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CMA.No.2263 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.2263 of 2018

1. E.Alavuddin
2.A.Madharbee

...Appellants

Vs

The Managing Director,
State Express Transport Corporation Limited,
Chennai – 600 002.

..Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MACTOP.No.6602 of 2013 dated 21.03.2018 on the file of Motor Accident Claims Tribunal (Principal Special Judge, Special Court under E.C and NDPS Act, Chennai).

For Appellants : Mr.M.Malar

For Respondent : No appearance

J U D G M E N T

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 21.03.2018



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passed by the Motor Accident Claims Tribunal (Principal Special Judge, Special Court under E.C and NDPS Act, Chennai) in MACTOP.No.6602 of 2013.

2. On 06.08.2013 at 22.45 hours, while the deceased was riding a motor cycle bearing Regn.No.TN-19-F-2443 proceeding from Tambaram to Chengalpattu direction at GST Road, Guduvancheri, near Saffaa Apartments, the SETC bus bearing Regn.No.TN-74-N-1523 belonging to the respondent and driven by the driver of the respondent in a rash and negligent manner, hit behind the deceased. Due the said impact, the deceased sustained fatal injuries and died on the same day itself. Claiming that the deceased was working in Mathina Tyers, Urappakkam, pasting puncture and earning about Rs.10,000/- per month at the time of accident and the driver of the bus is solely responsible for the accident, the appellants/claimants have filed a claim petition claiming a sum of Rs.20,00,000/-.

3. The appellants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this



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appeal seeking enhancement.

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4. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Transport to Hospital	10,000/-
Damages to clothing and articles	2,000/-
Funeral Expenses	15,000/-
Loss of pecuniary benefits	12,09,600/-
Loss of expectation of life and mental agony	-----
Loss of estate	15,000/-
Loss of love and affection	80,000/-
Total	13,31,600/-

5. Before the Tribunal, the Appellants/claimants examined two witnesses as PW1 and PW2 and filed nine documents which were marked



as Ex.P1 to Ex.P9. On the side of the Respondent, one witness was examined as RW1. But no document was filed on the side of the respondent.

6. Heard the learned counsel for the appellants and perused the materials available on record.

7. The learned counsel appearing for the Appellants/Claimants submitted that the Tribunal ignored the valid evidence given by the appellants. The Tribunal failed to consider the income of the deceased; at the time of accident, the age of the deceased was 21 years and was working as a labour in a puncture shop and earning about Rs.600/- per day. Whereas the Tribunal fixed the income of the deceased only at Rs.8000/- per month. The Tribunal ought to award more compensation under the heads of funeral expenses and future prospectus. It ought to award under the head of loss of expectation of life and mental agony for which they are entitled to. It has only adopted 40 % of the income of the deceased as future prospectus. The Tribunal, without appreciating the evidences properly, has awarded the compensation and the said quantum is unreasonable. It has erred in awarding Rs.12,09,600/- towards loss of pecuniary benefits, Rs.15,000/-



towards loss of estate, Rs.80,000/- towards loss of love and affection; Rs.15,000/- towards funeral expenses and the same are very meagre. Hence, he prayed to enhance the compensation.

8. Per contra, the learned counsel appearing for the respondent submitted that the petition is devoid of merits and facts. The deceased while over taking the left side of the respondent bus moved over the heap of Tar with mud and thus the deceased skidded and he could not control and then hit the left rear side of the respondent bus and fell down. Moreover the compensation claimed by the appellants is highly excessive and baseless. This respondent is not liable to pay any compensation to the claimants. He further submitted that the rider of the two wheeler did not possess valid driving license and not wearing helmet at the time of alleged accident. He further submitted that the Tribunal after analysing the evidences on record, has rightly awarded the compensation to the appellants/claimants and hence, the award passed by the Tribunal does not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

9. Considering the age and earning capacity of the deceased, the Tribunal fixed the monthly income of the deceased at Rs.8000/-, added 40%



of future prospects, deducting $\frac{1}{2}$ of the income towards personal expenses of the deceased, adopting the multiplier of 18, calculated the pecuniary loss of income on account of the death of the deceased and has arrived at a sum of Rs.12,09,600/-. The Tribunal has relied upon Ex.P1/FIR, Ex.P2/Post Mortem report, Ex.P3/Death certificate, Ex.P4/legal heir certificate, and has taken the age of the deceased as 21 years. On perusal of records it is seen that the Tribunal has not properly considered the evidences properly and the documents marked, while fixing the monthly income of the deceased at Rs.8,000/-. Though it is stated that the monthly income of the deceased is Rs.10000/- per month, no proof is filed, considering the age of the deceased the notional income is fixed at Rs.8000/- per month and added 40% of future prospectus. Thus, Rs.11200/- – 50% =5600 pm. Thus arrived at Rs.12,09,600/- (5600 x 12 x 18). It is also seen that the deceased was the entire caretaker of the family having four dependants.

10. Taking note of the above submissions of the learned counsel for the appellants / claimants, economic situation prevailing at the present time and also the facts and circumstances of the case, this Court is of the considered view that Rs.9000/- is to be taken as monthly income of the



deceased. There is no need to change the multiplier adopted by the Tribunal.

Further, the 50% deduction made by the Tribunal also does not require any interference. If Rs.9000/- is taken as the monthly income of the deceased, after adding 40% towards future prospectus of the deceased and 50% of the amount is deducted towards personal expenses and the multiplier of 18 is adopted, the loss of income works out to Rs.13,60,800/-.
(Rs.9000x40%=3600, 9000+3600=12600 x 50% = Rs.6300/- p.m, 6300 x 12 x18 =Rs.13,60,800/-. Accordingly, the amount awarded by the Tribunal towards loss of income stands enhanced to Rs.13,60,800/-.

11.The details of the enhanced compensation are as under:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of pecuniary benefits (6300 x 12 x18 =Rs.13,60,800)	12,09,600/-	13,60,800/-
Transport to Hospital	10,000/-	10,000/-
Damages to clothing and articles	2,000/-	2,000/-
Funeral Expenses	15,000/-	15,000/-



<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Estate	15,000/-	15,000/-
Loss of love and affection	80,000/-	80,000 /-
Total	13,31,600/-	14,82,800/-

12. Thus, the appellants / claimants are entitled to the modified compensation of Rs.14,82,800/-. It is made clear that for the enhanced amount of Rs.14,82,800/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal.

13. The Civil Miscellaneous Appeal is partly allowed. No costs.

14. The respondent is directed to deposit the modified compensation as ordered above, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants / claimants shall withdraw the same, on making proper application before the Tribunal.



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15. Since the compensation amount now awarded is Rs.14,82,800/-, it

is made clear that the claimants have to pay the appropriate Court fee in order to receive the awarded amount.

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Internet : Yes/No

gv

To

1.The Motor Accident Claims Tribunal/
(Principal Special Judge, Special Court under
E.C and NDPS Act, Chennai)

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



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A.A.NAKKIRAN.,J.
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