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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22.07.2021

JUDGMENT PRONOUNCED ON: 06.08.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

CIVIL MISCELLANEOUS APPEAL NO.2961 OF 2014

1.P.Malliga

2.K.Pandurangan

.. Appellants

Versus

The Managing Director,
Metropolitan Transport Corporation,
(Chennai Division) Limited,
Pallavan Salai, Chennai-2

.. Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 15.04.2014 made in M.A.C.T.O.P No. 976 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellants : Mr.R.Kalai Arasan

For Respondent : Mr.K.Murthy

JUDGMENT

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

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 15.04.2014 made in M.A.C.T.O.P No. 976 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.



3.The appellants are the claimants in M.A.C.T.O.P No. 976 of 2012 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of their son P.Prakash, who died in the accident that took place on 24.01.2012.

4.According to appellants, on 24.01.2012 at about 21.00 hours, while the said P.Prakash was proceeding in the motor cycle bearing registration No.TN 22 AX 5252 from Keelkattalai to Nanmangalam along Medavakkam Main Road, South to North direction, opposite to Echankadu Axis Bank ATM, the driver of the Bus bearing Registration No.TN 01 N 9232, who was driving the bus behind the said P.Prakash, came in a rash and negligent manner and dashed against the deceased. In the accident, the said P.Prakash sustained fatal injuries and died on the spot. Therefore, the appellants filed the above said claim petition claiming a sum of Rs.30,00,000/- as compensation for the death of their son against the respondent.

5.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 the respondent and directed the respondent/Metropolitan Transport Corporation, to pay a sum of Rs.18,95,000/- as compensation to the appellants.

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

7. The learned counsel for the appellants contended that at the time of accident, the deceased was aged 26 years, working as a Sales and Service Executive and was earning a sum of Rs.17,500/- per month + allowance and also Rs.30,000/- per annum as incentive. To prove the avocation and income of the deceased, the appellants produced the pay slip of the deceased as Ex.P7 and also examined P.W.3, co-employer who was authorized by the proprietor of the company. P.W.3 deposed that the deceased was earning average sum of Rs.20,000/- per month [Rs.17,500/- as Salary and Rs.3,000/- incentive]. Ex.P11 is salary certificate. But, the Tribunal fixed a meagre sum of Rs.17,500/- as monthly income of the deceased and also went wrong in not awarding any amount for future prospects. He further contended that a sum Rs.40,000/- awarded by the Tribunal for loss of love and affection is also meagre. The Tribunal has not awarded any amount towards "loss of estate" and prayed for fair and reasonable award by enhancing the award amount.



8. Per contra, Mr.K.Murthy, learned counsel appearing for the respondent/Transport Corporation contended that a sum of Rs.17,500/- per month fixed by the Tribunal as notional income of the deceased is not meagre. A sum of Rs.50,000/- awarded by the Tribunal for loss of expectation of life is excessive. The Tribunal considering the entire materials on record, has awarded a sum of Rs.18,95,000/- as compensation for the appellants and the same is not meagre. The appellants have not made out any case for enhancement and prayed for dismissal of the appeal.

9. I have heard the learned counsel appearing for the appellants as well as the respondent/Transport Corporation and perused the entire materials on record.

10. From the claim petition filed by the claimants, it is seen that at the time of accident, the deceased was aged 26 years, was working as Sales and Service Executive at M/s.Wat Tech Systems, No.15, I Link Street, Sadasiva Nagar, Madipakkam, Chennai and was earning a sum of Rs.17,500/- per month as monthly income and also about Rs.30,000/- per annum as incentive. To Prove the avocation and income of the deceased, the claimants examined one Mr.R.Ilanthamayan as P.W.3, who is also working as Sales and Service Executive in the said Company and also produced Ex.P.7-Pay slip for the month of January 2012. P.W.3 in his evidence has deposed that he was earning a sum of Rs.18,300/- per month + Rs.3,000/- per month as allowance. He further deposed that had the deceased been alive, he would have earned more than his income and produced Ex.P10/authorization letter issued to him and Ex.P11/salary certificate. Since the incentive amount is not a fixed one and it is seen from Ex.P7, pay slip for the month of January-2012 that the deceased was getting a sum of Rs.17,500/- per month as salary. Salary certificate of the deceased was not produced before the Tribunal. Therefore, the amount in the pay slip cannot be taken into consideration. Accordingly, this Court is inclined to fix the notional income of the deceased as Rs.17,500/-. The deceased was a Bachelor at the time of accident and the Tribunal has rightly deducted 50% towards personal expenses of the deceased. As per Ex.P2/driving license of the deceased, the deceased was aged 28 years at the time of accident and the multiplier '18' applied by the Tribunal is not correct. As per the Judgment of Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier applicable is '17'. The Tribunal has not awarded any enhancement towards future prospects of the deceased. As per the Judgment of Hon'ble Apex Court reported in 2017 (2) TNMAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others] the appellants are entitled to 40% enhancement towards future prospects. Therefore, the pecuniary loss now modified as follows:-



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Rs.17,500 + 40% (Rs.7,000/-) future prospects=Rs.24,500/-
After deducting 50% =Rs.12,250/- towards personal expenses,
Contribution to family comes to Rs.12,250 x 12=Rs.1,47,000/-
per annum Rs.1,47,000 x 17=24,99,000/-

Further, taking into consideration the plight of the appellants who lost their son in the accident, this court is inclined to award Rs.15,000/- towards "loss of estate". Further, the tribunal awarded only Rs.40,000/- as compensation under the head "loss of love and affection". Since the claimants are mother and father of the deceased, a sum Rs.40,000/- each is awarded to the claimants towards loss of love and affection. No amount has been awarded under the head of Transportation. Accordingly, Rs.15,000/- is now granted by this Court. A sum of Rs.20,000/- awarded by the Tribunal towards funeral expenses is excessive and the same is reduced to Rs.15,000/-. The appellants are not entitled to any amount towards loss of expectation of life. Hence a sum of Rs.50,000/- awarded by the Tribunal for the loss of expectation of life is set aside. 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.	Funeral Expenses	Rs.20,000/-	Rs.15,000/-	reduced
2.	Loss of Expectation of life	Rs.50,000/-	----	Set aside
3.	Loss of Pecuniary benefits	Rs.17,85,000/-	Rs.24,99,000/-	enhanced
4.	Loss of Love and Affection	Rs.40,000/-	Rs.80,000/-	enhanced
5.	Loss of Estate	---	Rs.15,000/-	Granted
6.	Transportation	---	Rs.15,000/-	Granted
	Total	Rs.18,95,000/-	Rs.26,24,000/-	enhanced by Rs.7,29,000/-

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.18,95,000/- is hereby enhanced to Rs.26,24,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the Court fee, if any on the enhanced amount of



compensation. The respondent-Transport Corporation is directed to deposit the enhanced 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. On such deposit, the appellants are permitted to withdraw their respective share of the enhanced 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. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mpa

To

1. The II Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.
2. The Section Officer
Vernacular Records Section
High Court, Madras.

+2cc to Mr.K.Moorthy, Advocate, S.R.No.34881, 38894
+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No.38746

CMA.No.2961 of 2014

GP(CO)
CS/16/11/2021