

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3044 of 2019

Ramakani

.. Appellant/Claimant

Vs.

The Managing Director,  
Metropolitan Transport Corporation,  
Pallavan Salai, Pallavan House,  
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 16.11.2018 made in M.C.O.P.No.260 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondent : Mr.S.Suresh  
for Mr.K.Moorthy

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 16.11.2018 made in M.C.O.P.No.260 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai.

3.The appellant is the claimant in M.C.O.P.No.260 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai. She filed the above said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of her son viz., Lakshmanan who died in the accident that took place on 25.08.2016.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to respondent and directed the respondent-Transport Corporation to pay a sum of Rs.13,14,600/- as compensation to the appellant.

5.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant contended that at the time of accident, the deceased was aged 23 years, working as Courier Delivery Man at U.B.Express Courier South (P) Limited, Saidapet, Chennai and was earning a sum of Rs.15,000/- per month. But the Tribunal fixed a meagre sum of Rs.8,000/- per month as notional income of the deceased. The Tribunal ought to have fixed monthly income of the deceased at Rs.15,000/- as claimed by the appellant and ought to have deducted 1/3<sup>rd</sup> towards personal expenses of the deceased instead of deducting 50%. The amounts awarded by the Tribunal under other heads are meagre and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the appellant failed to prove the avocation and income of the deceased by producing valid documents. In the absence of any material evidence with regard to avocation and income of the deceased, a sum of Rs.8,000/- per month fixed by the Tribunal as notional income of the deceased is not meagre. The deceased was a bachelor at the time of accident and the Tribunal has rightly deducted 50% towards personal expenses of the deceased. The Tribunal considering the entire materials on record, awarded a sum of Rs.13,14,600/- as compensation to the appellant which is not meagre. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent-Transport Corporation and perused the entire materials on record.

9.From the materials available on record, it is seen that it is the contention of the appellant that at the time of accident, the deceased was aged 23 years, working as Courier Delivery Man at U.B.Express Courier South (P) Limited, Saidapet, Chennai and was earning a sum of Rs.15,000/- per month. The appellant failed to prove the avocation and income of the deceased. In the

absence of any material evidence with regard to avocation and income of the deceased, the Tribunal has fixed a sum of Rs.8,000/- per month as notional income of the deceased. The accident occurred in the year 2016 and the monthly income fixed by the Tribunal is meagre. Considering the age and nature of work done by the deceased, a sum of Rs.12,000/- per month is fixed as notional income of the deceased. Following the judgments of the Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others] and 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another], the Tribunal granted 40% enhancement towards future prospects of the deceased and applied multiplier '18'. The same are proper. The deceased was a bachelor at the time of accident, hence, the Tribunal has rightly deducted 50% towards personal expenses of the deceased. Thus, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.18,14,400/- {Rs.16,800/- [(Rs.12,000/- + Rs.4,800/- (40% of Rs.12,000/-)] x 12 x 18 x ½}. The Tribunal has awarded a sum of Rs.75,000/- towards loss of love and affection, which is excessive and the same is reduced to Rs.40,000/-. The amounts awarded by the Tribunal towards funeral expenses and loss of estate 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         | 12,09,600/-                     | 18,14,400/-                       | Enhanced                               |
| 2.    | Loss of love and affection | 75,000/-                        | 40,000/-                          | Reduced                                |
| 3.    | Funeral expenses           | 15,000/-                        | 15,000/-                          | Confirmed                              |
| 4.    | Loss of estate             | 15,000/-                        | 15,000/-                          | Confirmed                              |
|       | Total                      | Rs.13,14,600/-                  | Rs.18,84,400/-                    | Enhanced by Rs.5,69,800/-              |

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,14,600/- is hereby enhanced to Rs.18,84,400/- 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 if any already deposited, 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.260 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-  
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

krk

To

The Principal Special Judge,  
Motor Accidents Claims Tribunal,  
Special Court under E.C. & NDPS Act,  
Chennai.

+1cc to Mr.K.MOORTHY, Advocate, SR.NO. 1301

+1cc to Mr.K.VARADHAKAMARAJ, Advocate, SR.NO. 998

C.M.A.No.3044 of 2019

SV(CO)  
KKN 22.04.2021

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