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C.M.A. No.1660 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1660 of 2022

1.Rosamma

2.Yohanan Kutty

3.Roshan

..

Appellants

Vs.

Managing Director,

State Express Transport Corporation Limited,

Chennai – 600 002.

..

Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.09.2012 and made in MACTOP No.2032 of 2009 on the file of the Motor Accident Claims Tribunal IV Judge, Small Causes Court, Chennai.

For Appellants : Ms.Sunithi Abirami.M
for M/s.V.Velu

For Respondent : Mr.K.Kathiresan



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J U D G M E N T

WEB COPY This Civil Miscellaneous Appeal has been filed by the appellants challenging the quantum of compensation granted by the Tribunal in the award dated 11.09.2012, made in M.A.C.T.O.P. No.2032 of 2009 on the file of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai.

2.The appellants filed M.C.O.P. No.2032 of 2009 on the file of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai. claiming a sum of Rs.10,00,000/- as compensation for the death of one Robin John, who died in the accident that took place on 12.09.2008.

3. According to the appellants, on 12.09.2008 at about 14.00 hrs., while the said Robin John was riding the two wheeler bearing Regn. No.TN21S 9983 from Kalpakkam to Pudupattinam, the bus belonging to the respondent / Transport Corporation which was coming in opposite direction, driven by its driver in a rash and negligent manner, dashed against the



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motorcycle driven by the deceased and caused the accident. In the said accident, the said Robin John sustained multiple grievous injuries and died.

Hence, the appellants filed claim petition against the respondent/Transport Corporation claiming compensation.

4. The respondent filed counter denying the averments made by the appellants in the claim petition, including the manner of accident. According to the respondent, on the date of accident, while the bus was nearing Pudhupattinam Dharga, near ECR, the driver of the bus slowed down the same to enable the visitors of dharga to move from West to East safely. At that time, the deceased who was riding the motorcycle in an uncontrollable speed in the opposite direction, while attempting to overtake a car to avoid hitting the crossing pedestrians, lost balance, fell down brushing against the right corner of the bus and invited the accident. Hence, the respondent is not liable to pay any compensation to the appellants. The appellants have not impleaded the owner and insurer of the motorcycle and hence the petition is bad for non-joinder of necessary parties. The total compensation claimed by



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the appellants are highly excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, the 2nd appellant examined himself as PW4, one Ruthirakotti, eye witness to the accident was examined as PW3, one Sridhar, was examined as PW5. Thirteen documents were marked as Exs.P.1 to Exs.P.13. Neither documents were marked nor witnesses were examined on the side of the respondent.

6. The Tribunal, considering the evidence and documents filed on the side of the appellants, 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.4,90,000/- as compensation to the appellants. Aggrieved by the said order, the appellants have preferred the present appeal seeking enhancement of compensation.

7. The learned counsel appearing for the appellants submitted that at



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the time of accident, the deceased was working as a driver and was earning a sum of Rs.9,000/- per month. In support of their claim, the appellants have marked Ex.P13, salary certificate to prove the income of the deceased. However, the Tribunal had fixed only a sum of Rs.5,000/- per month as the income of the deceased. Similarly, the Tribunal had erroneously applied multiplier 15 taking into consideration the age of the mother of the deceased which is contrary to the judgments of the Hon'ble Apex Court in ***Sarla Verma & others vs. Delhi Transport Corporation & another***, reported in **2009 (2) TNMAC 1 SC Supreme Court** and ***National Insurance Co. Ltd., Vs. Pranay Sethi and others*** reported in **2017 (2) TN MAC 609 (SC)**. The learned counsel further contended that the Tribunal had not taken into consideration the increase towards future prospects while computing the loss of income. Further, the Tribunal had not awarded compensation towards loss of estate. For the above reasons, the learned counsel prayed for enhancement of compensation.



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8. Per contra, the learned counsel appearing for the respondent submitted that the appellants have not produced any document to prove the income of the deceased. In the absence of any material evidence, the notional income fixed by the Tribunal at Rs.5,000/- per month is just and reasonable. The compensation awarded under the other heads are also just and reasonable and prayed for dismissal of the appeal.

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

10. The only issue involved in this appeal is whether the amount of compensation awarded by the Tribunal is just and reasonable.

11. It is seen from the records that the appellants have established that the deceased was working as a driver, by marking Ex.P11- driving licence of the deceased. The appellants have also marked Ex.P13-salary certificate to prove the income of the deceased. However, the Tribunal has not accepted the



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same stating that no Bank statement was produced to prove that the salary was credited into the Bank Account of the deceased and fixed the notional income of the deceased at Rs.5,000/- per month. The accident is of the year 2008. Considering the age of the deceased, year of accident and the fact that he was working as a driver at the time of accident, this Court is of the view that it would be reasonable to fix a sum of Rs.6,500/- per month as notional income of the deceased. The deceased was aged 25 yrs. at the time of accident and was a bachelor. As per the judgment of the Hon'ble Apex Court in *Sarla Verma and Pranay Sethi, cited supra*, the multiplier applicable is **18** and the appellants are entitled to 40% enhancement towards future prospects. Thus, by fixing the notional income of the deceased at Rs.6,500/- per month, applying multiplier 18, adding 40% enhancement towards future prospects and deducting 50% towards personal expenses of the deceased, the compensation towards pecuniary loss is calculated as follows -

$$6,500 + 2600 (6500 \times 40\%) \times 12 \times 18 \times 50\% = \text{Rs.}9,82,800/-$$

12. The Tribunal has awarded a meagre sum of Rs.10,000/- each towards loss of love and affection to the appellants. Hence, a sum of



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Rs.40,000/- each is awarded under this head. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.10,000/- under this head. The compensation awarded under the head funeral expenses is just and reasonable and hence the same is confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,90,000/- to Rs.11,22,800/-, 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.	Pecuniary loss	4,50,000/-	9,82,800/-	Enhanced
2.	Loss of love & affection	30,000/-	1,20,000/-	Enhanced
3.	Funeral expenses	10,000/-	10,000/-	Confirmed
6.	Loss of Estate	-	10,000/-	Granted
	Total	4,90,000/-	11,22,800/-	Enhanced by Rs.6,32,800/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,90,000/- is hereby enhanced to Rs.11,22,800/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of



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petition till the date of deposit. 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 eight (8) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellants 1 & 2 are permitted to withdraw a sum of Rs.5,00,000/- each and the 3rd appellant who is the brother of the deceased is permitted to withdraw a sum of Rs.1,22,800/-, along with proportionate interest and costs, less the amount if any, already withdrawn. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.6,32,800/-, enhanced by this Court as per the order of this Court dated 11.07.2022, made in C.M.P. No.6670 of 2022 in C.M.A. SR.No.33703 of 2014. The appellants are directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

25.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J

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To

1. The IV Judge,
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

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