

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.2341 of 2015

and

M.P.No.1 of 2015

Metropolitan Transport Corporation Limited,
Rep. by its Managing Director,
No.2, Pallavan Salai,
Chennai - 600 002 ... Appellant/Respondent

versus

1.Mrs.E.Alli
2.E.Nithya
3.E.Naveen Kumar ... Respondents/Petitioners
1-3

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.631 of 2013, dated 07.01.2015, on the file of the Motor Accident Claims Tribunal, [III Additional District Judge], Tiruvallur @ Poonamallee.

For Appellant : Mr.S.S.Swaminathan
For Respondents : Mr.K.Varadha Kamaraj

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR ,J.)

Being aggrieved by the judgment and decree in MCOP No.631 of 2013 dated 07.01.2015 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Tiruvallur @ Poonamallee, by which a sum of Rs.49,54,216/-, has been awarded as compensation, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation, to the legal representatives of the deceased, Metropolitan Transport Corporation, Chennai, has preferred the present appeal.

2. Facts as deduced from the material on record and the impugned judgment are that on 01.07.2013, about 8.45 am, when the deceased P.Elumalai was riding his TVS Victor motorcycle bearing Regn.No.TN22 AM 0394 from Chrompet to Guindy i.e., West to East at a moderate speed, adhering to the traffic rules, near Military Hospital, Bharath Telephones, a Metropolitan Transport Corporation bus bearing Regn.No.TN01N 4849, driven by its driver in a rash and negligent manner, hit the motorcycle. The motorcyclist lost his balance and fell down. The back side tyre of the bus ran over his head and he died on the spot. In this regard, a criminal case has been registered on the file of the Inspector of Police, Mount Traffic Investigation, Pallavaram, Chennai, against the driver of the Metropolitan Transport Corporation bus. At the time of accident, the deceased was aged 50 years and was working as a Post Graduate Teacher (Maths) in Nandanam Government Higher Secondary School, Chennai. Legal representatives of the deceased viz., wife, aged about 48 years, unmarried daughter, aged about 23 years and unmarried son, aged about 21 years, have claimed compensation of Rs.70,00,000/- under various heads.

3. Before the claims tribunal, appellant-Metropolitan Transport Corporation, has filed a counter affidavit and denied, the manner of accident. They further submitted that their driver is in no way responsible for the accident and that the accident occurred only due to rash and negligent act on the part of the motorcyclist. Without prejudice to the above, they have also disputed the age, avocation and income of the deceased, and the quantum of compensation claimed under various heads.

4. Before the Claims Tribunal, wife of the deceased examined herself as PW.1., and reiterated the averments made in the claim petition. One Mr.V.Prakash, eye witness has been examined as PW2. Mrs.Tamizharasi, examined as PW3, is the Headmistress of Nandanam Government Higher Secondary School, Chennai. Documents viz., Ex.P1 - First Information Report, Ex.P2, Death Report, Ex.P3, Death Certificate, Ex.P4, Postmortem Certificate, Ex.P5, Legal Heir Certificate, Ex.P6, Driving Licence, Ex.P7, Ration Card, Ex.P8, Motor Vehicle Inspector's Report, Ex.P9, Salary Certificate and Ex.P10, Service Register of the deceased, have been marked on the side of the respondents/claimants. The driver of the Metropolitan Transport Corporation Bus has been examined as RW1 and no documentary evidence has been adduced, on behalf of the appellant-Transport Corporation.

5. On evaluation of pleadings and evidence, the Claims Tribunal, held that the driver of the Metropolitan Transport Corporation Bus bearing Regn.No.TN-01-N-4849, was negligent in causing the accident. Considering the age, avocation, income and

other parameters, required to be taken into consideration, the Claims Tribunal, by applying multiplier '11', and after deducting 1/3 towards personal and living expenses, computed the loss of dependency as Rs.45,39,216/-. Apart from that, the claims tribunal has awarded compensation of Rs.1,00,000/- each, to the daughter and son of the deceased towards pain and sufferings, Rs.1,00,000/- towards mental agony, Rs.1,00,000/- towards pain and sufferings to the wife of the deceased and Rs.15,000/- under the head, funeral expenses. In all, the claims tribunal has quantified the compensation at Rs.49,54,216/-, with interest, at the rate of 7.5% per annum, from the date of claim, till the date of realisation.

6. Assailing the findings of the Claims Tribunal, fixing negligence on the driver of the Metropolitan Transport Corporation Bus bearing Regn.No.TN01-N-4849, Mr.S.S.Swaminathan, learned counsel for the appellant submitted that the Claims Tribunal ought not to have fixed negligence on the driver of the appellant-transport Corporation, solely on the basis of the criminal case registered against its driver.

7. On the quantum of compensation, learned counsel for the appellant submitted that the Claims Tribunal has erred in awarding huge compensation of Rs.45,39,216/-, towards loss of dependency, by taking the income of the deceased as such, without deducting the income tax. He further submitted that the sum of Rs.1,00,000/- awarded to the wife under the head pain and sufferings in addition of Rs.1,00,000/- under the head, mental agony, is excessive. He also submitted that Rs.1,00,000/- each awarded to son and daughter, who are majors, towards towards pain and sufferings, is unnecessary.

8. Mr.K.Varadha Kamaraj, learned counsel appearing for the respondents/claimants, made submissions to sustain the award.

9. Heard the learned counsel appearing for both parties and perused the materials available on record.

10. As regards the manner of accident, though, the wife of the deceased, examined as PW1, has reiterated the manner of accident, she is not an occurrence witness. One V.Prakash, PW2, is stated to be the eyewitness and during his chief examination, he has clearly deposed that the transport corporation bus which came at a high speed, dashed against the motorcyclist. Evidence of PW1 and PW2, eye witness, is duly corroborated by Ex.P1, FIR. A criminal case has also been registered by the Inspector of Police, Mount Traffic Investigation, Pallavaram, Chennai, against the driver of the transport Corporation bus. Though, the transport corporation has denied the manner of accident, no independent witness has been examined, other than RW1, the

driver of the transport Corporation. Therefore, on an overall analysis of the evidence adduced on both sides and upon perusal of documents viz., Ex.P1, FIR and Ex.P8, Motor Vehicle Inspector's Report, the claims tribunal has arrived at a conclusion that the accident occurred only due to the rash and negligent driving of the driver of the transport corporation bus and accordingly, fastened liability. At this juncture, we deem it fit to consider a decision on the aspect of tort and crime, and the test to be applied in motor accident cases. In Jacob Mathew v. State of Punjab reported in 2005 (4) CTC 540, at Paragraphs 13 to 17, the Apex Court held as follows:

"13. The moral culpability of recklessness is not located in a desire to cause harm. It resides in the proximity of the reckless state of mind to the state of mind present when there is an intention to cause harm. There is, in other words, a disregard for the possible consequences. The consequences entailed in the risk may not be wanted, and indeed the actor may hope that they do not occur, but this hope nevertheless fails to inhibit the taking of the risk. Certain types of violation, called optimizing violations, may be motivated by thrill-seeking. These are clearly reckless.

14. In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences. Lord Atkin in his speech in Andrews v. Director of Public Prosecutions, [1937] A.C. 576, stated,

"Simple lack of care such as will constitute civil liability is not enough; for purposes of the criminal law there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established."

Thus, a clear distinction exists between "simple lack of care" incurring civil liability and "very high degree of negligence" which is required in criminal cases. Lord Porter said in his speech in the same case-

"A higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability. (Charlesworth & Percy, *ibid*, Para 1.13)

15. The fore-quoted statement of law in

Andrews has been noted with approval by this Court in Syad Akbar v. State of Karnataka (1980) 1 SCC 30. The Supreme Court has dealt with and pointed out with reasons the distinction between negligence in civil law and in criminal law. Their Lordships have opined that there is a marked difference as to the effect of evidence, viz. the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man, beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

16. Law laid down by Straight, J. in the case Reg v. Idu Beg (1881) 3 All. 776, has been held good in cases and noticed in Bhalchandra Waman Pathe v. State of Maharashtra 1968 Mh.L.J. 423, a three-Judge Bench decision of this Court. It has been held that while negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

17. In our opinion, the factor of grossness or degree does assume significance while drawing distinction in negligence actionable in tort and negligence punishable as a crime. To be latter, the negligence has to be gross or of a very high degree."

Going through the impugned judgment, we do not find any perversity or illegality, warranting interference.

11. On the aspect of quantum of compensation, the claims tribunal, based on Ex.P10, Service Register of the deceased, has fixed the age of the deceased as 53 and following the principles laid down by the Hon'ble Apex Court in Smt.Sarla Varma and

Others vs. Delhi Transport Corporation and another, reported in 2009 (2) TNMAC 1 (SC), adopted '11' multiplier.

12. Upon perusal of Ex.P9, Salary Certificate, Ex.P10, Service Register and oral testimony of Mrs.Tamizharasi, PW3, Headmistress of Nandanam Government Higher Secondary School, Chennai, who has deposed that the deceased was a P.G.(Maths) Teacher in the Government School and earned Rs.51,582/- and had he been alive, there is every possibility of him being promoted as Headmaster and considering the fact that the deceased had five more years of service, the claims tribunal has fixed the monthly income of the deceased as Rs.51,682/- and proceeded to compute the loss of dependency.

13. However, as rightly pointed out by the learned counsel for the appellant Transport Corporation, the tribunal has computed the loss of dependency without deducting income tax and applied '11' multiplier and thereafter deducted 1/3 towards the personal and living expenses.

14. The tribunal should have deducted Income Tax. The accident has occurred on 01.07.2013. As per the submission of the learned counsel for the Transport Corporation, in the year 2013, the income ceiling is Rs.2,00,000/- which is not refuted by the learned counsel for the respondents/claimants. He has also agreed that the tribunal has failed to deduct the income tax, while computing the compensation. Submission is placed on record.

15. In Shyamwati Sharma v. Karam Singh reported in 2010 (12) SCC 378, the Supreme Court at Paragraphs 8 and 9, held as follows:

"7. The submission of the respondents that the deduction of 30% from the salary is not warranted in view of the decision in Sarla Verma, is not sound. In Sarla Verma, the monthly salary of the deceased was only Rs.4004/- and the annual income even after taking note of future prospects was Rs.72072/-. The income was in a range which was exempt from tax, if the permissible deductions were applied. Therefore, this Court did not make any deduction towards income-tax. But this Court made it clear that where the annual income is in the taxable range, appropriate deduction should be made towards tax.

9. In this case as the annual income has been worked out as Rs.2,48,292/-, appropriate deduction has to be made towards income-tax. The rate of income tax is a varying figure, with reference to taxable income after permissible deductions and the year of assessment. The High Court has assessed the deduction as 30% and on the facts, we do not propose to disturb it. We however make it clear that while ascertaining

the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased."

The ratio laid down in Shyamwati Sharma's case, is reiterated in Manasvi Jain v. Delhi Transport Corporation reported in 2014 (1) TNMAC 647.

16. A claim for compensation under the head pain and sufferings to the legal representatives of the deceased is not tenable, in the light of the principle of Actio Personalis Moritur-cum-personna. Some of the case laws decided by various High Courts on this issue are hereunder:

"(i) The plain meaning of the maxim "Actio Personalis Moritur-cum-personna" is that "a personal action dies with the parties to the cause of action". The above said maxim is an invention of English Lawyers. In AIR 1967 SC 1124 [Girija Nandini Devi v. Bijendra Narain], the Supreme Court observed as hereunder,

"The maxim "Actio Personalis Moritur-cum-personna" means a personal action dies with the person has a limited application. It operates in a limited class of actions ex delicto such as actions for damages, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages ex delicto, and does not fall with the enumerated classes. Nor is such that the relief claimed being personal could not be enjoyed after death, or granting it would be nugatory".

(ii) However, the maxim "Actio Personalis Moritur-cum-personna" relates only to the personal injury, pain and suffering experienced by the deceased on account of injuries and it cannot be extended to the loss of estate of the deceased. Reference can be had to the decision of this Court in Thailammai V. A.V.Mallayya Pillai reported in 1975 ACJ 448, wherein, this Court held that the cause of action in respect of damages to the estate of the deceased survives and it is passed over to the legal representatives/dependants.

(iii) Explaining the maxim "Actio Personalis Moritur-cum-personna" and its applicability to the Motor Accident cases with reference to Section 306 of

the Indian Succession Act, the Gujarat High Court in *Jennabai V. Gujarat State Road Transport Corporation* [1991 ACJ 585], at Paragraph 10, 16 and 18, held as follows:

"10. Tort, frequently, involves a non-pecuniary loss. Even pecuniary loss of the deceased, being personal to him has no proper entitlement to a place in the assessment of the damages which goes to his estate. But for the pecuniary loss suffered by the deceased on account of such injuries, an action would lie or action would survive for the benefit of the estate of the deceased. The claim, on account of loss to the estate of the deceased, would, undoubtedly, survive and would pass over to his heirs or legal representatives. Section 306 of the Indian Succession Act does not exclude right to recover claim on the basis of proprietary right. In a case of personal injuries, arising out of vehicular accident, it may include pecuniary loss as well. This pecuniary loss or any loss which referable to the loss to estate would be a proprietary or right pertaining to property. Therefore, the right to maintain the action or to continue the action for recovery of pecuniary and proprietary loss which are referable or attributable to the loss to the estate, cannot be said to have been taken away by the provisions of Section 306 of the Indian Succession Act. If the provisions of Section 306 of the Indian Succession Act are extended to all causes of action, including those affecting proprietary or property, i.e., to the estate, it would be to stultify to a great extent the provisions of Section 212 (2). If it is stretched to that, it would be nugatory, which empowers a Hindu, Mohamadan, Buddhist, Sikh, Jain, Indian Christian or Parsi for applying for letters of administration in case of intestacy. Such a construction of section 306 of the Indian Succession Act would raise a direct conflict with the provisions of Order 22, Rule 3(1) of the Civil Procedure Code. Moreover, the liability to pay compensation is created immediately on the occurrence of the accident to the person suffering the injury and must amount to a debt payable to him and pass over to the heirs of the workman on his death and does not abate. Thus, provisions of Section 306 of the Indian Succession Act have no application of such cases. Therefore, the maxim *Actio Personalis Moritur-cum-personna* on which Section 306 of the Indian Succession Act is based, cannot have a blanket applicability in all actions even in a case of personal injuries wherein the damages flow from the head or under the head of loss to the estate. It may be mentioned that

in England, the said maxim has been criticised as harsh, unconscionable and unjust. The rightful claim falling in the realm of pecuniary or proprietary or loss to the deceased's estate would survive, which is not personal to the deceased. It may also be mentioned that the words 'personal injury' occurring in Section 306 mean bodily or physical injury as opposed to the injury to the proprietary right. Therefore, a cause of action in respect of injury to the property or loss referable to the deceased's estate flowing from the personal injury would not fall within the exception, but would, undoubtedly, survive. But, if interpreted otherwise, as held by the Tribunal, would mean unjust enrichment and benefit to the wrongdoer's estate and unjustifiable injury to the estate of the deceased. Unfortunately, the Tribunal has failed to address itself to such a vital and important aspect while considering and examining the provisions of Section 306 of the Indian Succession Act.

16. It is very clear from para 7 of the impugned judgment that the deceased had claimed Rs.2,200/- for Medical expenses and Rs.575/- for Miscellaneous expenses, etc. The claim under such heads would, undoubtedly, fall within the field of loss to the estate. If such amount would not have been spent by the deceased it was to go to the hands of the appellants or legal representatives of the deceased. Likewise, loss of past income awardable to the deceased on account of wrong done to him subject to reasonable expenses which would have been incurred by the deceased for himself would also be a loss to the estate. It can safely be concluded that had the deceased not sustained the injuries, there would not have been loss of income and consequently there would not have been any detrimental effect on the estate of the deceased. If the unfortunate accident had not occurred the income or expenses falling within the head of loss to the estate would have augmented the estate and same would have gone in the hands of the heirs and legal representatives of the deceased. The loss of past income for the period from the date of accident till the inability on the part of the deceased to earn on account of the injuries, subject to reasonable expenses for himself, would also form a part of estate of the deceased. No doubt, the loss of income occurring after the death of the deceased would not be a loss to the estate. The action for amount of claim which is not attributable to the loss of estate of the deceased could not survive to the appellants. In other words, the heirs and legal representatives of

the deceased would not be entitled to and eligible to claim the amount of claim which is not referable to or not attributable to the loss of the estate. Unfortunately, the Tribunal applied the doctrine of actio personalis moritur cum persona along with the provisions of Section 306 of the Indian Succession Act in respect of the entire claim without taking into account the separate claim under the head of loss to the estate of the deceased, Abdul Karim Musa. This proposition of law, unfortunately, could not be brought to the notice of the Tribunal. With the result, the approach of the Tribunal in so far as it related to the dismissal of the claim in respect of loss to the estate of the deceased cannot be sustained.

18. Incidentally, it may also be mentioned that could inability to compensate under the Workmen's Compensation Act, 1923, in case of an employment injury to the workman abate or die on account of demise of the workman unconnected with the employment? Suppose, in a given case, the workman files an application for compensation under Section 3 of the Workmen's Compensation Act, 1923, and during the pendency of the proceedings he dies otherwise than as a result of the employment injuries. Would that right be lost in view of the provisions of Section 306 of the Indian Succession Act? If the interpretation made by the Tribunal in the present case is accepted then the liability to compensate him under the Workmen's Compensation Act, 1923, would abate. Of course, the language in Section 306 of the Indian Succession Act, no doubt, appears to be general. But it is not always that a general import must necessarily receive a general and wide meaning divorced from the material facts of the case. The expression "other personal injuries not causing the death of the party" is preceded by the words, 'defamation, assault' as defined in the Penal Code. The words 'other personal injuries..... must, therefore, receive colour from the earlier words and ought to be construed with the words preceding. It is also settled proposition of law that benevolent legislation is required to be construed liberally so as to advance the underlying object and purpose of the provision. It is also well stated that if interpretation of a welfare legislation or any provision of the statute is capable of two constructions, that construction should be preferred which furthers the policy of the Act or provision concerned and which is more beneficiary for the class in whose interest the law has been made."

(iv) In *V.Mepherston v. Shiv Charan Singh & Ors.*, reported in I(1998) ACC 6, the Delhi High Court, while testing the correctness of the award passed by the Motor Accident Claims Tribunal, considered as to whether personal damages awarded to the claimant/injured are inheritable or not. In the said case, the death was not due to the accident. The main contention was that the claim for enhancement for general damages after the death of the objector does not survive. Answering the issue, the Court at Paragraph 3, observed as follows:

"3. So far as the contention of Mr.Tarun Johri that claim for damages which was on account of suffering and pain suffered by the deceased, to my mind, it would abet on the death of the injured. But so far as other claims under other heads those would not come to an end on the death of the objector. The right to sue would survive even on the death of the objector. As a matter of fact claim on account of special diet, medicine, conveyance etc., are such which related to the loss of the property, therefore, right to sue would not abet on the death of the objector. It would survive to his legal heirs as held by the High Court of Punjab and Haryana in the case of *Joti Ram & Ors. v. Chaman Lal & Ors.*, AIR 1985 Punjab & Haryana page 2=I (1986) ACC 550."

(v) In *Kartar Kaur v. Dayal Singh* reported in II (1999) ACC 372 (DB), one of the issues raised before the Division Bench of Madhya Pradesh High Court was about the continuance of the appeal by the Legal Representatives of the injures/claimant (sons of the deceased) based on the Doctrine "Actio Personalis Moritur cum Persona", ie., a personal claim dies with the person (claimant). Answering the issue, at Paragraph 13, the Division Bench held as follows:

"13. In view of the above, we are of the view that where the injured claimant dies as a result of the injuries during the pendency of his claim for compensation, the legal representatives would be entitled to pursue the claim as in case of death caused in an accident by the use of motor vehicle. Where the injured dies his natural death and not because of injuries suffered in motor accident, the legal representatives would be entitled to pursue the claim to the extent as recognised by Section 306 of the Indian Succession Act, that is, the claim on account of loss to the estate of the deceased. Where in a case, the compensation has been awarded to the injured and an appeal is preferred and during the pendency of the appeal, claimant/injured dies, his

legal representatives can continue the appeal for enhancement of compensation."

(vi) A similar issue came up for consideration before the Division Bench of Karnataka High Court in *Sridevi v. Mastak Ahamad* reported in I (2002) ACC 262 (DB). In the above reported judgment, a minor, aged about four years, sustained injuries. On the claim made by her father, Rs.72,000/- was awarded. Aggrieved by the inadequacy of compensation, an appeal was preferred by the injured through her father and during the pendency of the appeal, she died. Legal Representatives were brought on record. It was submitted that the compensation for Medical Expenses, Pain and Suffering, Loss of Amenities and general damages was on the lower side. Following the decision in *V.Mepheron's* case, the Division Bench held that the appeal is abated in so far as the claim for damages for pain and suffering is concerned and on the question of expenses on medicines, special diet, conveyance etc., as the expenses relate to loss of estate, they would not abate.

(vii) Similar view was taken by the Himachal High Court in *Ram Ashari v. H.R.T.C.*, reported in IV (2005) ACC 379. At paragraph 6 to 8 of the judgment, it is held as follows:

"6. It is well settled law that an action in torts for claim of compensation for damages on account of injuries suffered by an injured is a right personal to the injured. This right cannot be continued by the legal heirs or legal representatives. It is no doubt true that the legal heirs or the legal representatives can continue the proceedings insofar as they relate to the loss to the estate such as medical expenses, amount spent on treatment etc. However, the claim with regard to pain and suffering, future loss of income and such related matters is an action which is personal to the injured alone and cannot be continued after his death unless it is proved that the death is the result of the injuries suffered in the accident.

7. A Division Bench of this Court in *Narinder Kaur v. State of H.P.*, II (1991) ACC 206 = (1991) 2 ACJ 767, held as follows:

"(8) We have heard the learned counsel for the parties and gone through the records. The principle of *actio personalis moritur cum persona* relates only to the personal or bodily injuries and not to the loss caused to the estate of the deceased by the tort-feasor. In its applicability, the principle stands considerably modified by the provisions of Section 306

of the Indian Succession Act, which clearly lays down that all demands whatsoever and all rights to prosecute or defend any action or special proceedings existing in favour of or against a person at the time of his death survive except causes of action for defamation, assault and other personal injuries not causing death of the party etc., which come to an end with the death of the injured. The loss of the estate is thus not covered by the exceptions contained in Section 306 of the Indian Succession Act. While taking this view, we are fortified by the decisions of the Supreme Court in Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair, 1986 (1) ACJ 440 : AIR 1986 SC 411 : 1986 (2) TAC 216, and M.Veerappa v. Evelyn Sequeria, AIR 1988 SC 506. The claimants as legal representatives of the original claimant were, as such, entitled to be substituted in his place with a view to continue the proceedings in the case and to have a decision on the claim in respect of the loss caused to the estate of the deceased."

8. Keeping in view of the settled position of law and the fact that in the present case there is no claim for loss to the estate and the entire claim is based on the personal claim of the deceased Karam Chand, the appeal cannot be continued and prosecuted by the legal representatives."

(viii) A Full Bench of the Karnataka High Court in Uttam Kumar (deceased) v. Madhav and another, 2002 ACJ 1828, had an occasion to consider an appeal filed by the legal representatives of the deceased for enhancement of the compensation. Short facts of the reported case are as follows:

"In an accident that occurred on 07.01.1995, where the Uttam Kumar sustained injuries. He was admitted in the hospital for his treatment and he incurred expenses. He claimed compensation. The Tribunal awarded Rs.36,250/- with costs and interest. Not satisfied with the compensation, he preferred an appeal for an enhancement. Pending disposal of the appeal, he died and his aged parents were brought on record. The Division Bench of the Karnataka High Court found that the cause of action will not survive and Lrs., of the deceased claimant will not be entitled to compensation. However, the Division Bench observed that in view of the amended provisions of the Motor Vehicles Act, 1988 and the decision of the Supreme Court in Kannamma v. Deputy General Manager, Karnataka State Road Transport Corporation reported in 1991 ACJ 707 (Karnataka), referred this matter to a Larger Bench. The Full Bench which examined the issue with

reference to the provisions of the Motor Vehicles Act and Indian Succession Act, 1925 and answered as follows:-

(i) A claim petition presented under Section 110-A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc. (loss to the estate) cannot, on such person's death occurring not as a result or consequence of bodily injuries sustained from a motor accident, be prosecuted by his/her legal representatives; but

(ii) A claim petition presented under Section 110-A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc. (loss to the estate) can, on such person's death occurring as a result or consequence of bodily injuries sustained in the motor accident, be prosecuted by his/her legal representatives only insofar as the claim for compensation in that claim petition relates to loss of estate of the deceased person due to bodily injuries sustained in the motor accident."

17. Similarly, an award of Rs.1,00,000/- towards pain and sufferings to the wife, in addition to Rs.1,00,000/- awarded under the head mental agony has to be deducted. The award should have been under the head loss of consortium, in terms of the decision of the Apex Court in Sarla Verma v. Delhi Transport Corporation Ltd., reported in 2009 (2) TNMAC 1 (SC). Likewise, the award of Rs.1,00,000/- each to the children, should have been made under the head loss of love and affection, as per the decision in Rajesh v. Rajbir Singh, reported in 2013 (3) CTC 883 (SC). Though, the learned counsel for the transport corporation sought for reduction in the compensation, now modified under the head loss of love and affection, considering the fact that the children have lost the love and affection of their father, at a very young age, this Court is not inclined to accept the submissions. Hence, the amounts awarded under the head pain and sufferings is modified as loss of consortium and love and affection, respectively.

18. Perusal of the award further shows that the tribunal has awarded only Rs.15,000/- towards funeral expenses and there is no award towards consortium, transportation and damages to clothes and articles. Hence, a reworking has to be done. Accordingly, loss of dependency is worked out as follows:

Gross Monthly Income : Rs.51,582/-
Less 1/3 deduction : Rs.17,194/-
Income : Rs.34,388/-

Income per annum : Rs.4,12,656/-
Less : Rs.2,00,000/-
(Income Tax Ceiling during 2013)

Taxable Income per annum : Rs.2,12,656/-

Income Tax @ 10%
for 11 years : Rs.21,265/- x11 = Rs.2,33,915/-

Loss of Dependency : (Rs.51,582/- x 12 x 1/3 x 11) - Income tax
: Rs.45,39,216/- - Rs.2,33,915/-
: Rs.43,05,301/-

19. Further, in Rajesh & Others Vs. Rajbir Singh & Others, reported in 2013 (2) TN MAC 55 (SC), the Hon'ble Apex Court has awarded Rs.25,000/- towards funeral expenses. Following the said decision, sum of Rs.15,000/- awarded under the head funeral expenses is enhanced to Rs.25,000/-. There is no award towards transportation and Damages to clothes and articles. Hence, sum of Rs.10,000/- and Rs.1,000/-, respectively is awarded towards transportation and damages to clothes and articles.

20. In the light of the above submission and reworking, the compensation due and payable to the wife and children of the deceased works out to Rs.46,41,301/-, with interest, at the rate of 7.5% per annum from the date of claim till deposit. The award of the tribunal is modified and there shall be a reduction of compensation by Rs.3,12,915/-. The compensation now modified is apportioned hereunder:

Loss of Dependency : Rs.43,05,301/-
Loss of Love and Affection: Rs. 2,00,000/-
to son and daughter
@ Rs.1,00,000/- each
Loss of consortium : Rs. 1,00,000/-
Funeral Expenses : Rs. 25,000/-
Transportation : Rs. 10,000/-
Damages to clothes : Rs. 1,000/-

Total : Rs.46,41,301/-

Out of the compensation awarded, wife of the deceased is entitled to Rs.20,00,000/-. Out of the remaining sum viz., Rs.26,41,301/-, son is entitled to Rs.13,00,000/- and daughter is entitled to Rs.13,41,301/-

21. In the result, the Civil Miscellaneous Appeal is partly allowed. The appellant-Transport Corporation is directed to deposit the award amount, now determined by this Court, if not already deposited, with proportionate accrued interest and costs, less the amount already deposited to the credit of MCOP No.631 of 2013 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Tiruvallur @ Poonamallee, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents/claimants are permitted to withdraw their share, as apportioned by the tribunal, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ars/skm

To

1.The Motor Accident Claims Tribunal,
(III Additional District Judge),
Tiruvallur @ Poonamallee.

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

+1 cc to M/S.S.S.Swaminathan vide sr.57906

+1 cc to Mr.K.Varadhakamaraj Advocate sr.57923

C.M.A.No.2341 of 2015

aa16/12/2015