

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5/4/2017

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Civil Miscellaneous Appeal No.1639 of 2016
CMP.12448/16 & 3323/17

The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Villupuram. ... Appellant/Respondent

Vs

1. Mrs.S.Manjula
2. Minor Sriram
3. Minor Shree Vishnu
Minor petitioners 2 & 3 rep.by their Mother
and Natural Guardian the 1st Petitioner Mrs.Manjula
4. Mrs.Gandhimathi
5. R.Varadharajan ... Respondents/Petitioner

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, to set aside the award made in MCOP.No.88 of 2008 dated 02.10.2010 on the file of the Motor Vehicles Accidents Claims Tribunal and Chief Judicial Magistrate Court, Chengalpattu.

For Appellant : Mr. J.Lokesh
for Mr.K.J.Sivakumar.

For Respondents : Mr.R.Ranganathan Naidu

J U D G M E N T

[Judgment of the Court was made by S.Manikumar,J]

Quantum of compensation of Rs.21,76,200/-, with interest at the rate of 7.5% p.a., from the date of claim, till deposit and costs, awarded in M.C.O.P.No.88 of 2008 dated 2/11/2010, on the file of the Motor Accidents Claims Tribunal and Chief Judicial Magistrate Court, Chengalpattu, is challenged on the grounds that it is excessive.

2. From the material on record, it could be deduced that on the fateful day 7/3/2008, when the husband of the first respondent, father of minor respondents 2 and 3 and son of the respondents 4 and 5, an Accounts Manager in SRM Institute of Hotel Management, was proceeding to his house in his Motorcycle, bearing Registration No.TN21L-1135, a bus bearing Registration No.TN32N-2463, belonging to the Transport corporation, driven in a rash and negligent manner, hit the motorcyclist from behind. As a result of which, he sustained injuries and died on 8/3/2008.

3. To support avocation, P.W.1 wife has let in evidence. P.W.3 Accounts Manager of SRM Institute of Hotel Management, Potheri has supported her version by deposing that from 07.06.1999, the deceased was employed in SRM Institute of Hotel Management, Potheri as Maintenance Supervisor. During April 2008, Management had resolved to promote him as Senior Maintenance Supervisor and fixed his monthly salary as Rs.16,650/- p.a. Upon perusal of Ex.P.2, Provisional Certificate, Ex.P.3 Apprentice Training Certificate, Ex.P.4 Certificate of Competency for Electrical Supervisors, Ex.P.10 Monthly income certificate and Ex.P.14 Promotion Details and considering the testimony of P.W.3 Accounts Manager of SRM Institute of Hotel Management, Potheri, the Claims Tribunal, accepted the avocation of the deceased and determined his income as Rs.16,650/- p.m. Thereafter, deducted 1/3rd towards the personal and living expenses and arrived at a sum of Rs.11,100/-, for computing the loss of contribution to the family.

4. On the basis of the entry in Ex.P.12 Employee's Basic Data, the Tribunal noticed the Date of Birth as 5/6/1973 and taking note of the accident, determined his age as 35 years. Applied 16 multiplier, as per second schedule to the Motor Vehicles Act, 1988 and computed the loss of contribution to the family as Rs.21,31,200/- [Rs.1,33,200/- x 16]. That apart, the Tribunal awarded Rs.5,000/- towards Funeral Expenses, Rs.15,000/- towards loss of consortium, Rs.25,000/- under the head of loss of love and affection to minor children and parents. Altogether, the Tribunal awarded compensation of Rs.21,76,200/-, with interest at the rate of 7.5% p.a., from the date of claim till deposit and costs.

5. Though, Mr.J.Lokesh for Mr.K.J.Sivakumar, learned counsel for the Transport Corporation contended that a sum of Rs.11,100/- taken as the monthly income, for the purpose of computing the loss of contribution to the family is excessive, this Court is not inclined to accept the same, for the reason the Claims Tribunal has considered Exs.P.2, P.3, P.4, P.10 and P.14, respectively.

6. '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." In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Apex Court, 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."

7. Quantum of Compensation of Rs.5,000/- awarded under the head, funeral expenses, is less. On the aspect of quantum of compensation, under the head, funeral expenses, the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883, held as follows:

"21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower

of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

8. Following the aforesaid judgments, we deem it fit to enhance the compensation as Rs.25,000/- for funeral expenses.

9. Legal representatives of the deceased, particularly, minor children have lost the love and affection of the deceased. In *Rajesh v. Rajbir Singh* reported in 2013 (2) TNMAC 55, the Hon'ble Apex Court has awarded Rs.1,00,000/- each, to the legal representatives of the deceased, towards loss of love and affection.

10. Following the above said judgment, we deem it fit to enhance the compensation under the head loss of consortium as Rs.1,00,000/-. In the case on hand, minors were aged 8 and 3 years, respectively. Following the above said judgment, we deem it fit to award compensation of Rs.1 lakh each, to the minor children/respondent Nos.2 and 3. No compensation has been granted for Transportation. Hence a sum of Rs.10,000/- would be just and reasonable.

11. After reworking, compensation due and payable to the legal representatives works at Rs.25,67,200/-, with interest at the rate of 7.5% p.a., from the date of claim till deposit.

Loss of contribution to the family	...	Rs. 21,31,200.00
Loss of love & Affection (minor children)	...	Rs. 2,00,000.00
Loss of consortium	...	Rs. 1,00,000.00
Loss of love and Affection for parents	...	Rs. 1,00,000.00
Funeral expenses	...	Rs. 25,000.00
Transportation	...	Rs. 10,000.00
conventional damages	...	Rs. 1,000.00
Total		Rs. 25,67,200.00

12. Considering the educational qualifications and experience, the Tribunal ought to have awarded compensation under the head future prospects also and that there is a conspicuous omission.

Compensation awarded by the Tribunal	...	Rs.21,76,200.00
Amount now determined by this Court	...	Rs.25,67,200.00

	Rs.	3,91,000.00

Amount apportioned to

the mother of the deceased	...	Rs. 91,000.00
wife of the deceased	...	Rs. 1,00,000.00
Minor children	...	Rs. 2,00,000.00
(Rs.1 lakh each)		

		Rs. 3,91,000.00

13. In view of the above, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

14. Mr.Lokesh, learned counsel for the Transport Corporation submitted that Transport Corporation has already deposited Rs.10,63,100/- (Rupees Ten lakhs Sixty three thousand and hundred only), to the credit of M.C.O.P.No.88 of 2008, on the file of the Motor Accidents Claims Tribunal and Chief Judicial Magistrate Court, Chengalpattu.

15. Transport Corporation is directed to deposit the balance amount, with proportionate interest, to the credit of M.C.O.P.No.88 of 2008, on the file of the Motor Accidents Claims Tribunal and Chief Judicial Magistrate Court, Chengalpattu, within a period of six weeks from the date of receipt of a copy of this order.

16. Share of the minors/respondents 2 and 3, 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 1st respondent/mother of the minors once in three months, till they attain majority. On such deposit being made, except the minors, the respondents/claimants are permitted to

withdraw the award amount, by making necessary applications.

17. Appeal appears to have been filed solely for the purpose of protracting payment. This is a third case from Villupuram Division, wherein well considered orders are tested by filing unnecessary appeals.

18. Legal representatives/claimants are directed to pay the required Court fee, on the enhanced amount to the Registry.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mvs.

To

1.The Motor Vehicles Accidents Claim Tribunal
and Chief Judicial Magistrate,
Chengalpattu.

2.The Secretary,
Transport Department,
Fort.St.George, Chennai.

To issue suitable directions to all managing directors of
Transport Corporation to avoid unnecessary litigation.

+1cc to Mr.R.Ranganathan, Advocate SR.No.20538
+1cc to Mr.K.J.SivaKumar, Advocate SR.No.20509

GN(11/08/2017)

C.M.A.No.1639 of 2016

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