

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2016

C O R A M

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH,J.,
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU,J.,

C.M.A.Nos.2478 of 2014
and
M.P.No.1 of 2015
and
C.M.A.SR.No.40921 of 2015
and
M.P.No.1 of 2015

The Managing Director
Tamil Nadu State Transport
Corporation, Salem-4.

.. Appellant in
CMA No.2478 of 2014
and respondent in
CMA SR No.40921/2015

-Vs.-

1. P.Amudha
2. G.Purushothaman
3. P.sobana
4. P.Jayachandran

.. Respondents in
CMA No.2478 of 2014
and Appellants in
CMA SR.No.40921 of 2015

Civil Miscellaneous Appeal and CMA SR filed under section 173 of Motor Vehicles Act 1988 against the decree and judgment dated 30.01.2014 passed by the learned II Additional District Judge, [Motor Accidents Claims Tribunal] Tiruvallur at Poonamallee in MCOP No.97 of 2012.

For Appellant ... Mr.D.Venkatachalam
in CMA No.2478 of 2014
and respondent in
CMA SR.No.40921 of 2015

For Respondents ... Mr.K.Varadha Kamaraj
in CMA No.2478 of 2014
and appellants in
CMA SR.No.40921/2015

COMMON JUDGMENT

(Judgment of the Court was delivered
by Huluvadi G.Ramesh, J.,)

C.M.A.No.2478 of 2014 has been filed by the State Transport Corporation aggrieved by the judgment and decree dated 30.01.2014 passed by the learned II Additional District Judge, [Motor Accidents Claims Tribunal] Tiruvallur at Poonamallee in MCOP No.97 of 2012 and CMA SR.No.40921 of 2015 has been filed by the claimants against the very same judgment before the learned Single Judge, which is under the condone delay stage, seeking enhancement of the compensation awarded, which was withdrawn from the list of the learned Single Judge and tagged along with this appeal and disposed of by this common judgment.

2. The brief facts of the case is as follows:

(i) This is a case of fatal accident.

(ii) On 02.01.2012 at about 12.40 hrs, when the deceased was riding his motor cycle bearing Registration No.TN-23 AD 0469 on Vellore-Ambur National Highway, the bus bearing Regn.No.TN-30-N-0605 belonging to the appellant-Transport Corporation came in a rash and negligent manner and hit against the motor cycle, due to which, the deceased was thrown down and suffered grievous injuries and inspite of the treatment given, he died.

(iii) The parents and the unmarried sister and brother of the deceased went before the Motor Accident Claims Tribunal claiming compensation in a sum of Rs.43,00,000/-; however restricted their claim to Rs.40,00,000/-. To sustain their claim, the claimants examined P.Ws.1 and 2 and marked Exs.P1 to P6. On the side of the appellant one Muthukumar was examined as R.W1 and Exs.R1 to R3 were marked. The Tribunal after considering the oral and documentary evidence adduced awarded compensation in a sum of Rs.38,71,194/- as follows:

Heads	Compensation awarded
Loss of Revenue	Rs.38,51,194/-
Loss of love and affection	Rs. 10,000/-
Transport expenses	Rs. 5,000/-
Funeral expenses	Rs. 5,000/-
Total	Rs.38,71,194/-

The said compensation awarded is under challenge before this Court, with the appellant-Transport Corporation seeking reduction and by the claimants, seeking enhancement.

3. The learned counsel representing the appellant-Transport Corporation submits that they are mainly aggrieved by the quantum of compensation awarded by the Tribunal. In such circumstances, there is no need for us to go in to the finding relating to negligence.

4. The learned counsel appearing for the appellant-Transport Corporation submits that the Tribunal ought not to have fixed the monthly income of the deceased at Rs.29,715/- in the absence of any documentary evidence. He also submitted that the Tribunal ought to have deducted 50% each towards his personal expenses and living expenses as he is a bachelor instead of deducting only 1/4 th. Further 20% of his expenses also should have deducted towards income tax. Accordingly, he prayed for reducing the compensation awarded.

5. Per contra, the learned counsel appearing for the claimants submitted that the Tribunal ought to have fixed the monthly income of the deceased at Rs.34,950/- considering the documentary evidence produced on the side of the claimants, viz., Ex.P6 salary slip. He also submitted that the Tribunal has not awarded any amount towards future prospects as the deceased was aged only 24 years at the time of the accident. It is his further contention that the Tribunal ought to have fixed the multiplier at 18 as per the judgment of the Apex Court reported in 2009 (6) SCC 121 [Sarala Verma vs. Delhi Transport Corporation] instead of fixing at 16 considering the age of the mother of the deceased. Further he submitted that the Tribunal has not awarded sufficient compensation under the head "loss of love and affection" and also under other heads. Accordingly, he prayed for enhancement of the same.

6. We have heard the learned counsel on either side and perused the award passed by the Tribunal.

7. It is an admitted fact that the deceased was aged only 24 years at the time of accident and his family consists of four persons, viz., parents, sister and brother. It is not in dispute that the deceased was in the service of Indian Army. Had he been alive, he would have served for another 30 years or more and would have got promotions in his service and earned more money. In such circumstances, fixing the monthly income of the deceased at Rs.29,715/- based on Ex.P6, the salary slip produced by the claimants, is not on the higher side, that too, when the Tribunal has not awarded any compensation separately for future prospects, which as per the judgment of the Hon'ble Apex Court reported in (2012) 6 SCC 421 [Santosh Devi vs. National Insurance Company Limited and others] should have been awarded at 50%. Further, the multiplier adopted by the Tribunal taking into consideration the age of the mother of the deceased is also erroneous. As per the decision of the Apex Court reported in 2013(9) SCC 65 [Reshma Kumari and others vs. Madan Mohan and another] it has been laid down that the age of the deceased should be taken to fix the multiplier.

8. In such circumstances, though it is argued, that the compensation awarded by the Tribunal is on the higher side, considering the facts and circumstances of the case and also the law laid down by the Hon'ble Apex Court in Santosh Devi's case [supra] and in the case of Munna Lal Jain and another vs. Vipin Kumar Sharma and Others [2015(6) SCC 347] to meet the ends of justice, we are of the view that it needs further enhancement on proper calculation based on the age of the deceased taking the appropriate multiplier and also adding 50% of the income towards future prospects, it will come to more than Rs.40 lakhs. However, since the claimants have restricted their claim before the Tribunal to a sum of Rs.40,00,000/-, we allow the appeal filed by the claimants by rounding off the amount awarded by the Tribunal in a sum of Rs.38,71,194/- to Rs.40,00,000/- [Rupees forty lakhs only].

9. Accordingly, the CMA No.2478 of 2014 filed by the State Transport Corporation is dismissed. CMA SR.No.40921 of 2015 filed by the claimants is allowed with costs. Consequently, the connected miscellaneous petitions are closed.

10. It is brought to the notice of this Court that the appellant-Transport Corporation has deposited the entire award amount along with accrued interest as per the interim order passed by this Court in M.P.No.1 of 2014 in CMA No.2478 of 2014 dated 12.09.2014. Since the compensation awarded by the Tribunal is enhanced by this Court, the appellant-Transport Corporation is directed to deposit the remaining amount of Rs.1,28,806/- [Rupees one lakh twenty eight thousand eight hundred and six only] with interest at 7.5% p.a. from the date of claim petition till the date of deposit. Such amount shall

be deposited by the appellant-Transport Corporation within a period of three months from the date of receipt of a copy of this order. On such deposit being made, the claimants are entitled to withdraw their respective shares as apportioned by the Tribunal by filing an appropriate application.

-s/d-
Assistant Registrar (CSII)

True Copy

Sub-Assistant Registrar

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To

The II Additional District Judge
Motor Accidents Claims Tribunal
Tiruvallur at Poonamallee.

+1 cc to Mr.D.Venkatachalam Advocate sr.23387
+1 cc to Mr.K.Varadhakamaraj Advocate sr.23344

C.M.A.Nos.2478 of 2014
and
C.M.A.SR.No.40921 of 2015

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