

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2016

C O R A M

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.239 of 2013
and C.M.A.No.487 of 2013

C.M.No.239 of 2013

1.M.Meena
2.A.Tarun (Minor)
Minor rep. By his mother and natural guardian M.Meena
3.V.Meenakshi ...Appellants

Vs

Metropolitan Transport Corporation Ltd
Rep. By its Managing Director
Pallavan Salai
Chennai-2 ...Respondent

Vs

C.M.A.No.487 of 2013

1.The Managing Director
Metropolitan Transport Corporation Ltd.,
Chennai. ..Appellant

Vs

1.M.Meena
2.Tarun (Minor)
Minor represented by his mother and natural
guardian M.Meena
3.V.Meenakshi ...Respondents

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1989, against the judgment and decree passed by the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court II, Chennai, made in M.C.O.P.No.3305 of 2008 dated 09.02.2012.

For appellant in CMA 487/2013/
Transport Corporation ... Mr.S.V.Vasanth Kumar
For respondents in CMA 487/2013/
claimants ... Mr.S.Gangaram Prasad
for R1 to R3.

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

The Metropolitan Transport Corporation filed C.M.A.No.487 of 2013, challenging the compensation granted by the Tribunal, whereas the claimants filed C.M.A.No.239 of 2013 for enhancement of compensation.

2. It is a case of fatal. On 15.04.2008 at about 23.00 hours, while V.Amudhan (deceased) was riding his motor cycle bearing Reg.No.KA-03-V-4625 from east to west on New Avadi Road, Chennai, the driver of the MTC Bus bearing Reg.No.TN-01-N-3974 came from north to south in a rash and negligent manner and dashed against him, resulting in V.Amudhan, sustaining serious injuries and on the way to hospital, he died. The wife, minor son and mother of the deceased filed M.C.O.P.No.3305 of 2008 claiming a compensation of Rs.75,00,000/- from the Metropolitan Transport Corporation stating that the deceased was aged about 37 years at the time of accident and was working as Deputy Manager in State Bank of Mysore and was earning Rs.40,000/- per month.

3. In support of the claim before the Tribunal, wife of the deceased/1st claimant was examined as P.W.1. Thiru.Sheik Mohammed and Ms.C.Shanthi were examined as P.W.2 and P.W.3. Exs.P.1 to P.13 were marked and the details of which are as follows:-

Ex.P.1	True copy of the FIR
Ex.P.2	Post Mortem Certificate
Ex.P.3	Charge sheet
Ex.P.4	Death certificate of the deceased
Ex.P.5	Legal Heir certificate-True copy
Ex.P.6	Secondary School Mark Sheet
Ex.P.7	Degree Provisional Certificate
Ex.P.8	Copy of identity card.
Ex.P.9	Copy of driving license of the deceased
Ex.P.10	Death Certificate

Ex.P.1	True copy of the FIR
Ex.P.11	Service extract of deceased
Ex.P.12	Sketch

4. On the side of the Metropolitan Transport Corporation, R.W.1/Saravanan and R.W.2/Kuruviah were examined and Ex.R.1-Accident Report and Ex.R.2-Requisition letter by respondent to Traffic Wing were marked.

5. The Tribunal, on an analysis of evidence and the materials placed before it, pointed out that the accident took place at a junction viz., New Avadi Road and Halls Road intersection; the bus came in the New Avadi Road and entered the main road from the smaller road. Admittedly there was no signal at that junction and the motorcyclist, who was on coming in the main road, was not careful enough and hence, the accident occurred and there was contributory negligence on the deceased also. So stating, the Tribunal fixed the negligence on the deceased at 25% and on the bus at 75%.

6. The Tribunal based on the evidence of P.W.3/employee of State Bank of Mysore and Exhibits P.8 and P.12, the monthly income of the deceased was fixed at Rs.39,498/-. Further, on going through the decision of 2009(1) TNMAC 1 Sarala Verma's case, 50% future prospects of the deceased was added to the salary, for the purpose of arriving at the compensation and it was arrived at Rs.59,247/-. As per II Schedule, 15 multiplier was adopted and after deducting income tax from the salary of the deceased, the loss of dependancy was calculated as Rs.47398 x 12 x 15 =Rs.85,31,640/- and after deducting 1/3 towards his personal expenses, the balance was Rs.56,87,760/-. Thus, the Tribunal awarded the following compensation with interest at the rate of 7.5% per annum:-

Head	Amount granted by the Tribunal
1.Loss of dependancy	Rs.56,87,760/-
2.Funeral and transport expenses	Rs. 5,000/-
3.Loss of love and affection	Rs.1,00,000/-
4.Loss of consortium	Rs. 50,000/-
Total	Rs.58,42,760/-

7. Aggrieved by the said award, both the claimants and the

Transport Corporation filed the above appeals.

8. We have heard the learned counsel on either side and perused the material papers placed on record.

9. On the finding of the Tribunal regarding contributory negligence on the part of the deceased and thus fixing the liability of 75% on the Transport Corporation, the Tribunal relied on Ex.P.12/Sketch and the same is produced before this court. We have given our anxious consideration to the same. From the nature and time of accident that took place i.e., at 11 p.m., it is seen that there was no Police Beat in the said signal and that the motorcyclist already crossed the road and the bus dashed against the tail end of the two-wheeler, hence, it cannot be said that the two wheeler was negligent. Hence, we are of the view that it is for the bus driver who alone should be careful and because of his carelessness, he hit the rear end of the two-wheeler, who almost crossed the inter-section of the road. Thus, we are of considered opinion that Ex.P.12/Sketch shows no negligence on the part of the deceased, but only on the driver of the Transport Corporation bus, who could have avoided the accident, if he was careful. Hence, as far as the finding of the Tribunal regarding negligence is concerned, we set aside the liability fixed at 25% on the deceased and 75% on the Transport Corporation and we hereby, fix the total liability on the Transport Corporation.

10. The learned counsel for the Transport Corporation has not seriously contended as regards the quantum of compensation that is Rs.43,82,070/- granted to the claimants.

11. Even though the claimants filed appeal for enhancement of compensation, we are of the view that the amount granted under various heads are just and reasonable.

12. In the result, the Civil Miscellaneous Appeal filed by Metropolitan Transport Corporation is dismissed and the appeal filed by the claimant is partly allowed. We set aside the liability fixed at 25% on the deceased. We fix the total liability of Rs.58,42,760/- on the appellant/Transport Corporation. Interest granted at 7.5% per annum is confirmed. The learned counsel appearing for Metropolitan Transport Corporation seeks four weeks time to deposit the balance amount. On such deposit, the major claimants are permitted to withdraw the balance award amount with interest and cost. The share of minor claimant is directed to be deposited in any one of the

nationalised banks till the minor attains majority. There will be no order as to costs in both the appeals.

-s/d-
Assistant Registrar(CCC)

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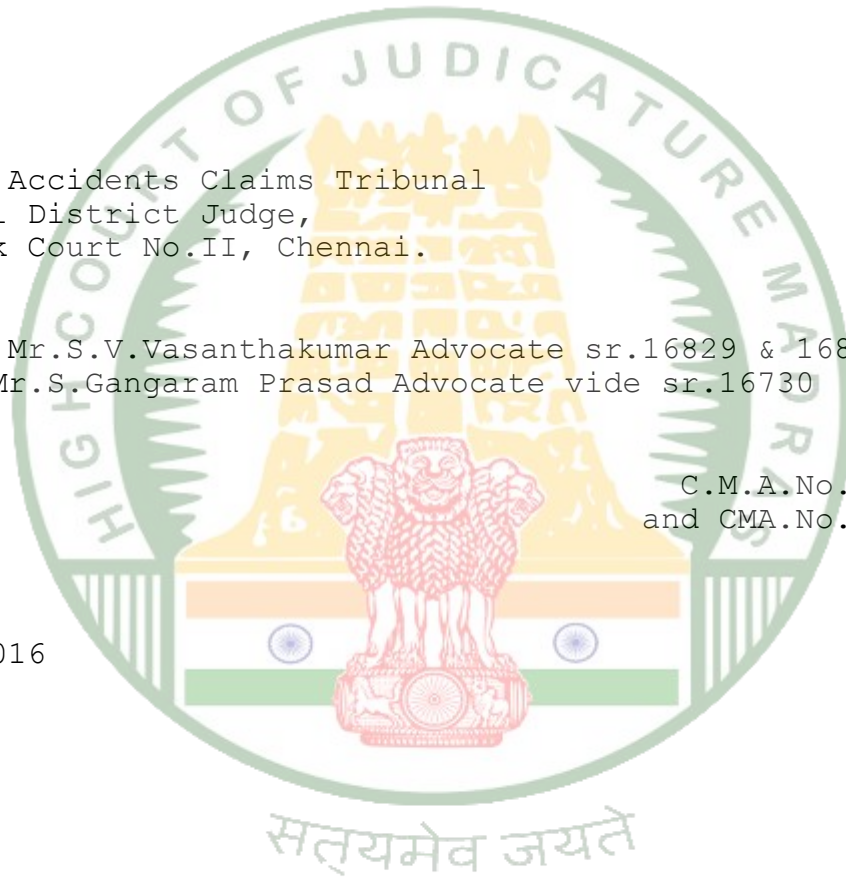
Sub-Assistant Registrar

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To
The Motor Accidents Claims Tribunal
Additional District Judge,
Fast Track Court No.II, Chennai.

+2 ccs to Mr.S.V.Vasanthakumar Advocate sr.16829 & 16830
+1 cc to Mr.S.Gangaram Prasad Advocate vide sr.16730

C.M.A.No.239 of 2013
and CMA.No.487 of 2013

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