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C.M.A. No. 493 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 493 of 2021

1. Saraswathy
2. Lalitha
3. Venkatachalam ... Appellants / Petitioners

Vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Chennai. ... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 22.08.2019 passed in M.C.O.P. No. 719 of 2017 on the file of the Principal Special Judge, Motor Accident Claims Tribunal, Chennai.

For Appellants : Mr. K. Varada Kamaraj

For Respondent : Mr. Anton Dhanasekaran



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JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No. 719 of 2017, dated 22.08.2019 on the file of the Principal Special Judge, Motor Accident Claims Tribunal, Chennai.

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

3. On 20.08.2016, at about 10:00 hours, the deceased Srinivasan was riding a Honda Activa vehicle bearing Registration No.TN-21-AU-9067 in the 200 feet road from South to North at Korattur, while he reached near the Thanthakuppam bridge mouth, a MTSC bearing Registration No.TN-01-N-9483 driven by its driver in a rash and negligent manner came in the same direction, hit on the Honda Activa vehicle of the deceased and caused grievous injuries. Thereafter, the deceased succumbed to injuries on the way to DRJ Hospital. A criminal case was registered in Cr.No.916/PH1/2016 U/s.279, 338, 304(A) IPC on the file of the T-12,



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Ponnamallee Traffic Investigation, Chennai-56. For the loss of deceased Srinivasan, the claimants, who are the wife and children of the deceased has filed this claim petition seeking a compensation for a sum of Rs.85,00,000/- under section 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T rules.

4. The respondent - Transport Corporation filed a counter and denied the manner in which the accident was taken place and stated that the driver of the bus has driven the bus with due care and caution. The Transport Corporation also contended that the accident was happened only due to the rash and negligence on the part of the deceased, who tried to pass between the bus and a car, which was going in front of the respondent bus and invited the accident and further contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.19 and X.1 to X.3 were marked. On the side of the respondent, R.W.1 was examined and no exhibits were marked.



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6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the respondent's driver is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.30,65,475/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the quantum of compensation, the claimants have filed this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimants submitted that, Tribunal has not awarded future prospectus, while calculating loss of income of the deceased and the compensation awarded under various heads is on the lower side, hence prays to modify the compensation awarded by the Tribunal.

9. The learned counsel appearing for the respondent - Transport Corporation submitted that the Tribunal based on the evidences placed on



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record, has awarded a just compensation, hence prays to confirm the same.

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10. Heard the submissions made on both sides and perused the materials available on record:

11. The major contention raised by the claimants is that the Tribunal has not awarded future prospectus while calculating loss of income of the deceased. The respondent - Transport Corporation has not filed any appeal challenging the liability fixed on them. It is also admitted by both sides that, Tribunal after appreciating the evidences placed on record, accepted the monthly income of the deceased, however, the Tribunal has not granted future prospectus.

12. In this case, the deceased was aged about 56 years at the time of occurrence and he was working as Telecom Technician and Telephone mechanic in BSNL and was earning Rs.51,466/- per month, hence based on the evidences placed on record and by following the dictum laid down in the judgment of the Hon'ble Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation and others* [2009 ACJ 1298 SC : 2009 (6) SCC



121], the Tribunal has rightly adopted the multiplier as '9' and calculated the loss of income as Rs.29,85,480/-. However, the Tribunal has not granted future prospectus on the loss of income of the deceased. Considering the age and avocation of the deceased, this Court is of the view that the claimants are entitled to compensation under the head future prospectus.

13. As per the dictum laid down in the judgment of the Hon'ble Apex Court in *National Insurance Co. Ltd., vs. Pranay Sethi and other* [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680], this Court is inclined to grant 15% future prospectus to the total income fixed by the Tribunal as compensation under the head loss of income and the compensation under the head future prospectus is assessed as follows:

Total loss of income fixed by the Tribunal	= Rs.29,85,480/-
Future Prospectus @ 15%	= Rs.4,47,822/-

14. The Tribunal has awarded Rs.40,000/- under spouse consartium to the wife of the deceased and Rs.20,000/- each to the son and daughter of the deceased. As per the Hon'ble Apex Court in *Magma General Insurance Co. Ltd., vs Nanu Ram* reported in *2018 ACJ 2018*, all



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the claimants are entitled for consortium. Hence, this Court is inclined to grant the claimants, consortium of Rs.40,000/- each to the wife, son and daughter of the deceased Srinivasan as per the Apex Court Judgment stated supra.

15. The Tribunal in its award has awarded Rs.6,665/- to each of the claimants i.e., (Rs.6,665/- x 3 = Rs.19,995/-) under the head funeral expenses and this Court is of the view that dividing the compensation under the head funeral expenses to all the claimants is not proper and the same is also on the higher side, hence this Court is inclined to modify the same to Rs.15,000/- under the head funeral expenses. The Tribunal has not awarded compensation under the head loss of estate, hence this Court is inclined to award Rs.15,000/- under the head loss of estate.

16. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	29,85,480/-	29,85,480/-	Confirmed
2.	Future Prospectus	---	4,47,822/-	Granted
3.	Funeral expenses	19,995/-	15,000/-	Reduced
4.	Loss of consortium (first claimant)	20,000/-	40,000/-	Enhanced
5.	Loss of love and affection/ modified to Loss of consortium (second and third claimants)	40,000/-	80,000/-	Enhanced
6.	Loss of estate	---	15,000/-	Granted
	Total Compensation	30,65,475/-	35,83,302/-	Enhanced

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.30,65,475/- is hereby enhanced to **Rs.35,83,302/- [Rupees Thirty Five Lakh Eighty Three Thousand Three Hundred and Two only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The respondent - Transport Corporation is directed to deposit the amount awarded by this Court 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



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judgment to the credit of M.C.O.P.No.719 of 2017 on the file of the Principal Special Judge, Motor Accidents Claims Tribunal, Chennai. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

20.11.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Principal Special Judge,
Motor Accident Claims Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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