IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.367 of 2017

1. Tmt. Anjalai @ Anjali
2. Minor K.Arun
3. Minor K.Mohan
4. Perumal
5. Malliga

Minor appellants 2 and 3 represented through their next friend and mother the 1st appellant herein.

... Appellants/Petitioner

vs.

The Managing Director,
Metropolitan Transport Corporation Division,
Anna Salai, Chennai. ... Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, enhance the award against the judgment and decree dated 16.02.2012 and made in M.A.C.T.O.P.No.1342/2010 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellants : M/s.M.Malar

For Respondent : Mr.K.Murthy

JUDGMENT

This appeal is preferred by the appellants/claimants against the award of a sum of Rs.12,05,000/- towards compensation for the death of one P.Krishnan, in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 12.02.2009, at about 16.45 hours, the deceased P.Krishnan was riding the motorcycle bearing Registration No.TN 07 AM 6738 in the Velacherry Main Road near ICICI Bank. At that time, the MTC bus bearing registration No.TN 01 N 4612 belonging to the respondent Transport Corporation, came in a rash and negligent manner and hit the motorcycle from behind. Due to the said impact, the deceased sustained grievous injuries and he later on, died in the hospital. Stating so, his wife, sons, father and mother being the surviving legal heirs, filed a claim petition before the Tribunal, seeking compensation of Rs.10,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.12,05,000/- with interest at the rate of 7.5% per annum from the date of petition.

3.Feeling aggrieved and being dissatisfied with the quantum of compensation so awarded, the appellants are before this Court with the present appeal seeking enhancement of the same. Along with the said appeal, the appellants filed a miscellaneous petition viz., MP.No.1 of 2013 seeking amendment of the claim from Rs.6,00,000/- to Rs.16,00,000/- under the head "loss of pecuniary benefits", which was allowed, vide order of this Court dated 21.07.2015.

4.That apart, it is to be pointed out that there is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award 'just compensation'. The Motor Vehicles Act is a beneficial and welfare legislation. A 'just compensation' is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time barred. Further, there is no need for a new cause of action to claim an enhanced amount. The Courts are duty bound to award just compensation. (See: Nagappa v. Gurudayal Singh [(2003) 2 SCC 274]; Magma General Insurance v. Nanu Ram [(2018) SCC Online SC 1546]; and Ibrahim v. Raju [(2011) 10 SCC 634]). Thus, it is clear that neither the Tribunal nor the High Court is precluded from awarding the compensation more than the amount claimed in the claim petition filed by the appellants.

5.The learned counsel for the appellants has submitted that when the deceased was earning Rs.9,600/- as a building mason, the Tribunal has erred in taking his income only at Rs.8,000/- per month. The learned counsel further submitted that the Tribunal ought to have taken the future prospects of the deceased as per the rulings of the Apex Court. Hence, the learned counsel sought to enhance the compensation awarded by the Tribunal.

6.Per contra, the learned counsel for the respondent/ Transport Corporation has submitted that after properly analysing the materials and evidence, the Tribunal has awarded the just compensation, which in-fact is higher than what was claimed by the appellants and hence, the same does not require any interference in the hands of this Court.

7.Heard the learned counsel on either side and perused the materials available on record.

8.With regard to the quantum of compensation, only the amount awarded by the Tribunal towards loss of income, needs interference, since no amount has been added towards future prospects of the deceased, while calculating pecuniary loss. The Tribunal, taking note of the evidence of PW3 and Ex.P9, has taken the monthly income of the deceased at Rs.8,000/- deducted 1/4th of the amount towards personal expenses of the deceased, adopted the multiplier of 15 and arrived at the pecuniary loss at Rs.10,80,000/-. Considering the age and avocation of the deceased, as per the decision of the Honourable Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi, reported in 2017-13 SCALE 12, the deceased is entitled to 40% towards future prospects (Rs.3,200/-), for arriving at the compensation towards pecuniary loss. If that is done, the amount towards pecuniary loss works out to Rs.15,12,000/- ([Rs.8000/- + Rs.3200/- FP] x ¾ x 12 x 15). Accordingly, the award of the Tribunal towards pecuniary loss stands modified from Rs.10,80,000/- to Rs.15,12,000/- The amounts awarded towards other heads are confirmed. The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Pecuniary loss	15,12,000/-
Loss of love and affection	1,00,000/-
Loss of consortium	15,000/-
Funeral expenses	10,000/-
TOTAL.....	16,37,000/-

Thus, the appellants/ claimants are entitled to the modified compensation of Rs.16,37,000/- with interest at the rate of 7.5% per annum from the date of claim petition.

9.In fine, the appeal is partly allowed. No costs. The respondent/Transport Corporation is directed to deposit the modified amount of compensation, now determined by this Court, along with interest and costs, after deducting the amount already deposited, if any, within a period of four 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 shares of the appellants 1, 2, 4 and 5 / claimants as per the ratio of apportionment made by it, to their respective Savings Bank Account, through RTGS, within a period of one week thereafter. In respect of the share of the minor / third appellant, the Tribunal shall invest the same in a fixed deposit in any one of the Nationalised banks till he attains majority and the interest accrued thereon shall be permitted to be withdrawn by the first appellant/claimant once in three months directly from the bank, which shall be used for the benefit and welfare of the minor. Needless to state that the appellants have to pay the appropriate court fee, to receive the awarded amount.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The learned II Judge Small Causes Court,
   The Motor Accident Claims Tribunal,
   Chennai.

2. The Section Officer,
   V.R.Section, Madras High Court,
   Chennai 104.

+1cc to M/s.M.Malar, Advocate SR.No.26790

C.M.A.No.367 of 2017

CNR(CO)
GMY(04/05/2021)