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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal Nos.2299 of 2015 and 4014 of 2019
and C.M.P.No.22673 of 2019

CMA No.2299 of 2015:

R.Jothi (Since died) by legal heirs

1. J.Vasanthi, W/o.R.Jothi

2. J.Ohm Prakash, S/o.R.Jothi

3. J.Devi Shree, D/o.R.Jothi

4. J.Udaya Prakash S/o.R.Jothivalli

... Appellants

Vs.

The Managing Director,
Metropolitan Transport Corporation,
Chennai-2.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.04.2015 made in MACT. OP.No.2496 of 2013 on the file of the III Judge, Motor Accident Claims Tribunal (Small Causes Court) Chennai.



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For Appellant : Mr.C.Munusamy

For Respondent : Mr.S.S.Swaminathan

CMA No.4014 of 2019

The Managing Director,
Metropolitan Transport Corporation,
Chennai-2.

... Appellant

Vs.

R.Jothi (Since died) by legal heirs

1. J.Vasanthi, W/o.R.Jothi

2. J.Ohm Prakash, S/o.R.Jothi

3. J.Devi Shree, D/o.R.Jothi

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... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.04.2015 made in MACT. OP.No.2496 of 2013 on the file of the III Judge, Motor Accident Claims Tribunal (Small Causes Court) Chennai.

For Appellant : Mr.S.S.Swaminathan

For Respondent : Mr.C.Munusamy

COMMON JUDGMENT

Since the issue in both the appeals are one and the same, the same are disposed by way of this common order.



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2. These appeals have been filed both by the claimant as well as the Insurance company against the award passed in the judgment and decree dated 29.04.2015 made in MACT. OP.No.2496 of 2013 on the file of the III Judge, Motor Accident Claims Tribunal (Small Causes Court) Chennai.

3. The case of the claimant is that on 22.09.2012 at about 22.00 hours the deceased was walking on Anna Salai TVS Bus Stop, opposite IOB from east to west, at that time, the MTC bus bearing Reg. No.TN 01 N 4490 came in a rash and negligent manner from south to north and dashed against the deceased, thereby, he fell down and sustained injuries. He undergone treatment and died on 12.12.2013. The claimants are the wife, daughter and sons of the deceased claimed a total compensation of Rs.1,00,40,000/- from the transport corporation.

4. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and



negligent driving on the part of the driver of the bus belonging to the respondent and awarded a sum of Rs.27,03,600/- to the claimants. Questioning the quantum passed by the Tribunal, the claimants filed CMA.No.2299 of 2015 and the insurance company filed CMA. No.4014 of 2019.

5. The learned counsel for the claimants submitted that the deceased was working as a Manager in IOB bank and the Tribunal has erred in fixing the monthly income of the deceased only as Rs.22,611/- while the claimants have marked the salary certificate as Ex.P25 which shows monthly income as Rs.55,000/-. The learned Judge ought not to have considered the payment of pension while computing loss of income on account of his death. Apart from that the Tribunal did not consider the future prospects of the deceased. The Tribunal ought to have taken the monthly income of the deceased at least as Rs.55,000/- instead of a sum of Rs.22,611/- The learned Judge ought to have adopted multiplier of 8 instead of 5. Further, the learned Tribunal has awarded lesser sum towards loss of love and affection, funeral expenses and loss of estate. The learned counsel prays that this Court may interfere with the award



passed by the Tribunal.

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6. The learned counsel for the Transport Corporation submitted that the Tribunal erred in awarding huge and excessive compensation for the death of R.Jothi in the road accident which occurred on 22.12.2012. The deceased crossed the road in mount road in a careless and negligent manner which act cause for the occurrence of the accident. Without considering the said fact, the Tribunal fastened the entire liability as against the Transport Corporation, which is not sustainable.

7. Heard the counsel for claimants and the learned counsel for Transport Corporation.

8. This Court carefully considered the submissions made on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.



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10. The facts of the case are not in dispute. Admittedly, the deceased is a pedestrian. When he was standing in TVS bus stand, the transport corporation bus dashed against the deceased, for which, he was admitted in the hospital. Subsequently, he died. It is also an undisputed fact that the Law Enforcing Agency registered a case against the driver/RW1 of the Transport Corporation bus. Apart from that, the wife of the deceased examined as PW1 and eyewitness to the accident was examined as PW2. On perusal of the PW2 evidence, the Tribunal has fastened the liability as against the Transport Corporation, which cannot be interfered with by this Court as there is no independent eyewitness examined on the side of the transport corporation. Hence, this Court is not inclined to interfere with in respect of liability.

11. In the instant case, in respect of quantum of compensation is concerned, the Tribunal has fixed the monthly income of the deceased at Rs.22,611/- However, the Tribunal has failed to consider Ex.P25/salary slip, awarded compensation in respect of pecuniary loss at Rs.9,04,440/- which needs interference.



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12. The deceased was aged about 59 years at the time of the accident and at that time, he was retired from service as Bank Manager. While he was in service, the deceased was earning a sum of Rs.55,000/- per month, which was marked as Ex.P25. But the claimants have not produced the particulars with regard to the pension. Therefore, the Tribunal has fixed the notional monthly income at Rs.15,074/- after deducting his personal expenses. The accident had taken place on 22.09.2012 and the notional monthly income fixed by the Tribunal is very much on the lower side. However, PW1 is receiving the monthly pension at 50% and the deceased may earn a sum of Rs.6,000/- in other works. Considering the age of the deceased, the age of the claimants and also the year in which the accident had taken place, this Court is inclined to fix the notional monthly income at Rs.18,306/-. The age of the deceased was 59 years and therefore, 10% is added towards future prospects. If so, the loss of income /dependency would be:

Monthly Income	:	Rs. 18,306/-
Add: Future Prospects	:	Rs. 1,830/-
10% of Rs.18,306/-		-----
		Rs. 20,136/-
Annual Income (20,136 * 12)	:	Rs. 2,41,632/-
Less : Personal expenses		



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Rs.2,25,000/- *1/3	:	Rs. 75,000/-

Multiplier	:	Rs. 1,66,632/-
		x 7

Loss of income/dependency	:	Rs.11,66,424/-

13. The Tribunal has awarded a sum of Rs.40,000/- towards loss of love and affection and it is modified as a sum of Rs.1,60,000/- as there are four dependents. As per Ex.P19 and P26, this Court is inclined to reduce the compensation in respect of medical expenses at Rs.12,58,155/- Further, the Tribunal has not awarded any compensation towards loss of estate. Hence, this Court is inclined to award a sum of Rs.15,000/- towards loss of estate, which the claimants are entitled to. Further, the Tribunal has awarded a sum of Rs.30,000/- towards attender charges, Rs.25,000/- towards extra nourishment and Rs.10,000/- towards transportation, which are unwarranted.

14. In the light of the above discussion, this Court modifies the compensation in the following manner:-



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	9,04,440	11,66,424
Loss of Love and affection	50,000	1,60,000 (4 persons x 40,000)
Transportation	10,000	
Extra nourishment	25,000	
Medical expenses	16,54,103	12,58,155
Attender charges	30,000	
Funeral Expenses	15,000	15,000
Loss of estate		15,000
Total	27,03,543	26,14,579/-

15. The compensation awarded by the Tribunal at Rs.27,03,543/- is reduced to **Rs.26,14,579/-**. The liability fixed by the Tribunal is confirmed. The Transport Corporation is directed to deposit the entire award amount, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. The first claimant/wife is entitled to get the award amount Rs.10,00,000/- and the sons and daughter are entitled to get the award amount of Rs.5,38,193/-



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each with proportionate interest and costs.

16. In the result, both the appeals are disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

18.11.2024

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Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No



WEB COPY To

III Judge, Motor Accident Claims Tribunal
(Small Causes Court) Chennai.



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M.DHANDAPANI, J.

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Civil Miscellaneous Appeal
Nos.2299 of 2015 and 4014 of 2019

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