IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2017

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.1355 of 2017

The Managing Director
Tamil Nadu State Transport
Corporation,
No.12, Ramakrishna Road,
Salem. ... Respondent/Appellant

Vs.

1. Minna Nayek
2. Minor Jashoda Nayek
3. Minor Sahadev Nayek
4. Minor Namitha Nayek
Minors represented by their
Next friend and mother
Minna Nayek

5. Chanpa Nayek
(All are residing at
GP Dharsa Village,
Jambani Block Medimipur District,
West Bengal State) ...Petitiner/ Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 27.09.2013 in M.C.O.P.No.734/2013 on the file of the Motor Accident Claims Tribunal (District Judge and Special District Court for Motor Accident Claims Cases) , Krishnagiri.

For Appellant : Mr. D.Venkatachalam

JUDGMENT

Compliance of principles of natural justice is essential and basic principle, normally. Whether issuance of notice before enhancing the compensation to the opposite side/claimants, is necessary? Certainly, not. Only when non-compliance of principles of natural justice causes prejudice or violates the rights of the opposite party, notice is necessary. Whereas when the opposite party is to be benefitted by an order, there is no necessity to issue notice to the said party.

2.To put it otherwise, benefit could be given even exparte in the absence of the opposite parties in the proceedings, especially, in claims regarding the Motor Vehicles Act, 1988, when the proceedings are brought before this Court by Insurance Companies/Transport Corporation. Similarly, while dismissing the appeal filed by the Insurance Companies/Transport Corporation, etc., at the time of admission itself, this Court has got power and jurisdiction to enhance the compensation by reappreciating the evidence on record when the Tribunal did not award just compensation to the victims of the road traffic accidents.

3.Here is one such case, wherein the Civil Miscellaneous Appeal has been preferred by the Transport Corporation as against the award of this Rs.10,66,600/- for the death of one Bahadur Nayek, aged 35 years, a Coolie, working in a Private Company alleged to be earning Rs.10,000/- per month, in the accident which occurred on 28.06.2010, when he tried to cross the road from left side at Uthangarai to Tirupattur Main road, near Karapattu Bus Stop and was hit down by a bus bearing Registration No. TN-30-N-0871 belonging to the appellant Transport Corporation.

4.Heard Mr.D.Venkatachalam, learned counsel appearing for the appellant, who would submit that the appeal has been preferred only on the ground of quantum. Therefore, the negligence aspect is not gone into.

5.It is submitted by the learned counsel for the appellant that the Tribunal instead of taking 1/4th deduction, wrongly deducted 1/5th, based on the size of the family of the deceased, namely 5 members, whereas the deduction should have been one-fourth. With regard to other heads, he would submit that the amounts awarded are on the higher side and therefore, he seeks to reduce the compensation awarded.

6.A close scrutiny of pleadings and the award would reveal that the deceased was aged about 35 years and the Tribunal determined the monthly income at Rs.6,000/- in the absence of any document to prove the same. However, the monthly income determined at Rs.6,000/- is on the lower side, especially when the accident occurred in 2010. Even in 2010, no manual labour would have been available for less than Rs.7,500/- per month. That apart, the Hon'ble Supreme Court in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627, even in the absence of any proof regarding income, in respect of a vegetable vendor, who sustained injuries in the accident occurred on 13.07.2008, fixed the monthly income at Rs.6,500/-. Since, this accident had occurred on 28.06.2010 two years thereafter, following the said judgment, this Court determines the monthly income at Rs.7,500/-.

7.No amount towards "future prospects" has been awarded by the Tribunal. Since the Tribunal determined the age of the deceased as 35 years relying upon Exhibit P.2, Post mortem certificate, as per Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 and Santosh Devi V. National Insurance Company Ltd. and others reported in 2012 6 SCC 421 and Rajesh and others V. Rajbir Singh and others reported in 2013 (3) CTC 883, 50% is added towards " Future Prospects". Therefore, the total monthly income would be

= Rs.7,500/- (+) 50% (Rs.7500/-) = Rs.11,250/-.

8.As rightly pointed out by Mr.D.Venkatachalam, the Tribunal wrongly deducted 1/5th towards "Personal Expenses" of the deceased when the family consists of 5 members, whereas as per Sarla Verma's case (cited supra), one-fourth deduction should have been made for a 5 member family. Hence, deducting 1/4th towards "Personal Expenses' of the deceased, the monthly contribution of the deceased to his family would be,

= Rs.11,250/- (-) 1/4*(Rs.11,250/-)
= Rs.11,250/- (-) 2,812.50/- = Rs.8437.50/-.

9.The proper multiplier to be applied for a person aged about 35 years, as per the judgment of the Honourable Apex Court in Smt.Sarala Varma and Others /vs/ Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 is 16, which has been rightly adopted by the Tribunal. Therefore, applying the same, "Loss of Dependency" would be,

Loss of Dependency = Rs.8437.50 x 12 x 16 =
= Rs.16,20,000/-

10.The first respondent/wife was awarded only Rs.50,000/- towards "Loss of Consortium". The amount awarded towards loss of consortium is not just compensation. The said amount could, in no way, be equated to the mental agony and suffering that the widow would undergo throughout her life, considering the physiological, sociological and emotional disturbances and the same is enhanced to Rs.1,25,000/- as per Rajesh and others V. Rajbir Singh reported in 2013 (3) CTC 883. The respondents 2 to 4, who are the children of the deceased, are aged about 5 years, 7 years and 14 years respectively and they have been given a meagre amount of Rs.15,000/- each towards "Loss of Love and

Affection" and the same has to be enhanced. Therefore, a sum of Rs.75,000/- is awarded to each of respondents 2 to 4, totally amounting to Rs.2,25,000/- under the head "Loss of Love and Affection".

11.The mother of the deceased i.e., 5th respondent was given only Rs.15,000/-. Irrespective of age of the person and position, for the mother, the deceased was a child and loss of her child at any age could not be compensated, especially when the 5th respondent Mother is in the evening of her life. Hence, the 5th respondent Mother is awarded a sum of Rs.50,000/- towards "Loss of Love and Affection". The sum of Rs.25,000/- for "Funeral Expenses" and Rs.10,000/- towards "Transportation Expenses" are confirmed. No amount was awarded towards "Loss of Estate". Even though the Hon'ble Apex Court in Kala Devi and Others v. Bhagwan Das Chauhan and Others reported in 2014 (2) TNMAC 680 and in Kalpana Raj and Others v. Tamil Nadu State Transport Corporation reported in 2014 (5) SCALE 479 awarded a sum of Rs.1,00,000/- towards "Loss of Estate", this Court awards a sum of Rs.60,000/-. In all, a sum of Rs.21,15,000/- is awarded as compensation payable to the claimants.

12. Accordingly, the respondents 1 to 5/claimants are entitled to the following compensation:

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount reduced/ enhanced by this Court (Rs.)	Total (Rs.)
1.	Loss of Dependency	9,21,600.00	(+) 6,98,400.00	16,20,000.00
2.	Loss of Consortium to the first respondent/wife	50,000.00	(+) 75,000.00	1,25,000.00
3.	Loss of Love and Affection to the respondents 2 to 4/children - Rs.75,000/- each.	45,000.00	(+) 1,80,000.00	2,25,000.00
4.	Loss of Love and Affection to the 5th respondent mother	15,000.00	(+) 35,000.00	50,000.00

5.	Funeral Expenses	25,000.00	Nil	25,000.00
6.	Loss of Estate	Nil	60,000	60,000.00
7.	Transportation Charges	10,000.00	Nil	10,000.00
			Grand Total	21,15,000.00

13.Though the appeal has been preferred by the Transport Corporation, as against the award of Rs. 10,66,600/-, this Court, suo motu, has enhanced the compensation to the tune of Rs.21,15,000/-, for which the Court has got power and jurisdiction invoking Order XLI Rule 33 CPC. The provisions of Order XLI Rule 33 C.P.C was explained by the Hon'ble Apex Court in the case of Mahant Dhangir v. Madan Mohan, 1987 Supp SCC 528 : AIR 1988 SC 54 in following words:

> “The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The appellate Court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate court could also pass such other decree or order as the case may require. The words “as the case may require” used in Rule 33 Order 41 have been put in wide terms to enable the appellate Court to pass any order or decree to meet the ends of justice. What then should be the constraint? We do not find many. We are not giving any liberal interpretation. The rule itself is liberal enough. The only constraint that we could see, may be these: That the parties before the lower Court should be there before the appellate Court. The question raised must properly arise out of the judgment of the lower Court. If these two requirements are there, the appellate Court could consider any objection against any part of the judgment or decree of the lower Court. It may be urged by any party to the appeal. It is true that the power of the appellate Court under Rule 33 is discretionary. But it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties. The Court should not refuse to exercise that discretion on mere technicalities.”

Thus, the Court is empowered to enhance the compensation by re-appreciating the evidence on record and applying the correct law, as on date, even before issuing notice to the respondents/claimants, at the admission stage itself which was also recognized by the Hon'ble Apex Court in Nagappa v. Gurudayal Singh and others reported in 2003 (2) SCC 274.

14.The purpose for which the Motor Vehicles Act has been enacted is not only for prescribing road rules, but also to prescribe the manner in which the compensation to benefit the victims of road traffic accidents had to be decided. What is to be awarded is only "just compensation". A benevolent legislation should be liberally construed in the interest of victims of road traffic accidents, especially when the interest of minors are involved. The said principle was laid down by the Hon'ble Apex Court in the case of Oriental Insurance Company Limited v. Mohd. Nasir and Another reported in (2009) 6 Supreme Court Cases 280. Further, in the case of National Insurance Co. Ltd., v. M.Jayagandhi and others reported in 2008 (1) TNMAC 177, on the question as to whether in the absence of any Cross Objection, the High Court could suo moto enhance the compensation, by exercising power under Order 41, Rule 33 CPC., this Court, at paragraph 37 has held as follows:

> "37.The question arising for consideration is whether in the absence of any Cross Objection, the Appellate Court could suo motu enhance the compensation. The Appellate Court exer-cising power under Order 41, Rule 33, CPC could enhance the quantum of compensation even without Cross-Objection. The Courts and Tribunals have a duty to weigh various factors and quantify the amount of compensation which should be just. Reference could be made to the decision of the Supreme Court in Sheikhupura Trans. Co. Ltd. v. Northern India Transporter's Ins. Co. Ltd., 1971 ACJ 206 (SC), wherein it is held that pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately, but must necessarily be an estimate or even partly a conjecture. The general principle is that the pecuniary loss can be ascertained only by balancing, on the one hand, the loss to the Claimants of future pecuniary benefits and on the other any pecuniary advantage which from what-ever sources come to them by reason of the death, i.e. the balance of loss and gain to a dependant by the death must be ascertained. The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error. Broadly speaking, in the case of death, the basis of compensation is loss of pecuniary bene-fits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be un-reasonable, excessive nor deficient."

Therefore, even in the absence of appeal/cross appeal and without notice to the claimants, the compensation has been enhanced from Rs.10,66,600/- to Rs.21,15,000/-.

15.No amount of compensation would be sufficient to compensate or fill the vacuum created by the untimely death of the bread winner of the family. The compensation being awarded by this Court, atleast, should be sufficient to take care of daily needs and the upbringing of children. The first respondent is also responsible for bringing up the children, in the absence of the head of the family/bread winner of the family. Therefore, an earnest endeavour to do complete justice, this Court has, suo motu, enhanced the compensation from Rs.10,66,600/- to Rs.21,15,000/-. The rate of interest at 7.5% per annum awarded by the Tribunal stands confirmed. Since the claimants are residents of West Bengal and the appeal is disposed of at the admission stage itself, without notice to them, the appropriate court-fee payable for the enhanced amount, shall be paid by the appellant Transport Corporation before this Court and the same shall be deducted from the compensation amount payable to the claimants.

16.As far as the apportionment of the amount is concerned, the ratio fixed by the Tribunal is set aside and this Court makes it clear that the 1st respondent/ wife would be entitled to get Rs.11,00,000/-, respondents 3 and 4, who are minors, would be entitled to Rs.3,00,000/- each and the 2nd respondent, who was aged about 14 years in 2010, would have attained majority by now and this Court, suo motu, declares her majority and she would be entitled to get Rs.3,00,000/- and the mother of the deceased would be entitled to get Rs.1,15,000/-.

17.The appellant is directed to deposit the entire amount, as per the modified award passed by this Court, after deducting the court-fee payable for the enhanced compensation amount, along with interest and costs within a period of eight weeks along from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount directly to Bank account of the major claimants, through RTGS, within a period of two weeks thereafter. As far as the share of the minor claimants are concerned, the same shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority and the 1st respondent would be entitled to withdraw interest accruing on such deposits once in three months.

18.Since the claimants are stated to be natives of West Bengal, it is appropriate to direct the claimants to open a Bank account in West Bengal, provided if they do not have any account, so that the Tribunal would be able to transfer the compensation amount to their account.

19.While dismissing the appeal filed by the Transport Corporation, since the enhancement has been made in favour of the claimants/respondents, even without notice to the claimants, it is appropriate to direct the Registry to send the order copy directly to the claimants, free of cost.

20.In the result, the Civil Miscellaneous Appeal is dismissed with enhancement. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vv/nv
To

1.District Judge,
Special Court for Motor Accident
Claims Tribunal,Krishnagiri.

2.The Managing Director
Tamil Nadu State Transport
Corporation,
No.12, Ramakrishna Road,
Salem.

Copy to

2. Minna Nayek
3. Minor Jashoda Nayek
4. Minor Sahadev Nayek
5. Minor Namitha Nayek
6. Chanpa Nayek
(All are residing at
GP Dharsa Village,
Jambani Block Medimipur District,
West Bengal State(as per Court direction)

+1cc to M/S D.Venkatachalam, Advoate Sr.25875

C.M.A.No.1355 of 2017

cnr[co]
srg 23/06/2017