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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1196 of 2021

1.S.Mani
2.M.Suresh
3.R.Suriya

.. Appellants/Claimants

Vs.

The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan 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 30.09.2019 made in M.C.O.P.No.2361 of 2013 on the file of the Motor Accident Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellants : Mrs.C.Harini
for Mr.E.Rajadurai

For Respondent : Mr.K.Moorthy

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 30.09.2019 made in M.C.O.P.No.2361 of 2013 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

3.The appellants are the claimants in M.C.O.P.No.2361 of 2013 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.12,00,000/- as compensation for



the death of one S.Ramani @ Ramaniammal, who died in the accident that took place on 15.12.2012.

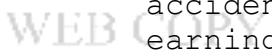
4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to respondent-Transport Corporation and directed the respondent to pay a sum of Rs.10,70,050/- as compensation to the appellants.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellants contended that at the time of accident the deceased was aged 45 years, Flower Vendor and was earning a sum of Rs.300/- per day. But the Tribunal fixed a meagre sum of Rs.6,500/- per month as notional income of the deceased. The Tribunal ought to have fixed a sum of Rs.12,000/- as monthly income of the deceased and awarded compensation. The Tribunal erred in calculating the default period for deducting interest from the date of filing of petition upto the date on which delay was condoned instead of calculating only the period of default period. The default period is only 207 days from 30.06.2015 to 22.02.2016 and the petition for restoration was filed on 22.02.2016 and the respondent counsel also endorsed the no objection in condoning the delay and restoration petition. The compensation awarded by the Tribunal is meagre and prayed for enhancement of compensation.

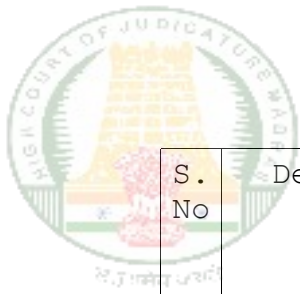
7.Per contra, learned counsel appearing for the respondent-Transport Corporation contended that the appellants failed to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, a sum of Rs.6,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The Tribunal has rightly deducted interest for the period from date of filing of the petition upto the date on which the delay was condoned and there is no error in the same. The Tribunal considering the entire materials on record, has awarded a sum of Rs.10,70,050/- as compensation to the appellants, which is not meagre. The appellants are not entitled to any enhancement and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent-



9.It is the case of the appellants that at the time of accident the deceased was a Flower Vendor aged 45 years and was earning a sum of Rs.300/- per day. Except oral evidence, the appellants have not filed any document to prove the avocation and income of the deceased. In the absence of any document with regard to avocation and income, the Tribunal considering the age and nature of work done by the deceased, fixed a sum of Rs.6,500/- per month as notional income of the deceased. The accident is of the year 2012. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. As per Exs.P4 & P5/death report and postmortem certificate, the deceased was aged 45 years at the time of accident. The Tribunal following the judgments of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] and 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], rightly applied multiplier '14' and granted 25% enhancement granted towards future prospects. There are three dependants of the deceased and the Tribunal has rightly deducted 1/3rd towards personal expenses of the deceased. Thus, by fixing Rs.9,000/- per month as notional income of the deceased, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.12,60,000/- {Rs.11,250/- [Rs.9,000/- + Rs.2,250/- (25% of Rs.9,000/-)] X 12 X 14 X 2/3}. This Court is of the considered view that the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. 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	9,10,056/-	12,60,000/-	Enhanced
2.	Loss of consortium to 1 st appellant	40,000/-	40,000/-	Confirmed
3.	Loss of love and affection to appellants 2 & 3	80,000/-	80,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Funeral expenses & Loss of estate	30,000/-	30,000/-	Confirmed
	Total	Rs.10,70,056/- Rounded off to Rs.10,70,050/-	Rs.14,20,000/-	Enhanced by Rs.3,49,950/-

10.From the materials on record, it is seen that the appellants have filed petition to condone the delay of 207 days in filing the petition to restore the M.C.O.P., which was dismissed for default on 30.06.2015, filed on 22.02.2016. The said petition was taken up for hearing and the petition was allowed on 19.06.2019. The Tribunal while calculating the interest, deducted the interest for default period from date of filing petition upto the date of order of that petition. The appellants are entitled to interest from the date of filing of the petition to condone the delay till the disposal of the said petition. In view of the same, the appellants are not entitled to any interest only from 30.06.2015 to 22.02.2016, the date of dismissal of the M.C.O.P as dismissed for default till filing of the petition to condone the delay in filing to restore the M.C.O.P., which was dismissed for default.

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,70,050/- is hereby enhanced to Rs.14,20,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-Transport Corporation is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2361 of 2013 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before



the Tribunal. The appellants are not entitled to any interest for the delay period from 30.06.2015 to 22.02.2016. No costs.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

krk

To

1. The III Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.
2. The Section Officer,
VR Section,
High Court, Madras.

+1CC to Mr.E.Rajadurai, Advocate, Sr.No.21840

+1CC to Mr.K.Moorthy, Advocate, Sr.No.21531

C.M.A.No.1196 of 2021

MG (CO)

K.RK. (20.10.2021)