IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25/4/2017

C O R A M

The Honourable **Mr.Justice S.Manikumar**
and
The Honourable **Mr.Justice M.Govindaraj**

CMA No.1399 of 2017
and CMP No.7426 of 2017

Tamil Nadu State Transport Corporation Ltd.,
rep.by its Managing Director,
Villupuram,
Kanchipuram Dist., ... Appellant

Vs

1. Padma
2. Monisha
3. Shinisha
4. Thangappan
5. Muthamma
6. M/s. Industrial Needs,
(Proposed II respondent)
No.3, B.C.Press Road, Royapuram,
Chennai – 13. ... Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 03.09.2015 made in M.C.O.P.No.5071 of 2004 on the file of Motor Accident Claims Tribunal, [V Small Causes Court], Chennai.

For Appellant : Mr.K.J.Sivakumar

JUDGEMENT

(Order of the Court was made by S.Manikumar,J.)

Quantum of compensation of Rs.14,58,000/- with interest, at the rate of 7.5% per annum, from the date of claim till deposit and costs, awarded in M.C.O.P.No.5071 of 2004 dated 03.09.2015, on the file of Motor Accident Claims Tribunal, [V Small Causes Court], Chennai, to the legal representatives of the deceased, is the only challenge. Therefore, there is no need to advert to the aspect of negligence and liability.

2. Deceased was stated to be a driver of a van bearing Regn.No.TCZ-8619. PW1 wife has deposed that, at the time of accident, as driver, he earned Rs.6,000/- per month, and Rs.40/- daily batta. However, no documentary evidence was filed. Taking note of the year of accident i.e., 2004, the tribunal, notionally fixed his monthly income as Rs.3,000/-per month. He was aged 32 years. Following the decision of the Hon'ble Supreme Court in ***Santhosh Devi – Vs- National Insurance Company Ltd., reported in 2012(2) TNMAC 1 (SC)***, the tribunal decided to add 50% of the income towards future prospects, but added 100% of the monthly income. Tribunal rounded off the same to Rs.7,000/-. Thereafter, applied '16' multiplier. As the dependents were four, 1/4th has been deducted. Thus, the tribunal arrived at the loss of contribution to the family as Rs.10,08,000/-. That part, the tribunal has awarded Rs.2,00,000/- under the

heads loss of love and affection to the respondents 2 to 5, minor daughters and parents of the deceased. Following the decision of the Hon'ble Supreme Court in ***Rajesh and others Vs.Rajbir Singh reported in 2013 (2) TNMAC 55 (SC),*** the tribunal awarded Rs.1,00,000/- towards loss of consortium, The tribunal awarded Rs.1,00,000/- under the head loss of estate and Rs.50,000/- under the head Funeral Expenses. In all, the tribunal awarded a sum of Rs.14,58,000/-, as compensation, with interest at the rate of 7.5% per annum, from the date of claim till deposit and costs.

3. Taking this court to the mistake committed by the Tribunal in addition of 100% of monthly income fixed and then, rounding off the same to Rs.7,000/- by a further addition of Rs.1,000/-, Mr.K.J.Sivakumar, learned counsel for the appellant-Tamil Nadu State Transport Corporation Limited, submitted that the tribunal has committed a mistake, in computing the loss of contribution to the family. Sum of Rs.50,000/- awarded under the heads Funeral Expenses and Rs.1,00,000/- awarded under the head loss of estate, are also challenged.

4. Admittedly, the accident occurred on 30.3.2004, when the deceased was on the wheels of the Van bearing Regn.No.TCZ8619. Though, PW1, has deposed that at the time of accident, her husband earned Rs.6,000/- per month, and Rs.40/- Batta per day, the tribunal has grossly

erred in fixing the monthly income as Rs.3,000/-. From the material on record, it could be seen that the deceased is survived by his wife, minor daughters and parents. To maintain a family, comprising of five members, including two minors, even in the year 2004, Rs.3,000/-, taken as the monthly income, would be too less. Having regard to the fact that the deceased as driver of the Van sustained injuries, taking note of the number of Dependants, consumer price index and inflation and such other economic factors, which prevailed in 2004, we deem it fit to accept the contention of PW1-Wife and accordingly fix the monthly income of the deceased as Rs.5,000/- and propose to compute the loss of contribution to the family.

5. Even taking for granted that the deceased had no future prospects in his career, as driver yet possibility of revision of income, in the subsequent years, cannot be brushed aside. On the aspect of future prospect, the tribunal ought to have considered addition of certain income under the head future prospects or prospect, as decided by a Coordinate Bench of this Court in **C.M.A.No.3273 of 2014, dated 13.10.2015 [Royal Sundaram Alliance Insurance Co. Ltd., v. Tmt.Vennila,** to which, one of us is a party (Hon'ble Mr.Justice S.Manikumar). Relevant paragraphs are extracted hereunder.

> "56. As tabulated in the foregoing paragraphs, it should be noted that Consumer Price Index, Gross Domestic Product and Per Capita Income, have increased. One cannot

disown the fact that the percentage of those in unorganized sectors is more than the organised sectors. While that be so, would it be appropriate for the Insurance Companies and Transport Corporations, to contend that there is absolutely no chance of any upward revision in wages or salary of those, employed in unorganised sectors or for that matter in the earnings of self-employed. If the contentions of the Insurance Companies and Transport Corporations have to be accepted, whether the self-employed or those engaged in unorganised sectors, can never have any expectation of an event in future, ie., increase in earnings or wages? With the basic study of the statistics, we are of the considered view that the answer should be a clear 'No'. When the Consumer Price Index is applicable uniformally to rich or raff, it cannot be contended that those who are engaged in unorganized sectors or self-employed, would continue to earn the same income, for years together.

57. For the abovesaid reasons, we are of the considered view that the word, “prospects” should not be read and understood, only in plural sense, meaning thereby, its prospects or an apparent probability of advancement in employment, in organised sectors alone. Narrowing down the meaning of the words, “future prospects” only to the employment prospects and consequently, more possibility of earning income, only in the case of organised sector and not in unorganised sector or self-employed, would affect the majority and therefore, the meaning of the word, “prospect” used in singular, meaning thereby, expectation, possibility or probability, chances of earning more income in future,

depending upon the factors, stated supra, should also be considered.

58. Thus, from the above particulars, extracted supra, it is evident that both the Central and State Governments have periodically revised the minimum wages across the country. It has been raised taking into consideration the Consumer Price Index. In respect of scheduled employments, for skilled, semi-skilled, unskilled, construction workers, labourers, etc., wages, are fixed in various scheduled employments, right from Agarbathi Industry to Woolen Carpet and Shawl wearing machinery.

59. While that be the position in organised sectors, it cannot be contended that insofar as unorganised sectors or self-employed, is concerned, there would not be any revision in the wages or salary or earning. When the minimum wages of an employee in the organised sector, is revised periodically, taking into consideration the Consumer Price Index and Variable Dearness Allowance, the living conditions, then the others, in a unorganised sector may expect more or less the same wage, and if there are more number of persons, there may be chances of lesser wage, on account of surplus human resources and in such cases, the bargaining power of certain class of employees, depending upon the field, for revision of wages or earning, may be less.

60. If a non-salaried domestic worker sells a piece of any article, which he or she manufacturers and if the customer bargains the rate, he or she would immediately reply, as to how much amount, he/she has to spend for buying the basic materials, other materials used, compare the

erstwhile travel expenses and the cost of labour. Can anyone in this Country can say that the electricity charges, water charges, rent, fee received by the Government, cost of education, price of commodities, etc., have remained the same, without any change. Cost of tea sold in a ordinary tea stall is the same for any person, whether engaged in organised or unorganised. Contenting inter alia that there would not be any increase in wages or earning for those engaged in unorganised sectors, for years to come, can it be said that he would never take a cup of tea, outside?

61. At this juncture, it should be borne in mind that Consumer Price Index is fixed, taking into consideration that the majority consumers are from unorganised sectors. Thus, with reference to Gross Domestic Product, Per Capita Income, Consumer Price Index and such other economic factors, determined on the basis of participation and contribution of both organised and unorganised sectors, the classification that those engaged in unorganised sectors, should be totally denied of any addition of income under the head, future prospects, would in our humble view, would affect Article 14 of the Constitution of India. When the majority of persons, in unorganised sectors, also decide the economic factors, stated supra, it would be unjust and unreasonable to contend that there would not any prospect or addition in the earning of those engaged in unorganised sector, forever. If there is addition of Variable Dearness Allowance to the basic wages, in the case of organised sector, depending upon the Consumer Price Index, applicable for a particular period, one would reasonably expect the same factor of variable Dearness

Allowance, to be a relevant factor, for determining the variation in the wage in case of unorganised sector also, as Consumer Price Index is common to all, whether engaged in organised or unorganised sector.

62. At this juncture, we deem it fit to consider, what “Dearness Allowance” means? “Dearness Allowance” is a cost of living adjustment allowance paid to Government employees, Public sector employees (PSU)and pensioners. Dearness Allowance is calculated as a percentage of an Indian's basic salary to mitigate the impact of inflation. Variable Dearness Allowance is always linked to Consumer Prince Index. The notifications of Minimum wages by the Central and State Government reflects how much is the Variable Dearness in each field.

63. In the light of what we have tabulated above, judicial notice can also be taken that the cost of labour, whether it is in agricultural field or manufacturing or services, has increased. Thus, focusing on the increase in wages or earning, in almost all the fields of operation, right from agricultural or industrial or manual labourers, tea shop or road side vendor, the Consumer Price Index, being the same to rich or raff and therefore, correspondingly to meet out the living conditions, atleast for providing the basic amenities, like food, shelter and clothing, and not to add up the expenditure towards health, education, certainly, there would be revision of wages or earning, even in unorganised sectors also. Future is the period of time that will come after the present or things that will happen. Having regard to the consistent and periodical revision of wages by the

Governments, it cannot be contended by the Insurers or Transport Corporations that a person in unorganised sector, has no future at all, in the matter of revision of wages or earning.

64. In **R.K.Malik's** case (cited supra), the Hon'ble Supreme Court considered the quantum of compensation, payable to the legal representatives of the deceased children, aged between 10 and 18 years. Referring to the inflation, price rise, etc., the Hon'ble Supreme Court, by observing that the there would be a future prospects, for the children also, granted a sum of Rs.75,000/- under the head, future prospects, though as on the date of accident, they were children, studying in a school. In **V.Mekala's** case (cited supra), the injured was a student studying in 11th Standard. While determining the monthly income of the injured as Rs.10,000/-, the Hon'ble Supreme Court added 50% of the income, under the head, future prospects. In the recent decision in **Munna Lal Jain's** case (cited supra), the Hon'ble Supreme Court added 50% under the head, future prospects.

65. Thus, from the line of judgments, it could be noticed that the Hon'ble Supreme Court has considered the addition of a quantified sum, under the head, future prospects, in effect, indicating that there is a prospect or chance or possibility of earning more income, after a passage of time, though not periodically, as done in the case of Government or Public Sector Undertakings or Boards or Corporations, Companies owned and controlled by the Government or Limited Companies.

66. We have already extracted the orders of the

Chief Labour Commissioner, Ministry of Labour and Employment, Government of India, New Delhi and taken into consideration a sample case, City of Chennai. Wage revision may vary in rural or urban areas or metropolitan cities. At the risk of repetition, as observed earlier, the number of persons, engaged in unorganized sectors, agriculture or industrial, or home based or self-employment, etc., are more in number, than those employed in organised sectors.

67. Income from the organised sector alone, is not the deciding factor, for determining Gross Domestic Product, Consumer Price Index or Per Capita Income. Thus, from a basic study of the factors, taken into consideration by the Governments for revision of wages, to the enumerated categories of employees, one cannot lose sight of the fact that the said factors, would also have an indeligible effect on those, engaged in unorganized sectors also. In the light of our discussion and the details considered, we are of the considered view that addition of certain percentage of income under the head, future prospects, has to be done in the case of those engaged in unorganized sector or self-employed also, otherwise, they would be deprived of just compensation. Addition of income under the head,future prospects, should not be restricted to only salaried persons, with stable jobs.

68. Though it is the case of the Insurance Companies and Transport Corporation that in the case of persons engaged in unorganised sector or salaried or persons, who do not have any permanent job, addition of certain percentage of income, under the head, “future prospects”, to the income drawn, at

> the time of death, should not be made, for computation loss of dependency compensation, we are not inclined to accept the same, for the reason that the expression “future prospects” should not be confined only to the prospects of the deceased in the career, progress or upgradation of position, in which, he was engaged, prior to death, but the expression “future prospects” should also be extended to the likelihood of increase in wages/salary, earned by either a skilled or semi-skilled person, clerical and others, considering the upward increase in the cost price, inflation and such other factors.”

6. For the reasons stated supra, we decide to fix the monthly income as Rs.5,000/-. In the light of the above decision, we deem it fit that 50% of the income, now fixed by us, should be added towards future prospect and accordingly, compute the loss of contribution to the family, which works to Rs.10,80,000/- [(Rs.5,000/- + Rs.2,500/-) x 12 x 16 x 3 / 4].

7. Compensation of Rs.1,00,000/- awarded under the head loss of consortium is duly supported by the decision of the Hon'ble Supreme Court in ***Rajesh's*** case [cited supra]. At the time of accident, respondents 2 and 3 were minors, aged about 10 years and 8 years, respectively. Respondents 4 and 5 parents were aged 58 years and 48 years respectively. The overall compensation of Rs.2,00,000/- awarded under the head loss of love and affection to respondents 2 to 5, is less. Considering the age of the minors,

the tribunal ought to have awarded compensation of Rs.1,00,000/- each, to the minors and awarded atleast Rs.50,000/- each to the parents. If the above said amount has been awarded, then the total compensation, under the head loss of love and affection, would be Rs.3,00,000/-.

8. Sum of Rs.50,000/- awarded under the head funeral expenses appears to be slightly on the higher side. It could be noticed from the award that the tribunal has not awarded any compensation under the head transportation. We deem it fit to award Rs.15,000/- for transportation and Rs.25,000/- for funeral expenses. Compensation of Rs.1,00,000/- awarded under the head loss of estate appears to be on the higher side, but, on the facts and circumstances of the case, we are of the view that the excess compensation can be adjusted against inadequate compensation, under the head loss of love and affection. As per the decision of the Hon'ble Supreme Court in ***Sarla Verma and Others Vs. Delhi Transport Corporation,*** reported in ***2009 ACJ 1298***, sum of Rs.10,000/- can be awarded under the head loss of estate. The tribunal has not awarded any compensation under the head conventional damages and therefore, Rs.1,000/- can be awarded under the head conventional damages. After reworking, compensation due and payable to the legal representatives of the deceased would be Rs.15,31,000/-. Compensation awarded by the tribunal is Rs.14,58,000/-.

Though, there is a calculation mistake, this Court is ordained to see, as to whether, just compensation is awarded to the legal representatives of the deceased. After reworking, compensation amount, due and payable, arrived at by us, is higher than the amount awarded by the tribunal.

9. In the light of the above, we are not inclined to interfere with the quantum of compensation. Hence, Civil Miscellaneous Appeal, is dismissed. No Costs. Consequently, the Connected Miscellaneous Petition is closed.

10. Despite the directions issued on 28.02.2017 and 28.03.2017, respectively, the Managing Director, Tamil Nadu State Transport Corporation, Villupuram, Kanchipuram District, has not deposited the amount so far. We are constrained to observe that the Managing Director, Tamil Nadu Transport Corporation, Villupuram, Kanchipuram District, for whatever reasons, which he may state, prima facie, has disregarded the orders of this Court, in not complying with the directions. Though, we can even call for an explanation as to why suo motu contempt action should not be initiated for disobedience of the orders, we refrain from doing so, and deem it fit to give him, one more opportunity to comply with the directions, within two weeks from today.

11. Tamil Nadu State Transport Corporation, Villupuram, Kanchipuram District, represented by its Managing Director, is permitted to file a memo of compliance within two Weeks. If no such compliance report is filed, Registry is directed to issue contempt notice to the Managing Director, Tamil Nadu State Transport Corporation, Villupuram, Kanchipuram District. Registry is directed to ascertain and then to take appropriate action as directed.

12. Post on 01.06.2017.

(S.M.K.,J) (M.G.R.,J)
25/04/2017

ars/av

Index: yes/No
website: Yes/No.

To

The Motor Accident Claims Tribunal,
V Small Causes Court
Chennai.

<u>Note to office:</u>
Registry is directed to send a copy of this order
to the Secretary to the Government,
Transport Department, Fort St. George, Chennai - 9
- to facilitate compliance of this orders.

S.MANIKUMAR,J

a n d

M.GOVINDARAJ,J

ars/av.

CMA No.1399 of 2017
and CMP No.7426 of 2017

25/04/2017