, once in

three months, directly from the bank which shall be utilised for the benefit and welfare of the minor. No costs.

24.07.2020

srk

To
1. The Chief Small Causes Court,
(Motor Accidents Claims Tribunal), Chennai.

2. The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Salai, Chennai-600 002.
3.The Section Officer, V.R.Section,
Madras High Court, Chennai-104

R.MAHADEVAN, J.,
srk

CMA.No.1338 of 2017

24.07.2020