



C.M.A.No.272 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.272 of 2023

1.R.Maheswari

2.R.Prabhavathi

... Appellants

Versus

The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai-600 002.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 05.07.2019 passed in M.C.O.P.No.7757 of 2013, by the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellants : Mr.K.Malaikannu

For Respondent : Mr.K.Vinod



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JUDGMENT

WEB COPY This appeal has been filed by the appellants/claimants challenging the compensation awarded by the Tribunal in M.C.O.P. No.7757 of 2013, dated 05.07.2019.

2.The claim petition was filed stating that on 29.10.2013 at about 21.30 hrs, when the deceased was standing at T.H. Road on the Southern side of Vaidyanathan Street, a bus bearing Registration No.TN-01-AN-0155 came in a rash and negligent manner, hit against the deceased and caused the accident. Due to the said accident, the deceased – son of the 1st appellant sustained grievous injuries all over the body and died in the hospital on 11.11.2013. Thus, the appellants are entitled for compensation.

3.The respondent/Transport Corporation filed a counter denying all the averments made in the claim petition and stated that the accident occurred due to the careless and negligent act of the deceased who crossed the road without minding the bus which was turning towards right side. Hence, the respondent is not liable to pay compensation to the appellants. In any case, the compensation claimed is excessive and



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prayed for dismissal of the claim petition.

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4.Before the Tribunal, the appellants/claimants examined three witnesses as P.W.1 to P.W.3 and marked exhibits viz., Ex.P.1 to Ex.P.10 on their side. On behalf of the respondent/Transport Corporation, R.W.1 was examined and Ex.R1 was marked.

5.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent and hence, directed the respondent to pay a sum of Rs.10,52,400/- as compensation to the appellants.

6.Aggrieved over the award passed by the Tribunal, the appellants/claimants filed the present appeal seeking for enhancement of compensation.

7.Learned counsel for the appellants/claimants submitted that the compensation awarded by the Tribunal is meagre. Though the appellants have examined PW3-employer of the deceased, who had stated that the



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deceased was earning Rs.12,000/- per month, the Tribunal erroneously fixed a meagre notional income at Rs.6,500/- per month and hence, the Tribunal ought to have accepted the evidence of PW3 as regards the monthly income. Hence prayed for enhancement of compensation.

8.Learned counsel for the respondent/Transport Corporation, per contra, submitted that though PW3 was examined on the side of the appellants, the said witness had admitted in his cross examination that he did not maintain any particulars of the deceased and proof for the payment of salary; that PW3 also had not submitted Income Tax returns; that the appellant also had not filed the appointment letter of the deceased said to have issued by PW3. In such circumstances, the learned counsel submitted that the notional income fixed by the Tribunal is just and reasonable and hence prayed for dismissal of the appeal.

9.The only question involved in the present appeal is whether the compensation awarded by the Tribunal is just and reasonable.

10.On perusal of records, this Court finds that PW1-mother of the



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deceased and PW3-employer of the deceased, who were examined on the side of the appellants have stated that the deceased was working as salesman in a Jewellery shop by name "Sri Ganesh Jewellers" and drawing a monthly salary of Rs.12,000/-. However the Tribunal rightly found that PW3 had not maintained the employees' particulars and any accounts book to substantiate his version evidencing the payment of salary to the deceased. Hence, the income has not been established by acceptable evidence. Therefore, this Court is of the view that only a notional income can be fixed. Considering the job, age of the deceased and year of accident, this Court feels that it would be just and reasonable to fix a notional income of Rs.10,000/- per month to the deceased. The deceased was aged 24 years at the time of accident. By applying multiplier 17, granting 40% enhancement towards future prospects and after deducting 50% towards personal expenses, the loss of dependency is calculated as follows:

$$\text{Rs.14,000 (Rs.10,000 + 40\%)} \times 12 \times 17 \times 1/2 = \text{Rs.14,28,000/-}$$

The amount awarded by the Tribunal under other heads is just and



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reasonable and hence, the same are confirmed 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	9,28,200	14,28,000	Enhanced
2.	Loss of Love and Affection	80,000	80,000	Confirmed
3.	Loss of Estate	15,000	15,000	Confirmed
4.	Transport Expenditure	10,000	10,000	Confirmed
5.	Funeral Expenses	15,000	15,000	Confirmed
6.	Attender Charges	4,200	4,200	Confirmed
	Total	10,52,400	15,52,200	Enhanced by Rs.4,99,800/-

11.With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,52,400/- is hereby enhanced to Rs.15,52,200/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The respondent/Transport Corporation is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a



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receipt of copy of this Judgment. On such deposit the appellants are permitted to withdraw their respective shares on basis of the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. The appellants are directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

17.08.2023

rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The III Court of Small Causes,
The Motor Vehicle Accident Tribunal,
Chennai.

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



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SUNDER MOHAN, J.

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