

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2012

CORAM:

THE HONOURABLE MR JUSTICE S.MANIKUMAR

C.M.A.No.3055 of 2012

1.Thangammal

2. Minor Saritosh

3. Minor Raghuraman

4. Minor Raghubathy

5. Sidhamma

... Appellants/Claimants

(minors 2 to 4 rep.by mother and
natural guardian Thangammal)

Vs.

The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
12, Ramakrishna Road,
Salem .

... Respondent /Respondent

Civil Miscellaneous Appeals filed under Section 173 Motor Vehicles Act. 1988 challenging the inadequacy of the compensation the award, dated 29.03.2007 in M.C.O.P.No. 84 of 2005 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Mettur.

For Appellants : Mr.D.Shivakumaran

For Respondent : Mr.D.Venkatachalam

J U D G M E N T

Being aggrieved by the finding, fixing contributory negligence on the deceased, viz., Mr.Periasamy, and the inadequacy of the quantum of compensation awarded to the wife, three minor children and mother of the deceased, legal representatives have preferred this appeal.

2. Short facts leading to this appeal are as follows:

That on 30.03.2005, about 9.45 p.m., when the said Periasamy was travelling as a pillion rider in a TVS 50 bearing Registration No.

30 Z 1892, on Tharamangalam to Sankari main road, a Transport Corporation Bus, Route No.91 bearing Registration No.TN 27 N-0662, which came in the opposite direction, driven in a rash and negligent manner, dashed against a TVS 50 and due to the said impact, the persons, who travelled in the motorcycle, were thrown out and Mr.Periasamy. husband of the first appellant sustained grievous injuries. Immediately thereafter, he was taken to Government Hospital, Salem, in the same Transport Corporation Bus. But he died on the way to hospital. A case in Crime No. 126 of 2005. under Sections 279, 337 and 304(A) of IPC has been registered against the driver of the State Transport Corporation Bus.

3. According to the first respondent wife, at the time of accident, the deceased was working as a Supervisor in a Powerloom Factory, belonging to one Mr.Rajendran and that he was paid a sum of Rs.5,000/- as monthly salary. She has further submitted that due to the sudden demise of the breadwinner, minor children, aged about 4 % years and less, wife and mother of the deceased , were put to inexplicable agony, hardship and financial constraint and in the abovesaid circumstances, claimed compensation of Rs.10.00,000/-.

4. To prove the manner of accident and employment, income earned by the deceased, at the time of accident, wife of the deceased examined herself as PW-1 and marked Ex.PI - FIR, Ex.P2- Post-mortem certificate of the deceased. Ex.P3- X Standard certificate of the deceased, dated - March 1986. Ex.P4- Higher secondary course certificate, dated - March 1988, Ex. P5- Co-operative Supervisor's Training course certificate, dated 28.04.1989, Ex.P6- Provisional certificate for Diploma in Co-Operation, dated 13.06.1990, Ex.P7- Diploma in Co-operation certificate, dated 31.01.1991, Ex.P8- B.Com., Degree certificate, dated 29.12.1992. Ex.P9 - B.Com Provisional certificate, dated 25.09.1992, Ex.P10 - M.Com. Degree certificate, dated 18.12.1997, Ex.P11 - M.Com Provisional certificate, dated 25.09.1997, Ex. P12-Birth certificate of 2nd petitioner. Ex. PI3 - Birth certificate of 3rd petitioner; Ex. P14-Birth certificate of 4th petitioner, Ex.PI5 - OBC certificate of the deceased, Ex. PI6™ Typewriting Lower grade certificate (English), Ex. P17- Certificate (English), Ex, P19-Typewriting Higher grade certificate (Tamil), Ex. P20- OBC certificate issued by Tahsildar. dated 06.04.1998, and Ex. P21-Employment card of deceased. PW-2 is stated to be the employer and that he has deposed that at the time of accident, the deceased was employed as a Supervisor in his Powerloom Factory and paid Rs.5,000 - per month, but no document has been filed.

5. The Transport Corporation, resisted the claim petition contending *inter alia* that the Bus bearing Registration No. TN 27 N-0662, at 8.45 P.M., took a trip, to Chinnappampatty and at 09.40 p.m.. before reaching Chinnappampatty and when the driver was negotiating a curve, after crossing a bridge, a motorcycle viz., TVS 50. bearing

Registration No. TN 30 Z 1892, carrying three persons, driven in a rash and negligent manner, in an uncontrollable speed, dashed against the middle portion of the bus and thus caused the accident.

6. According to the Transport Corporation, since three persons travelled in the motorcycle, contrary to the statutory provisions and as the motorcyclist could not balance the vehicle, due to carrying excess passengers than permitted, the accident has taken place and in the abovesaid circumstances, denied negligence on the part of the driver of the State Transport Corporation Bus. Hence, the Corporation has submitted that it is not liable to pay compensation.

7. Without prejudice to the above, the Corporation has disputed the age, employment, monthly income and the quantum of compensation claimed under various heads. On their behalf, the Corporation has examined one Mr. Ramkumar, Investigating Officer of the State Transport Corporation, and no document has been marked.

8. Upon evaluation of pleadings and evidence, the Claims Tribunal, fixed 50% Contributory negligence on the motorcyclist. In the absence of any document to prove that the deceased was paid Rs.5,000/- per month, the Claims Tribunal fixed the monthly income at Rs.4,000/-, applied '17' multiplier and deducted 1/3rd towards the personal living expenses of the deceased and computed the compensation at Rs.5,44,000/-, under the head, loss of contribution to the family.

9. In addition to the above, the Tribunal has awarded Rs.25,000/- to the widow, who was just aged about 23 years old, at the time of accident; Rs.30,000/- for loss of love and affection to the minor children; Rs. 10,000/- for loss of love and affection to the mother; Rs.5,000/- for transportation and Rs.5,000/- for funeral expenses. Altogether, the Tribunal has awarded compensation of Rs.6,19,000/-. Taking note of 50% of contributory negligence, fixed on the deceased, deducted 50% from out of the total compensation and awarded 3,09,500/- with interest at the rate of 9% pa., to the wife and legal representatives.

10. Assailing the finding of the Tribunal, fixing 50% of contributory negligence on the motorcyclist, Mr.D.Shivakumaran. learned counsel for the appellants submitted that merely because three persons travelled in a motorcycle, that alone would not constitute negligence on the part of the motorcyclist. According to him. there should be either direct or circumstantial evidence to prove that there was negligence on the part of the motorcyclist, in causing the accident. He further submitted that the finding of the Tribunal is purely speculative. He also submitted that such finding without there being any acceptable evidence, let in by the respondent State Transport Corporation, requires reversal.

11. On the quantum of compensation, learned counsel for the appellants submitted that though the appellants/claimants have let in evidence through PW-2, the employer, to the effect that, on the date of accident, the deceased was employed as a Supervisor and earned Rs.8,000/- p.m. and when the appellants/claimants have produced Exs.P-3 to P-21, certificates proving the educational qualifications of the deceased, including Technical qualifications in typewriting, higher grade, both in Tamil and in English, the Claims Tribunal, has not considered the above said certificates, and failed to take note of the number of dependents, while determining the monthly income and by fixing a lesser income, has computed the loss of contribution to the family. In the light of the above, he submitted that the Claims Tribunal has erred in awarding a lesser compensation to the appellants and hence, sought for modification of the finding regarding negligence and suitable enhancement.

12. Opposing the prayer for reversing the finding of the Tribunal in fixing 50% contributory negligence on the motorcyclist and inviting the attention of this Court to the award, Mr.D.Venkatachalam, learned counsel for the Tamil Nadu State Transport Corporation Ltd., submitted that apart from examining PW-1, widow, the appellants/claimants have not chosen to examine any occurrence witness and except Ex.P1 - FIR, there is no other oral or documentary evidence, to corroborate the version of PW-1, that the accident occurred purely due to the fault of the driver of the bus.

13. Taking this Court through the oral testimony of RW-1, Investigating Officer of the transport Corporation, who has deposed that, at 9.40 p.m., the bus, before reaching Chinnappampatty and after crossing a bridge and when the driver was negotiating a curve, a motorcycle viz., TVS 50 bearing Registration No. TN 30 Z 1892, carrying three persons, driven in a rash and negligent manner near the curve, had dashed against the bus, learned counsel appearing for the State Transport Corporation submitted that if there was no fault on the part of the motorcyclist, the appellants could have very well marked the sketch and adduced any supportive evidence. According to him, the very fact that three persons travelled in a TVS 50 in the motorcycle, would give rise to a presumption that the rider, while negotiating a curve, would have lost his balance and dashed against the middle portion of the bus and thus invited the accident.

14. Learned counsel for the Transport Corporation also brought to the notice of this Court that during cross-examination, PW-1 herself, has admitted that, at the time of accident, three persons travelled in the TVS 50. In the light of the oral testimony of RW-1, Investigating Officer, coupled with the admission by PW-1, widow,

learned counsel for the Transport Corporation, submitted that the circumstances in which the accident occurred, and the consequential finding, fixing 50% negligence on the motorcyclist, cannot be said to be perverse or without any evidence. Hence, he prayed to sustain the finding regarding negligence.

15. On the quantum of compensation, learned counsel for the Transport Corporation submitted that the estimate of loss of contribution to the family, by fixing the monthly income at Rs.4,000/-, cannot be said to have been made arbitrarily, particularly, when the appellants/claimants have not produced any documentary evidence to prove that, at the time of accident, the deceased was engaged as a Supervisor in a Powertoom Factory. In this context, he invited the attention of this Court to the testimony of PW-2, the employer, who has not filed any document to support the employment of the deceased and his monthly income.

16. Learned counsel for the Transport Corporation further submitted that, at the time of accident the deceased, was stated to be aged 35 years and that therefore, as per *Sarala verma's* case, the Claims Tribunal has applied 16 multiplier, for computing the loss of contribution to the family.

17. According to him, in the absence of any documentary evidence, the determination of monthly income at Rs.4,000/- for the purpose of computing dependency compensation and deduction of 50% for the contributory negligence, on the part of the motorcyclist, cannot be said to have been made without any basis. Hence, he prayed to sustain the award and accordingly, dismiss the appeal.

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

19. As per the version of PW-1, widow, the accident occurred on Tharamangalam to Sankari main road, when the Transport Corporation bus. Route No 91, bearing Registration No. TN 27 N-0662, which came in the opposite direction, driven in a rash and negligent manner, by its driver, dashed against the motorcyclist, causing greivous injuries to her husband, who died, on his way to the hospital. As contended by the learned counsel for the respondent/State Transport Corporation, except Ex.P1 - FIR, no other document has been marked.

20. Rebutting the manner of accident, the Transport Corporation has contended that on 13.03.05, when the vehicle bus was on its trip from Salem to Chinnappampatty, at 9.40 p.m. just before Chinnappampatty, after crossing bridge and when the bus was proceeding, on the left side of the road, the motorcyclist, carrying three persons, dashed against the bus. PW.1, has admitted that three

persons travelled in the motorcycle. Both PW.1 and RW-1 Investigating Officer have not witnessed the accident.

21. Merely because three persons travelled in a motorcycle, whether that itself would constitute negligence on the part of the rider of the motorcycle, so as to absolve the liability of the Transport Corporation from payment of entire compensation, amount without any deduction, in the absence of any supportive evidence to prove that, because of carrying two or more persons, the motorcyclist was unable to control the vehicle and thus, caused the accident, it is worthwhile to consider few decisions,

22. In Managing Director vs. Abdul Salam and others, reported in 2003(1)M.L.J.489, this Court considered the aspect of negligence, where three persons travelled in a Motor Cycle and collided with a vehicle, which came in the opposite direction, resulting in the death of the one pillion rider. The Tribunal awarded compensation to the legal representatives of the deceased. On appeal by the State Transport Corporation, this Court in paragraph-2 of the judgment held as follows:

"Apart from that, when three persons are travelling in a motor cycle, two as pillion riders, any unusual movement of the pillion riders would make the rider of the motor cycle to loose his control over the vehicle. Even though such travelling of three persons in a motor cycle is contrary to the statute, still the enforcement wing do not care to take note of the same and failed to take action against their illegal action. Virtually because of the failure on the part of the enforcement wing, such travelling of three persons in two wheelers have become a regular sight. Even though the highway patrolling is available but it is rare sight to see a highway patrolling vehicle. The travelling of three persons has become rampant in the mofussils and in the city; especially among the youngsters like the college students. When that be the case, the enforcing authority is expected to enforce the statute with some strictness to avoid any untoward incident. There is no purpose in conducting the Road Safety Week without infusing the road sense in compliance of the Rules and Regulations of the statute in the minds of those who are using the vehicles.

23. In Ravikumar v. Manager, Indian Textiles Co-oprative Ltd., reported in 2005 ACJ 1560, the Court considered as to whether double riding of a bicycle by itself would amount to negligence. In paragraph 8 of the judgment, it is held that,

"when there was two people on the bicycle, even though there is no evidence to indicate precisely how and under

what circumstances the accident took place. The Court drew the inference from the fact of double riding that cycle would have been to be rather unstable and if that is the case it is obvious that the cycle could not have been moving in a safe manner. In that context, the Court held that when the cycle is over loading by two persons riding on it, that it would certainly be oscillating in a zig zag manner which would have been the obvious reasons for the collision".

24. Before the Apex Court, in a case, where two persons rode a bi-cycle (Double riding) and whether they had contributed to the accident, came up for consideration in *Fazilka Dabwali Transport Corporation P. Ltd. vs. Madan Lal* reported in 1977 ACJ 403, where the Apex Court held that merely because two persons rode the bi-cycle, that by itself cannot lead to an inference that they have contributed to the accident. On facts, contributory negligence was not proved.

25. In *Narpal and Another v. Kanta Devi and Others* reported in (II)1992 ACC 261, the Punjab and Haryana High Court held that the deceased could not be held to be solely responsible for causing accident, as he was carrying three pillion riders, along with empty drums of milk in a motor cycle.

26. The Rajasthan High Court in *National Insurance Company Limited and others v. Kastoori and others* reported in 1988 ACJ 8, considered a case as to whether mere travelling of four persons in the motor cyclist, by itself amounts to contributory negligence. The Court held that merely because more persons travelled in a motor cycle, contributory negligence cannot be admitted, unless there is evidence to show that they contributed to the accident.

27. In *Mohindeer Singh Sohal and another vs Ramesh Kumar and others* reported in 1981 ACJ 326, the Bombay High Court held contributory negligence cannot be held for carrying more persons than permitted by law. On facts, the Court went on to hold that when the driver of the motor vehicle was driving with due care and caution, it cannot be held that there was contributory negligence.

28. In *United India Fire and General Insurance Company Limited and another, vs. Mrs. Sayar Kanwar and others* reported in 1976 ACJ 426, a Division Bench of the Karnataka Court, held that merely because three persons travelled in the motor cycle, it does not amount to contributory negligence.

29. The decision reported in 2003 (1) MLJ 499 (cited supra) of this Court, was considered elaborately by another Division Bench of this Court, with reference to the statutory provisions, in *Kattabomman Transport corporation Limited, rep. by its Managing Director, Vannarpettai, Tirunelveli v. Vellai Duraichi and others* reported in 2004(1) TNMAC 180 and the latter Bench held that three persons

travelling in a motor cycle does not by itself amounts to contributory negligence. This Court held that in the absence of any evidence to prove that the rider or the pillion rider contributed to the accident, no contributory negligence can be attributed to the motorcyclist.

30. Yet another aspect to be considered in the case on hand, is that whether the report of the Investigating Officer of the Transport Corporation can be accepted to disprove the manner of accident. RW.1, Investigating Officer, might have conducted an enquiry, as to how, the accident occurred. But he had not witnessed the accident. His testimony is not supported by any independent witness. The Transport Corporation has not marked any document. Though Ex.P1 - FIR is the only document marked, in support of the contention that the bus driver was negligent in causing the accident, it is well known that the motor accident claims cases, the findings on negligence is arrived at, only on the principles of preponderance of probability and strict proof of evidence is not required.

31. Yet another aspect, which does not find favour with the Transport Corporation, is that the driver of the Transport Corporation, against whom, negligence has been attributed, has not been examined by the Corporation. Mere averments denying the manner of accident and the counter allegations against the motorcyclist that when three persons travelled in TVS-50, there would be a presumption that the rider, while negotiating a curve, would have lost his balance and dashed against the middle portion of the bus, is not proved by adducing any evidence, through the driver of the bus nor supported by any independent evidence, either oral or documentary. Mere averments do not stand the test of proof. On the contrary, adverse inference can be drawn against the driver of the Transport Corporation bus. Reference can be made to few decisions,

32. In *New India Assurance Co. Ltd., v. Debajani Sahu* reported in I (2002) ACC 103 (Ori.), the Orissa High Court held that,

"8. In the present case, the Claims Tribunal found about the negligence of the bus driver on the basis of the evidence of the P.Ws. It is contended that P.W. 2 himself being the driver employed by the deceased was a highly interested witness and his evidence cannot be accepted as reliable. There is no dispute in the fact that the accident was caused involving the scooter and the bus. Even assuming that the evidence of P.W. 2 is not accepted, still then the doctrine of *res ipsa loquitur* is applicable. In such a situation, the owner of the bus should have examined the driver of the bus to explain the circumstances under which the accident occurred, as the other person involved in the accident having died cannot speak from the grave to explain the circumstances under which the accident had taken place. Of course, the bus owner has remained *ex-parte*, but no attempt was made by the Insurance Company which was

contesting the case even on merit (whether justifiably or not is immaterial), has not chosen to adduce any evidence to rebut the evidence of P.W. 2, not has bothered to summon the bus driver to explain the circumstances under which the accident took place. In such a case, an adverse inference can be drawn against the owner/Insurance Company for not examining the bus driver who would have been the best witness to explain the circumstance under which the accident occurred. In such view of the matter, the finding of the Tribunal on the question of negligence cannot be assailed and the contention in this regard raised by the Counsel for the appellant cannot be accepted."

33. In *Sitabai v. Ishak Hussain* reported in I (2001) ACC 761 (DB), the Madhya Pradesh High Court, at Paragraph 5, held as follows:

"5. In this case, the claimants could not examine any eyewitness of the accident. It was difficult for the claimants to search an eyewitness as the claimants were not present on the spot at the time of accident. This difficulty is avoided by applying the maxim *res ipsa loquitur*. Their Lordships of the Supreme Court in case of *Puspabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.*, reported in 1977 ACJ 343 (SC), observed:

"The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident 'speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle

it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care."

In this case, the respondent No. 1 was driving the vehicle which left the road and dashed against a tree. In view of this maxim, the burden shifts on the respondent No. 1 to prove that he was not negligent. It was in the special knowledge of respondent No. 1 as to how the vehicle left the road and came down and struck against a tree. The respondent No. 1 did not examine himself. Under such circumstances, adverse inference that he drove the vehicle in a rash and negligent manner as a result of which this accident occurred, shall be drawn against him. The learned Tribunal committed error in not applying this maxim. We hold that the accident occurred due to rash and negligent driving of the vehicle by respondent No. 1."

34. In Beni Bai & others v. A. Salim & another reported in II (1999) ACC 408 (DB) (M.P.), the Madhya Pradesh High Court, held as follows:

In the circumstances, for non-examination of the material witnesses particularly the driver and the conductor, who had the first hand knowledge of the manner in which the accident occurred, necessarily an adverse inference has to be drawn against the respondents. For want of evidence on behalf of the respondents, the plea raised in defence cannot be said to be established. On the other hand, the appellants have examined Atmaram, A.W.1. who was at the spot, who stated that at the bus stop when the passengers were getting down from the bus, the driver without seeing that the passengers have got down or not, started the bus and there one boy came under the wheel of the bus. From the circumstances, it cannot be inferred that the deceased might have jumped from the running bus. Hence it was the duty of the driver and conductor to have taken care to see whether passengers have got down from the bus or not, then only the driver could have started the bus. As the driver and conductor have failed in their duties to take care, we hold that the accident occurred due to negligence of the driver of the city bus. This Court in similar circumstances where the same type of defence was taken, has observed that it is the driver of the passenger bus who has to take care that the passengers who wish to get down from the bus have got down and then to start the bus. But that care was not taken. Therefore, it was held that the accident was caused because of the negligence of the driver

and conductor.

35. Though the Transport Corporation has contended that the Claims Tribunal has not committed any manifest illegality in fixing 50% contributory negligence, on the rider of TVS-50, Motorcycle, on the ground that during cross-examination, PW.1, herself, has admitted that three persons had travelled in TVS-50, coupled with testimony of RW.1, Investigating Officer of the Transport Corporation, this Court is not inclined to accept the same, in view of the decisions, stated supra and mere fact that three persons travelled in a Motorcycle, would not by itself, constitute negligence on the part of the rider of the motorcycle and unless and until, substantial evidence is adduced to prove that because of such travelling, the rider lost the balance and invited the accident.

36. As stated supra, RW.1, Investigating Officer, who has not seen the accident, is not the competent person to speak about the manner of accident. Even assuming that he had enquired some people, at the place of occurrence and ascertained, from them, as to how, the accident occurred, unless and until, the said persons examined by him and those, who had given any statement, regarding the manner of accident, are examined in the Claims Tribunal, on behalf of the Transport Corporation to dispute the manner of accident and subject themselves for cross-examination by the claimants, the Courts/Tribunals need not be carried away, by the averments made in the counter affidavit, disputing the manner of accident and record any finding on negligence, on the basis of such report filed by the Investigating Officer. The report of an Investigating Officer filed by the Corporation cannot be given any weightage, unless, there is supporting oral evidence, from the those, stated to have witnessed the accident. Hence, in the light of the decisions, stated supra, the finding of negligence is reversed.

37. It is the case of the legal representatives of the deceased that at the time of accident, the deceased was a supervisor in a powerloom factory, belonging to one Mr.Rajendran and earned Rs.5,000/- per month. To prove that the deceased was educationally qualified and Specialised Co-operative field and acquired higher grade certificates in Typewriting both in Tamil and English, they have produced following certificates,

1. Ex.P3 - 10th Mark Sheet
2. Ex.P4 - 12th Mark Sheet
3. Ex.P5 - Co-operative Training Certificate
4. Ex.P6 - Provisional Diploma Certificate
5. Ex.P7 - Co-operative Post Graduation Training Certificate
6. Ex.P8 - B.Com Certificate
7. Ex.P9 - Provisional Certificate
8. Ex.P10 - M.Com Certificate
9. Ex.P11 - Provisional Certificate issued by Annamalai University

for M.Com Post Graduation course.

- 10.Ex.P16 - Typewriting English Junior Grade Certificate
- 11.Ex.P17 - Typewriting Tamil Junior Grade Certificate
- 12.Ex.P18 - Typewriting English Higher Grade Certificate
- 13.Ex.P19 - Typewriting Tamil Higher Grade Certificate

38. P.G.Degree Provisional Certificate in Co-operation, Provisional Diploma Certificate in Co-operation, Typewriting higher grade certificates in English and Tamil, would prove that the deceased would have been employed, as a supervisor in a Powerloom factory. At the time of accident, he was stated to be aged 35 years. PW.2, Employer, has deposed that the deceased as a Supervisor, the deceased was paid Rs.5,000/- per month. Though the learned counsel for the Transport Corporation, has inter alia, contended that in the absence of any documentary evidence, the Claims Tribunal has erred in accepting the employment and consequently, erred in determining the monthly income of the deceased at Rs.4,000/-, for the purpose of computing the loss of contribution to the family, this Court is not inclined to accept the said contention for the reason that by producing educational qualification certificates and considering the number of family members, wife, three minor children and mother of the deceased, the Tribunal has fixed the monthly income at Rs.4,000/- for the purpose of computing the loss of contribution to the family.

39. The deceased was a Post Graduate in Co-operation and also obtained diplomas/certificates in Co-operation. That apart, he had acquired higher grade qualifications in typewriting, both in English and Tamil. He cannot be treated on par with a labourer or a non-earning member. To maintain such a large family, with his educational and technical qualifications, he would have certainly been engaged in some avocation, suitable to his educational qualifications and therefore, the contention that prior to death, he was employed as a Supervisor in a Powerloom factory, cannot be rejected. Moreover, the testimony of PW.2, employer, has supported the contention of the claimants.

40. As per Sarala Verma's case, when the number of dependants are between 4 and 6, $1/4^{th}$ deduction has to be made, towards the personal and living expenses. At the time of accident, the deceased was aged 35 years. As per Sarala Verma's case, the multiplier applicable to the age group of persons between 31 and 35 years, is '16'. Deducting $1/4^{th}$ towards personal and living expenses of the deceased, the loss of contribution to the family works out to Rs.7,23,000/- (Rs.3,515 x 12 x 16).

41. 'Consortium' as per the *Best v. Samuel Fox* reported in 1952 AC 716 means, "Duty owed by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." Consortium is not a pecuniary loss. Inasmuch as

the widow was aged 23 years, the compensation of Rs.25,000/- awarded to her, is sustained.

42. Compensation of Rs.30,000/-, ie., Rs.10,000/- each, awarded to the three minor children and Rs.10,000/- awarded to the mother of the deceased, under the head, loss of love and affection, cannot be said to be excessive. Rs.5,000/-each awarded under Funeral Expenses and Transportation is sustained. A sum of Rs.500/- is awarded towards damage to clothes. On the quantum of compensation, the Claims Tribunal has awarded 9% interest. Considering a decision made in Tamil Nadu State Transport Corporation Ltd., v. Rajapriya reported in 2005 (3) CTC 373 = 2005 (10) SCC 720, the rate of interest is scaled down to 7.5% interest.

43. The total compensation arrived at, by the Claims Tribunal, was Rs.6,19,000/- and after deducting 50% towards contributory negligence, the Tribunal has worked the total compensation at Rs.3,09,500/- with interest at the rate of 9% per annum. Now, consequent to the reversal of the finding, regarding contributory negligence and re-working of the compensation, under various heads, the respondents/claimants are entitled to Rs.7,98,500/- with interest at the rate of 7.5% per annum. The appellants/legal representatives of the deceased, have to pay necessary Court fee on the enhanced amount, if not paid. The Registry is directed to work out the Court fee and on payment of the requisite Court fee, the decree shall accordingly be drafted.

44. In the result, the Civil Miscellaneous Appeal is allowed. No costs. Out of the enhanced compensation amount of Rs.4,89,000/-, 5th appellant, mother of the deceased, is entitled to Rs.89,000/-. The remaining amount of Rs.4,00,000/- is directed to be shared, equally by appellants 1 to 4, wife and children of the deceased. Share of the minors with proportionate accrued interest, as stated supra, shall be deposited in a Nationalised Bank, in their individual names, with the 1st appellant as Guardian. The share apportioned to the minor children, deposited in the Nationalised Bank, with accrued interest, on the amounts apportioned to them, shall not be withdrawn, till they attain majority. Only future interest on such deposit, shall be periodically withdrawn by the 1st appellant, once in three months.

45. Record of proceeding shows that while condoning the delay of 1,037 days in filing the appeal, this Court vide order in M.P.No 2 of 2011, dated 01.10.2012, has condoned the delay, on condition that the claimants shall not be entitled to interest for the delay period in filing the appeal. Excluding the interest for the above period, the Transport Corporation is directed to deposit the award amount, now determined by this Court, with proportionate accrued interest, at the rate of 7.5% per annum, to the credit of M.C.O.P.No. 84 of 2005 on the file of the Motor Accident Claims Tribunal (Subordinate Judge).

Mettur, within a period of four weeks from the date of receipt of a copy of this order. If the Transport Corporation had already deposited the amount determined by the Tribunal with 9% pa., then the Corporation is directed to deposit the balance enhanced amount with interest at 7.5% pa., on the enhanced amount, after deducting interest for 1037 days, the delay period. The Transport Corporation is directed to deposit the interest on the quantum of compensation at 7.5%, from the date of claim, deducting the interest for the period of delay in filing the appeal.

Sd/-
Asst.Registrar(CO)
6.2.2014

/True Copy/

Sub Asst.Registrar

skm

To

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

+1cc to Mr.D.Shivakumaran, Advocate Sr 76468
+1cc to Mr.D.Venkatachalam, Advocate Sr 76469

km/7.2.2014

C.M.A.No.3055 of 2012

सत्यमेव जयते

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