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C.M.A.No.1653 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1653 of 2018

1.G.Santha

2.R.Gopal

... Appellants

Vs.

The Managing Director
Metropolitan Transport Corporation Ltd.,
Chennai Division, Pallavan Salai
Chennai - 2

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.11.2015 made in M.C.O.P. No.3041 of 2013 on the file of the Motor Accidents Claims Tribunal, (Special Sub Judge No.I to deal with MCOP Cases) Chennai.

For Appellants : Mr.M.Mahendran for
Mr.N.M.Muthurajan

For Respondent : No Appearance



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J U D G M E N T

This Civil Miscellaneous Appeal is filed against the judgment and decree dated 04.11.2015 made in M.C.O.P. No.3041 of 2013 on the file of the Motor Accidents Claims Tribunal, (Special Sub Judge No.I to deal with MCOP Cases) Chennai.

2. This appeal has been filed by the claimants who are the parents of the deceased. The respondent is the owner of the offending vehicle.

3. The case of the claimants is that on 10.02.2013, at about 8.30 hours, the deceased was driving a motor-bike bearing Regn. No. TN-09-AT-3331, from Pallikaranai to Egmore along Anna Salai, south to north direction. At that time, near M.C. Raja Hostel, Saidapet, a bus bearing Regn. No. TN-01-N-8847, which was driven in a rash, speed and negligent manner, came from behind and hit against the motor-bike of the deceased and thereby, the deceased suffered fatal injuries.

4. The claimants had filed a claim petition in M.C.O.P.No.3041 of 2013 before the Motor Accidents Claims Tribunal, (Special Sub Judge



No.I to deal with MCOP Cases) Chennai, against the owner of the offending bus, claiming compensation of Rs.22,00,000/- for the death of their son.

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5. In order to substantiate their claims, on the side of the claimants, 3 witnesses were examined as P.W.1 to P.W.3 and 2 documents were marked as Ex.P.1 to Ex.P.10. On the side of the respondent, one witness was examined as R.W.1. However, no documentary evidence was let in.

6. The Tribunal, after hearing the arguments on either side and considering the materials, awarded compensation of Rs.12,88,000/- with cost interest at 7.5% per annum from the date of numbering of the petition till its realization.

7. Aggrieved by the order of the Tribunal, the claimants have filed the present appeal before this Court for enhancement of compensation.

8. The learned counsel for the appellants/claimants submitted that the deceased was working as a driver in TATA Associates and getting monthly salary of Rs.15,000/- and in order to prove the same, the salary



certificate of the deceased was marked as Ex.P.8 through, the co-employee of the deceased/P.W.3. But the Tribunal has failed to consider the same and rejected the evidence of the said co-employee for the reason that the authenticity of the alleged co-employee was not proved. Further, the Tribunal by holding that the claimants have not proved the income and avocation of the deceased, fixed only Rs.6,500/- as notional income of the deceased. Even otherwise, at the relevant point of time, the notional income would be higher than what the Tribunal has fixed. The Tribunal has fixed the said amount of Rs.6,500/- notionally, based on the decision of the Hon'ble Supreme Court in the case of ***Syed Sadiq and Others Vs. Divisional Manager, United India Insurance Co. Ltd.***, reported in ***2014 (1) TN MAC 459 (SC)***, wherein, the Hon'ble Supreme Court has fixed the income of a Vegetable Vendor as Rs.6,500/- for the accident occurred in the year 2008. But in this case, the deceased was having valid licence and was working as a driver. Therefore, the notional income fixed by the Tribunal is not correct and the decision referred to by the Tribunal is not applicable to the present case on hand. He would further submit that the claimants have got 2 sons and one of their sons died prior to the death of the deceased and the claimants were entirely depending upon the income of the deceased alone. Therefore, they are total



dependent on the deceased. Hence, the award passed by the Tribunal does not reflect the “just compensation” and it is lower than the “fair” and ‘just compensation’. Hence, the present appeal is filed for enhancement of compensation.

9. There is no representation for the respondent.

10. Heard the learned counsel for the appellants.

11. The accident is not in dispute. The manner of accident is not in dispute. The liability is also not in dispute. Neither the owner nor the Insurer, challenged the award fixed by the Tribunal. The claimants have filed this appeal for enhancement of compensation on the ground that the notional income fixed by the Tribunal, is on the lower side and the award passed by the Tribunal does not reflect the “just and fair compensation”.

12. A perusal of the records shows that the claimants have not proved the income and avocation of the deceased. Though the claimants made an attempt to prove the avocation and income of the deceased through a



witness namely P.W.3 who was alleged to be the co-employee of the deceased, they have not proved that the said witness was the co-employee of the deceased. They have not summoned the employer of the deceased and proved the employment and income of the deceased and they have also not proved the authenticity of the salary certificate in the manner known to law. Therefore, the Tribunal did not consider the evidence of P.W.3 as well as the salary certificate/Ex.P.8 and fixed the notional income.

13. This Court, as an appellate Court and a final Court of fact finding, has got every right and power to re-appreciate the entire evidence and give independent findings.

14. This Court, while re-appreciating the entire materials finds that though the claimants have stated that the deceased was working as a driver and earning Rs.15,000/- per month, the employment and income of the deceased was not proved in the manner known to law as stated above either by summoning the employer of the deceased or any other authorized or competent persons. Therefore, the Tribunal fixed the income of the deceased notionally as Rs.6,500/-.



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15. Though the learned counsel for the appellants/claimants contended that the notional income fixed by the Tribunal is perverse, in the absence of any material or evidence, just because the deceased was possessing licence, one cannot presume that he was working as a driver. It has to be proved in the manner known to law.

16. In this case, there is no material to show that the deceased was working as a driver and earning Rs.15,000/- per month. However, considering the facts and circumstances, the Tribunal has fixed the notional income of the deceased at Rs.6,500/-. Further, the Tribunal has considered the future prospects and also adopted multiplier method and since the deceased was a Bachelor, 50% deduction has been made towards personal expenses.

17. Therefore, this Court does not find any reason to interfere with the award passed by the Tribunal. There is no merit in the appeal and the appeal is liable to be dismissed.



18. Accordingly, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs in this appeal.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



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To

- 1.The Motor Accidents Claims Tribunal,
(Special Sub Judge No.I to deal with MCOP Cases), Chennai.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

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P.VELMURUGAN. J.

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