

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.12.2016

Pronounced on : 24.05.2017

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1598 of 2015
and Cross Objection No.96 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
No.3.137, Salamedu, Vazhuthareddy,
Villupuram 605 602

... Appellant in C.M.A. &
Respondent in Cross-objection

..Vs..

1. C.Ramadoss
2. Renuka
3. Suguna
4. Gopinathan
5. Raghunathan
6. Selvam @ Selvakumar
7. R.Venmathi

... Respondents in C.M.A. & Petitioner
Cross-Objectors in Cross-objection

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, and Cross Objection filed under Order 41 Rule 22 of the CPC, against the judgment and decree, dated 22.10.2013, made in MCOP No.102 of 2010 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Madhurantakam.

For Appellant in CMA &
For Respondent in Cross-obj. : Mr. K.J.Sivakumar

For Respondents in CMA & : Ms. K.Vasanthamala,
For Cross-obj. In Cross-Obj. for R-1 to R-7

C O M M O N J U D G M E N T

"The time has come for Parliament to have a rethink on properly assessing the value of homemakers' and householders' work and suitably amending the provisions of the Motor Vehicles Act and other related laws for giving compensation when the victims are women and homemakers," - observed the Hon'ble

Supreme Court, while deciding the case of Arun Kumar Agrawal and Anr. Vs. National Insurance Company and Ors., reported in MANU/SC/0507/2010.

2. The lack of law has resulted in grant of inadequate compensation to the family of a homemaker and the Cross-Objection made in this case would go to show that there is every justification for the observation of the Hon'ble Supreme Court, cited supra.

3. In respect of the death of one Sakunthala, aged 50 years, a Vegetable Merchant and Farmer, earning a sum of Rs.7,000/- per month, the husband, daughters and sons (seven in numbers) of the deceased filed a claim petition, claiming a sum of Rs.7,00,000/-.

4. The claim was disputed by the respondent in the MCOP / Transport Corporation, on the ground that the alleged accident had happened only due to the negligent driving of the two-wheeler bearing Registration No.TN21-K-4548 and the petition is bad for non-joinder of necessary parties, i.e., the owner and the Insurance Company of the two-wheeler and therefore, the Transport Corporation was not liable to pay any compensation.

5. The Tribunal, on consideration of the materials placed before it, came to the conclusion that, apart from the allegations against the driver in the First Information Report, the averments in the First Information Report stands corroborated by the evidence of the P.W.2, the eye-witness, and hence the liability is only on the part of the Transport Corporation. Moreover, the Tribunal has also relied upon the evidence of the driver of the Transport corporation and on a cumulative consideration has given a finding that the negligence is only on the part of the driver of the Transport Corporation.

5.1. Nothing prevented the Transport Corporation from filing the petition to implead the owner and insurer of the two-wheeler and that step has not been taken. Under the circumstances, the liability fixed on the part of the Transport corporation cannot be said to be unjustified.

6. In order to find out the justifiability of the quantum of the compensation, it is necessary to consider the age of the claimants, the extent of the dependency of the claimants and the contribution of the deceased to the family of the claimants.

7. A perusal of the award passed by the Tribunal would go to show that the monthly income of the deceased has been taken at Rs.3,500/-, deducting 1/4th towards the personal expenses and adopting the multiplier of '14', loss of dependency has been

arrived at Rs.4,41,000/-. Awarding transport expenses at Rs.3,500/-, cremation expenses at Rs.5,000/- and loss of love and affection at Rs.50,000/- total amount has been quantified at Rs.4,99,500/-.

8. The age of the deceased had been determined as '45', based on post-mortem report. There was a finding that there was no documentary evidence to prove the income and therefore, the monthly income has been fixed at Rs.3,500/-, based on the decision of the Delhi High Court reported in 2009 (4) Law Weekly 229 (National Insurance Company v. Minor.Deepika).

8.1. The first claimant is the husband and the other claimants are the children, totally there had been seven dependents upon the income of the deceased.

8.2. The claimants are aged 57, 30, 27, 25, 22, 20 and 19 respectively. Out of seven dependents, first claimant is the husband and out of remaining six, three are daughters and three are sons.

8.3. The claim of the dependents is that the deceased had been discharging household responsibilities as a homemaker, apart from being employed as Vegetable Merchant and Farmer. In a family where there are large number of dependents, the mother / homemaker is bound to make extra earnings in order to keep the family going. Just because there is no documentary evidence, where it cannot be expected when a person is employed in an unorganized sector, it cannot be said that the deceased was not employed at all. Considering the necessity of going for an avocation as well as the household responsibility, in a family where large number of dependents are living, the monthly income can be safely taken at Rs.6,000/- (based on the decision reported in (2014) 2 SCC 735 (Syed Sadiq v. United India Insurance Company Limited). Needless to point out that the value at Rs.6,000/- includes the value of services rendered as a homemaker.

8.4. Time and again, the Supreme Court as well as the various High Courts proclaimed that the services of the housewife are "round-the-clock" and that should be taken into account, while fixing the monthly income.

8.5. Raising the question - Can a homemaker's work be assessed? Shri.Avijit Chatterjee weighs the pros and cons, raising the following ancillary issues:-

"In 2001, in Lata Wadhwa vs State of Bihar, the Supreme Court fixed the compensation at Rs 3,000 per month for all homemakers between 34 and 59 years of age. For older women, the amount was Rs 1,600 a month.

This judgment was cited in Captain Singh vs Oriental Insurance Co. Ltd and others, in 2004, by the Delhi High Court when it refused to award a higher compensation to the family of a homemaker killed in an accident, estimating the worth to Rs 10,000 per annum.

....
"The underestimation is at the level of undercounting her direct financial contribution and non-financial contribution to the family," says Aasha Kapur Mehta, professor of economics, Indian Institute of Planning and Public Administration, New Delhi. "This does not take cognisance of the massive impact that the loss of her life will have on the way her children will be nurtured and their future prospects. Nor does it take into account the effect on her husband or on the emotional impact on her parents and siblings and other relatives."

The judgment, clearly, has wider ramifications. Why should a homemaker's contribution be recognised posthumously, asks Supreme Court lawyer Karuna Nundy. "Why not recognise a housewife's services to her family and children when she is alive," she says, adding that though it may not be always possible to value a woman's contribution in terms of money, she should have equal financial rights and power in a marriage.

.....
Feminist economists feel it is important to fix a monetary value on the contribution of a homemaker to the family and to the economy. But how do you compute her worth?

"There are several methods," says Sanjukta Chaudhuri, associate professor of economics and women's studies, University of Wisconsin-Eau Claire, US. The "market" method estimates the per hour market value of outsourcing each task accomplished by a homemaker; the "opportunity cost" method is based on the prevailing average wage of people who are in the labour market with similar education levels.

"But I personally favour 'comparable worth' method", comparing the value produced by homemaking vis-à-vis occupations that are related," she says.

Not everybody agrees with her. "Though I feel a homemaker's contribution should be recognised, putting a monetary value on it will undermine the relationship between a husband and a wife. Moreover, it is quite insulting," argues Anup Kumar Sinha, professor of economics, IIM, Calcutta.

Pradip Kumar Bose of the Centre for Studies in Social Sciences, Calcutta, believes that the concept

of assigning a "price tag" on housework violates the idea of a family. "This idea has been debated in the US and UK but not found any favour because it is impractical," the professor of sociology states.

In 2012, the then women and child development minister, Krishna Tirath, had proposed a bill making it mandatory for men to pay a salary to their wives for household chores. Though nothing came of it, it prompted feminists to demand the inclusion of homemakers' contribution to the country's gross domestic product. Chaudhuri points out that though major economies such as the US, China and India do not include homemakers' contribution in the GDP, some Latin American countries do so."

8.6. However, having regard to the existing practice, this Court has to quantify the compensation.

9. Contending that the prospective increase in income would be applicable even for people working in the unorganized sector and that a person is not expected to spend 1/4th towards the personal expenses, when the dependents are large in number, the decision reported in the case of Santosh Devi v. National Insurance Company Limited and Ors., MANU/SC/0322/2012, is relied upon, in which it has been held as follows:

"14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be nave to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.

.....

18. Therefore, we do not think that while making the observations in the last three lines of paragraph

24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

10. So far as the deduction towards the personal expenses are concerned, the relevant observation in Santosh Devi case (cited supra) reads as under:-

"It is also not possible to approve the view taken by the Tribunal which has been reiterated by the High Court albeit without assigning reasons that the deceased would have spent 1/3rd of his total earning, i.e., Rs. 500/-, towards personal expenses. It seems that the Presiding Officer of the Tribunal and the learned Single Judge of the High Court were totally oblivious of the hard realities of the life. It will be impossible for a person whose monthly income is Rs. 1,500/- to spend 1/3rd on himself leaving 2/3rd for the family consisting of five persons. Ordinarily, such a person would, at best, spend 1/10th of his income on himself or use that amount as personal expenses and leave the rest for his family."

10.1. Hence, deducting 1,000/- towards the personal expenses and awarding 30% increase in the future prospective increase in earning and adopting multiplier of '14', the loss of dependency would be Rs.5,000/- + $(30/100) \times 12 \times 14 = \text{Rs.}10,92,000/-$.

10.2. Awarding a sum of Rs.25,000/- towards cremation expenses, Rs.10,000/- towards transport Expenses and Rs.25,000/- to P-1 for loss of consortium and a sum of Rs.25,000/- to P-2 to P-7 each, towards loss of love and affection, the total amount of compensation is quantified at Rs.13,02,000/-.

11. In the result, the Civil Miscellaneous Appeal (filed by the Transport Corporation) is dismissed and the Cross-Objection (filed by the claimants) is allowed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

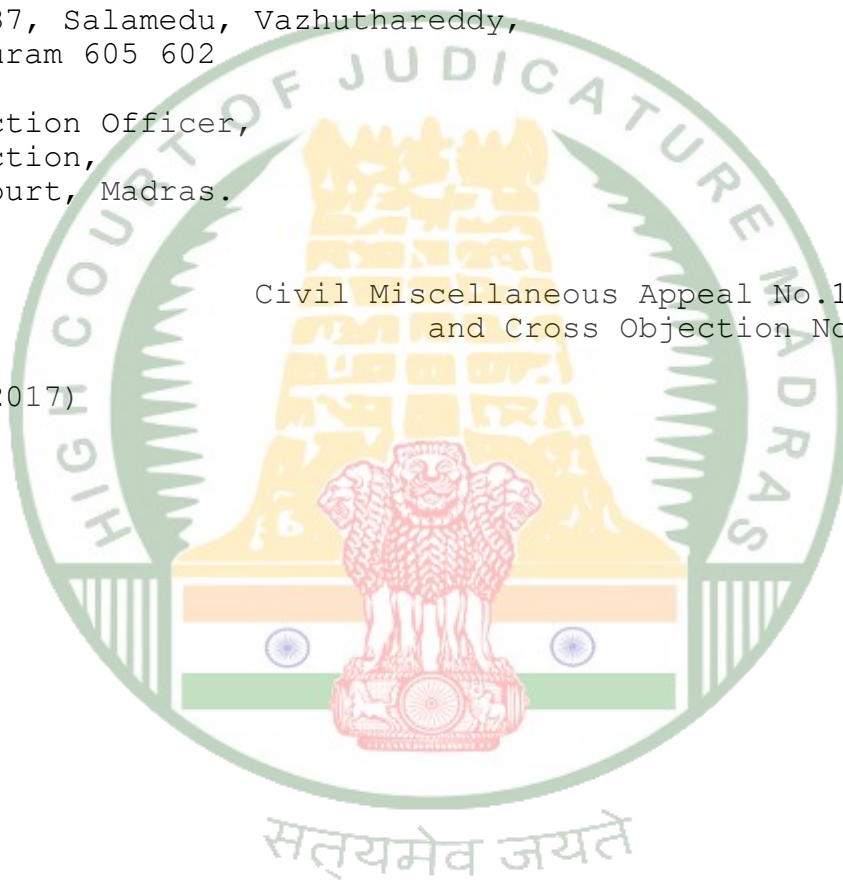
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To

1. The Motor Accident Claims Tribunal,
Subordinate Judge,
Madhurantakam.
2. The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
No.3.137, Salamedu, Vazhuthareddy,
Villupuram 605 602
3. The Section Officer,
V.R.Section,
High Court, Madras.

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CA(16/06/2017)



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