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C.M.A.No.2614 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.2614 of 2022

1.Wortam Kashung
2.Minor Vso Kashung
3.Minor Thotyarphi Kashung
4.A.S.Tuisamla

... Appellants / Petitioners

Vs

The Managing Director
Metro Transport Corporation Ltd
Pallavan Salai
Chennai - 600 002.

..... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the 50% contributory negligence fixed on the part of the deceased and to enhance the compensation in the judgment and decree dated 22.08.2022 made in MCOP.No.1213 of 2016 on the file of MACT / Special Court under E.C. & NDPS Acts at Chennai with interest at 9% cost by allowing this appeal.



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For Appellants : Mr.Ma.Pa.Thangavel

For Respondent : Mr.Anton Dhanasekaran

JUDGMENT

A certain Wonreila, who hails from Manipur, had come down to Chennai for eking her livelihood as a beautician, died in an accident while alighting from a bus bearing registration No.TN01-N-4731, belonging to the respondent-Corporation. The accident appeared to have occasioned, that before Wonreila could complete alighting from the bus, the driver rashly and negligently took the vehicle. Staking a claim of Rs.27,00,000/- as compensation, Wonreila's husband, two children and her mother moved the Tribunal in MCOP.No.1213 of 2016, as against which, the Tribunal had awarded a sum of Rs.9,15,300/-, on the following heads :

<i>Sl.No.</i>	<i>Heads of compensation</i>	<i>Amount (Rs.)</i>
1	Loss of dependency	7,16,800.00
2	Medical Bills + Transportation + Funeral	66,500.00
3	Loss of consortium	1,32,000.00
Total :		9,15,300.00



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Aggrieved by the inadequacy of the same, the claimants are before this Court.

2. The learned counsel for the appellants submitted that the appellants are aggrieved on two scores :

- (a) that it has fixed the notional income of the victim at a paltry sum of Rs.8,000/-. Even though the claimants have not produced any documentary evidence to show that even going by the standard of living in 2015, Wonriela would have earned around Rs.20,000/-, and the claimants have produced Ext.P10, a certificate to show that she had done "advanced beautician course";
- (b) that the Tribunal had attributed 50% negligence to the victim, when the driver has to be faulted fully;
- (c) that even though her mother was one of the claimants, the Tribunal did not consider her to be the dependant of the victim, and deducted 1/3rd towards personal expenditure instead of 1/4 as is provided in *Sarala Varma* dictum.

3. The learned counsel appearing for the respondent submitted that evidence



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is categorical that the accident had occurred when Wonriela tried to alight from a running bus. And he also submitted that in the absence of any material evidence to support, the Tribunal had very fairly fixed the notional income of the victim at Rs.8,000/-.

4. After considering the rival submissions and the evidence available, this Court considers that 15% negligence can be attributed to Wonriela. And going to the income part of it, this Court considers that Rs.12,000/- per mensem would be reasonable. Now this would mean, at Rs.12,000/- per month and providing 40% towards future prospects, since the victim was 34 years old at the time of her death, and applying a multiplier of 16, the total loss of income that would accrue to the estate would be Rs.32,25,600/- (Rs.16,800 x 12 x 16). Towards this, 25% may have to be deducted towards personal expenditure, and that would bring down the total amount to Rs.24,19,200/-. From this, a further deduction of 15% must be give towards contributory negligence of the victim. This would bring the total compensation amount to Rs.20,56,320/-. So far as the other heads are concerned, this Court does not inclined to interfere with the award of the Tribunal. Therefore, the compensation awarded by the Tribunal in MCOP



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No.1213 of 2016 on the file of MACT/Special Court under E.C. & NDPS

Act, Chennai, is enhanced from Rs.9,15,300 to Rs.22,54,820/-.

5. In fine, this Court allows this appeal and holds that the appellants are entitled to a compensation of Rs.22,54,820/- (Rs.20,56,320/- + Rs.66,500/- + Rs.1,32,000/-). This Court is informed that since the sum awarded by the Tribunal has already been deposited by the respondent-Corporation, the respondent is now required to deposit the differential sum of Rs.13,39,520/- before the Tribunal, along with the accrued interest at the rate of 7.5% p.a. as determined by the Tribunal from the date of claim petition till the date of deposit, within a period of six weeks from the date of receipt of copy of this order. So far as apportionment of compensation is concerned, it can be in the manner as was done by the Tribunal, and upon deposit of the amount, the major claimant/claimants are permitted to withdraw the same forthwith. The claimants are also directed to pay the necessary Court fee for the enhanced compensation amount, if any. No costs.

16.10.2023

Index : Yes / No

Speaking order / Non-speaking order

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N.SESHASAYEE.J.,

ds

To:

- 1.The Principal Special Judge
MACT /Special Court under E.C. &NDPS Act
Chennai,
- 2.The Section Officer
VR Section
High Court, Madras.

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