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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.3504 OF 2008

1. Sabita Jana
2. Dulal Chandra Jana ...Appellants / Claimants

Vs.

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

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.05.2008 passed in MACT.O.P.no.3358 of 2005 by the Additional District Cum Sessions Court (Fast Track Court No.III), Motor Accidents Claims Tribunal, Chennai.

For Appellants : Mr.R.Kalai Arasan

For Respondent : Dr.SS.Swaminathan

J U D G M E N T

Challenging the judgment and decree passed by the Tribunal awarding a compensation of Rs.1,97,000/-, the claimants/appellants are before this court to enhance the compensation.

2. The claimants/appellants filed a claim petition before the Tribunal seeking compensation of Rs.6,00,000/- for the death of their son namely Gopal Jana in a road accident that took place on 19.04.2005.



3. The brief case of the claimants is as follows. On 19.04.2005, at about 7.45 hours, the deceased was travelling as a pillion rider in a motorcycle bearing registration No.TN-01-P-8892, driven by one Subeth Kumar Midya @ Rajkumar from Nungambakkam to Kilpauk and while they proceeding along Chetpet Gurusamy Over Bridge, a bus bearing registration No.TN-01-N-2823 hit the motorcycle, thereby both of them sustained grievous injuries and the deceased was admitted to Kilpauk Medical College Hospital, from there, referred to Government General Hospital, Chennai and treated as inpatient and subsequently, he died on 21.04.2005. The rash and negligent driving of the driver of the bus was the cause of accident and since the respondent/Metropolitan Transport Corporation is the owner of the vehicle, they are liable to pay compensation to the claimants.

4. The respondent resisted the claim petition.

5. Before Tribunal, on the side of the claimants/appellants, the first claimant and one another witness have examined as PW1 and PW2 and marked Ex.P1 to Ex.P8. On the side of the respondent, one witness was examined as RW1 and no document was marked.

6. After analysing the evidence on record, the Tribunal has awarded a compensation of Rs.1,97,000/- under the following heads.

Heads	Amount in Rs.
Loss of income (2000x16x12)	3,84,000
Funeral Expenses	2,000
Loss of love and affection	5,000
conveyance expenditure	3,000
Total	3,94,000
After deducting 50% towards contributory negligence	1,97,000

7. Heard the learned counsels for the parties and also I have perused the material on record.

8. The learned counsel appearing for the claimants/appellants submitted that the deceased was only a



pillion rider in the motorcycle and he has not contributed any negligence to the accident and therefore, the trial court has committed an error in deducting 50% of the compensation arrived for contributory negligence on the part of the deceased. He further submitted that the Tribunal has awarded a meagre amount of Rs.5,000/- towards "love and affection" and the compensation awarded under the other heads also very meagre and hence, he prayed for enhancement of the compensation.

9. The learned counsel appearing for the respondent submitted that the Ex.P2, rough sketch prepared by the investigation officer clearly shows that the motorcycle was driven close to the meridian line, which causes contributory negligence on the part of the driver of the motorcycle and no material was placed before the Tribunal to establish that the cause of the accident was only due of the rash and negligent driving of the driver of the bus. Therefore, the Tribunal has not considered the above facts and awarded an excess amount and directed the respondent to pay the compensation.

10. Now, the point for determination before this court is

(i) Whether there is contributory negligence on the part of the driver of the motorcycle as well as the driver of the Transport Corporation?

(ii) Whether the compensation awarded by the Tribunal has to be enhanced?

13. Point No.1

A perusal of the sketch Ex.P2 shows that the driver of the motorcycle has just crossed the meridian which caused to the accident, as a result of which the deceased who travelled as pillion rider sustained fatal injuries. Further, the Ex.P2 clearly shows that the driver of the bus has driven the bus proceeding over the Chetpet Overbridge from north to south and he had also crossed the line of the meridian. Therefore, the Tribunal has rightly fixed 50% of the contributory negligence on the part of the rider of the motorcycle and 50% on the part of the driver of the bus. The point is answered accordingly.

14. Point No.2

In the claim petition, the claimants stated that the occupation of the deceased was self employment and earned a sum of Rs.40,000/- per month as income. However, no proof of income



was filed by the claimants. Therefore, considering the fact that no proof of income filed and also taking into account the year of the accident, the Tribunal has correctly fixed the income of the deceased as Rs.3,000/- per month and after deducting 1/3 amount towards 'personal expenditure' and by adopting proper multiplier '16', the Tribunal has correctly arrived (2,000 x 16 x 12) at Rs.3,84,000 towards " Loss of Income".

15. As far as the compensation awarded under the other heads are concerned, the learned counsel appearing for the appellant submitted that the Tribunal without following the decisions of the Honourable Supreme Court, has awarded a very meagre amounts towards "Funeral Expenses, Love and Affection and Conveyance Expenses " and hence the same shall be enhanced.

16. Considering the above submissions and also taking into account the facts and circumstances of the case and fatal injuries sustained by the deceased, this court is of the view that it is just and reasonable to enhance the compensation of Rs.40,000/- (Rs.20,000/- each) towards "love and affection" , Rs.15,000/- towards " Loss of Estate " and Rs.15,000/- towards "Funeral and Conveyance Expenses". Accordingly the revised compensation awarded under various heads is extracted hereunder.

Heads	Compensation awarded by the Tribunal	Compensation modified by this court
Loss of income (2000x16x12)	3,84,000	3,84,000
Funeral Expenses	2,000	15,000
Loss of love and affection	5,000	40,000
conveyance expenditure	3,000	15,000
Total	3,94,000	4,54,000
After deducting 50% towards contributory negligence	1,97,000	2,27,000

As far as the interest portion is concerned, only a sum of Rs.1,97,000/- awarded by the Tribunal will carry interest at



the rate of 9% p.a. and the difference amount of Rs.30,000/- which is enhanced by this court will carry interest only at the rate of 7.5% p.a. from the date of claim petition till the date of realisation. Accordingly the point is answered.

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17. In the result,

(i) The appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 1,97,000/- to Rs.2,27,000/- with interest at the rate of 9% p.a. on Rs.1,97,000/- and 7.5% p.a. on Rs.30,000/- from the date of claim petition till the date of realisation. No costs.

(ii) The respondent/Metropolitan Transport Corporation is directed to deposit the enhanced compensation of Rs.2,27,000/- along with interest at the rate of 9% p.a. on Rs.1,97,000 and 7.5% p.a. on Rs.30,000/- from the date of claim petition till the date of deposit, within a period of 12 weeks from the date of receipt of a copy of this order, less the amount if already deposited.

(iii) On such deposit being made by the respondent, the claimants are entitled to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

mst

To

The Motor Accident Claims Tribunal,
Additional District cum Sessions Judge,
Fast Track Court No.III, Chennai.

Copy to

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

+1cc to Mr.N.M.MuthuRajan, Advocate SR.No.2207

+1cc to M/s.S.S.Swaminathan, Advocate SR.No.1887

CMA.3504 of 2008

SSI(CO)

RVM(13/09/2021)