IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **02.11.2016**

Coram:-

The Hon'ble Mr. Justice **M.DURAISWAMY**

and

The Hon'ble Mr.Justice **R.SURESH KUMAR**

C.M.A.Nos.59 & 391 of 2012 and
M.P.No.1 of 2012 in
C.M.A.No.59 of 2012

The Tamil Nadu State Transport Corporation Ltd.
Villupuram Division III
Kanchepuram Region
No.42-A, Thirukachi Nambi Street
Little Kancheepuram
Kancheepuram 631 503
Rep. by its General Manager

.. Appellant in C.M.A.No.59/2012

1.Mrs.Bhanumathy Ravisankar
2.Mrs.Madhumathi

... Appellant in C.M.A.No.391/2012

v.

1.Mrs.Bhanumathy Ravisankar

2.Mrs.Madhumathi

3.M/s.Tamil Nadu State Transport Corporation
(Villupuram) Ltd. Division III
Rep. by its Managing Director
Villupuram

.. Respondents in C.M.A.No.59/2012

1.M/s.Tamil Nadu State Transport Corporation
(Villupuram) Ltd. Division III
Rep. by its Managing Director
Villupuram

2.M/s. Tamil Nadu State Transport Corporation
(Villupuram) Ltd., Division III
Kanchepuram Region
No.42-A, Thirukachi Nambi Street
Little Kancheepuram
Kancheepuram 631 503
Rep. by its General Manager
.. Respondents in C.M.A.No.391/2012

Civil Miscellaneous Appeals filed against the judgment and decree dated 24.01.2011 made in M.C.O.P.No.679 of 2007 on the file of the Chief Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai.

For Appellant
in C.M.A.No.59/2012 : Mr.S.S.Swaminathan

For Appellants
in C.M.A.No. 391/2012 : Mr.R.Ravichandran

For Respondents
in C.M.A.No.59/2012 : Mr.R.Ravichandran
- for R1 & R2

R3 - Given up

For Respondents
in C.M.A.No.391/2012 : Mr.S.S.Swaminathan

<u>J U D G M E N T</u>

(Judgement of the court was delivered by **M.DURAISWAMY, J**.,)

Challenging the award passed in M.C.O.P.No.679 of 2007 on the file of the Motor Accident Claims Tribunal, (hereinafter referred to as "the Tribunal"), Chief Judge, Small Causes Court, Chennai, the Transport Corporation has filed the appeal in C.M.A.No.59 of 2012. Challenging the very same award, the claimants have filed the appeal in C.M.A.No. 391 of 2012 for enhancement of the compensation.

2. The claimants 1 and 2, who are the wife and daughter respectively of the deceased Ravisankar, have filed a claim petition in M.C.O.P.No.679 of 2007, claiming a total compensation of Rs.75,00,000/- for the death of the deceased, who died in a motor vehicle accident that took place on 31.10.2005.

3. The brief case of the claimants is as follows:-

(i) According to the claimants, on 31.10.2005, the deceased was coming from Virudhachalam to Chennai by his Car

Maruthi 800 bearing Registration No. TN 07 X 7418 along GST Road in between Maduranthagam and Chengalpet. When he was crossing Pukkathurai Koot Road, the bus, bearing Registration No.TN 32 N 2019 belonging to the Transport Corporation, coming from the opposite direction, i.e. from North to South, suddenly turned to the right to the Vandavasi Road, as a result, the bus dashed against the car, due to which, the deceased sustained multiple fracture all over the body and died at the spot.

(ii) According to the claimants, the accident had occurred only due to the rash and negligent driving of the driver of the bus.

(iii) The deceased was aged 52 years at the time of accident and he was working as a Senior Manager in Indian Overseas Bank and was earning a sum of Rs.28,366.19/- per month. The claimants contended that the deceased would have attained higher position in his bank with corresponding increase in salary with corresponding increase in other benefits. The deceased was originally an Advocate by profession and later he joined banking services, therefore, according to the claimants, after retirement, he would have practiced for atleast ten years or so.

4. The respondents filed their counter denying the allegations that the driver of the bus was rash and negligent at the time of the accident. Further, according to the respondents, the bus was proceeding slowly and cautiously near Pukkathurai Koot Road and trying to pass from the main road to Utiramerur Road and at that time, a Maruthi 800 car driven by the deceased coming at a high speed towards Chennai without minding the junction road and ignoring the national highways traffic rules, dashed against the bus on the left side and the driver of the car sustained fatal injuries. Further, the respondents contended that the accident had occurred only due to the rash and negligent driving of the deceased.

5. Before the Tribunal, on the side of the claimants, 3 witnesses were examined and 15 documents, Exs.P-1 to P-15 were marked and on the side of the Transport Corporation, the driver of the bus was examined as R.W.1, however, no document was marked.

6. The Tribunal, after taking into consideration the

oral and documentary evidences of both sides, awarded a total compensation of Rs.22,75,000/- together with interest @ 7.5 % p.a. as detailed below:-

Sl.No.	*Head*	*Amount of Compensation awarded (Rs.)*
1	Loss of earning	22,46,574/-
2	loss of love and affection to the 2nd claimant	10,000/-
3	Loss of consortium	10,000/-
4	Funeral Expenses and Transport Corporation	8,426/-
	Total	22,75,000/-

Out of the total compensation, the first claimant was entitled to get Rs.13,75,000/- and the second claimant is entitled to a sum of Rs.9,00,000/-.

7. The Tribunal found that the driver of the bus was negligent in driving the bus, therefore, fastened the liability on the Transport Corporation. Relying upon Ex.P-9, salary certificate, the Tribunal fixed the gross salary of the deceased at the time of accident at Rs.28,366.19/-. The Tribunal adopted multiplier 11 and deducted 1/3rd towards the personal and

living expenses of the deceased.

8. Heard Mr.S.S.Swaminathan, learned counsel appearing for the Transport Corporation and Mr.R.Ravichandran, learned counsel appearing for the claimants.

9. The learned counsel appearing for the Transport Corporation submitted that the deceased was negligent in driving the vehicle, therefore, the Transport Corporation is not liable to pay any compensation. Further, the learned counsel submitted that the Tribunal failed to deduct 30% of the gross salary towards income tax, therefore, the award of Rs.22,75,000/- is very much on the higher side. In support of his contention, the learned counsel relied upon a judgment reported in **2010 ACJ 1968 (Shyamwati Sharma and others v. Karam Singh and others),** wherein, the Hon'ble Supreme Court held as follows:-

> "7. As noticed above, the gross salary was Rs.13,794/- per month or Rs.1,65,528/- per annum. By adding 50% towards future prospects (as the deceased was less than 40 years of age), the deemed gross income would have been Rs.20,691/- per month or Rs.2,48,292/- per annum. The percentage

> of deduction towards income-tax and surcharge, taken as 30% by the High Court, does not require to be disturbed, having regard to the income. On such deduction, the net annual income of the deceased would have been Rs.1,73,800/-. From the said sum, one-fourth (25%) had to be deducted towards the personal and living expenses of the deceased. Thus the contribution of the deceased to his family would have been Rs.1,30,350/- per annum. By applying the multiplier of 15, the total loss of dependency will be Rs.19,55,250/-. By adding a sum of Rs.5,000/- each under the heads of loss of consortium, loss of estate and funeral expenses, the total compensation is determined as Rs.19,70,250/-."

10. Countering the submission made by the learned counsel for the Transport Corporation, learned counsel appearing for the claimants submitted that the driver of the bus drove the bus in a rash and negligent manner, therefore, the Transport corporation is liable to pay the compensation. Further, the learned counsel submitted that the Tribunal has not taken in to consideration Ex.P13, salary certificate, of the deceased and also the evidence of P.W.3, who is an officer of the Indian Overseas Bank. Further, the learned counsel submitted that the award of Rs.10,000/- towards consortium and Rs.10,000/-

towards loss of love and affection and Rs. 8,426/- towards funeral and transport expenses are very much on the lower side. In support of his contention, the learned counsel relied upon the following judgments:-

(i) **2013(7) Supreme Court Cases 476 (Vimal Kanwar and otehrs v. Kishore Dan and others)** wherein, the Apex Court held as follows:-

> 23. In the case of **2009(6) SCC 121 (Sarala Verma and others v. Delhi transport Corporation and another)** this Court held (SCC p.132 para 20
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> "20. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation."
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> This Court further observed that (SCC p.134 para 24
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> "24. .... Where the annual income is in taxable range, the word "actual salary" should be read as "actual salary less tax". Therefore, it is clear that if the annual income comes within the taxable range income tax is required to be deducted for determination of the actual salary. But while deducting income-tax from salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head

"salaries" one should keep in mind that under Section 192 (1) of theIncome-tax Act, 1961 any person responsible for paying any income chargeable under the head "salaries" shall at the time of payment, deduct income-tax on estimated income of the employee from "salaries" for that financial year. Such deduction is commonly known as tax deducted at source ('TDS' for short). When the employer fails in default to deduct the TDS from employee salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under Section 201(1A) of the Income-tax Act, 1961. Therefore, in case the income of the victim is only from "salary", the presumption would be that the employer under Section 192 (1) of the Income- tax Act, 1961 has deducted the tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee. However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income.

25. In view of the finding as recorded above and the provisions of the Income-tax Act, 1961, as discussed, we hold that the High Court was wrong in deducting 20% from the salary of the deceased towards income-tax, for calculating the compensation. As per law, the presumption will be that employer-State Government at the time of payment of salary deducted income- tax on the estimated income of the deceased employee from the salary and in absence of any evidence, we hold that the salary as shown in the Last Pay Certificate at Rs.8,920/- should be accepted which if rounded off comes to Rs.9,000/- for calculating the compensation payable to the dependent(s)."

(ii) **2011(4) Supreme Court Cases 689 (K.R.Madhusudhan and others v. Administrative Officer and another)** wherein, the Apex Court held as follows:-

8. In the **Sarala Verma and others v. Delhi transport Corporation and another**[**2009(6) SCC 121]** Sarla judgment the Court has held that there should be no addition to income for future prospects where the age of the deceased is more than 50 years. The learned Bench called it a rule of thumb and it was developed so as to avoid uncertainties in the outcomes of litigation. However, the Bench held that a departure can be made in rare and exceptional cases involving special circumstances.

9. We are of the opinion that the rule of thumb evolved in Sarla Verma (supra) is to be applied to those cases where there was no concrete evidence on record of definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different courts, and to overcome the same.

10. The present case stands on different factual basis where there is clear and incontrovertible evidence on record that the deceased was entitled and in fact bound to get a rise in income in the future, a fact which was corroborated by evidence on record. Thus, we are of the view that the present case comes within the `exceptional circumstances' and not within the purview of rule of thumb laid down by the Sarla Verma (supra) judgment. Hence, even though the deceased was above 50 years of age, he shall be entitled to increase in income due to future prospects.

11. We base our conclusion on our findings from the records of the case. The evidence of PW.1, the son of the deceased, is that there are four claimants, three of them are the sons of the deceased and the other claimant is paternal grand-mother. Therein, he stated that the deceased was the only bread earner of the family. It was stated by PW.1 that if his father, the deceased, would have

been alive he could have got promotion and could have received the salary of Rs.20,000/- per month.

12. PW.3, who was the Senior Assistant in KEB, in his evidence also stated that the deceased was 52 years of age at the time of his death and he was having six years of service left. The annual increment is Rs.350/-. In the year 2003 (which would have been year of retirement), the basic pay of the deceased would have been around Rs.16,000/- and in all he would have obtained gross salary of Rs.20,000/- per month. PW.3 deposed that as per the Board Agreement for every five years their pay revision is compulsory.

13. Both the witnesses were cross-examined before the Tribunal but the evidence leading to pay revision was not assailed. Therefore, the consistent evidence before the Tribunal was that if the deceased would have been alive he would have reached the gross salary of Rs.20,000/- per month. In view of this evidence the Tribunal should have considered the prospect of future income while computing compensation but the Tribunal has not done that."

11. In the case on hand, the Tribunal had taken the age of the deceased at the time of the accident as 52 years. The monthly income as per Ex.P9 salary certificate was Rs.28,366.19. As per the ratio laid down by the Hon'ble Supreme Court in

2011(4) Supreme Court Cases 689 (cited supra) even though the deceased was 52 years of age, he shall be entitled to increase in income due to future prospects.

12. In the case on hand, the claimants have not produced any document to establish that the deceased would have earned more at the time of retirement. But, it cannot be disputed that definitely the deceased would have earned more at the time of his retirement, if he had lived a normal life period. It is also not in dispute that the deceased was holding a permanent job as a Senior Manager in the Indian Overseas Bank. P.W.4, the Senior Manager deposed that the deceased would have earned a sum of Rs.44,739.91 in May 2008. P.W.3 also produced a calculation sheet prepared by him mentioning the proposed salary of the deceased till his retirement if he would have been alive. However, on a perusal of the calculation made in Ex.P13, we find some mistakes in calculating the proposed income of the deceased. That apart, the said calculation sheet is not an official document issued by the Indian Overseas Bank. That apart, in the cross examination of P.W.3, he has stated that the correct position can be ascertained only if the service record of the

deceased is produced before the court. Admittedly, the service record was not produced before the Tribunal. Therefore, we are of the view that Ex.P13, cannot be relied upon, which was rightly rejected by the Tribunal.

13. So far as future prospects is concerned, even in the absence of Ex.P13, as per the judgment of the Apex Court reported in **2011(4) Supreme Court Cases 689 (cited supra)** an addition of 15% of actual salary to the actual salary income of the deceased towards future prospects can be awarded.

14. So far as the deduction of income tax is concerned, the Tribunal had deducted only 10 % towards income tax. The Tribunal had taken the gross salary for the purpose of arriving at the loss of income. No doubt, the deceased had paid income tax at the time of receiving the salary. However, the same was not taken into consideration by the Tribunal, since the Tribunal had taken only the gross salary for the purpose of calculating the compensation. If the net salary is taken into consideration, then, the income tax paid by the deceased can also be taken

into consideration. In the case on hand, since the gross salary was taken into consideration, we are of the view that 30% should be deducted towards income tax as laid down by the Apex Court.

15. So far as loss of consortium is concerned, the Tribunal had award only a sum of Rs.10,000/- and towards loss of love and affection to the second claimant, the Tribunal awarded only Rs.10,000/-. Since the award of Rs.10,000/- each towards loss of consortium and loss of love and affection are very much on the lower side, we are of the view that the compensation towards loss of consortium can be enhanced to Rs.1,00,000/- and similarly, the compensation towards loss of love and affection to the second claimant can also be enhanced to Rs.1,00,000/-.

16. So far as the compensation towards funeral expenses and transportation are concerned, the Tribunal awarded a sum of Rs.8,426/-. Since the said sum is very low, we enhance the same to Rs.25,000/-.

17. So far as the loss of earning is concerned, if 15% is added towards future prospects, it comes to Rs.32,620.90

(Rs.28,366/- + 15%). In other words, a sum of Rs.3,91,450.80 per annum. If 30% is deducted towards income tax, it comes to Rs.2,74,015.56. If 1/3rd is deducted towards personal and living expenses of the deceased, the balance comes to Rs.1,82,677.04. The Tribunal had adopted the correct multiplier of 11 as per **Sarala Verma and others v. Delhi transport Corporation and another**[**2009(6) SCC 121]** case. Therefore, the loss of earning comes to Rs.20,09,447.44, which is rounded off to Rs.20,10,000/-.

18. The modified award amount would be as follows:-

Sl.No.	***Head***	***Amount granted by the Tribunal (Rs.)***	***Amount granted by this Court (Rs.)***
1	Loss of earning	22,46,574/-	20,10,000/-.
2	Loss of love and affection to the 2nd claimant	10,000/-	1,00,000/-
3	Loss of consortium	10,000/-	1,00,000/-
4	Funeral Expenses and Transport Corporation	8,426/-	25,000/-
	Total	22,75,000/-	22,35,000/-

19. In all, the claimants are entitled to a total

compensation of Rs.22,35,000/- together with interest at the rate of 7.5% per annum. The 1st claimant is entitled to a sum of Rs.13,50,000/- and the second claimant is entitled to a sum of Rs.8,85,000/-.

20. This Court, while granting interim stay by order dated 06.02.2012 in M.P.No.1 of 2012 in C.M.A.No.59 of 2012 had directed the Transport Corporation to deposit 50% of the award amount together with proportionate interest and on such deposit being made, the claimants were permitted to withdraw 50% of the deposited amount (i.e. 25% of the respective apportioned share along with proportionate accrued interest) and the Tribunal was directed to deposit the balance amount in any nationalised Bank in a fixed deposit on re-investment scheme. We direct the Transport Corporation to deposit the balance amount as awarded in this judgment within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit being made by the Transport Corporation, the claimants are permitted to withdraw the entire amount to be deposited by the Transport Corporation as well as the amount lying in the fixed deposit in the nationalised bank.

21. In the result, the appeal in C.M.A.No.391 of 2012 stands dismissed and the appeal in C.M.A.No.59 of 2012 is partly allowed. No costs. Connected miscellaneous petition is closed.

(M.D.,J) (R.S.K.,J)

02.11.2016

Index : No

Rj

To

The Chief Judge,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

M.DURAISWAMY J,

and

R.SURESH KUMAR,J

Rj

C.M.A.Nos.59 & 391 of 2012 and
M.P.No.1 of 2012 in
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02.11.2016