

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A. No. 343 of 2015

&

M.P. No.1 of 2015

The Managing Director,
Tamil Nadu State Transport
Corporation Limited, Division-I,
Kumbakonam - 612 001. ..Appellant/1st Respondent

Vs.

1. Tmt. N. Jayamani
2. N. Karthikeyan
3. N. Yogeshwari ..Respondents 1to3/Petitioners
4. C. Uma Maheswari
5. Minor C. Vaishnavi
6. Minor C. Gopika
(Minors rep. By their mother and
next friend C. Uma Maheswari) ..Respondents 4to6/Respondents 2to4

Prayer: Civil Miscellaneous Appeal as against the judgment and
decree dated 21.12.2013 passed in M.C.O.P. No. 1137 of 2007 by the
Motor Accidents Claims Tribunal (I Additional District and Sessions
Judge), Cuddalore.

For Appellant :: Mr.D. Venkatachalam

J U D G M E N T

It is disheartening to note that a child in the mother's
womb, at the time of filing the claim petition, subsequent to her
birth, was made as a party to it, which petition was filed seeking
compensation for the death of her father, in the accident, which
occurred on 31.10.2003.

2. A 31 year old Railway Constable, namely, N. Chezhiyan,
working in CRPF-Signal II at Chennai, earning about Rs.7000/- per
month, while riding his motor cycle, along with one Nagendran, tried
to overtake a car, during which time, the bus belonging to the
appellant Transport Corporation, coming in the opposite direction, at
great speed, driven in a rash and negligent manner, hit the
motorcycle, resulting in the death of the said Chezhiyan. Hence, the
claim petition was filed.

3. The Tribunal, on contest, found that the bus belonging to the appellant Transport Corporation was driven rashly and negligently and directed the appellant to pay a sum of Rs.8,28,000/- as compensation together with interest @ 7.5% per annum. The said award is being challenged before this Court on the question of liability as well as quantum.

4. Heard Mr.D. Venkatachalam, learned counsel for the appellant, who would submit that the accident occurred only because of the rash and negligent driving of the two-wheeler by the deceased. According to the counsel, the deceased tried to overtake a car without noticing the oncoming bus resulting in the collision of the bus and the two-wheeler and therefore, the deceased was responsible for the accident.

5. However, the Tribunal, relying upon Ex-P1, FIR, filed against the driver of the bus and the evidence of P.W.1, which was in consonance with the statement in the FIR, while rejecting the evidence of R.W.1, the Conductor of the bus, concluded that the accident had occurred only due to the rash and negligent driving by the driver of the bus. If really, the appellant Transport Corporation intended to prove that the accident was caused because of the rash and negligent driving of the two-wheeler by the deceased, nothing prevented them from examining the driver of the bus. However, only the Conductor of the bus was examined, who may not be in a position to give the correct details. Therefore, the finding of the Tribunal that the accident occurred because of the rash and negligent driving by the driver of the bus is sustained and the contention raised by the learned counsel for the appellant, on the aspect of liability, is hereby rejected.

6. Coming to the question of quantum, the deceased was working as a Constable in CRPF and was earning about Rs.6723/- per month, as per the documents filed before the Tribunal. As the deceased was only 31 years at the time of accident, "Future Prospects" should have been taken into consideration by the Tribunal. However, without considering the same, the Tribunal even went to the extent of reducing the monthly salary of Rs.6723/- to Rs.6000/- without any justification. Therefore, this Court, while fixing the monthly salary of the deceased, at Rs.6723/-, adds 50% of monthly salary towards "Future Prospects" following the judgment rendered in Santosh Devi V. National Insurance Company Ltd. and others reported in 2012 6 SCC 421. Therefore, the total monthly income would be,

Monthly salary	=	Rs.6,723/-
Add: 50% towards "Future Prospects"	=	(Rs.6,723/-+ 50% (Rs.6,723/-))
Total Salary	=	Rs.10,084.50p.

7. The claim petition was filed by the mother, sister and brother of Chezhiyan, since deceased, wherein his wife and two children, one of whom was born after his death, have been shown as respondents 2 to 4. Since the deceased was survived by his wife, two children and his mother, the size of the family would be four and in that event, one-fourth deduction will have to be made towards "Personal Expenses", in the light of the judgment rendered by the Honourable Apex Court in Sarla Verma's case ((2009 2 TN MAC 1 (SC)). After one-fourth deduction, the monthly contribution of the deceased to the family would be,

Monthly Contribution of the
deceased to the family:: Rs.10,084.50 (-) $\frac{1}{4}$ (Rs.10,084.50)
:: Rs.7,563/- (approx.)

Following the judgment in Sarla Verma's case, the Tribunal rightly applied multiplier 16 and adopting the said multiplier, "Loss of Income" is calculated as hereunder:

Loss of Income :: Rs.7563 x 12 x 16
:: Rs.14,52,096/-.

8. It is seen that only a sum of Rs.10,000/- was awarded towards "Loss of Consortium". At a young age, the 1st respondent lost her husband and though, no amount of money can compensate the loss suffered by her, in an effort to provide solace to her, following the judgment of the Honourable Apex Court rendered in Rajesh and others V. Rajbir Singh and others reported in 2013 3 CTC 883, this Court awards a sum of Rs.1 lakh to the young widow for "Loss of Consortium". The Tribunal rightly awarded a sum of Rs.40,000/- towards "Loss of love and affection" to the mother of the deceased and his siblings. As already stated, the minor daughter, C. Gopika, who was born after the death of the victim in this case, could not even see her father's face and she has been totally denied of his love, care, affection and guidance throughout her life. Therefore, the said minor child has to be compensated adequately and a sum of Rs.50,000/- is awarded to the 6th respondent alone, towards "Loss of love and affection". The other minor child, the 5th respondent herein, is awarded Rs.50,000/- under the said head. The sum of Rs.10,000/- awarded towards "Funeral Expenses and Ambulance Expenses" is too low and the same is enhanced to Rs.15,000/-. Hence, the award of Rs. 8,28,000/- granted by the Tribunal is enhanced to Rs.17,07,096/- rounded off to Rs.17 lakhs. The rate of interest awarded by the Tribunal at 7.5% per annum remains intact.

9. As far as the apportionment is concerned, the Tribunal, without considering the future of minor children, awarded only Rs.1,75,000/- as against the sum of Rs.2,28,000/- to the mother of the deceased and Rs.2,50,000/- to the wife of the deceased. Therefore, this Court modifies the apportionment of the compensation amount and out of the total sum of Rs.17 lakhs, as per the

modified award passed by this Court, the minor children, namely, the 5th and 6th respondents would be each entitled to Rs.5 lakhs and the mother and the wife of the deceased would be entitled to Rs.3,50,000/- each.

10. Even though the appeal has been filed by the Transport Corporation, this Court has enhanced the compensation amount payable to the claimants, without notice to them, as there is no necessity for the respondents to be heard in this matter, as they are going to be benefitted only. Only when the rights of parties are likely to get affected, principles of natural justice have to be complied with. When benefit is to accrue to the respondents, there is no need to issue notice to the respondents.

11. Further, in the appeal filed by the Transport Corporation, this Court, on re-appreciating the evidence on record, applying the latest law and invoking Order XLI Rule 33 CPC and Section 151 CPC, has enhanced the compensation payable to the claimants, in an endeavour to award just and reasonable compensation. Besides, the provisions of Motor Vehicles Act are beneficial in nature, which aim at consoling, comforting and compensating the victims of road accidents and therefore, even in the appeal filed by the Transport Corporation, in the absence of any appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation amount. Furthermore, an appeal is a continuation of the original proceedings and this Court is bound to re-appreciate the pleadings and evidence on record and award just compensation as contemplated under the Act. Hence, in an endeavour to do complete justice, the award of the Tribunal to the tune of Rs.8,28,000/- is enhanced to Rs.17 lakhs.

12. The appellant Transport Corporation is directed to deposit the entire amount, as per the modified award passed by this Court, along with interest and costs, after deducting the amount already deposited, if any, before the Tribunal, on or before 26th April, 2015, failing which the Chairman cum Managing Director and Financial Advisor cum Chief Accounts Officer of the appellant Transport Corporation shall appear before this Court on 27th April, 2015. On such deposit being made, the 1st respondent and the 4th respondent are permitted to withdraw Rs.3,50,000/- each, within a period of two weeks thereafter. The share of the minors' shall be deposited in interest bearing Fixed Deposit, in any one of the Nationalised Banks, till they attain majority. The 4th respondent is permitted to withdraw interest accruing on such deposit once in three months.

13. The Civil Miscellaneous Appeal stands dismissed enhancing the award passed by the Tribunal, as indicated above. The claimants shall pay the appropriate court-fee for the enhanced amount, if any. No costs. Connected M.P. is closed.

14. For reporting compliance, call on 27th April, 2015.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The MACT (I Addl. District & Sessions Court), Cuddalore.

2. The Chairman Cum Managing Director and Financial Advisor Cum Chief Accounts Officer, Tamil Nadu State Transport, Corporation Ltd., Division-I, Kumbakonam 612001.

+ 1 cc to Mr.D. Venkatachalam, Advocate SR.12083

KM(CO)

EU 24.03.2015

C.M.A.No. 343 of 2015

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