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C.M.A.No.2485 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2485 of 2023

Usha

.. Appellant

Vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Anna Salai,
Chennai-600 002.

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 19.07.2022 passed in M.A.C.T.O.P.No.2082 of 2016 by the Principal Special Judge, Special Court under EC & NDPS Act (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.M.Mahendran
for Mr.R.Kalai Arasan

For Respondents : Mr.M.Murali Vinodh



J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 19.07.2022 made in M.C.O.P.No.2082 of 2016 on the file of the Motor Accident Claims Tribunal, Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai.

2. The Appellant is the Claimant in M.C.O.P.No.2082 of 2016 on the file of *Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai*. She filed the above said claim petition, claiming a sum of **Rs.12,00,000/-** as compensation for the death of one Sundaravalli, who died in an accident that took place on 10.01.2016.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Respondent and directed the 2nd Respondent-Transport Corporation to pay a sum of **Rs.2,17,500/-** as compensation to the Appellant.

4.Not being satisfied with the amount awarded by the Tribunal, the Appellant has come out with the present appeal seeking enhancement of



compensation.

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5. The learned counsel appearing for the Appellant contended that though the deceased Sundaravalli was a gardener in M/s. Hotel Buhari at the time of accident and was earning a sum of Rs.9,000/- per month, the Tribunal has fixed only a sum of Rs.5,000/- as monthly income of the deceased while determining the compensation towards loss of dependency. He further submitted that the Tribunal having come to the conclusion that the accident occurred due to negligence on the part of the Respondent driver, ought not to have fixed 10% of contributory negligence on the deceased based on Ex.P8-Rough Sketch.

6.Per contra, learned counsel appearing for the 2nd Respondent-Transport Corporation contended that since the appellant has not filed any documentary evidence in order to prove that the deceased was earning a sum of Rs.9,000/- per month, the Tribunal has fixed the notional monthly income of the deceased at Rs.5,000/- and the same is reasonable. He further submitted that the total compensation awarded by the Tribunal under various heads is not meagre. The appellant has not made out any case for



enhancement of compensation. As far as fixation of 10% contributory negligence is concerned, the Tribunal taking note of Ex.P8-Rough Sketch found that the deceased crossed the road where there is no pedestrian crossing and rightly fixed 10% contributory negligence on the part of the deceased, which does not warrant any interference and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the Appellant as well as the learned counsel appearing for the 2nd Respondent-Transport Corporation and perused the entire materials on record.

8. It is the case of the Appellant that at the time of accident the deceased was a gardener and was earning a sum of Rs.9,000/- per month. But no documents have been filed to that effect and therefore the Claims Tribunal fixed a sum of Rs.5,000/- as monthly income of the deceased which is reasonable. That apart, the Tribunal on considering oral and documentary evidence has rightly awarded compensation towards various heads which are just and reasonable and hence, the same are hereby confirmed.



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9. As far as the fixation of 10% contributory negligence on the part of the deceased is concerned, though the Tribunal on considering the oral and documentary evidence has come to the conclusion that the accident occurred due to rash and negligent driving on the part of the driver of the bus, merely relying upon Ex.P8-Rough Sketch has fixed 10% contributory negligence on the part of the deceased by stating that the deceased crossed the road where there is no pedestrian crossing, which in the opinion of this Court is not correct. Though there is no pedestrian crossing, it is the duty of the driver of the offending vehicle to drive the vehicle in a careful manner and therefore the fixation of 10% contributory negligence on the part of the deceased is liable to be set aside and accordingly set aside and hence the compensation granted by the Tribunal towards Loss of Dependency comes to Rs.1,50,000/- (1,35,000+15,000 (10% contributory negligence) and the total compensation comes to **Rs.2,32,500/-**

10. In the result, this Civil Miscellaneous Appeal is partly allowed. The Respondent-Transport Corporation is directed to deposit a sum of Rs.2,32,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit less the amount already deposited, if



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any, within a period of six weeks from the date of receipt of a copy of this order to the credit of **M.C.O.P.No.2082 of 2016** on the file of the Motor Accidents Claims Tribunal, Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai. On such deposit being made, the Tribunal is directed to transfer the Award amount, directly to the Bank account of the Appellant/Claimant through RTGS, within a period of three weeks from the date of deposit into the Court by the Insurance Company. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest. No costs.

19.01.2024

arr

Index : Yes / No

Internet : Yes / No



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To

1. The Managing Director,
Metropolitan Transport Corporation Ltd.,
Anna Salai,
Chennai-600 002.
2. The Motor Accident Claims Tribunal,
Principal Special Judge, Special Court under E.C. & NDPS Act,
Chennai.
3. The Section Officer,
VR Section,
High Court,
Madras.



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KRISHNAN RAMASAMY, J.
arr

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