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C.M.A.No.1400 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1400 of 2023

1.B.Muthukumari

2.Minor. Prathap Kumar

3.Minor. Mathumitha

...Appellants

(Minor petitioners 2 & 3 represented by their
mother and natural guardian B.Muthukumari,
the first petitioner herein)

Vs.

The Managing Director,
Metropolitan Transport Corporation,
Pallavan Illam, Anna Salai,
Chennai - 2.

...Respondent

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.12.2014 in M.C.O.P.No.51 of 2013 on the file of the Motor Accident Claims Tribunal, (III Additional District Judge), Tiruvallur, Poonamallee.

For Appellants : Mr.K.Varadhakamaraj

For Respondent : Mr.M.Murali Vinoth



J U D G M E N T

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The Civil Miscellaneous Appeal is filed for enhancement of compensation awarded by the Tribunal, dated 16.12.2014 made in M.C.O.P.No.51 of 2013 on the file of the Motor Accident Claims Tribunal, (III Additional District Judge), Tiruvallur, Poonamallee.

2. The appellants are claimants in M.C.O.P.No.51 of 2013 on the file of the Motor Accident Claims Tribunal, (III Additional District Judge), Tiruvallur, Poonamallee. They filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the death of Baskar, who died in the accident that took place on 14.10.2012.

3. According to the appellants, on the date of accident i.e., on 14.10.2012 at about 06.45 p.m., while the deceased was riding his two wheeler bearing Registration No.TN-22-AL-4968 on the left hand side of the road, the driver of the bus belonging to the respondent/ Transport Corporation bearing Registration No.TN-01-N-5936 drove the same in a rash and negligent manner without observing the Traffic Rules, dashed against the two wheeler of the deceased. Due to the said impact, the deceased suffered injuries and succumbed to death. The deceased was aged



about 38 years at the time of the accident, was working as a construction worker and that he was the sole bread winner of his family. Hence, the appellants filed claim petition claiming a sum of Rs.8,00,000/-, as compensation against the respondent.

4. The respondent/ Transport Corporation filed counter statement, denying all the averments made in the claim petition and and stated that the accident took place due to the negligent act of the driver belonging to the respondent/Transport Corporation. In any event, the compensation claimed by the appellants was excessive and he prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellants examined two witnesses P.W.1 and P.W.2 and marked six documents as Exs.P1 to P6. The respondent/Transport Corporation examined R.W.1 and did not let in any documentary evidence.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent act of the driver of the respondent/ Transport Corporation and directed the respondent/



Transport Corporation to pay a sum of Rs.7,96,000/- as compensation to the appellants.

7. The learned counsel for the appellants submitted that the deceased was working as a construction worker and was also doing a job of fixing floor and wall tiles and was earning more than a sum of Rs.10,000/- per month. The accident was of the year 2012. However, the Tribunal had fixed the monthly income at Rs.4,500/- per month. The Tribunal, however, had not taken the future prospects while calculating the compensation under the head of “loss of income”. The learned counsel fairly submitted that the Tribunal erroneously applied multiplier 16 instead of 15, as the deceased was aged 38 years. The Tribunal had not awarded the compensation under the head “Loss of estate” and prayed for enhancement of compensation.

8. Per contra, the learned counsel for the respondent/Transport Corporation submitted that the Tribunal had rightly fixed the monthly income of the deceased, since the appellants had not produced any proof of income of the deceased. The Tribunal, further erroneously awarded a sum of Rs.2,00,000/- as compensation towards the “Pain and Suffering” for the appellants who are dependents of the deceased to which they are not entitled to. The Tribunal ought to have awarded a sum of Rs.1,20,000/- towards



“Loss of love and affection” as per the judgment in *Sarla Verma's case*.

Further, the Tribunal had awarded a sum of Rs.20,000/- as compensation under the head "Funeral expenses", whereas, it ought to have awarded only Rs.15,000/-. Therefore, the learned counsel prayed for dismissal of the appeal.

9. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent/Transport Corporation and perused all the materials available on record.

10. This Court finds that the appellants have established that the deceased was employed as a construction worker and had specialised in fixing floor tiles. It is a matter of common knowledge that the wages of the construction workers had increased substantially at the time of the accident. Hence, in the aforesaid circumstances, considering the age, nature of the job and the year of the accident, this Court is of the view that it would be just and reasonable to fix a sum of Rs.8,000/- as the notional monthly income of the deceased at the time of accident. Further, this Court also finds that the Tribunal had not considered the future prospects for which the deceased was entitled to. Considering the fact that the age of the deceased was 38 years at



the time of accident, the future prospects has to be reckoned as 40%. One third has to be deducted from the income towards his personal expenses.

Further, as rightly pointed out by the learned counsel for the appellants, the correct multiplier applicable is 15 and not 16, as fixed by the Tribunal.

Hence, the compensation under the head of "Loss of income" has to be fixed as follows:- Rs.8,000/- + Rs.3200 (8000 x 40%) x 12 x 15 x 2/3 =

Rs.13,44,000/-. The compensation awarded by the Tribunal under the head

“Pain and Suffering” is set aside and a sum of Rs.40,000/- each is awarded

towards “Loss of Love and Affection” to appellants 2 and 3. The first

appellant is awarded a sum of Rs.40,000/- towards “Loss of consortium”.

The compensation under the head “Funeral expenses” is reduced from

Rs.20,000/- to Rs.15,000/-. On perusal of the records, it reveals that the

Tribunal has not awarded any compensation under the head “Loss of Estate”

and therefore, a sum of Rs.15,000/- is awarded under the said head.

11. Thus the compensation awarded by the Tribunal is modified as follows:-



Sl.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of Income	5,76,000	13,44,000	Enhanced
2.	Loss of Estate	---	15,000	granted
3.	Funeral expenses	20,000	15,000	reduced
4.	Pain and Suffering	2,00,000	----	Set aside
5.	Loss of consortium to first appellant	---	40,000	granted
6.	Loss of Love and Affection to appellants 2 and 3	---	80,000	granted
	Total	7,96,000	14,94,000	Enhanced by Rs.6,98,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,96,000/- is hereby enhanced to Rs.14,94,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. The first appellant being the wife of the deceased is entitled to 40% of the award amount and the second and third appellants who are the minor children are entitled to 30% each of the award amount.



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The respondent/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first appellant is permitted to withdraw her share of the award amount along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The second and third appellants being minors, their share shall be deposited in Court in any interest bearing deposit in any nationalised bank untill they attain majority. It is made clear that the appellants shall not be entitled for any interest on the enhanced award amount for the delay period in filing the appeal, as per the order of this Court dated 28.06.2023 made in C.M.P.No.8813 of 2023 in C.M.A.SR.No.48813 of 2023. No costs.

11.07.2023

Index: Yes/No

Internet: Yes/No

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To

- 1.The III Additional District Judge,
The Motor Accident Claims Tribunal,
Tiruvallur, Poonamallee.
- 2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104

SUNDER MOHAN,J.



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