

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29/6/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and
The Honourable Mr.JUSTICE G.R.SWAMINATHAN

Civil Miscellaneous Appeal Nos.1807 and 1808 of 2017

The Managing Director
Tamil Nadu State Transport
Corporation (Villupuram) Ltd
Kancheepuram Region
Kancheepuram.

... Appellant/Respondent in
both the appeals

Vs

1. Gnanam
2. Tamilarasi @ Divya
3. Delli Babu

... Respondents/ Petitioners
C.M.A.No.1807/2017

and

1. Pavunu
2. Arun
3. Minor Anusiya
4. Minor Dillip

(R.R.3 and 4 - rep. By their Mother
and natural friend Pavunu) ...

Respondents/Petitioners
C.M.A.No.1808 of 2017

Appeals filed under Section 173 of the Motor Vehicles Act,
1988 against the Judgment and Decree, dated 24/8/2016, made in
M.C.O.P.Nos.3982 and 3983 of 2014, on the file of the Motor
Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.J.Lokesh

For Respondents : Mr.T.Ananthasekar

COMMON JUDGMENT

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

In the accident, which occurred, on 30/9/2013, involving a motorcyclist, bearing Registration No.TN19-8829 and a transport Corporation bus, bearing Registration No.TN21N-1514, the motorcyclist Paneer and pillion rider Mahadevan, sustained grievous injuries and died.

2. Contending inter alia that Paneer, aged about 40 years, was engaged in J.R.Constructions, Chennai and earned Rs.24,000/- p.m., legal representatives, filed M.C.O.P.No.3982 of 2014, claiming compensation of Rs.35,00,000/-, under various heads.

3. Similarly, contending inter alia that Mahadevan, aged about 35 years, who was also engaged in the very same construction company, legal representatives, filed M.C.O.P.No.3983 of 2014, claiming compensation of Rs.35,00,000/- under various heads.

4. Tamil Nadu Transport Corporation (Villupuram Division) Limited, Kancheepuram Region, Kancheepuram, denied negligence attributed, to the driver of the said Transport Corporation bus, in causing the accident. Without prejudice to the above, Corporation also disputed the age, avocation, income of the deceased and compensation claimed under various heads.

5. On evaluation of pleadings and evidence, the Tribunal held that the accident occurred only due to the rash and negligent driving of the driver of the Government bus, bearing Registration No.TN21N-1514.

6. Details of compensation awarded in the claim petitions are as follows:-

M.C.O.P.No.3982 of 2014 (C.M.A.No.1807 of 2017)

Loss of Pecuniary Benefits	...	Rs.21,60,000/-
Loss of Love and Affection	...	Rs. 3,00,000/-
Loss of Consortium	...	Rs. 1,00,000/-
Loss of Estate	...	Rs. 50,000/-
Funeral Expenses	...	Rs 25,000/-

Total Compensation

Rs.26,35,000/-

M.C.O.P.No.3983 of 2014 (C.M.A.No.1808 of 2017)		
Loss of pecuniary benefits	...	Rs.23,04,000/-
Loss of Love and affection	...	Rs. 4,00,000/-
Loss of Consortium	...	Rs. 1,00,000/-
Loss of Estate	...	Rs. 50,000/-
Funeral expenses	...	Rs. 25,000/-

Rs.28,79,000/-

7. Being aggrieved by the quantum of compensation, awarded in each of the claim petitions, Tamil Nadu State Transport Corporation (Villupuram) Limited, has preferred instant appeals, C.M.A.No.1807 of 2017 (M.C.O.P.No.3982 of 2014) and C.M.A.1808 of 2017 (M.C.O.P.No.3983 of 2014), respectively, on the grounds inter alia that when the Tribunal has awarded a sum of Rs.1 lakh each to the wives of the deceased, under the head loss of consortium, a separate award of another Rs.1 lakh under the head loss of love and affection, is superfluous and excess. That is the only challenge in both the appeals.

8. Submission of Mr.J.Lokesh, learned counsel for the Transport Corporation is placed on record.

9. Per contra, Mr.T.Ananthasekar, learned counsel for the legal representatives of the deceased Paneer, in M.C.O.P.No.3982 of 2014 (C.M.A.No.1807 of 2017) submitted that the Tribunal has failed to award a reasonable compensation, under the heads transportation and conventional damages to clothes and articles.

10. In so far as the compensation awarded, in M.C.O.P.No.3983 of 2014 (C.M.A.No.1808 of 2017), by inviting the attention of this Court, to the number of legal representatives viz., four, Mr.Ananthasekar, learned counsel for the claimants submitted that as per Sarla Verma & Others Vs. Delhi Transport Corporation, reported in {2009 (5) L.W - 561}, the Tribunal, ought to have deducted $\frac{1}{4}$ towards personal and living expenses of the deceased and if that is done, the quantum of compensation, would be more and in such circumstances, there is no need to reduce Rs.1 lakh, which is claimed as excessive compensation, under the head loss of love and affection. There is no award for transportation and damages to clothes and articles.

11. Heard the learned counsel for the parties and perused the materials available on record.

12. '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 Hon'ble 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."

Award of Rs.1 lakh under the head loss of consortium can be justified in the light of the above said judgment.

13. Love and Affection is one of the components in consortium. When the Tribunal has awarded a sum of Rs.1 lakh under the head loss of consortium, which includes several components, as stated supra, a separate compensation of Rs. 1 lakh again under the head loss of love and affection, is certainly superfluous and excess. However, perusal of the judgment shows that the Tribunal has not awarded just and reasonable compensation, for transportation and damages to clothes and articles. Accordingly, Rs.10,000/- and Rs.2,000/- respectively is awarded.

14. After reworking, compensation due and payable to the legal representatives of the deceased in C.M.A.No.1807 of 2017) (M.C.O.P.No.3982 of 2014), is as follows:-

Loss of pecuniary benefits	...	Rs.21,60,000
Loss of consortium	...	Rs. 1,00,000
Loss of love and affection	...	Rs. 2,00,000
Loss of estate	...	Rs. 50,000
Funeral expenses	...	Rs. 25,000
Transportation	...	Rs. 10,000
Damages to clothes	...	Rs. 2,000

		Rs,25,47,000

Compensation awarded
by the Tribunal is ... Rs.26,35,000/-

On appeal, compensation
now determined by this
Court is Rs.25,47,000/-

Reduced amount Rs. 88,000/-

15. In the result, Civil Miscellaneous Appeal No.1807 of 2017, is partly allowed, as indicated above. Reduction of compensation would be from the share apportioned to the wife. Tamil Nadu State Transport Corporation (Villupuram) Limited, Kancheepuram, is directed to deposit the compensation amount, now determined by this Court, less the statutory deposit, to the credit of M.C.O.P.No. 3982 of 2014, on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai, within a period of six weeks, from the date of receipt of a copy of this order.

No costs. Consequently, the connected Miscellaneous Petition is closed.

16. As regards, M.C.O.P.No.3983 of 2014 (C.M.A.No.1808 of 2017), as rightly pointed by Mr.T.Ananthasekar, learned counsel for the respondents, the Tribunal has recorded that the deceased is survived by four dependants. As per the judgment of the Hon'ble Supreme Court in Sarla Verma & Others Vs. Delhi Transport Corporation and Another {2009 (5) L.W - 561}, if the number of dependants are 4, reduction should be $\frac{1}{4}$, from the personal and living expenses of the deceased. If $\frac{1}{4}$ is deducted,

the quantum of compensation payable under the head loss of contribution to the family would be more and the same works out to Rs.25,92,000/- (18,000 x $\frac{3}{4}$ x 12 x 16). Excess amount of Rs.1 lakh under the head loss of love and affection can always be adjusted against inadequate compensation awarded under the head loss of contribution to the family. Compensation awarded under other heads is just and reasonable. In the light of the above discussion, we are not inclined to reduce the overall compensation.

17. In the result, C.M.A.No.1808 of 2017 is dismissed. Tamil Nadu State Transport Corporation (Villupuram) Limited, Kancheepuram, is directed to deposit the compensation amount, as awarded by the Tribunal, less the statutory deposit, to the credit of M.C.O.P.No. 3983 of 2014, on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai, within a period of six weeks, from the date of receipt of a copy of this order. The share of the minors/respondents 3 and 4, 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 1 and 2 are permitted to withdraw the award amount, as apportioned by the tribunal, by making necessary applications.

No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

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सत्यमेव जयते
Sub Assistant Registrar

mvs.

To

1.The Motor Accident Claims Tribunal,
II Small Causes Court, Chennai.

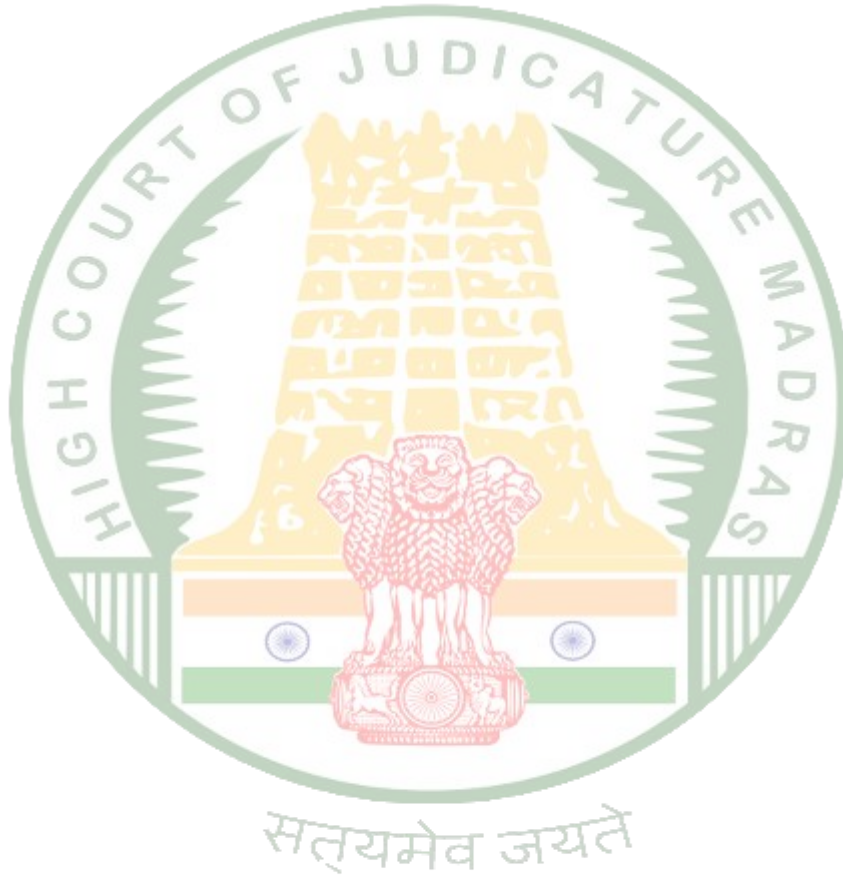
2.The Section Officer,
V.R.Section,
High Court, Madras.

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+2cc to M/s.K.J.Sivakumar, Advocate, S.R.No.45578 & 45577
+2cc to M/s.D.Poovannan, Advocate, S.R.No.45625

C.M.A.Nos.1807 and 1808 of 2017

RV (CO)
CU (03/08/2017)



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