IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.Nos.1193, 1703, 1704 and 1714 of 2017
and connected Miscellaneous Petitions

Tamil Nadu State Transport Corporation
(Kancheepuram Division) Ltd.,
Rep., by its Managing Director,
Kancheepuram District. .. Appellant in C.M.A.Nos.1193 and 1714 of 2017
Respondent in C.M.A.Nos.1703 and 1704 of 2017

versus

1. Latha
2. Minor Santhiya
3. Minor Bhavana
(Minors are represented by their mother, 1st respondent)
4. Murugesan .. Respondents 1 to 4 in C.M.A.No.1714 of 2017
Appellants 1 to 4 in C.M.A.No.1703 of 2017

5. Akila
6. Minor Jeevan
7. Minor Subhiksha
(Minors are represented by their mother, 1st respondent)
8. Mallika .. Respondents 1 to 4 in C.M.A.No.1193 of 2017
Appellants 1 to 4 in C.M.A.No.1704 of 2017

Prayer: Civil Miscellaneous Appeals are filed, against the common judgment and decrees in M.C.O.P.No.3880 and 3881 of 2014, dated 12.01.2016, on the file of the Motor Accident Claims Tribunal (Chief Small Causes Court), Chennai.

For Appellants in CMA.Nos.1193 & 1714/17 : Mr.P.Paramasivadoss
For Respondents in CMA.Nos.1703 & 1704/17 : Mr.K.Suryanarayanan

COMMON JUDGMENT

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

C.M.A.Nos.1193 and 1714 of 2017, is filed by the Managing Director, Tamil Nadu State Transport Corporation (Kancheepuram Division) Ltd., to set aside the common judgment and decree made in M.C.O.P.No.3880 and 3881 of 2014, dated 12.01.2016, on the file of the Motor Accident Claims Tribunal (Chief Small Causes Court), Chennai, by which, the Tribunal, fixing negligence on the driver of the Transport Corporation bus, bearing Registration No.TN 21 N 1608, awarded compensation of Rs.19,66,000/- (in respect of M.C.O.P.No.3880 of 2014) and Rs.20,74,000/- (in respect of M.C.O.P.No.3881 of 2014), with interest, at the rate of 7.5% 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 separate appeals in C.M.A.Nos.1703 and 1704 of 2017, 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.P.Paramasivadoss, 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 material on record, this Court is of the view that evidence of PWs.1 and 2, 1st claimant in both M.C.O.Ps., is supported by PW.5, eye-witness and corroborated by Ex.P1 - FIR in Cr.No.495 of 2014, registered against the driver of the appellant-Transport Corporation, for the offences, under Sections 279, 337 and 304(A) IPC., on the file of D3 Guduvancherry Police Station. Though RW.1, driver of the bus, has stated that he was not negligent, in causing the accident and that the deceased motorcyclists are responsible for the same, this Court is not inclined to accept the same, for the reason that there is no independent witness to support the version of RW.1, driver.

4. While dealing with the scope of the enquiry in the Claims Tribunal, the Apex Court in N.K.V.Brother's Private Limited v. Kurmai [AIR 1980 SC 1354], has held that,

> "Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and

mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

5. In a decision in Union of India v. Saraswathi Debnath [1995 ACJ 980], High Court of Gauhati has held in Paragraph 6 as follows:

> "The law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

6. In Bimla Devi & Ors. Vs. Himachal RTC reported in 2009 (13) SCC 530, the Supreme Court held as follows:

> "It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

7. It is the well settled law that proceedings before the Claims Tribunal are summary in nature and it is suffice to consider, whether there is any preponderance of probability, as to the manner of accident, as detailed in the claim petition. Strict proof of evidence is not required. Therefore, there is no perversity in the findings recorded by the Tribunal and hence, we concur with the same.

8. Notwithstanding the prayer to interfere with the finding on negligence, learned counsel appearing for the appellant-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 consequently, reduction of the quantum of compensation.

9. Per contra, seeking enhancement of compensation, Mr.K.Suryanarayanan, learned counsel appearing for claimants submitted that the Tribunal has failed to award a just and reasonable compensation, under the head, loss of consortium. He further submitted that compensation of Rs.50,000/- each, awarded to the children and parent 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., damages to clothes.

10. On the quantum of compensation, it is the case of the claimants in M.C.O.P.No.3880 of 2014 that on the date of accident, ie., on 12.05.2014, the deceased was an electrician in Raghu Plumping Works, Guduvanchery and earned Rs.12,000/- per month. To support avocation, one Kannan has been examined as PW.4, who has deposed that the deceased Raghunathan worked under him, in his establishment, viz., Sri Ganesh Winding Works, as Electrician and he was paid Rs.400/- per day. PW.4, Kannan, has also produced his licence for running Small Scale Industries, marked as Ex.P14 and his voter Identity Card, marked as Ex.P15. Though no salary slip was produced, accepting the avocation as electrician, the Tribunal fixed his monthly income as Rs.8,000/- and added 50% of the income, towards future prospects, in terms of the decision in Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55 (SC). Income for the purpose of computation of loss of contribution, arrived at, by the Tribunal, was Rs.12,000/- [Rs.8,000/- x 1/2 = Rs.4,000/- + Rs.8,000/- = Rs.12,000/-]. Date of Birth mentioned in Ex.P6 - Transfer Certificate, is 22.07.1985. Accident has occurred on 12.05.2014 and therefore, the Tribunal fixed the age of the deceased as 28 years. Following the decision in Sarla Verma v. Delhi Transport Corporation Ltd., reported in 2009 ACJ 1298 SC, the Claims Tribunal applied '17' multiplier, applicable for the age group of persons, between 25 and 30 years. Considering the number of dependants, the Tribunal has deducted 1/4th towards personal and living expenses of the deceased and after applying '17' multiplier, computed the loss of contribution to the family as Rs.18,36,000/- [Rs.12,000/- x 12 x 17 x ½]. That apart, the Claims Tribunal has awarded Rs.50,000/- towards loss of consortium, Rs.50,000/- for loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.5,000/- towards transportation. Altogether, the Claims Tribunal has awarded Rs.19,66,000/- with interest at the rate of 7.5% per annum, from the date of claim, till deposit.

11. In respect of M.C.O.P.No.3880 of 2014, it is the case of the respondents/claimants that on the date of accident, ie.,

on 12.05.2014, the deceased, aged 32 years, was an Auto driver and earned Rs.15,000/- per month. To support avocation, one Murugan has been examined as PW.3, who has stated that the deceased Prabakaran was his co-auto driver, in the same auto stand and they earned Rs.500/- per day. He has produced his driving licence, marked as Ex.P13. Though no salary slip was produced, the Tribunal, considering Ex.P12 - Driving Licence of the deceased, fixed monthly income of the deceased as Rs.9,000/- and added 50% of the income, towards future prospects, in terms of the decision in Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55 (SC). Income for the purpose of computation of loss of contribution, arrived at, by the Tribunal, was Rs.13,500/- [Rs.9,000/- x 1/2 = Rs.4,500/- + Rs.9,000/- = Rs.13,500/-]. Date of Birth mentioned in Ex.P12 - Driving Licence, is 26.12.1981. Accident has occurred on 12.05.2014 and therefore, the Tribunal fixed the age of the deceased as 32 years. Following the decision in Sarla Verma v. Delhi Transport Corporation Ltd., reported in 2009 ACJ 1298 SC, the Claims Tribunal applied '16' multiplier, applicable for the age group of persons, between 31 and 35 years. Considering the number of dependants, the Tribunal has deducted 1/4th towards personal and living expenses of the deceased and after applying '16' multiplier, computed the loss of contribution to the family as Rs.19,44,000/- [Rs.13,500/- x 12 x 16 x ½]. That apart, the Claims Tribunal has awarded Rs.50,000/- towards loss of consortium, Rs.50,000/- for loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.5,000/- towards transportation. Altogether, the Claims Tribunal has awarded Rs.20,74,000/- with interest at the rate of 7.5% per annum, from the date of claim, till deposit.

12. As regards nature of avocation, income earned by a skilled person, or even a labourer, cannot be static, considering the price index, inflation and such other factors, that are taken into consideration, for computing the compensation. Moreover, periodical revision of wages, is being done by the Government, even for daily rated employees. On the aspect that no document has been produced, this Court deems it fit to consider a decision of this Court in Valli v. Tamil Nadu State Transport Corporation, Vellore reported in 2010 (2) TNMAC 154, wherein, this Court held that,

> "Though the deceased was stated to be a mason, no document has been filed to prove the same. However, this Court is of the view that to expect documentary proof from small traders, self-employed skilled workers, construction workers, cannot be justified. All construction workers are not engaged by contractors or builders and during the relevant period, there was no chance for a skilled worker, to register himself with any agency or board."

Having regard to the avocation of the deceased, electrician in respect of M.C.O.P.No.3880 of 2014 and auto-driver in respect of M.C.O.P.No.3881 of 2014 and for the reasons, stated supra, this Court is not inclined to reduce the income fixed by the claimant.

13. On the plea of enhancement, in M.C.O.P.No.3880 of 2014 (C.M.A.No.1703 of 2017), it is the case of the respondents/claimants that on the date of accident, the deceased was stated to be an electrician in Raghu Plumping Works, Guduvanchery and earned Rs.12,000/- per month. To support avocation, Mr.Kannan has been examined as PW.4, who has deposed that the deceased Raghunathan worked under him, in his establishment, viz., Sri Ganesh Winding Works, as Electrician and he paid Rs.400/- per day. However, we deem it fit to determine the monthly income as Rs.9,000/- and loss of contribution to the family, works out to Rs.20,65,500/- (Rs.13,500/- x 3/4 x 12 x 17).

14. In M.C.O.P.No.3881 of 2014 (C.M.A.No.1704 of 2017), it is the case of the respondents/claimants that on the date of accident, the deceased was an auto-driver and earned Rs.15,000/- per month. To support avocation, one Murugan has been examined as PW.3, who has deposed that the deceased was his co-auto driver, in the same auto stand and they earned Rs.500/- per day. In view of the above evidence and considering Ex.P12 - Driving Licence of the deceased, monthly income of the deceased is determined as Rs.10,000/- and loss of contribution to the family, works out to Rs.21,60,000/- (Rs.15,000/- x 3/4 x 12 x 16).

15. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owned 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. It is certainly a conventional damage awarded to a widow, who has lost her husband. In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Apex Court, while observing that at least a sum of Rs.1 Lakh has to be awarded to the widow, for loss of consortium, held as follows:

> “In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts

of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

In both the cases, the Claims Tribunal has awarded Rs.1,00,000/- each, towards loss of consortium.

16. On the plea of enhancement of compensation, under the heads, loss of love and affection, claimed in C.M.A.Nos.1703 and 1704 of 2017, 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. Rs.50,000/- awarded for loss of love and affection to the children and aged parents, in both M.C.O.P.Nos.3880 and 3881 of 2014, 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/- each, to the minor children, under the said head. At the time of accident, father of the deceased in M.C.O.P.No.3880 of 2014 was aged 65 years and mother of the deceased in M.C.O.P.No.3881 of 2014 was aged 60 years. Having regard to the above, Rs.50,000/- each is awarded to the aged parents in both the cases. As rightly pointed out, there is no compensation for 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.2,000/- for damages to clothes, in each case.

17. In the light of the above discussion and decisions, we are of the view that the claimants in M.C.O.P.No.3880 of 2014 (C.M.A.No.1703 of 2017), are entitled to compensation of Rs.24,62,500/-. Total compensation due and payable to the claimants, is apportioned hereunder:

Dependency Compensation	:	Rs.22,65,500/-
Loss of Love and Affection	:	Rs. 2,50,000/-
Loss of Consortium	:	Rs. 1,00,000/-
Funeral Expenses	:	Rs. 25,000/-
Transportation	:	Rs. 10,000/-
Loss of Estate	:	Rs. 10,000/-
Damages to clothes & articles	:	Rs. 2,000/-
Total	:	Rs.24,62,500/-

Out of the enhanced compensation of Rs.4,96,500/-, having regard to the age of the father of the deceased, ie., 65 years, we deem it fit to apportion Rs.1,96,500/- to him and the balance amount of Rs.3,00,000/- is apportioned equally between the wife and minor children, i.e., Rs.1,00,000/- each.

18. In in M.C.O.P.No.3881 of 2014 (C.M.A.No.1704 of 2017) are entitled to compensation of Rs.25,57,000/-. Total compensation due and payable to the claimants, is apportioned hereunder:

Dependency Compensation	:	Rs.21,60,000/-
Loss of Love and Affection	:	Rs. 2,50,000/-
Loss of Consortium	:	Rs. 1,00,000/-
Funeral Expenses	:	Rs. 25,000/-
Transportation	:	Rs. 10,000/-
Loss of Estate	:	Rs. 10,000/-
Damages to clothes & articles	:	Rs. 2,000/-
Total	:	Rs.25,57,000/-

Out of the enhanced compensation of Rs.4,83,000/-, having regard to the age of the mother of the deceased, ie., 60 years, we deem it fit to apportion Rs.1,83,000/- to her and the balance amount of Rs.3,00,000/- is apportioned equally between the wife and minor children, i.e., Rs.1,00,000/- each.

19. In the light of our discussion, C.M.A.Nos.1193 and 1714 of 2017 are dismissed and C.M.A.Nos.1703 and 1704 of 2017 are allowed. The appellant-Transport Corporation, is directed to deposit the amount determined by this Court, with proportionate accrued interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.3880 and 3881 of 2014, on the file of the Motor Accident Claims Tribunal (Chief Small Causes Court), Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, except the minors, the respondents/claimants are permitted to withdraw the same, by making necessary applications, before the Tribunal. The share of the minors shall be deposited in any one of the Nationalised

Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors shall be paid to the guardian once in three months, till they attain majority. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

skm

To

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

+1cc to Mr.P.Paramasivadoss, Advocate, S.R.No.42984
+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.42301
+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.42302

C.M.A.Nos.1193, 1703, 1704 and 1714 of 2017

CNR(CO)
CS/01/08/17