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C.M.A.No.1529 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

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THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.M.A.No.1529 of 2021

Velankanni

...Appellants

Vs

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Chennai – 2

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles, Act, 1988 to allow this Civil Miscellaneous Appeal and by enhancing compensation awarded in Judgment and Decree dated 29.01.2020 in M.C.O.P.No.5732 of 2014 on the file of the Principal Special Judge, Special Court under E.C. & NDPS Act, (Motor Accident Claims Tribunal as per G.O.(MS) No.716, Home (tr.IV) Dept, at Chennai)

For Appellants : Mr.Amar Dineshbhai Pandiya

1/10



C.M.A.No.1529 of 2021

WEB COPY

For Respondent : M/s M. Murali Vinod

JUDGEMENT

This Civil Miscellaneous Appeal has been filed to enhance the compensation awarded in Judgment and Decree dated 29.01.2020 in M.C.O.P.No.5732 of 2014 on the file of the Principal Special Judge, Special Court under E.C. & NDPS Act, (Motor Accident Claims Tribunal as per G.O.(MS) No.716, Home (tr.IV) Dept, at Chennai)

2. For the sake of convenience, the parties are referred to herein according to their litigative status as mentioned before the Tribunal.

According to the petitioner on 30.04.2014 at about 7:20 hours, while the deceased Govindammal, who is the mother of the petitioner was crossing the East Coast Road from East to West, near world of Titan, a MTC bus bearing Registration Number TN-32-N-8094, driven by its driver in a rash and negligent manner dashed against the deceased. Due to which the deceased sustained grievous injuries and succumbed to the injuries.

2/10



C.M.A.No.1529 of 2021

WEB COPY

According to the petitioner, the deceased was a House Maid cum cook in an Advocate office and her monthly income was Rs.8,000/-. It is their further submission that the accident occurred only due to the rash and negligent driving of the respondent's driver.

3. In the counter statement filed by the respondent, they have stated that their driver drove the vehicle with due caution, and the accident had taken place only due to the negligence of the deceased. The respondent also disputed the avocation and income of the deceased. It is also the contention of the respondent that the claim is excessive.

4. Before the Tribunal two witnesses were examined. One being the petitioner and the second witness being the eyewitness to the occurrence. They marked eight documents as Exs.P1 to P8. On behalf of the respondent the driver of the respondent Corporation was examined as R.W.1. As per the pleadings, evidence and the materials available on record, the Tribunal has awarded the compensation of Rs.1,76,000/- . Aggrieved with the quantum



C.M.A.No.1529 of 2021

WEB COPY

ordered by the learned Tribunal, the petitioner herein has come forward with the instant appeal for enhancement of the award.

5. The learned counsel for the Petitioner/Appellant has contended that the notional income arrived by the Tribunal is very meager, in the backdrop of inflation and decreasing money value. Their further submission is that the notional income ought to have been fixed at Rs.6,000/- per month. He would also invite the Judgment of the Hon'ble Apex Court held in *National Insurance Co., Ltd Vs. Pranay Sethi and others* reported in (2017) 16 SCC 680 and, *Sarla Verma and others vs Delhi Transport Corporation, (2009) 6 SCC 121* and contended that the amount awarded for loss of love and affection at Rs. 20,000/- is contrary to the above precedents and prays for enhancement. It is also the further submission of the learned counsel for the appellant that the Tribunal erred in deducting 50% towards the personal expenses of the deceased, instead of 1/3.

6. Per contra, the learned counsel for the respondent would justify the



C.M.A.No.1529 of 2021

compensation of the learned Tribunal, and also would submit that there is no ground for interference with the order of the learned Tribunal. Hence prays for dismissal of this appeal .

7. I have given my anxious consideration to the either side submission. The objection of the appellant are in respect of 1. Determination of meager notional income. 2. Higher deduction of 50%, towards personal expenses of the deceased and 3. Awarding lesser amount of Rs.20,000/- towards loss of love and affection contrary to Rs.40,000/- in line with the Judgment of ***Pranay Sethi***'s case (cited supra).

8. Let us consider the above objection one by one. Coming to the determination of notional income of the deceased the petitioner has not filed any documentary proof to prove the income of the deceased. However, considering the inflation and money value of the year 2014, this Court is of the view that, for the housemaid the notional income of Rs.3,000/- is very much low, and do not reflect the reality. Therefore, this Court is inclined to enhance the notional income of the deceased, considering the age of the deceased and the wage of the relevant period, there is every possibility for a



C.M.A.No.1529 of 2021

WEB COPY

house maid, in the age of deceased would get an income of Rs.6,000/- per month. Therefore, the determination of notional income by the Tribunal at Rs.3,000/- is enhanced to Rs.6,000/- .

9. It is the further submission of the learned counsel for the appellant that contrary to the Judgment of *Sarla Verma's* case (cited supra), the Tribunal has deducted 50% towards personal and living expenses of the deceased. The Trial Court, has wrongly hold the deceased as bachelor and deducted 50% towards personal expenses. Here the deceased is admittedly 65 years old, and also the petitioner is the daughter of the deceased. Therefore, the proper deduction would only be 1/3.

10. In respect of the multiplier, considering the age of the deceased, the Tribunal has determined the proper multiplier of 7. It is pertinent to mention here that no amount could be added towards future prospects.

11. Therefore based on the above factor, the compensation under the head loss of dependency would be at Rs. 6,000 x 12 x 7 = Rs.5,04,000/-. From out of this quantum, the deceased would have spent 1/3rd towards his personal and living expenses. Therefore deducting 1/3rd amount from



C.M.A.No.1529 of 2021

Rs.5,04,000/-, the ultimate loss of dependency would be at Rs.3,36,000/-.

Further, the amount awarded by the Tribunal towards loss of love and affection is enhanced to Rs.40,000/- in line with the Judgment of *Pranay Sethi's* case. However, this Court confirms the amount awarded towards the loss of Estate and Funeral Expenses.

12. 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	1,26,000/-	3,36,000/-	Enhanced
2.	Funeral Expenses	15,000/-	15,000/-	Enhanced
3.	Love and affection of a mother	20,000/-	40,000/-	Enhanced
4.	Loss of Estate	15,000/-	15,000/-	confirmed
	Total	Rs.1,76,000/-	Rs.4,06,000/-	Enhanced by Rs.2,30,000/-



C.M.A.No.1529 of 2021

WEB COPY

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is hereby enhanced to **Rs.4,06,000/-** from **Rs. 1,76,000 / -** together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent-Metropolitan 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 six(6) weeks from the date of receipt of the copy of this judgment, to the credit of M.C.O.P.No.5732 of 2014 dated 29.01.2020 on the file of the Principal Special Judge, Special Court under E.C. & NDPS Act, (Motor Accident Claims Tribunal. On such deposit, the appellant/claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any already withdrawn by making necessary applications before the Tribunal. No costs.

19.06.2023

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Index : Yes/No

Speaking order/non-speaking order

8/10



C.M.A.No.1529 of 2021

To,

1. The Managing Director, Metropolitan Transport Corporation Ltd.,
Chennai – 2.

2. The Principal Special Judge, Special Court under E.C. & NDPS Act,
(Motor Accident Claims Tribunal)



WEB COPY



C.M.A.No.1529 of 2021

C.KUMARAPPAN, J.,

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C.M.A.No.1529 of 2021

19.06.2023

10/10