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CMA No.1449 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N. MALA

Civil Miscellaneous Appeal No. 1449 of 2021

1.B.V. Niranjana

2.B. Lalitha

.. Appellants

Versus

1.Metropolitan Transport Corporation Ltd.,
rep., by its Managing Director,
Pallavan Salai, Chennai-600 002.

2.Vetriselvi

3.The New India Assurance Co. Ltd.,
No.45, 2nd Line Beach, Moore Street,
Chennai-600 001.

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 24.06.2020 made in M.C.O.P.No.1009 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Chennai.

For Appellants : Mrs. Ramya V.Rao

For respondents : Mr. A. Vinothraj for R1

Mrs. G. Sukumari for R3



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JUDGMENT

This Civil Miscellaneous Appeal is filed by the appellants/claimants challenging the award dated 24.06.2020 made in M.C.O.P.No.1009 of 2010 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Chennai.

2. The appeal is filed seeking enhancement of compensation. As the appeal is filed for enhancement of compensation, the issue as regards negligence and liability are not disputed in this appeal.

3. The undisputed facts are that on 15.12.2009, when the deceased was riding his motor cycle, a Transport Corporation bus, which proceeded behind the deceased motor cycle, hit the deceased motor cycle, due to which the deceased lost balance and fell down. At that time a lorry belonging to the second respondent ran over the deceased and caused his death. The parents of the deceased filed a claim petition stating that the deceased was a second year M.Tech student in V.I.T., Vellore and claimed a sum of Rs.25,00,000/- as compensation for the death of their only son.

4. Before the claims Tribunal, first claimant examined himself as



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P.W.1 and another witness was examined as P.W.2 and Exs.P1 to P17 were marked in support of their claim. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and three documents (i.e) Exs.R1 to R3 were marked.

5. The Claims Tribunal, on the basis of the pleadings and assessment of the entire evidence on record, awarded compensation of Rs.15,67,000/- along with 7.5%. Not satisfied with the compensation awarded by the claims Tribunal, the claimants have filed this appeal for enhancement of compensation.

6. The learned counsel for the appellant submitted that the deceased was a bright student and he was pursuing M.Tech, Mechatronics, in a prestigious institution. i.e., V.I.T., Vellore. The learned counsel further submitted that Ex.P5, dated 11.06.2008 was marked to establish that the deceased was offered appointment on a salary Rs.1,70,400/- per annum. The learned counsel therefore submitted that the Tribunal erred in assessing the income at Rs.10,000/- per month. The learned counsel therefore submitted that the income of the deceased may be assessed considering the above. Except the income, no other issue was raised before me.



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7. The learned counsel for the first respondent on the other hand submitted that the deceased was only a student and non earning member and therefore the assessment of income at Rs.10,000/- is justified and it does not call for any interference by this Court.

8. Heard the learned counsel appearing on either side and perused the entire evidence placed on record.

9. The claimants have marked documents to show that the deceased was a bright student, pursuing his post graduation in M.Tech., Mechatronics, in V.I.T., Vellore. Ex.P5 was filed to establish that even during his final year B.Tech., the deceased was offered employment at a salary of Rs.1,70,400/- in Sutherlands Global Services. At this stage, it would be relevant to note here the Division Bench Judgment of this Court in C.M.A.No.1639 of 2021 dated 17.03.2022. The Hon'ble Division Bench, in the above said case, fixed the monthly income for the deceased who was a B.E. graduate at Rs.20,000/- per month. Therefore, I am of the view that in the present case, though the deceased was pursuing his post graduation, the notional income can be safely fixed at Rs.20,000/- per month. As such, I am of the view that award of the



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Tribunal needs to be modified with respect to loss of income. Thus, the income of the deceased is fixed at Rs.20,000/- per month and 40% is awarded towards future prospects $\{Rs.20,000/- \times 40/100 = Rs.8,000/-\}$ and hence the monthly income comes to Rs.28,000/- $\{Rs.20,000 + Rs.8,000/-\}$. The multiplier 18 is adopted which is appropriate to the age of the deceased and 50% is deducted towards personal expenses of the deceased as he died as a bachelor. Thus, compensation for loss of income is determined at Rs.30,24,000/- $\{Rs.28,000/- \times 12 \times 18 \times 50/100\}$. The award towards conventional heads is confirmed.

10. It is seen from grounds of appeal that the value of the claim in the appeal is restricted to Rs.9,33,000/-. The Hon'ble Supreme Court has held, the claim should not be restricted just because the claimants restrict the same for the purpose of Court fee. If the Court finds that the just and fair compensation determined by it is more than the claim, it need not be restricted to the claim. The learned counsel for the appellants submitted that Transport Corporation has deposited the award amount but the appellant has not withdrawn the same. Therefore, there shall be a direction to the Transport Corporation to deposit the balance enhanced compensation of Rs.15,12,000/-, along with 7.5% interest within a period of twelve weeks from the date of receipt of copy of this order. On such deposit being made, the claimants are



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entitled to withdraw the same by making proper application before the Tribunal. It is made clear that the decree shall be drafted by the Registry only after the payment of Court fee on the enhanced amount, less Court fee already paid. In other aspects, the judgment and decree of the Tribunal is confirmed. Accordingly, the appeal is allowed. No costs.

13.04.2023

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Index : Yes/No

Neutral Citation : Yes/No



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To

- 1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Chennai.
- 2.The Section Officer,
VR Section,
High Court,
Madras.



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N.MALA, J.

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