

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.Nos.979 and 1382 of 2016
C.M.P.No.10564 of 2016

1. Anandha Lakshmi
2. Prasanna

..Appellants in C.M.A.No.979/16
Respondents in C.M.A.No.1382/16

versus

Tamil Nadu State Transport Corporation
(Villupuram Division-I) Ltd.,
Villupuram.

..Respondent in C.M.A.No.979/16
Appellant in C.M.A.No.1382/16

Prayer: Civil Miscellaneous Appeals are filed, against the judgment and decree in M.C.O.P.No.21 of 2014, dated 22.01.2016, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Neyveli.

For Appellants in C.M.A.No.979/16

Respondents in C.M.A.No.1382/16:Mr.J.Pradeep

Mr.S. Sathia Sekaran

For Respondent in C.M.A.No.979/16

Appellant in C.M.A.No.1382/16:Mr.S.Sairaman

JUDGMENT

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

C.M.A.No.1382 of 2016, is filed by the Managing Director, Tamil Nadu State Transport Corporation (Villupuram Division-I) Ltd., Villupuram, to set aside the judgment and decree made in M.C.O.P.No.21 of 2014, dated 22.01.2016, on the file Motor Accident Claims Tribunal (Subordinate Judge), Neiveli, by which, the Tribunal, fixing negligence on the driver of the Transport Corporation bus, bearing Registration No.TN 21 N 1473, awarded compensation of Rs.23,70,000/-, with interest, at the rate of 9% per annum, from the date of claim, till the date of realisation.

2. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed a separate appeal in C.M.A.No.979 of 2016, for enhancement.

As facts and submissions, in both the cases, are common, they are taken up together and disposed of, by a common order.

3. Though Mr.S.Sairam, learned counsel appearing for the Transport Corporation assailed the correctness of the finding of the Tribunal, fixing negligence on the driver of the Transport Corporation bus, going through the materials on record, this Court is of the view that there is no perversity in the findings recorded by the Tribunal and we therefore, concur with the same.

4. Notwithstanding the prayer to interfere with the finding on negligence, Mr.S.Sairam, learned counsel appearing for the Transport Corporation submitted that the Tribunal has failed to consider that no proper and acceptable evidence has been adduced to prove employment and earning of the deceased and therefore, sought for re-determination and reduction of the quantum of compensation. It is also his submission that 9% interest awarded by the Tribunal, is on the higher side.

5. Per contra, seeking enhancement of compensation, Mr.S.Sathiaselan, learned counsel appearing for claimants submitted that the Tribunal has failed to award a just and reasonable compensation to the elder brother of the deceased, despite the fact that the entries in Ex.P5 - Family Ration Card, revealed his relationship. He further submitted that the Tribunal has erred in dismissing the claim of the elder brother of the deceased. He further submitted that under Section 166 of the Motor Vehicles Act, the 2nd claimant, elder brother of the deceased, is also entitled to claim compensation. He also submitted that the Tribunal ought to have awarded a just and reasonable compensation, under the head, loss of love and affection, to him.

6. Added further, learned counsel appearing for the claimants submitted that compensation of Rs.50,000/- awarded to the mother of the deceased, under the head, loss of love and affection, is less. He also submitted that the Tribunal has failed to award any compensation towards loss of estate, and for conventional damages, viz., transportation and damages to clothes.

7. On the plea of the Transport Corporation for reduction of rate of interest, placing reliance on a decision in Puttamma v. K.L.Narayana Reddy reported in 2014 (1) TNMAC 481 (SC), learned counsel for the claimants submitted that the rate of interest, ordered by the Tribunal, need not be interfered with.

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

8. On the quantum of compensation, it is the case of the claimants that on the date of accident, ie., on 19.08.2013, the deceased was an employee, in Goodrich Aerospace Services Pvt. Ltd., and earned Rs.1,73,820/- per annum. Upon perusal of Ex.P7 - Diploma Certificate of the deceased, the Tribunal has observed that the deceased was studying Diploma in Mechanical Engineering, in Diamond Academy, Open University, Karnataka. Ex.P12 - is the College Identity Card. PW.1, mother of the deceased, has adduced evidence, supporting employment and earning. Ex.P11 is the Salary Certificate of the deceased and upon perusal of the same, the Tribunal has observed that at the time of accident, the deceased was working as Operator in the abovesaid Company and during April' 2011, he had earned Rs.1,68,800/- per annum, and during February' 2012, earned Rs.1,73,820/- per annum. Upon perusal of Ex.P13 - Certificate of Excellence, the Tribunal has recorded that during 2009, the deceased had won the best performance award in the Company. Ex.P6 is the Income Tax Pan Card. Holding that the claimants have substantiated their case that at the time of accident, the deceased was employed and earned Rs.1,73,820/- per annum, the Tribunal has determined the monthly income as Rs.14,485/- and rounded off the same to Rs.15,000/-. Date of Birth mentioned in Ex.P6 - Pan Card is 09.05.1985. Accident had occurred on 19.08.2013 and therefore, the Tribunal has fixed the age of the deceased as 28 years. Following the decision in Santosh Devi v. National Insurance Co. Ltd., reported in 2012 (6) SCC 421, wherein, the Hon'ble Apex Court held that even a self-employed and persons on fixed wages, are entitled to compensation under the head, future prospects, the Tribunal has added 50% of the income and determined the monthly income for the purpose of computation of compensation, under the head, "Loss of Contribution to the Family" as Rs.22,500/- [Rs.15,000/- + Rs.7,500/- (50% of the monthly income determined by the Tribunal)]. The deceased was a bachelor and hence, following Sarla Verma v. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 (SC), the Tribunal has deducted 50% towards personal and living expenses of the deceased and after applying '17' multiplier, applicable for the age group of persons, between 25 and 30 years, computed the loss of dependency at Rs.22,95,000/- [Rs.22,500/- x 12 x 17 x ½].

9. At the time of accident, the mother of the deceased was aged 54 years. Following the decisions in Rajesh v. Rajbir Singh reported in 2013 (9) SCC 54, Julu Kuruvilla and others v. Kunjuamma Mohan and others reported in 2013 (9) SCC 166, Kalpanaraj and others v. Tamil Nadu State Transport Corporation reported in 2014 (5) SCALE 479, Kala Devi and others v. Bhagwan Das Chauhan and others reported in 2015 (2) SCC 771 and Asha Verman and others v. Maharaj reported in 2015 (1) TNMAC 465 (SC), the Tribunal has awarded Rs.50,000/-

towards loss of love and affection and Rs.25,000/- for funeral expenses. Altogether, the Tribunal has awarded compensation of Rs.23,70,000/-. As regards rate of interest, following the decision in Puttamma v. K.L.Narayana Reddy reported in 2013 (8) Supreme 795, the Tribunal has ordered the rate of interest at 9% per annum, on the quantum of compensation determined.

10. Elder brother, 2nd claimant, cannot be denied compensation on the ground that he is not dependent on the deceased. He is one of the legal representatives, entitled to the estate of the deceased. Contention of the Transport Corporation, before the Tribunal, that brother is not a dependent on the deceased and therefore, not entitled to claim compensation, cannot be countenanced, for the reason that the issue as to whether, a brother or sister of the deceased can maintain a claim petition for compensation has been considered by this Court in Oriental Insurance Company v. Rangamal reported in 2011 (1) TCJ 7 = 2011 AAC 1168 and Managing Director, Tamil Nadu State Transport Corporation Ltd., v. M.Shanthi reported in 2010 CIJ 374 Mad 2. In the former case, it was the contention of the appellant-Insurance Company that brother/sister is entitled to claim compensation only under 'No Fault Liability'. Following the decisions of the Hon'ble Apex Court in Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and another reported in 1987 ACJ 561, Vidya Dhar Dubey and others v. U.P.State Road Transport Corporation reported in 1997 ACJ 1388, Oriental Insurance Company Ltd., v. Naresh Chandra Agarwal and others reported in 2000 ACJ 931, Govindasamy v. Ravi and others, reported in 2003 (1) MLJ 253, Kishan Lal v. Bharosi Lal reported in II (2003) ACC 225, Managing Director, K.S.R.T.C., v. Venkataramappa K.S., reported in III (2003) ACC 457 (DB), New India Assurance Co. Ltd., v. Ashwin Vrajilal Rajgor reported in 2005 ACJ 1618, A.Manavalagan v. A.Krishnamurthy reported in I (2005) ACC 304 (DB), this Court held that brother and sister of the deceased, as the case may be, is entitled to maintain a claim for loss of estate and accordingly, rejected the said contention. Though, we may, burden this judgment with the extract of the above judgments, yet we proceed to do so, for clarity and future course of action, by all concerned.

(a) In Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and another reported in 1987 ACJ 561, the Gujarat High Court held that all the Legal heirs and the Legal Representatives of the deceased can maintain a claim petition under Section 110-A (now under Section 166(1)) of the Motor Vehicles Act and consequently, awarded compensation to the nephews of the of the deceased. Considering the divergence of opinion expressed by various High Courts, as regards maintainability of a claim petition under Section 110-A (now under Section 166(1)) of the Motor Vehicles Act, by persons, other than wife, husband, parents and child of, a person, who died in a Motor accident, the

Hon'ble Supreme Court, at Paragraph 10, held as follows:

"10. Clauses (b) and (c) of sub-section (1) of Section 110-A of the Act provide that an application for compensation arising out of an accident may be made where death has resulted from the accident by all or any of the legal representatives of the deceased or by any agent duly authorised by all or any of the legal representatives of the deceased. The proviso to sub-section (1) of Section 110-A provides that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application. The expression "legal representative" has not been defined in the Act. Section 2(11) of the Code of Civil Procedure, 1908 defines "legal representative" as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The above definition, no doubt, in terms does not apply to a case before the Claims Tribunal but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the Code of Civil Procedure. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of sub-section (1) of Section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident and clause (c) of that sub-section authorises any agent duly authorised by all or any of the legal representatives of the deceased to make it. The proviso to sub-section (1) of Section 110-A of the Act appears to be of some significance. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-A (1) of the Act thus expressly states that (i) an application for compensation may be made by the legal representatives of the deceased or their agent, and (ii) that such application shall be made on behalf of or for the benefit of all the legal representatives. Both the person or persons who can make an application for compensation and the persons

for whose benefit such application can be made are thus indicated in Section 110-A of the Act." Interpreting Section 110-A (now amended as Section 166(1)), vis-a-vis, the corresponding provision in the Fatal Accidents Act, 1855, the Hon'ble Apex Court further held that,

"These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 was "new in its species, new in its quality, new in its principles, in every way new" the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies.

(b) While confirming the decision of the Gujarat High Court in *Megjibhai Khimji Vira v. Chaturbhai Taljabhai* reported in 1977 ACJ 253 (Guj.), the Hon'ble Supreme Court, at Paragraph 12, held that,

"We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers" children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor

vehicles accidents."

(c) In Vidya Dhar Dubey and others v. U.P.State Road Transport Corporation reported in 1997 ACJ 1388, the Allahabad High Court considered an issue, as to whether a claim for compensation for the death, by the widowed aunt and sister of deceased's maternal uncle, claimed to be dependents and not the legal heirs of the deceased, viz., parents, wife and son, could be entertained or not. Following the decision reported in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai reported in 1987 ACJ 561 (SC), the Allahabad High Court held that emphasis under the Motor Vehicles Act is dependency and that near and dear, including the brother's children, can be the dependants.

(d) In Oriental Insurance Company Ltd., v. Naresh Chandra Agarwal and others reported in 2000 ACJ 931, parents of the deceased were not alive and therefore, the brother of the deceased in the capacity of a legal representative, preferred a claim. Following Gujarat State Road Transport Corporation's case, the award passed by the Tribunal, was confirmed by the Allahabad High Court, holding that the Legal Representatives including the brother of the deceased is entitled to claim compensation.

(e) In Govindasamy v. Ravi and others, reported in 2003 (1) MLJ 253, a Hon'ble Division Bench of this Court held that the deceased father's younger brother is also entitled to claim compensation, as he was also a legal representative, as per the Hindu Succession Act.

(f) In Kishan Lal v. Bharosi Lal reported in II (2003) ACC 225, the deceased was the elder brother of the claimants-appellants Nos.1 and 4 and the brother-in-law of appellants Nos.2 and 5 and father of the appellant No.3. The deceased was unmarried and that he had adopted a son, appellant No.3 therein. Maintainability of the claim petition, filed on behalf of the brothers, adopted son and other relatives, was one of the issues before the Tribunal. Without giving any opportunity to the parties therein, the Tribunal held that inasmuch as the deceased was an unmarried person, appellant Nos.1, 2, 4 and 5 therein, were not entitled to maintain a claim petition, and that they were not the dependents of the deceased. As no document was filed to prove adoption, claim of the appellant No.3 was also rejected. Thus, in toto, the Tribunal dismissed the claim petition. After referring to Section 166(1)(c) of the Motor Vehicles, which states that an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165, can be made, Hon'ble Mr. Justice J.S.Verma (as he then was), held as follows:

"5. I find merit in the submission of the learned Counsel for the appellants that if the contrary view is taken, in the event of death of a

person in accident who happens to be an unmarried or whose parents are not living, it shall amount to as if no compensation can be claimed in regard to the death of such persons and such compensation will lead to such an unpleasant situation that the defaulting negligent driver will escape the liability for any such accident for the purpose of compensation, I fully agree with learned Counsel for the appellants in this regard and specially when in the present case, application for compensation had also been filed including an adopted son, adoption of which could only be proved by leading evidence as per law."

So saying, the order of the Tribunal, dismissing the claim petition, was set aside and that the matter was remitted back to the Tribunal, to proceed with the claim petition, on merits.

(g) In *Managing Director, K.S.R.T.C., v. Venkataramappa K.S.*, reported in III (2003) ACC 457 (DB), the deceased was an agricultural labourer and that there was no class I heir. A claim for compensation was made by the married sisters and brother. Before the Tribunal, objection was raised by the Transport Corporation that the claimants were not the dependents, on the deceased and that therefore, they are not entitled to make a claim for compensation. However, the Tribunal computed the dependency compensation, in addition to the compensation awarded under the conventional damages. Aggrieved by the same, the State Transport Corporation preferred an appeal to the High Court, reiterating the said averments. The High Court framed the following questions for consideration,

"(1) Whether the brothers and sisters of the deceased can maintain a claim petition even though they were not depending upon the income of the deceased for their maintenance?

(2) Whether the compensation awarded by the Tribunal is on the excessive side?"

Following the judgment of the Hon'ble Supreme Court in *Gujarat State Transport Corporation's case*, (cited supra) and taking note of Section 8 of the Hindu Succession Act, which states that when a male Hindu dies intestate, his property has to be devolved, according to the provision of Section 8, the Court held as follows:

i.e., (a) firstly, upon the heirs, being the relatives specified in Class I of the Schedule; and (b) secondly, if there is no heir of Class I then upon the heirs, being the relatives specified in Class II of the Schedule. A Hon'ble Division Bench of the Karnataka High Court, held that the claimants, viz., brothers and sisters, who fall under Class-II heirs, as per Hindu Succession Act, would be entitled to maintain a claim.

(h) In *New India Assurance Co. Ltd., v. Ashwin Vrajlal Rajgor* reported in 2005 ACJ 1618, a Hon'ble Division Bench of the Gujarat High Court considered the entitlement of the brother's son and brother's wife (sister-in-law) of the deceased, for compensation. After considering the judgment of the Hon'ble Supreme Court in *Gujarat State Road Trans. Corpn., v. Ramanbhai Prabhatbhai* reported in 1987 ACJ 561 (SC), another Hon'ble Division Bench of the Gujarat High Court in *Ashwin Vrajlal Rajgor's* case, (stated supra), the Court held that in the absence of Class-I legal representatives to represent the estate of the deceased, a brother's son, a Class-II heir, the brother's wife are entitled to claim compensation. The Hon'ble Division Bench has also taken note of the line of succession, as provided for, under the Hindu Succession Act, 1956 and held that the appellants therein, were entitled to compensation.

(i) In *A.Manavalagan v. A.Krishnamurthy* reported in I (2005) ACC 304 (DB), a Hon'ble Division Bench of the Karnataka High Court considered a case, where, the husband claimed compensation for the death of his wife under the Motor Vehicles Act. It was objected that he was not a dependent on his wife. While considering the issue as to whether a legal representative, not dependent on the income of the deceased, would be entitled to claim loss of dependency, the Hon'ble Division Bench, at Paragraph 16 and 19(i) and (ii), held as follows:

"16. But, what would be the position if the claimant, though a legal heir is not a dependant of the deceased" Obviously, the question of awarding any amount under the head of loss of dependency would not arise, as there was no financial dependency. In fact in this case, the deceased was not even managing the 'house hold' as is normally done by a housewife as the husband and wife were living in different places due to exigencies of service and the couple had no children. In such a case, the main head of compensation will be loss to estate under Section 2 of the Fatal Accidents Act. The claim petition becomes one on behalf of the estate of the deceased and the compensation received becomes part of the assets of the estate. Consequently what is to be awarded under the head of loss of dependency under Section 1A would be nil, as there is no real pecuniary loss to the members of the family.

19. We may summarise the principles enunciated, thus:

(i) The law contemplates two categories of damages on the death of a person. The first is the pecuniary loss sustained by the dependant members of his family as a result of such death. The second is the loss caused to the estate of the deceased as a result of such death. In the first category, the

action is brought by the legal representatives, as trustees for the dependants beneficially entitled. In the second category, the action is brought by the legal representatives, on behalf of the estate of the deceased and the compensation, when recovered, forms part of the assets of the estate. In the first category of cases, the Tribunal in exercise of power under Section 168 of the Act, can specify the persons to whom compensation should be paid and also specify how it should be distributed (Note: for example, if the dependants of a deceased Hindu are a widow aged 35 years and mother aged 75 years, irrespective of the fact that they succeed equally under Hindu Succession Act, the Tribunal may award a larger share to the widow and a smaller share to the mother, as the widow is likely to live longer). But in the second category of cases, no such adjustments or alternation of shares is permissible and the entire amount has to be awarded to the benefit of the estate. Even if the Tribunal wants to specify the sharing of the compensation amount, it may have to divide the amount strictly in accordance with the personal law governing succession, as the amount awarded and recovered forms part of the estate of the deceased.

(ii) Where the claim is by the dependants, the basis for award of compensation is the loss of dependency, that is loss of what was contributed by the deceased to such claimants. A conventional amount is awarded towards loss of expectation of life, under the head of loss to estate."

(j) In *Managing Director, Tamil Nadu State Transport Corporation Ltd., v. M. Shanthi* reported in 2010 CIJ 374 Mad, the objection of the Transport Corporation that a married brother/sister cannot maintain a claim petition has been rejected. At Paragraph 22, this Court held as follows:

"22. Insofar as the contention that the claimants are not dependents of the deceased, this Court is of the considered view of this Court that when a claim petition is made by a married son or daughter, or in the absence of any other Class-I heir and if the claimants adduce evidence that they are the legal representatives and that the deceased during his lifetime, had contributed a portion of his income to them and if the said contention is disputed, it is the burden of the objector to lead strong rebuttal evidence to dislodge the claim of dependency. If the contention of contribution by the deceased to the legal representatives is not rebutted by any acceptable evidence, the inevitable conclusion of the Tribunal should be in favour of the claimants. In view of the judgments and for the reasons stated supra, the award made in favour of

the married sisters and others, cannot be said to be without any legal principles and this Court is not inclined to interfere with the decision of the Tribunal."

(k) In United India Insurance Company v. Kasiammal reported in 1997 (III) CTC 346, one of the contentions raised therein, challenging the award, was that a married son, living separately and not a dependant, is not entitled to claim compensation. At Paragraph 6 of the judgment, the short question framed by this Hon'ble Court was that whether the claimants, married sons and married daughters, would be entitled for compensation" While addressing the abovesaid question, a learned Judge has considered two decisions relied on by the appellant-Insurance Company therein in Revanben v. Kantibhai Narottamehai Gohil reported in 1995 ACJ 548 and U.P.State Road Transport Corporation v. Tara Devi reported in 1995 ACJ 1220 and also the decisions of the Hon'ble Apex Court in Bhagwatidin v. Gheesalal reported in 1980 ACJ 116, Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai reported in AIR 1987 SC 1690 and Pushpam v. Nirmala reported in 1991 TLNJ 101 and ultimately, at Paragraphs 15, 16 and 17, held as follows:

"15. As pointed out earlier, the compensation amount is being paid to the legal representatives on account of untimely death of their ancestor. The dependency of the legal representatives is a question to be considered and does not mean only the dependents can claim compensation. The compensation being the amount for the loss to the estate of the deceased, it has to be considered as to whether the legal representatives had been put to loss because of the death of the deceased. Wherever the deceased is an earning member, naturally his savings is an accumulation for the estate which can be divided by the legal representatives after the death of the deceased. As the legal representatives had been put to loss of the earning of the deceased, the legal representatives are also entitled for the compensation.

16. Further in this case there is absolutely no evidence to show that the married sons are living separately. When they are residing with the mother, naturally the married sons had lost not only the assistance of the deceased mother but also lost her valuable advice in family matters. The deceased, being a widow, naturally she could have lived with any one of the sons. When the legal representatives, the married sons of the deceased are entitled for compensation even though they are residing separately, the claimants herein will be entitled for compensation; especially when they are residing with the deceased. More over, the aged parents in many a house are the watch dogs for the entire

house, servants and the grand children except a few exceptional cases. When the claimants had lost such valuable services of their mother they are entitled for compensation. The loss cannot be substituted by any other confident or responsible person either in the family or by appointing a servant. If the contention of the counsel for the appellant is accepted, I do not surprise that in future the appellant may plead that generally the aged ones are only a liability in the family and since due to the accident the aged one died, the family is get rid of the same and the driver should be suitably rewarded by the legal representatives instead of claiming any compensation for the death of the deceased.

17. Further if the contention of the counsel for the appellant that the claimants are entitled only for the no fault amount is accepted, then a person who sustained some grievous injuries will be paid more than the amount that would be paid to the legal representatives i.e., married sons and daughters of the deceased and in that case it would be cheaper to kill than maim. If the claimants are to be paid the no fault amount, that may mean that the claimants are being paid some ex gratia payment out of sympathy and not for the loss of life of their ancestor. Hence the contention of the counsel for the appellant cannot be countenanced and there is absolutely no merit in the appeal and is dismissed."

(1) It is worthwhile to reproduce the judgments in Pushpam's case (cited supra) and Bhagwatidin's case, which are as follows:

"10. In fact in judgment reported in Pushpam v. Nirmala reported in 1991 TLNJ 101, the question considered is whether in a petition claiming compensation for injuries sustained by the claimant, after his death whether the sister can come on record as the legal representative. Venkataswami, J. has held, that the sister of the deceased claimant can be brought on record as the legal representative, in the following terms:-

"In more or less identical circumstances, V. Ramaswami, J, as he then was, in 1981 ACJ 185 (supra), after noticing a Division Bench Judgment of this Court in C.P.Kandaswamy v. Mariappa Stores, 1974 ACJ 3 held that by introducing Section 110-A in the Motor Vehicles Act, Parliament intended not to restrict the statutory right to claim damages to the injured alone. In the case of claims arising out of motor accidents, Clause (b) provides that the cause of action would survive to the legal representative where death has resulted from the accident. This was

an exception to the general principle actio personalis moritur cum persona. It is true there is a distinction between case of death resulting from the accident and a case of other personal injuries not causing the death of the party, i.e., the party dying subsequently during the pendency of the proceedings not due to the accident. But the Motor Vehicles Act does not, in my opinion, make any distinction so far as the right to claim damages. The claims in all these cases are no statutory rights. Therefore, there appears to be no reason to restrict the right to the injured alone." Therefore, there appears to be no reason to restrict the right to the injured alone." The learned Judge further distinguished the Division Bench case (1974 ACJ 362) on facts. The learned Judge ultimately held as reasonable question of recovering the actual expenses incurred by the deceased, I have no doubt that the claim will survive since that amount if had not been spent might have been available as the estate of the deceased to be succeeded by his legal representatives." In 1987 II ACJ 561 (supra) the Supreme Court has elaborately considered the expression 'legal representative' in Section 110-A of the Act. After noticing the divergent views of the various High Courts, the Supreme Court has held as follows:-

"In the light of the principles laid down in the above two judgments, I am of the view that the decisions cited by the learned counsel for the first respondent, namely reported in Videowala v. Union of India, 1986 (II) MLJ 345 and reported in Kandaswamy v. Mariappa Stores, 86 L.W. 667, cannot be pressed into service. I am further of the view that the question of bringing on record or coming on record as legal representatives and the further question whether they are entitled to compensation on the facts and circumstances of the case are two different issues. Merely because they are brought on record, that does not automatically entitle them to get compensation. In the light of the wider meaning given to the expression 'legal representative' by the Supreme Court, though in a case of death in a motor accident, the order of the Court below cannot be sustained. Therefore, I hold that the petitioner is entitled to continue the proceedings and it is for the court below to decide whether the petitioner is entitled to compensation at all, and if so, how much in the light of the principles laid down in 1981 ACJ 185 (supra) and other cases."

(m) In yet another case reported in Bhagwatidin v. Gheesalal, 1980 ACJ 116, the Hon'ble Madhya Pradesh High Court held, that the brother of the deceased can claim compensation, and that the same is extracted hereunder:-

"There is another, aspect, which requires consideration. The provisions of Sections 110-A to 110-F of the Motor Vehicles Act, were inserted to provide cheap and speedy remedy to the persons, who had suffered loss on account of the accident. The provisions, being benevolent, call for liberal and broad interpretation so that the real purpose of enacting Sections 100-A to 100-F is achieved. It is well settled that if the provisions of a welfare legislation are capable of two interpretations, the interpretation, which furthers the policy of the act and is more beneficial to the persons for whose interest the law has been made, should be preferred. Therefore, if the Parliament has thought it fit not to use the word 'representative', as was used in Fatal Accidents Act, but has used, the word 'legal representative' in Section 110-A of the Motor Vehicles Act, full effect has to be given to the legislative intent. I am, therefore, of the opinion that the category of persons, who are entitled to claim compensation on account of the death of the deceased person, cannot be restricted to the relations specified in Section 1-A of the Fatal Accidents Act, 1855 and I agree with the view taken by the Madras, Andhra Pradesh and Gujarat High Courts in the decisions referred to above that all the legal representatives of a deceased as defined by Section 2(ii) of C.P.C. are entitled to claim compensation for the death of the deceased under Section 110-A of the Motor Vehicles Act, if they have suffered any loss on account of the death of the deceased. In the present case, it is common ground that the appellant being the brother of the deceased was not survived by any other nearer heir. The appellant, therefore, is entitled to claim compensation on account of the death of the deceased from the respondents."

11. On the aspect, as to how a provision has to be interpreted, this Court deems it fit to consider some of the decisions.

(i) In Smt.Hira Devi and others Vs. District Board, Shahjahanpur, reported in AIR 1952 SC 362, the Hon'ble Supreme Court at paragraph 14, held that,

"No doubt, it is the duty of the Court to try and harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty of the Court to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act."

(ii) In Nalinakhya Bysack Vs. Shyam Sunder Haladar and others, reported in AIR 1953 SC 148, the Hon'ble Apex Court held that

"It is not competent to any Court to proceed upon the assumption that the Legislature has made a mistake. The Court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the Legislature the Court cannot aid the Legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is casus omissus, it is for others than the Courts to remedy the defect."

(iii) In G.Narayanaswami Vs. G.Pannerselvam and others, reported in 1972 (3) SCC 717, the Hon'ble Supreme Court held that while interpreting a provision, the Court should interpret the provision, in a broad and generous spirit, keeping in mind, the fundamental law of the land or the basic principles of Government. However, held that the rule of "plain meaning" or "literal" interpretation, "the primary rule" could not be altogether abandoned today in interpreting any document. The Hon'ble Apex Court held that the object of interpretation and "construction" (which may be broader than "interpretation"), should be, to discover the intention of the law-makers in every case. This object can, obviously, be best achieved by first looking at the language used in the relevant provisions. Other methods of extracting the meaning can be resorted to only if the language used is contradictory, ambiguous, or leads really to absurd results. This is an elementary and basic rule of interpretation as well as of construction processes which, from the point of view of principles applied, coalesce and converge towards the common purpose of both which is to get at the real sense and meaning, so far as it may be reasonably possible to do this, of what is found laid down. The Hon'ble Supreme Court at paragraph 18 of the said judgment further held that "Plain meaning" or "Literal" construction which must ordinarily prevail. A logical corollary of that rule is that a statute may not be extended to meet a case of which provision has clearly and undoubtedly not been made. An application of the rule necessarily involves that addition to or modification of words used in statutory provisions is not generally permissible. The Hon'ble Apex Court held that Courts may depart from this rule only to avoid a patent absurdity.

(iv) In Union of India Vs Sankalchand Himatlal Sheth and another, reported in 1977 (4) SCC 193, the Hon'ble Supreme Court, at paragraph 54, held as follows:-

"54. Now, it is undoubtedly true that where the language of an enactment is plain and clear upon its face and by itself susceptible to only one meaning, then ordinarily that meaning would have to be given by the Court. In such a case the task of interpretation can hardly be said to arise. But language at best is an imperfect medium of expression and a variety of significations may often

lie in a word or expression. It has, therefore, been said that the words of a statute must be understood in the sense which the legislature has in view and their meaning must be found not so much in a strictly grammatical or etymological propriety of language, nor in its popular use, as in the subject or the occasion on which they are used and the object to be attained. It was said by Mr Justice Holmes in felicitous language in *Town v. Eisner* that "a word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used". The words used in a statute cannot be read in isolation: their colour and content are derived from their context and, therefore, every word in a statute must be examined in its context. And when I use the word "context", I mean it in its widest sense "as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in pari materia and the mischief which " the statute was intended to remedy". The context is of the greatest importance in the interpretation of the words used in a statute. "It is quite true", pointed out Judge Learned Hand in *Helvering v. Gregory* "that as the articulation of a statute increases, the room for interpretation must contract; but the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create". Again, it must be remembered that though the words used are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing, be it a statute, or contract, or anything else, it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary, but to remember that a statute always has some purpose or object to accomplish, whose sympathetic and imaginative discovery, is the surest guide to its meaning. The literal construction should not obsess the Court, because it has only prima facie preference, the real object of interpretation being to find out the true intent of the law maker and that can be done only by reading the statute as an organic whole, with each part throwing light on the other and bearing in mind the rule in *Heydon case* which requires four things to be "discerned and considered" in arriving at the real meaning: (1) what was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy Parliament has appointed;

and (4) the reason of the remedy. There is also another rule of interpretation which is equally well settled and which seems to follow as a necessary corollary, namely, where the words, according to their literal meaning "produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification", the Court would be justified in "putting on them some other signification, which, though less proper, is one which the Court thinks the words will bear". Vide *River Wear Commissioners v. Adamson*. It is in the light of these principles of interpretation that I must proceed to consider what is the true meaning and effect of clause (1) of Article 222: whether it permits transfer of a Judge from one High Court to another, irrespective of his consent."

(v) In *P.K.Unni Vs. Nirmala Industries and others*, reported in 1990 (2) SCC 378, a Three Judge Bench of the Hon'ble Supreme Court held that "Assuming there is a defect or an omission in the words used by the Legislature, the Court would not go to its aid to correct or make up the deficiency. The Court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. "No case can be found to authorise any Court to alter a word so as to produce a casus omissus." Where the language of the statute leads to manifest contradiction of the apparent purpose of the enactment, the Court can, of course, adopt a construction which will carry out the obvious intention of the legislature. In doing so a "judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

12. Going through the judgments, we are of the considered view that there is a distinction between being a dependent on the income and receiving contribution from the deceased, either monetarily or through the services rendered by the deceased to the members of the family, legal representatives, which, in our considered view, is also a decisive factor, in computing the compensation. Though the provision under Section 2(1)(d) of the Workmen's Compensation Act, 1923, defines, who are all the dependents entitled to claim compensation under the Workmen's Compensation Act, we are of the view that there is a clear distinction under Section 166 of the Motor Vehicles Act, which states that all the legal representatives are entitled to claim compensation.

13. Section 2(1)(d) does not confer any statutory right to a married daughter to seek for compensation under the Workmen's Compensation Act. The said Act has come into force in 1923. Whereas, Motor Vehicles Act has been enacted in the year 1939. Section 166 of the Motor Vehicles Act, does not restrict the entitlement of the elder brother to prefer any

claim along with others. Both Acts are beneficial legislations. Nevertheless, there is a clear distinction insofar as the language employed in the said Acts. When Section 2(1)(d) of the Workmen's Compensation Act, speaks about dependency, Section 166 of the Motor Vehicles Act, speaks about the right of the legal representatives to succeed to the estate of the deceased. There is a specific inclusion of all the legal representatives to claim for compensation under Section 166 of the Motor Vehicle's Act. Therefore, merely because a brother has joined the other claimants/legal representatives, such claim cannot be said to be against the statutory provision, and therefore, to be rejected in limini.

14. If the intention of the framers of the Legislature that the subsequent enactment, viz., Motor Vehicles Act, 1988, was to restrict the payment of compensation only to dependants, the word "dependant" as defined in Section 2(d) of the Workmen's Compensation Act would have been incorporated in the Motor Vehicles Act also. All the legal heirs are entitled to the estate of the deceased and can claim compensation.

15. Denying compensation to the brother, would be opposed to the object of the Act and it would be amounting to adding words to the legislation, which this Court is not supposed to do. As held by the Hon'ble Apex Court, even if there is casus omissus, it is not for this Court to add words to legislation. The construction and interpretation of the words, "legal representatives" in Section 166 of the Motor Vehicles Act, in the context and nature of the legislation, being beneficial, in our view, that should be interpreted in such a way not to take away their rights. Merely because a elder brother has also preferred a claim, that by itself would not disentitle him, from claiming compensation, as a legal representative, to represent, the estate of the deceased.

16. If a brother has to be excluded from the expression, "legal representative", employed in Section 166 of the Motor Vehicles Act, then, in our view, it would virtually amounting to substituting the words "legal representatives" with "dependants", as used in Section 2(1)(d) of the Workmen's Compensation Act. No doubt, under the Workmen's Compensation Act, one who is gainfully employed cannot be called as a dependent. Brothers and sisters, legal representatives, cannot be said to be gainfully employed. The word "dependent", used in the Workmen's Compensation Act, has a different meaning in the context of which, it is employed.

17. 'Legal Representative' ordinarily includes heirs, as well as persons, who represent the estate of the deceased person or a person, on whom, the estate devolves on the death of an individual. Right to claim for compensation by any or all legal representatives under Section 166 of the Motor Vehicles Act is a legal right. It is an assertable right enforceable before the Courts and administrative agencies, in

its wider sense and therefore, a legal right has to be understood, as an advantage or benefit conferred upon a person by a rule of law; and having regard to the manner, in which, a provision has to be interpreted, as held by the Hon'ble Supreme Court in the decisions stated supra, this Court is of the view that the definition of "legal representatives" cannot be restricted to exclude brother, from making any claim under section 166 of the Act and consequently, restrict his claim.

18. Courts have consistently held that what has been specifically excluded by legislation in a provision cannot be imported into the section by decisions of Courts. By engrafting Section 166 of the Motor Vehicles Act, enabling all the legal representatives to make a claim, in contra distinction to, Section 2(1)(d) of the Workmen's Compensation Act, which enables only the persons enumerated in the said section to claim compensation under section 3 of the Workmen's Compensation Act, the intention of the legislature is clear and the definition, "legal representative" cannot be narrowed down to mean only "dependents", excluding brother.

19. There could still be a case where there is contribution of a portion of the income of the deceased to a legal representative, who had preferred a claim and he/she need not be wholly dependant on the income of the deceased. A likelihood of loss of contribution from the deceased would give rise to a claim for compensation by him under Section 166 of the Motor Vehicles Act, though he may not be a wholly dependent, as defined in Section 2(1)(d) of the Workmen's Compensation Act.

20. It is a well recognised rule of interpretation of statutes that the expressions used in the statute, should ordinarily be understood, in which, they harmonise with the object of the statute, to effectuate the object of the legislature and the Court should adopt an object oriented approach, keeping in mind the language employed in the statute. When the legislature has used the words, "Legal Representatives" in Section 166 of the Act, and having regard to the duty of the Court to act upon the true intention of the legislature, "Mens or Sententia Legis", this Court is not inclined to accept the submissions of the Transport Corporation, interpret and circumscribe the meaning of the words, "Legal Representatives" to mean only "dependents". The right to represent the estate of the deceased by

the brother, is not taken away and such an interpretation, would make the provisions of law of succession, ineffective.

21. As the statute is very clear that all the legal representatives can maintain a claim under Section 166 of the Motor Vehicles Act, depending upon the loss of monetary benefit or the gratuitous and invaluable services, measured in

terms of money, that the legal representative, might have received and lost in the event of death, brother or sister can maintain a claim, the words "Legal Representatives", cannot be narrowed down to mean only, dependents. In the light of the above decisions and discussion, this Court is of the view that elder brother is also entitled to compensation.

22. As stated supra, the claimants have substantiated their claim for computation of compensation, towards loss of dependency, by adducing documentary evidence, such as, Ex.P6 - Income Tax Pan Card, Exs.P7 and P10 - Diploma Certificates, Ex.P8 - Mark List and Transfer Certificate, Ex.P11 - Salary Certificate, Ex.P12 - I.D. Card issued by the Karanataka State Open University and Ex.P13 - Certificate of Excellence. Hence, we are not inclined to accept the contra contentions.

23. On the plea of enhancement of compensation, under the heads, loss of love and affection, claimed in C.M.A.No.979 of 2016, filed by the claimants, this Court is of the view that loss of love and affection cannot be measured in terms of money. However, compensation should be just and reasonable. Elder brother and the 2nd respondent has not been awarded any compensation, under this head. At the time of accident, when he had lost his brother, he was aged 28 years. Loss of his younger brother would linger in his mind for long period. Considering the above, this Court, inclined to award compensation of Rs.50,000/- to the elder brother, under the head, loss of love and affection. Rs.50,000/- awarded towards loss of love and affection, to the 1st claimant-mother is inadequate and hence, taking note of the decision in Rajesh's case (cited supra), this Court is inclined to enhance the same to Rs.1,00,000/- under the said head. Mother is aged 54 years and elder brother is aged 28 years. Having regard to the above, compensation to be apportioned in the ratio of 60:40, between the claimants. As rightly pointed out, there is no compensation towards loss of estate and for other conventional damages. In addition to the above, this Court is inclined to award Rs.10,000/- towards loss of estate, Rs.10,000/- for transportation and Rs.5,000/- for damages to clothes.

24. In the light of the above discussion and decisions, we are of the view that the claimants are entitled to compensation of Rs.24,95,000/-. Total compensation due and payable to the claimants, is apportioned hereunder:

Dependency Compensation	: Rs.22,95,000/-
Loss of Love and Affection	: Rs. 1,50,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 10,000/-
Loss of Estate	: Rs. 10,000/-
Damages to clothes & articles	: Rs. 5,000/-

Total	: Rs.24,95,000/-

25. In Puttamma v. K.L.Narayana Reddy reported in 2014 (1) TNMAC 481 (SC), the Hon'ble Supreme Court, having considered the rate of interest provided in various statutes, decisions in Kaushnuma Begum v. New India Assurance Co. Ltd., reported in 2001 (2) SCC 9, Abati Bezbaruah v. Deputy Director General, Geological Survey of India and Anr., reported in 2003 (1) CTC 570 (SC) and Supe Dei v. National Insurance Co. Ltd., & anr., reported in 2009 (4) SCC 513, awarded compensation at the rate of 12% per annum, at Paragraphs 59 to 62, it is held as follows:

"59. This Court in Kaushnuma Begum v. New India Assurance Co. Ltd. & Ors. (2001) 2 SCC 9. noticed that the Nationalized Banks are granting interest @ 9% on fixed deposit for one year and held as follows:

"24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf". Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. The amount of Rs 50,000 paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date."

60. This Court in Abati Bezbaruah v. Deputy Director General, Geological Survey of India & Anr. (2003) 3 SCC 148, noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc.

61. In Supe Dei v. National Insurance Co. Ltd. & Anr. (2009) 4 SCC 513, this Court held that proper interest would be 9% per annum.

62. In view of the aforesaid provisions of the Act, 1988 (Section 171) and the observation of this Court, as noticed above, we keep this question open for Tribunals and Courts to decide the rate of interest after taking into consideration the rate of interest allowed by this Court in similar case and other factors such as inflation, change in economy, policy adopted by the Reserve Bank of India from time to time and the period since when the case is pending."

26. In the case on hand, the accident has occurred on 19.08.2013. Claim petition has been filed in 2013. The Tribunal has awarded compensation on 22.01.2016, within a the period of 1½ years, since the date of institution of the claim. The maximum rate of interest awarded by the Banks on Fixed Deposits is 7.5%. As per the Motor Accident Claims Tribunal Rules, compensation awarded should be deposited. Even if the money is deposited in a Nationalized Bank, it would fetch only 7.75% interest. Considering the same, this Court is inclined to reduce the rate of interest to 7.5% per annum.

27. Mr.S.Sairaman, learned counsel appearing for the appellant-Transport Corporation submitted that pursuant to the order made in C.M.P.No.10564 of 2016 in C.M.A.No.1382 of 2016, 50% of the award amount with proportionate interest and costs, have been deposited to the credit of M.C.O.P.No.21 of 2014, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Neyveli. Hence, the Tamil Nadu State Transport Corporation (Villupuram Division-I) Ltd., Villupuram, is directed to deposit the balance compensation amount, as per the award now determined, by this Court to the credit of M.C.O.P.No.21 of 2014, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Neyveli, within six weeks, from the date of receipt of a copy of this order, less the amount, if any, already deposited, including the statutory deposit of Rs.25,000/-. The claimants are permitted to withdraw the deposited amount, after making necessary applications before the Tribunal.

28. In the result, C.M.A.No.1382 of 2016 is partly allowed, insofar as rate of interest is concerned and C.M.A.No.979 of 2016, is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
(Subordinate Judge), Neyveli.

+ 1 cc to Mr.S. Sairaman, Advocate SR.54860

C.M.A.Nos.979 and 1382 of 2016

PVS (CO)
EU 24.11.16



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