

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2017

CORAM

THE HONOURABLE DR.JUSTICE.S.VIMALA

C.M.A. No. 1531 of 2017

1. Poongodi
2. Minor Hemanathan
3. Minor Yamuna
4. Kasiammal
5. Thandi Udayar
6. Bhoopathy
7. Harikrishnan .. Appellants
(Minors represented by their Mother Poongodi)

Vs

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Vilupuram. .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 59 of 1988, to set a side the decree and Judgment dated 18.03.2005 made in MCOP No.569 of 2003 on the file of Motor Accident Claims Tribunal, (District Court) Thiruvannamalai.

For Appellants : Mr.F.Terry Chellaraja
For Respondent : Mr.K.J.Sivakumar

J U D G E M E N T

This appeal has been filed by the claimants, aggrieved over the the inadequate compensation awarded at Rs.3,36,000/-as against

the claim of Rs.10,00,000/-.

2. The deceased, Manikandan, aged 28 years, working as Mason and earning a sum of Rs.6,000/- met with an accident on 4.6.2003 and succumbed to the injuries. The legal representatives/dependents of the deceased filed claim petition claiming compensation in a sum of Rs.10,00,000/=.

3. The Tribunal, on consideration of oral and documentary evidence, awarded a sum of Rs.3,36,000/- under the following break-up details;

Loss of dependency (2250 (30 x 75) x12x18x 2/3)	Rs.3,24,000/-
Loss of consortium	Rs. 5,000/-
Funeral expenses	Rs. 2,000/-
Loss of love and affection	Rs. 5,000/-
Total	Rs.3,36,000/-

4. The learned counsel appearing for the appellants submitted that when the monthly income fixed at Rs.2,250/- is on the lower side. It is further submitted that the Tribunal should have fixed the monthly income at Rs.6,000/- and quantified the compensation.

5. Per contra, learned counsel for the respondent submits

that during the daily income of a construction worker could not have been more than Rs.75/= in the year 2003 and, keeping that in mind, the Tribunal has rightly fixed the daily income at Rs.75/- and, therefore, no interference is warranted with the award passed by the Tribunal.

6. Whether a person with an income of Rs.75/-per day would be able to maintain the family consisting of five persons (excluding two brothers) especially, two senior citizens, who require expenses on medical grounds and two infants who would require expenditure for growth and development is the moot question that arises for consideration.

7. The ancillary question that arises for consideration is when the deceased is required to support such a large number of dependents, whether the rule of 1/3rd deduction towards personal expenses, normally made, can be applied.

8. The Tribunal, considering the materials available on record, in the absence of any proof to substantiate the monthly income of the deceased, fixed the daily income at Rs.75/- and arrived at the monthly income at Rs.2,250/- and deducting 1/3rd towards the personal expenses, quantified the compensation at Rs.3,24,000/-.

9. At the outset it has to be pointed out that future prospective increase in income has not been considered by the Tribunal. It is not in dispute that the deceased was employed in an unorganised sector. That being the case, expecting documentary proof to substantiate the monthly income, that too, when illiterate persons are involved, cannot be enforced. That is the main reason, why the Courts are fixing notional income to calculate the compensation to be paid to the dependents of the deceased. While fixing the notional income as well, the type of unorganised sector, the necessity of labour and the inflow of labour into the said industry have to be taken into consideration for fixation of monthly income.

10. Where proof is not available through direct documentary evidence the Evidence Act, 1872 contemplates presumptions, inferences, natural human conduct under a given context and judicial notices can be taken of the above aspects. Further, the minimum requirement to sustain the life would form the basis for finding out the earnings and the average spending of an individual. In this context, this Court is compelled to rely upon the research data published by Research Institutions.

*Spending of Half of India: Lower than India's average
from www.indiaspend.com >*

An Indian living in a town or city spends Rs 88 (\$1.8) every day and in a village Rs 48 (72 cents), according to our analysis of government spending data, last released in 2011-12. The Goldman Sachs study considered 2013 data.

This is what Indians in villages and cities spend each day, on average, on food, clothing, rent and other daily needs.

Half the people in villages spend less than Rs 1,198 per month, which is Rs 40 per person per day, indicating the extent of poverty.

In cities, the poorest half of the people spent Rs 2,019 per month, or Rs 67 per person per day. Average spending in cities was Rs 20 higher than what the poor half spent—Rs 2,630 per month or Rs 87 per person per day. This shows inequality between the rich and the poor in urban India.

*The poverty line in India is defined as the ability to spend Rs 47 per person per day in urban areas and Rs 32 in rural areas. As many as 363 million Indians, or 30%, live below the poverty line, as **India Spend** has reported.*

The global poverty line, as defined by the World Bank, is \$1.90 (Rs 126).

The richest 5% of Urban India spent Rs2,859 per head per month on food in 2011-12, according to NSSO survey, about nine times more than that spent by the bottom 5% of Rural India.

11. According to the above data, the minimum requirement of a person to sustain himself per day could be safely fixed at Rs.48/-. Therefore, the supporter of the family ought to earn a sum of Rs.48/- per day per dependent, if he is to support his family. However, this

data is not useful for arriving at the earnings during the year 2003 as the data pertains to the year 2013. However, taking a cur from the above data, the monthly income can be safely fixed at Rs.5000/-and adding 50% towards future prospective increase in income, the monthly income could very well be fixed at Rs.7,500/-.

12. Then ancillary question that needs to be addressed is the deduction to be made towards personal expenses of the deceased, when the dependents are seven in numbers. Even assuming that the brothers were taking care of themselves, what should be the deduction towards personal expenses of the deceased. Direct answer to the above lies in the decision of the Supreme Court in *Santosh Devi – Vs – National Insurance Company Ltd. & Ors.* (2012 (6) SCC 421).

11. Explaining the need for revisiting the fast changing societal values, the effect of globalisation on the economy of the nation and its impact on the life of the people, the Hon'ble Supreme Court, in the case, cited *supra*, observed as under;

"Although, the legal jurisprudence developed in the country in last five decades is somewhat precedent-centric, the judgments which have bearing on socio-economic conditions of the citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and

similar matters needs to be frequently revisited keeping in view the fast changing societal values, the effect of globalisation on the economy of the nation and their impact on the life of the people.

In R.K. Malik v. Kiran Pal (2009) 14 SCC 1, the two Judge Bench while dealing with the case involving claim of compensation under Section 163-A of the Act, noticed the judgments in M.S. Grewal v. Deep Chand Sood (2001) 8 SCC 151, Lata Wadhwa v. State of Bihar (2001) 8 SCC 197, Kerala SRTC v. Susamma Thomas (1994) 2 SCC 176, Sarla Dixit v. Balwant Yadav (1996) 3 SCC 179 and made some of the following observations, which are largely reflective of the philosophy that victims of the road accidents and/or their family members should be awarded just compensation:

"In cases of motor accidents the endeavour is to put the dependants/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is therefore required to be paid for prospective pecuniary loss i.e. future loss of income/dependency suffered on account of the wrongful act. However, no amount of compensation can restore the lost limb or the experience of pain and suffering due to loss of life. Loss of a child, life or a limb can never be eliminated or ameliorated completely.

To put it simply—pecuniary damages cannot replace a human life or limb lost. Therefore, in addition to the pecuniary losses, the law recognises that payment should also be made for non-pecuniary losses on account of, loss of happiness, pain, suffering and expectancy of life, etc. The Act provides for payment of "just compensation" vide Sections 166 and 168. It is left to the courts to decide what would be "just compensation" in the facts of a case."

Deduction for personal and living expenses Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six."

12. If the above said proposition is applied to the facts of this case, it can be safely concluded that, deducting 1/5th towards personal expenses would be appropriate. If 1/5th is deducted, the monthly dependency would be Rs.6000/-. (Rs.7500 – Rs.1500 = Rs.6000/-).

13. Accordingly, fixing the contribution of the deceased to the family at Rs.6,000/- and applying multiplier of '17', the loss of dependency is quantified at Rs.12,24,000/-(Rs.6000 x 12 x 17).

14. Insofar as the compensation awarded under the other heads are concerned, this Court is of the considered opinion that the compensation on those heads are low and, accordingly, the same requires enhancement. Accordingly, this Court awards a sum of Rs.50,000/= under the head loss of love and affection to the father and mother of the deceased and for the two children, Rs.1,00,000/- is awarded under the head loss of love and affection. A sum of Rs.20,000/- is awarded to both the brothers under the head loss of love and affection. Loss of consortium to the wife is quantified at Rs.50,000/-. The compensation towards funeral expenses is quantified at Rs.16,000/-.

15. Thus, in all, the compensation awarded by the Tribunal is enhanced from Rs.3,36,000/- to Rs.14,60,000/- under the following heads :-

Loss of Dependency	-	Rs.12,24,000/-
Loss of Love & Affection (To the Children)	-	Rs. 1,00,000/-
Loss of Love & Affection (To Parents)	-	Rs. 50,000/-

Loss of Love & Affection (To Brothers)	-	Rs. 20,000/-
Loss of Consortium	-	Rs. 50,000/-
Funeral Expenses	-	Rs. 16,000/-
Total		Rs.14,60,000/-

16. In the result, the civil miscellaneous appeal is allowed and the award passed by the claims tribunal is modified by enhancing the compensation from Rs.3,36,000/- to Rs.14,60,000/- which is payable along with interest at 6% from 04.06.2003 to the date of award i.e, 18.03.2005 and thereafter at the rate of 7.5% p.a. till the date of deposit. No costs. The claimants/appellants shall pay the requisite court fee, if any, on the enhanced compensation amount, before receiving a copy of this judgment.

17. The Transport Corporation is directed to deposit the entire amount of compensation as awarded by this Court along with interest, as stated above, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the share of the major claimants, as per the ratio of apportionment made by the Tribunal, directly to the bank account of the claimants, through RTGS within a

period of two weeks thereafter. Insofar as the share of the minor claimants is concerned, the Tribunal shall keep the amount in an interest bearing deposit in any one of the Nationalised Banks, initially for a period of three years, which shall be renewed periodically till the minors attain majority. The interest accrued thereon on the Fixed Deposit shall be withdrawn by the natural guardian/Mother once in three months directly from the Bank.

05.06.2017

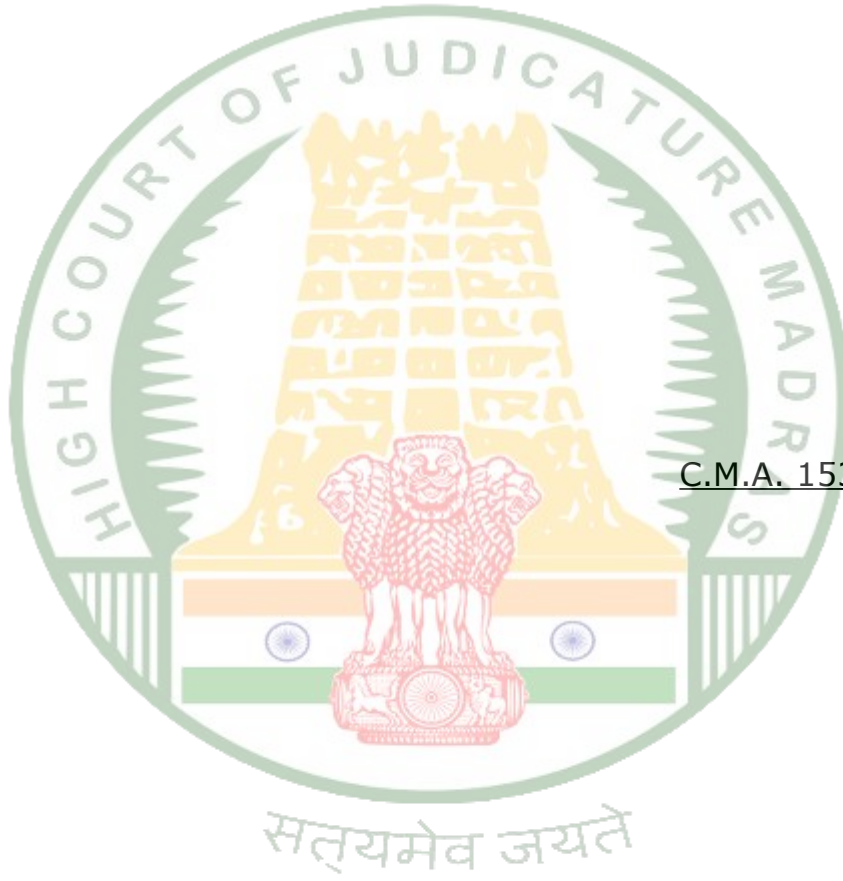
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To
The Motor Accident Claims Tribunal
(District Court)
Thiruvannamalai.

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Dr. S.VIMALA, J.

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