



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.3115 of 2013

1.B.Kamalakaran

2.K.Sukumar

3.K.Sarala

... Appellants/Petitioners

..Vs..

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai -600002.

...Respondent/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 05.11.2012 made in M.C.O.P.No.3350 of 2010 on the file of IV Judge, Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.K.A.Ravindran
For A.Shanmugaraj

For Respondent : Mr.S.Sivakumar

JUDGMENT

Dissatisfied with the judgment and decree, dated 05.11.2012 in MCOP.No. 3350 of 2010 passed by the tribunal awarding compensation of Rs.4,56,000/- along with interest at the rate of 7.5% per annum, the claimant are before this Court for enhancement of compensation.

2. It is the case of the appellant herein that on 30.08.2009 at about 9.50 a.m while the deceased was travelling as a pillion rider in a motor cycle bearing Reg.No. TN09-A5-9019 from south to north along Jawaharlal Nehru Road, at that time the MTC bus bearing Reg.No. TN01-4547 driven by its driver in a rash and negligent manner on the same direction and dashed against the deceased. Thereby, the deceased sustained grievous injuries and died. The accident had occurred only due to the



rash and negligent driving of the driver of the transport corporation bus. The legal heirs of the deceased filed a claim petition, claiming compensation of Rs.7,00,000/- for the death caused in the said accident. The tribunal based on the evidence and documents, has awarded a sum of Rs.4,56,000/- as compensation payable by the Transport Corporation. Challenging the said compensation, the claimants are before this Court for enhancement.

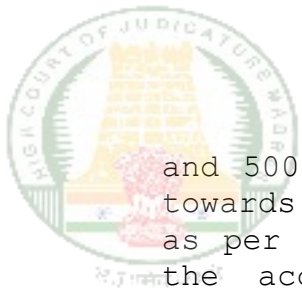
3. On the side of the claimants, two witnesses P.W.1 & P.W.2 were examined and nine documents Ex.P1 to P9 were marked. No witness and documents were marked on the side of the respondents.

4. The learned counsel appearing for the appellants submitted that the tribunal ought to have fixed the monthly income of the deceased at Rs.6000/- who was a tailor and embroidery designer by avocation. The compensation under loss of income by taking monthly income at Rs.4500/- is very less and the compensation under other heads viz., loss of consortium and loss of love and affection are also very meagre. In total the compensation awarded by the tribunal at Rs.4,56,000/- against the claim of Rs.7,00,000/- is very low and require to be enhanced.

5. On the other hand, the learned counsel appearing for the respondent/transport corporation submitted that the compensation awarded by the tribunal is fair and reasonable and does not require any interference by this Court and the appeal is liable to be dismissed.

6. Heard the learned counsel appearing for the appellants, the learned counsel appearing for the respondent/Transport Corporation and perused the materials available on record.

7. The main ground raised by the appellants is with regard to fixing of monthly income. On perusal of records, it is seen that the appellants have claimed that the deceased was a tailor and embroidery designer and earning a sum of Rs.6,000/- per month. In order to prove the same, Ex.P9/Training Certificate issued by the National Council for training in Vocational Trades was marked. PW2 on Mrs. Jayalakshmi was examined and she had deposed that she gave tailoring work to the deceased and paid for the same. Though, no documents were filed by the claimants to prove the income of the deceased, considering Ex.P9 and the evidence of PW2, it would be proper to enhance the monthly income fixed by the tribunal from 4,500/-



and 5000/-. The tribunal has rightly deducted 1/3 of the income towards personal and living expenses and adopted multiplier 11 as per the age of the deceased who was 52 years at the time of the accident. But the tribunal failed to include future prospects while calculating loss of income. As per the principles laid down by the Hon'ble Supreme Court in Sarala Verma's case, if the deceased is self employed and between the age group of 50 and 60 years, 10% of additional income to be added as future prospects. Accordingly, the loss of income awarded by the tribunal is modified by this Court at Rs.4,84,000/- (5000 + 500 (10%) x 1/3 x 12 x 11).

8. Likewise, the compensation awarded by the tribunal under other heads viz., Loss of Consortium for the husband is enhanced from Rs.20,000/- to Rs.30,000/- , Loss of Love and Affection to the children is enhanced from Rs.30,000/- to Rs.40,000/- (Rs.20,000/- each) and Funeral expenses from Rs. 10,000/- to Rs.15,000/-. Thus, the compensation awarded by the tribunal is modified as follows;

Heads	Compensation awarded by the Tribunal Rs.	Compensation modified by this Court Rs.
Loss of Income	3,96,000/-	4,84,000/-
Loss of Consortium to the husband/1 st claimant	20,000/-	30,000/-
Loss of Love and Affection to the children /2 nd & 3 rd appellants	30,000/-	40,000/-
Funeral Expenses	10,000/-	15,000/-
Total	4,56,000/-	5,69,000/-

The compensation awarded by the tribunal is modified to the aforesaid extent. Except the above modification, the award passed by the tribunal is confirmed.

9. The respondent/Transport Corporation is directed to deposit the entire compensation amount of Rs.5,69,000/- as



modified by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the compensation as modified by this Court as per the apportionment fixed by the tribunal along interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

10. In fine, the Civil Miscellaneous Appeal is partly allowed to the aforesaid extent. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Judge,
Court of Small Causes,
(Motor Accidents Claims Tribunal),
Chennai.

+1cc to Mr.A.Shanmugaraj, Advocate SR.No.15519

CMA.No.3115 of 2013

RK(CO)
GN(21/12/2021)