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C.M.A. No.2434 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.2434 of 2022

1.K.Kavitha

2.Minor Kavish Krishna

3.Shanthi

4.Munusamy

...Appellants

Vs.

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

...Respondent



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 18.11.2019 made in M.C.O.P. No.9175 of 2015 on the file of the Motor Accident Claims Tribunal (In the Court of the Principal Special Judge, Special Court Under E.C. & NDPS Act.), Chennai.

For Appellants : Mr.K.Varadhakamaraj

For Respondent : Mr. M. Murali Vinodh

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 18.11.2019, made in M.C.O.P. No.9175 of 2015 on the file of the Motor Accident Claims Tribunal (In the Court of the Principal Special Judge, Special Court under E.C. and NDPS Act) Chennai.

2.The appellants filed M.C.O.P. No.9175 of 2015 on the file of the Motor Accident Claims Tribunal (In the Court of the Principal Special Judge, Special Court under E.C., and NDPS Act) Chennai claiming a sum of



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Rs.1,00,00,000/- as compensation for the death of one Manickam, who died in an accident that took place on 14.09.2015.

3. According to the appellants, on 14.09.2015 at about 9.00 hours, while the deceased Manickam was riding a bike bearing Reg.No.TN – 07 – J 8392 at LB Road towards S.P.Road in front of Cornet Hotel, the driver of the MTC Bus, bearing Reg.No.TN-01-N-9388 belonging to the respondent drove the same in a rash and negligent manner and dashed against the deceased and caused the accident. In the accident, the said Manickam died and hence, the appellants filed claim petition claiming compensation against the respondent.

4. The respondent filed counter statement and denied all the averments made in the claim petition and stated that the driver of the bus drove the same with due care and caution by adhering all traffic rules and he was not rash and negligent at the time of the accident; that the deceased attempted to overtake the bus from the left side on the turning that too at a high speed in a careless and negligent manner and invited the accident; that hence, the respondent is



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not liable to pay compensation to the appellant. The respondent also denied the occupation and monthly income of the deceased. Hence, the total compensation claimed by the appellants is excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the appellants examined four witnesses as P.W.1 to P.W.4 and marked twenty documents as Exs.P.1 to P.20. The respondent examined one witness as R.W.1 and no document was marked on their side.

6. The Tribunal, considering the oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Bus belonging to the respondent and directed the respondent to pay a sum of Rs. 41,31,248/- as compensation to the appellants.

7. Aggrieved by the said order, the appellants have preferred the instant appeal seeking enhancement of compensation.



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8. The learned Counsel for the appellants submitted that the award of compensation granted by the Tribunal has to be enhanced for the following reasons:- (i) Though the deceased was aged 25 years at the time of the accident, the multiplier adopted by the Tribunal is 17 instead of 18; (ii) The appellants 2, 3 and 4 who are the minor son, mother and father of the deceased were awarded Rs.60,000/- totally towards the Loss of Love and Affection, though they were entitled to Rs.40,000/- each; (iii) The Tribunal had not awarded compensation under the head Loss of Estate.

9. The learned counsel for the respondent, *per contra*, submitted that the award of compensation is just and reasonable and there is no reason to interfere in the said award and hence, prayed for the dismissal of the appeal.

10. Heard the learned counsel appearing for the appellants as well as respondent and perused the materials available on record.



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11. The only question involved in this appeal is whether the compensation awarded by the Tribunal is just and reasonable ?

12. From the materials on record, it is seen that the appellants had produced Ex.P4/driving license to establish the age of the deceased as 25 years. However, the Tribunal had adopted a multiplier of 17 instead of 18 which is the correct multiplier. As regards the notional income, the Tribunal fixed Rs.17,500/- per month, based on Exs.P6 and P7 which is not in dispute. Since the deceased was aged 25 years at the time of the accident, the appellants are entitled to 40% enhancement towards future prospects. However, the Tribunal had erroneously awarded 50% enhancement towards future prospects. There are four dependents on the deceased and hence, 1/4th of his income has to be deducted towards his personal expenses. Thus, the Loss of Dependency has to be modified as follows:

Rs.17500 + 7000 (40% of Rs.17500) X 12 X 18 X 3/4 - 39,69,000/-



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13. The Tribunal has not awarded the compensation under the head Loss of Estate. Hence, this Court is of the view that the appellants are entitled to compensation under the head Loss of Estate at Rs.15,000/-. The Tribunal awarded Rs.20,000/- each towards Loss of Love and Affection to the appellants 2 to 4. They are each entitled to Rs.40,000/- as per the dictum of the Honourable Apex Court. The Compensation awarded by the Tribunal under the other heads is just and reasonable and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.41,31,248/- to Rs.41,59,000/-, break-up as follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	40,16,250/-	39,69,000/-	Reduced
2.	Loss of Consortium (for 1 st appellant)	40,000/-	40,000/-	Confirmed
3.	Loss of love & affection (appellants 2 to 4)	60,000/- (20,000 X 3)	1,20,000/- (40,000X3)	Enhanced



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4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
5.	Loss of Estate	-	15,000/-	Granted
	Total	41,31,250/-	41,59,000/-	Enhanced by Rs.27,750/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.41,31,250/- is hereby enhanced to Rs.41,59,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. It is made clear that the appellants are not entitled for any interest for the delay period of 907 days on the amount of Rs.27,750/, enhanced by this Court as per the order of this Court dated 01.11.2022, made in C.M.P. No. 14902 of 2022 in C.M.A.SR.90902 of 2022. The respondent/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 a receipt of copy of this Judgment. On such deposit, the appellants 1, 3 and 4 are permitted to withdraw their share of the award amount, less the amount, if any, already withdrawn, on the basis of



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apportionment fixed by the Tribunal. The share of the minor 2nd appellant is directed to be deposited in any one of the Nationalised Bank till the minor appellant attains majority. However, the 1st appellant, mother of the minor 2nd appellant is permitted to withdraw the accrued interest once in three months. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

28.07.2023

dk/spp

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.The Principal Special Judge,
The Special Court Under E.C. & NDPS Act./
The Motor Accident Claims Tribunal
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.



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SUNDER MOHAN, J

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