

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.Nos.2216 of 2013
and 153 of 2015
and M.P.Nos.1 & 2 of 2015

1.V.Kalavathy

2.V.Shobana

3.V.Gayathri (Minor)

Minor represented by her mother

V.Kalavathy as natural guardian

and next friend.

... Appellants in C.M.A.No.2216 of 2013

... Respondents in C.M.A.No.153 of 2015

Vs.

The Managing Director

Tamil Nadu State

Transport Corporation Limited,

Kancheepuram Region,

Kancheepuram.

.. Respondent in C.M.A.No.2216 of 2013

.. Appellant in C.M.A.No.153 of 2015

Prayer in both CMAs.: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act against the order dated 24.03.2012 in M.C.O.P.No.2153 of 2008 on the file of the Motor Accidents Claims Tribunal XVII Additional District & Sessions Judge, Chennai.

For Appellants in C.M.A.No.2216/13 &

Respondents in C.M.A.No.153/15

: Mr.V.Velu

For Respondent in C.M.A.No.2216/13 &

appellant in C.M.A.No.153/15

: Mr.P.Paramasivados

COMMON JUDGMENT

Both the appeals have been preferred against the very same Judgment dated 22.04.2012, awarding a sum of Rs.4,80,000/- for the death of one V.Ramesh Kumar, aged about 24 years, claimed to be prothithar-cum-driver, earning a sum of Rs.10,000/- p.m., in the accident, occurred on 17.02.2008.

2. The award was granted in favour of the respondents in C.M.A.No.153 of 2015. C.M.A.No.153 of 2015 is taken as a lead case and the State Transport Corporation is hereinafter referred to as

appellant-Transport Corporation and the claimants are the respondents herein.

3. Heard Mr.P.Paramasivadoss, learned counsel appearing for the appellant and Mr.V.Velu, learned counsel appearing for the respondents.

4.Mr.P.Pramasivadoss, learned counsel appearing for the appellant/Transport Corporation would submit that the accident occurred because of the rash and negligent driving of the deceased. Further he would submit that in the absence of any proof for the income of the deceased, the income of the deceased was taken as Rs.5,000/-p.m. and therefore, the same is required to be reduced.

5. Mr.V.Velu, learned counsel appearing for the respondents/claimants would submit that the amount determined at Rs.5,000/- is very low and he seeks to redetermine at Rs.10,000/- p.m.and adding 50% towards future prospects, totally a sum of Rs.15,000/- as monthly income. Therefore, he seeks for enhancement of the compensation.

6.Though Mr.P.Paramasivadoss, learned counsel for the respondents argued that because of the rash and negligent on the part of the deceased, the Tribunal based on Ex.P.1 filing of the F.I.R against the driver of the Transport Corporation bus, rightly came to the conclusion that the accident occurred due to the rash and negligent driving of the appellant-Transport Corporation bus. Further it is seen that there is no contra evidence adduced on the side of the appellant/Transport Corporation. Under such circumstances, the Tribunal held rightly that the accident occurred due to rash and negligent on the part of the driver of the Transport Corporation.

7. The accident occurred on 17.02.2008. The claim of the respondents is that the deceased Ramesh Kumar was working as a prohither-cum-driver. To prove the said contention Ex.P.11-copy of Educational Qualification Certificate issued by Veda Padasala was already marked. Ex.P9 Driving licence of the deceased was also marked. In those circumstances, the claim of the claimants cannot be ignored.

8. With regard to the accident occurred in the year 2008, the Honourable Supreme Court in Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459 determined a sum of Rs.6,500/- as monthly income for a vegetable vendor, who sustained injury in the accident occurred on 14.02.2008. In this case also, the accident occurred in the year 2008. Therefore, this Court is inclined to follow the determination made in the aforesaid judgment. Accordingly, a sum of Rs.6,500/- is taken as monthly income and 50% is added towards future prospects by following the judgment of the Honourable Supreme Court in Sarla Verma and

others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 and therefore, the loss of income is determined at Rs.9,750/-p.m.

9. As the age of the deceased was 22 years and as per para 15 of the judgment of the Honourable Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has widowed mother and large number of younger non-earning sisters or brothers his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third. Therefore, 1/3 is required to be deducted towards personal expenses. The monthly income is determined as follows:

$$\text{Rs.9750/-} - \frac{1}{3} = \text{Rs.6,500/-}.$$

10. The Tribunal applied multiplier 15 as per the age of the mother, whereas the Judgment of the Hon'ble Supreme Court in Amirt Bhanu Shali .V. National Insurance Company Limited in 2012 (11) SCC 738, age of the deceased alone has to be taken as the basis for determining the multiplier. In this case, the age of the deceased was 22 years and as per the second schedule, the appropriate multiplier is 17. As per Sarala Verma (supra), for the age of 22, the appropriate multiplier is 18 and the loss of income is calculated as follows:

$$6,500 + 50\% - \frac{1}{3} \times 12 \times 18 = 14,04,000/-$$

11. The first claimant is the mother, the second claimant is the sister and the third claimant is the younger sister (minor) of the deceased Ramesh kumar. The role of the son in the absence of the father that too with two sisters is essential for the family. Therefore, towards loss of love and affection, this Court awards a sum of Rs.60,000/- enhancing from Rs.25,000/- as awarded by the Tribunal.

12. Only a sum of Rs.5,000/- towards funeral expenses and the same is hereby enhanced to Rs.20,000/-. Since no amount was awarded towards transportation, a sum of Rs.10,000/- is hereby awarded. As no amount was awarded towards damages to clothes and other articles, a sum of Rs.5,000/- is hereby awarded the same. Totally, a sum of Rs.14,99,000/- is awarded as compensation. Rounded off to Rs.15,00,000/-. The rate of interest awarded by the Tribunal at 7.5% p.a. remains unaltered.

13. Accordingly, the compensation awarded by the Tribunal is hereby enhanced from Rs.4,80,000/- to Rs.15,00,000/- in the following manner:-

1	Loss of income 6,500+50% 1/3X12X18)	14,04,000
2	Loss of love and affection to the appellants	60,000
4	Loss of Transportation	10,000
5	Damages to clothes & other articles	5,00
	Funeral expenses	20,00
	Total	14,99,000

Rounded off to Rs.15,00,000/-.

C.M.A.No.2216 of 2013

In the result, the Civil Miscellaneous Appeal is partly allowed.
No costs.

14. The respondent/Transport Corporation is directed to deposit the entire amount along with interest and costs on or before 27.07.2015, failing which, the Chairman-cum-Managing Director and Financial Adviser cum Chief Accountant Officer of the Corporation shall appear before this Court on 28.07.2015. On such deposit being made, the Tribunal is directed to pay the amount to the legal heirs of the deceased / appellants 1 to 3, as per the apportionment fixed by the Tribunal. In respect of minor claimant/3rd appellant's share shall be continued in the fixed deposit in anyone of the Nationalised Banks till she attains majority. The first claimant is also permitted to withdraw the accrued interest thereon once in three months. The appellants 1 and 2 are permitted to withdraw their share amount with accrued interest. The Appellant shall pay Additional Court fee within two weeks from the date of receipt of the copy of the order.

C.M.A.No.153 of 2015

For the above reasons, the Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

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Assistant Registrar

//True Copy//

Sub Assistant Registrar

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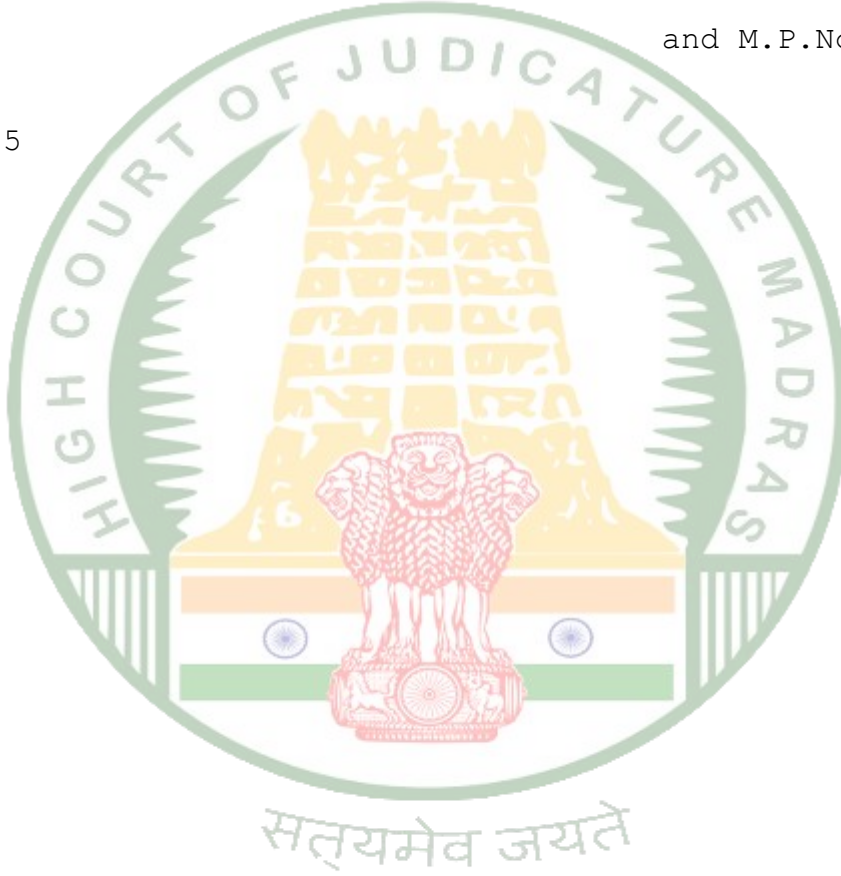
1.The Motor Accidents Claims Tribunal
Additional District Chennai.

2. The Managing Director,
Tamil Nadu Transport Corporation Limited,
Kancheepuram Region, Kancheepuram.

+ 1 cc to Mr.V. Velu, Advocate SR.22274

C.M.A.Nos.2216 Of 2013
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