

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2795 of 2017

E.Vijaya

.. Appellant/Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan Illam, Anna Salai,
Chennai 600 002. .. Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.11.2016 made in M.C.O.P.No.3781 of 2013 on the file of the Motor Accident Claims Tribunal/The learned Chief Judge, Small Causes Court, Chennai.

For Appellant : Mr.V.Balamurugan

For Respondent : Mr.S.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the Judgment and Decree dated 24.11.2016 made in M.C.O.P.No.3781 of 2013 on the file of the Motor Accident Claims Tribunal/the learned Chief Judge, Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3781 of 2013 on the file of the Motor Accident Claims Tribunal/the learned Chief Judge, Small Causes Court, Chennai. He filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of one Elumalai, who died in the accident that took place on 05.01.2013.

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.4,47,600/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the

Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the deceased was running a tiffin centre and was earning a sum of Rs.15,000/- per month. The Tribunal erroneously fixed a meagre sum of Rs.6,000/- as the monthly income of the deceased and wrongly deducted 1/2 towards personal expenses of the deceased. The Tribunal has awarded only a meagre amount towards loss of consortium and has not awarded any amount towards transportation and loss of estate. In any event, the total compensation awarded by the Tribunal is meagre and prayed for enhancement of the same.

6.Per contra, learned counsel appearing for the respondent/Transport Corporation contended that the Tribunal, in the absence of any material evidence to prove the avocation and income of the deceased, rightly fixed the income at Rs.6,000/- per month. The Tribunal has wrongly awarded compensation towards loss of love and affection. The Tribunal has granted compensation under different heads, which are not meagre. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the respondent/ Transport Corporation and perused the materials available on record.

8.It is the contention of the appellant that the deceased was running a tiffin centre and was earning a sum of Rs.15,000/- per month at the time of accident. The appellant failed to prove the said contention. In the absence of material evidence with regard to avocation and income of the deceased, the Tribunal fixed notional income of the deceased at Rs.6,000/- per month. The accident occurred in the year 2013 and the notional income fixed by the Tribunal is meagre. Therefore, a sum of Rs.7,500/- per month is fixed as notional income of the deceased. The Tribunal wrongly granted 15% enhancement towards future prospects. The appellant is entitled only 10% enhancement towards future prospects. The Tribunal erroneously deducted 1/2 towards the personal expenses of the deceased, instead of deducting 1/3. Hence, after deducting 1/3rd towards personal expenses of the deceased and applying the multiplier '9', the amount granted by the Tribunal towards loss of dependency is modified to Rs.5,94,000/- {[Rs.7,500/- + Rs.750/- (10% of Rs.7,500/-)] x 12 x 9 x 2/3}. The Tribunal has awarded a meagre sum of Rs.25,000/- towards loss of consortium. Having lost her husband, the appellant is entitled to a sum of Rs.40,000/- towards loss of consortium. The amount awarded by the Tribunal under the head funeral expenses, is excessive and the same is

hereby reduced to Rs.15,000/-. The Tribunal failed to award any amount towards loss of estate and transportation. This Court is inclined to award a sum of Rs.15,000/- towards loss of estate and Rs.5,000/- towards transportation. 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 dependency	3,72,600/-	5,94,000/-	enhanced
2.	Loss of consortium	25,000/-	40,000/-	enhanced
3.	Love and affection	25,000/-	25,000/-	confirmed
4.	Funeral expenses	25,000/-	15,000/-	reduced
5.	Loss of estate	-	15,000/-	granted
6.	Transportation	-	5,000/-	granted
	Total	4,47,600/-	6,94,000/-	Enhanced by Rs.2,46,400/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,47,600/- is hereby enhanced to Rs.6,94,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the Court fee, if any on the enhanced amount of compensation. 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 already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/ claimant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vkr

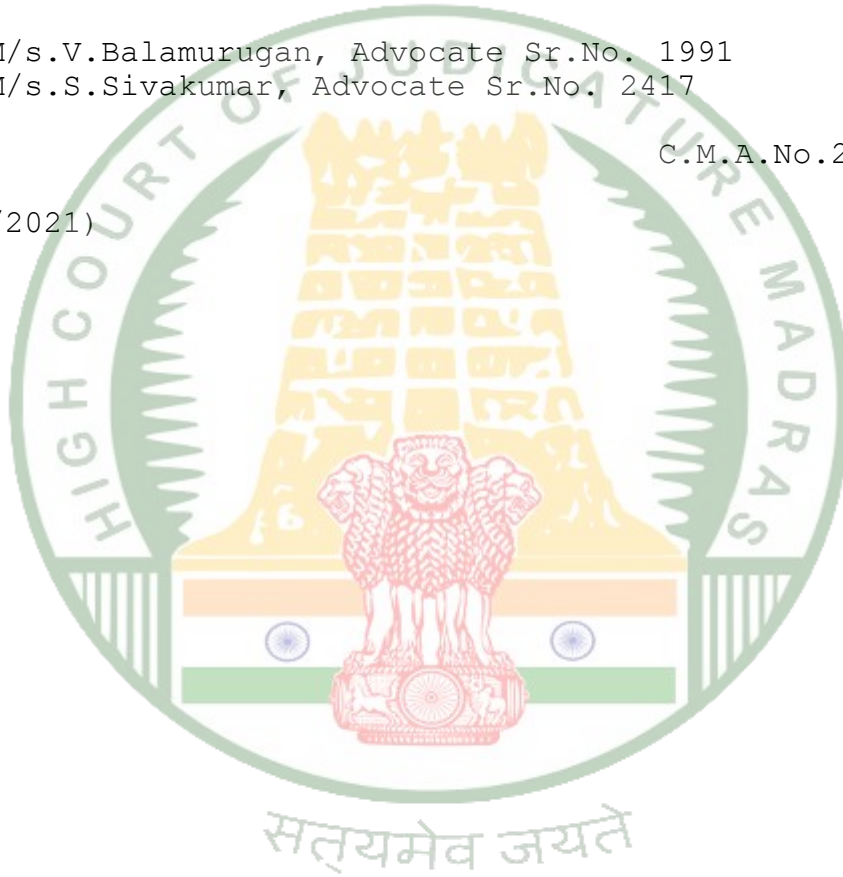
To

- 1.The Chief Judge,
Small Causes Court,
The Motor Accident Claims Tribunal,
Chennai.
- 2.The Section Officer,
V.R Section,
High Court, Madras.

+1 cc to M/s.V.Balamurugan, Advocate Sr.No. 1991
+1 cc to M/s.S.Sivakumar, Advocate Sr.No. 2417

C.M.A.No.2795 of 2017

AK (CO)
RMP (07/05/2021)



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