

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.Nos.659 & 1675 of 2016

C.M.A.No.659 of 2016

1. S.Revathi
2. Minor S.Vishnu
3. Minor S.Sivaranjani @ Sivananthini
4. R.Ranganathan
5. R.Kalaimani

(Minors both represented by mother Revathi,
1st appellant as guardian) ... Appellants/Claimants
in CMA.659/16
... Respondents /claimants
in CMA.1675/16

-vs-

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Villupuram ... Respondent/Respondent
in CMA.NO.659/16
...Appellant /Respondent in
CMA.1675/2016

Memorandum of Grounds of Civil Miscellaneous Appeals under
Section 173 of the Motor Vehicles Act, 1988 against the award
and decree dated 29.11.2013 made in M.C.O.P.No.2760 of 2011
passed by the Motor Accidents Claims Tribunal, Principal
District Judge, Cuddalore.

For Appellants
in CMA.659/16
and for Respondents
in CMA.1675/16 :: Mrs.Ramya V.Rao

For Respondent in
CMA.659/16
and for Appellant in
CMA.1675/16 :: Mr.K.J.Sivakumar

C.M.A.No.1675 of 2016

The Managing Director
Tamil Nadu State Transport Corporation
(Villupuram Division-I) Ltd.,
No.3/137, Salamedu
Vazhudhareddy Post
Villupuram 605 602

.. Appellant

-vs-

1. S.Revathy
 2. Minor S.Vishnu
 3. Minor S.Sivaranjani @ Sivananthini
(Minors are represented by mother Revathi,
1st respondent as guardian)
 4. R.Ranganathan
 5. R.Kalaimani
- ... Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 29.11.2013 made in M.C.O.P.No.2760 of 2011 passed by the Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore.

For Appellant :: Mr.K.J.Sivakumar

For Respondents :: Mrs.Ramya V.Rao

JUDGMENT

Heard the learned counsel for the parties.

2. Aggrieved by the impugned award passed by the Motor Accident Claims Tribunal, Principal District Judge, Cuddalore in M.C.O.P.No.2760 of 2011 dated 29.11.2013 awarding a sum of Rs.8,35,000/-, as against the claim of Rs.50,00,000/-, the Claimants have filed C.M.A.No.659 of 2016 seeking for enhancement of compensation and the Transport Corporation has filed C.M.A.No.1675 of 2016 questioning the quantum of compensation. With the consent of the learned counsel on either side, both the appeals are taken up together and disposed of by this common order. For convenience, the parties will be hereinafter referred to as "the Claimants" and "the Transport Corporation" in this order.

3. It is a case of fatal accident. On 27.7.2011 at about 9.00 P.M., while the breadwinner of the Claimants' family Mr.R.Sivasakthi Velmurugan, aged about 29 years, was riding his moped bearing Registration No.TN 31 B 6738 on the extreme left

of the Muthandikuppam-Kollukarankuttai road, near Marungoor, a bus bearing Registration No.TN 32 N 2077 belonging to the Transport Corporation, coming in the opposite direction in a rash and negligent manner, hit the moped and due to the said accident, the rider of the moped was thrown out of the moped and he sustained grievous injuries and multiple fractures all over his body and head. Although he was taken to the Government Hospital at Panruti at 9.30 P.M., he succumbed to the accidental injuries. Thereupon, First Information Report, Ex.P1 was registered in Crime No.265 of 2011 on the file of Muthandikuppam Police Station for the offence under Sections 279 and 338 of IPC. Finally the wife of the deceased, two minor children, one aged about 2 years and another 1 month old along with the parents of the deceased, filed a claim petition before the Motor Accident Claims Tribunal, Principal District Judge at Cuddalore claiming a sum of Rs.50,00,000/- on the ground that the breadwinner, aged about 29 years, was working as Driver in K.R.B.Lorry Service on a monthly salary of Rs.25,000/-. On the other hand, the Transport Corporation contended that at the time of accident, the deceased was not having any valid driving licence to drive any vehicle and since the deceased drove the moped in a zig-zag manner and on seeing the dangerous driving, the bus driver flicked the headlight and stopped the bus on the left side of the road, however, the deceased dashed on the right side headlight and invited the accident. But the Tribunal, finding that there was no evidence adduced by the Transport Corporation, rejected the contention of the Transport Corporation that the accident occurred only due to the negligence of the deceased, without examining either the driver or the conductor of the bus involved in the accident. Moreover, the First Information Report registered against the driver of the bus was marked as Ex.P1. After perusing the contents of the First Information Report and accepting the evidence of one Mr.Selvakumar, an eye-witness, who was examined as P.W.2 with regard to the manner of accident and considering the report of the Motor Vehicle Inspector marked as Ex.P2, which has revealed that the accident was not due to mechanical defect, the Tribunal has come to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the Transport Corporation, for which the Corporation was saddled with the liability.

4. While coming to the quantum of compensation, it is the contention of the learned counsel for the Claimants that the salary certificate, Ex.P6 dated 13.8.2011 issued by K.R.B.Lorry Service was produced to prove the income of the deceased. In support of the same, one Mr.Balakrishnan, the authorised representative of K.R.B.Lorry Service came and supported the case of the Claimants with regard to the monthly salary of the deceased. But the Tribunal, completely disbelieving the salary certificate, Ex.P6 and also ignoring the oral evidence adduced

by the employer Mr.Balakrishnan, who was examined as P.W.3, has wrongly fixed a sum of Rs.5,000/- as the monthly salary, as a result the loss of dependency has been completely reduced. Adding further, she submitted that when the accident took place on 27.7.2011, even though the Apex Court in the judgment in Syed Sadiq v. Divisional Manager, United India Insurance Co.Ltd., 2014 (1) TN MAC 459 (SC), in the absence of any proof produced by a vegetable vendor towards income, has held that a sum of Rs.6,500/- can be fixed as the notional monthly income, in the present case, when the employer himself has supported the salary certificate produced before the Tribunal, if not a sum of Rs.25,000/- as mentioned in the salary certificate, Ex.P6, at least a sum of Rs.8,000/- should have been fixed as the monthly income of the deceased. On this basis, she sought for enhancement of the compensation.

5. In reply, the learned counsel for the Transport Corporation heavily contended that the salary certificate marked as Ex.P6 does not carry the seal of the employer viz., K.R.B.Lorry Service, therefore the Tribunal has rightly rejected as unacceptable the salary certificate.

6. This Court finds it difficult to accept the contention advanced by the learned counsel for the Transport Corporation. The reason is that when the salary certificate issued by K.R.B.Lorry Service mentions that the deceased was employed as a Driver for a monthly salary of Rs.25,000/- and that the employer, Mr.Balakrishnan, who was examined as P.W.3, has also adduced evidence that the deceased, before the accident, was serving with them, although the salary certificate depicts a sum of Rs.25,000/- as the monthly salary, the learned counsel for the Claimants has fairly submitted that at least a sum of Rs.8,000/- can be taken as the monthly income. However, the learned counsel for the Transport Corporation submitted that the notional monthly income can be taken not more than Rs.6,500/-. This Court, finding that the salary certificate marked as Ex.P6 issued by K.R.B.Lorry Service has been supported by one Mr.Balakrishnan, P.W.3, is inclined to fix a sum of Rs.8,000/- as the notional monthly income of the deceased. Further, with regard to future prospects, in the light of the ratio laid down by the Apex Court in Santosh Devi v. National Insurance Company Limited and others, 2012 (2) TN MAC 1 (SC) holding that even in cases of self-employed or persons with fixed wages, a reasonable percentage of actual salary can be taken, in the present case, as the deceased was aged about 29 years, 50% of the actual salary is added towards future prospects. With regard to the deduction towards personal expenses, since there are five members in the family, namely, wife, two minor children and parents, one-fourth deduction is to be made on the basis of the judgment of the Apex Court in Sarla Verma's case reported in 2009 (2) TN MAC 1 (SC). With regard to the adoption of

multiplier, considered the age of deceased, the proper multiplier '17' is to be applied. Accordingly, a sum of Rs.18,36,000/- (Rs.8000+4000-3000x12x17=Rs.18,36,000/-) is arrived at towards the loss of dependency, instead of Rs.7,65,000/- awarded by the Tribunal. Coming to award of compensation under the other heads, namely, loss of consortium and loss of love and affection, that issue also has been settled by the Apex Court in the case of Rajesh and others v. Rajbir Singh and others, 2013 (9) SCC 54 and although subsequently our High Court has taken a different view depending upon the facts and circumstances of each case, this Court is inclined to award a sum of Rs.1,00,000/- towards loss of consortium to the wife, a sum of Rs.1,00,000 each to the two minor children and a sum of Rs.50,000/- each to the parents towards loss of love and affection. A sum of Rs.25,000/- is also awarded towards funeral expenses and a sum of Rs.10,000/- is awarded towards transport expenses.

7. Finally, the Claimants are entitled to a total compensation of Rs.22,71,000/- together with 7.5% interest per annum, instead of 6% per annum awarded by the Tribunal. Out of the award amount, the first appellant/widow is entitled to a sum of Rs.8,00,000/-, the second and third appellants/minors are entitled to a sum of Rs.5,00,000/- each and the fourth and fifth appellants/parents are entitled to a sum of Rs.2,35,500/- each. Since only the statutory amount of Rs.25,000/- alone has been deposited, the Transport Corporation is hereby directed to deposit the entire award amount together with interest to the credit of the M.C.O.P.No.2760 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Cuddalore within a period of four weeks from the date of receipt of a copy of this order. On such a deposit being made, the first, fourth and fifth appellants are entitled to withdraw the entire amount with accrued interest by moving appropriate applications before the Tribunal, after complying with the formalities. So far as the shares of the second and third appellants/minors are concerned, the same shall lie in deposit till they attain majority and that the first appellant, as the guardian of minors, is entitled to withdraw the interest accrued thereon periodically. With this modification in the award of the Tribunal, C.M.A.No.659 of 2016 filed by the Claimants is allowed to extent indicated above and C.M.A.No.1675 of 2016 filed by the Transport Corporation is dismissed. Consequently, C.M.P.No.12694 of 2016 is also dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

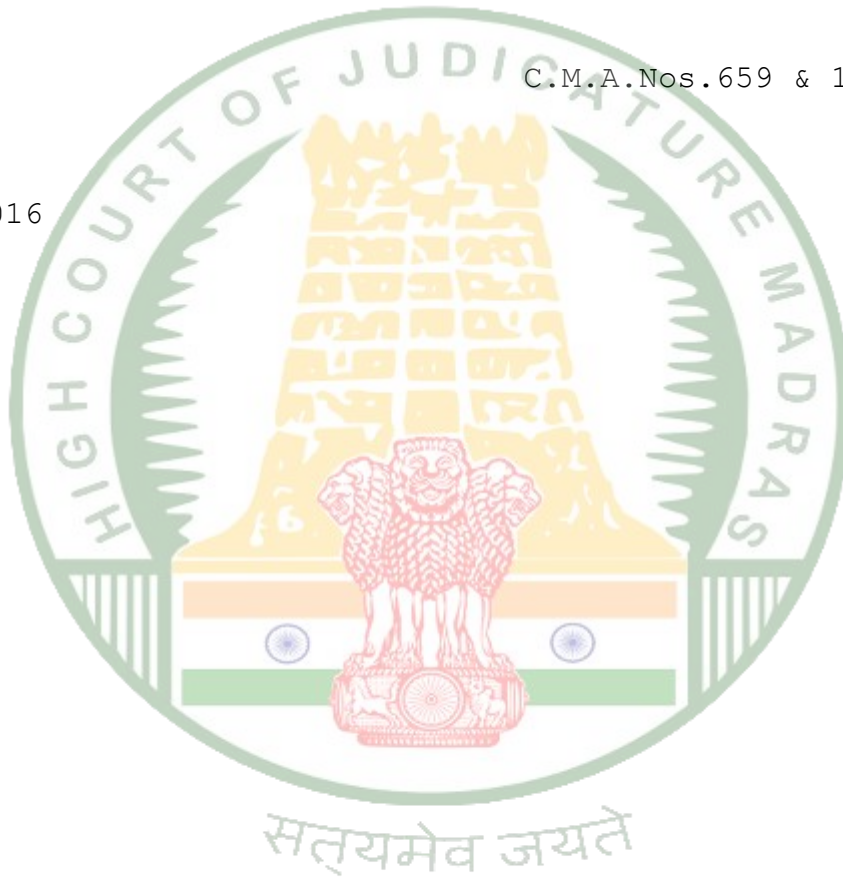
1. The Motor Accident Claims Tribunal
Principal District Judge
Cuddalore

+1 cc to Mr.K.J.Sivakumar Advocate sr 67466

+2 ccs to Mr.A.N.Viswanatha Rao Advocate sr 66987

C.M.A.Nos.659 & 1675 of 2016

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