

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.Nos.2758 and 2759 of 2016

C.M.A.No.2758 of 2016

1.Devika

2.V.Perumal ... Appellants/Claimants

Versus

The Managing Director,
Metropolitan Transport Corporation,
Pallavan Illam, Anna Salai,
Chennai - 2. ... Respondent/Respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.03.2011 made in M.C.O.P.No.490 of 2008 on the file of the Motor Accident Claims Tribunal (Principal District Court), Thiruvallur.

C.M.A.No.2759 of 2016

1.S.Stella

2.V.Suresh Kumar ... Appellants/Claimants

Versus

The Managing Director,
Metropolitan Transport Corporation,
Pallavan Illam, Anna Salai,
Chennai - 2. ... Respondent/Respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.03.2011 made in M.C.O.P.No.489 of 2008 on the file of the Motor Accident Claims Tribunal (Principal District Court), Thiruvallur.

For Appellant in : Mr.K.Varadhakamaraj
both appeals

For Respondent in : Mr.K.S.Suresh
both appeals

COMMON JUDGMENT

As the issues involved in both the Civil Miscellaneous Appeals are the same, having arisen out of the same accident, both the appeals are taken up together and disposed of by a common order.

2. On 15.03.2008, One Rajeshkumar (deceased in O.P.489 of 2008) was riding his motorcycle, bearing Reg.No.TN22 AW 7458, along with Srinivasan (pillion rider, deceased in O.P.No.490 of 2008), moving towards K.K.Nagar from South to North direction, when the respondent Corporation bus, bearing Reg.No.TN01 N 2356, came from behind them in a rash and negligent manner and knocked them down.

2.1. Hence, the legal representatives of the deceased Rajeshkumar, namely, mother and father of the deceased, filed a claim petition in M.C.O.P.No.489 of 2008 before the Motor Accident Claims Tribunal (Principal District Court), Thiruvallur, claiming compensation of Rs.14,00,000/-.

2.2. The mother and father of the deceased Srinivasan filed a claim petition in M.C.O.P.No.490 of 2008 before the Motor Accident Claims Tribunal (Principal District Court), Thiruvallur, claiming compensation of Rs.9,00,000/-.

2.3. The Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.3,27,000/- as compensation in each of the case. (to both the parents in each of the case).

2.4. Challenging the quantum of compensation as inadequate, the claim petitioners in M.C.O.P.No.490 of 2008 have filed C.M.A.No.2758 of 2016 and the claim petitioners in M.C.O.P.No.489 of 2008 have filed C.M.A.No.2759 of 2016.

3. The learned counsel appearing for the appellants would submit that the Tribunal should have taken the notional income on monthly basis of Rs.4,500/- and should have added future prospective increase in income. The further contention is that the multiplier should have been fixed based on the age of the deceased.

4. The learned counsel appearing for the Transport Corporation would submit that the Tribunal is justified in awarding the compensation.

5. In order to appreciate the contentions raised by the learned counsel for the appellants, it is necessary to look into the compensation awarded under various heads.

5.2. The Tribunal had taken the monthly income of the deceased as Rs.3,000/-, as there was no proof to show the income as Rs.4,500/- and Rs.5,000/- respectively and deducted Rs.1,000/- towards personal expenses and by adopting the

multiplier of 13, quantified the compensation of Rs.3,12,000/- towards loss of dependency. The Tribunal has also awarded a sum of Rs.5,000/- towards funeral expenses and Rs.10,000/- towards loss of love and affection. The total award is Rs.3,27,000/- in each of the claim petition.

5.3. The deceased Rajeshkumar was stated to be a Captain at Star City Hotel, Chennai and earning a sum of Rs.5,000/- p.m. and the deceased Srinivasan was stated to be a Houseman in the Royal Regency, Chennai and earning a sum of Rs.4,500/- per month. To prove the same, there is no documentary evidence on the side of the claimants before the Tribunal.

5.4. In both the claim petitions, the claimants are mother and father. The deceased are the sons to their respective parents. As the age of the parents increases, the dependency on the income of the sons would increase. Therefore, the just compensation to be awarded should take into account the dependency based on the age of the deceased.

6. It is a case of the respondent that it is only the age of the parents that should be taken into account while calculating loss of dependency, but, it is the case of the appellant that it is only the age of the deceased that must be decisive in fixing the dependency. The contention of the appellant fortified by the decision in the case Civil Appeal No.9858 of 2013 (Arising out of SLP(C) No. 1056 of 2008, dated October 31, 2013) (Radhakrishna and another vs. Gokul and others), which reads as follows:

"To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following well- settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand)

when multiplied by such multiplier gives the "loss of dependency" to the family.

7. The appropriate multiplier to be adopted in respect of the age group of the deceased has to be decided as per the reported decision in the case of Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, which reads as under:

"21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

5.5. In the case of Syed Sadiq vs. United India Insurance Co. Ltd., reported in (2014) 2 SCC 735, the Hon'ble Apex Court has fixed the monthly income of a vegetable vendor as Rs.6,500/-. Hence, this Court is inclined to fix the monthly income of the deceased at Rs.5,000/- p.m.

5.6. Based upon the settled legal position, the compensation to be awarded has to be restructured.

Case No.	Age of the deceased	Multiplier	Monthly income	Dependency	Total
C.M.A.No. 2759 of 2016	22	18	Rs.5,000/-	Rs.5,000 - 50/100 (deduction) x 2500 x 12 x 18	Rs.8,10,000 /-
				Loss of love and affection	Rs.1,00,000 /-
				Funeral expenses	Rs.10,000/-
				Total	Rs.9,20,000 /-

Case No.	Age of the deceased	Multiplier	Monthly income	Dependency	Total
C.M.A.No. 2758 of 2016	26	17	Rs.5,000/-	Rs.5,000 x 50/100 (deduction) x 2500 x 12 x 17	Rs.7,65,000 /-
				Loss of love and affection	Rs.1,00,000 /-
				Funeral expenses	Rs.10,000/-
				Total	Rs.8,75,000 /-

5.7. Accordingly, both the Civil Miscellaneous Appeals are allowed, by enhancing the compensation as stated above.

6. The Transport Corporation is directed to deposit the enhanced amount less the amount already deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimants are permitted to withdraw their respective shares of the amount as per the apportionment made by the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal
Principal District Court,
Tiruvallur.

+2cc's to Mr.K.Varadhakamaraj, Advocate, S.R.Nos.74935 & 74936
+2cc's to Mr.K.S.Suresh, Advocate, S.R.Nos.76179 & 76180

C.M.A.Nos.2758 & 2759 of 2016

KGK (CO)
CA (21/07/2017)

<https://hcservices.ecourts.gov.in/hcservices/>