IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.346 OF 2015
AND M.P.NO.1 OF 2015
AND CROS.OBJ.NO.73 OF 2015

Metropolitan Transport Corporation Ltd.,
Represented by its Managing Director
No.2, Pallavan Salai,
Chennai - 600 002. ... Appellant in CMA No.346/15
... Respondent in Cross Objection No.73 of 2015

Versus

1.D.Meena
2.Valarmathi
3.A.N.Kathavarayan
4.Minor Nithesh
(Minor represented by his mother and natural guardian D.Meena) ... Respondents in CMA 346/15
Cross Appellants in Cross Objection No. 73 of 2015

PRAYER: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.07.2014 passed in M.C.O.P.No.95 of 2011 by the Learned Special Sub Judge - II, Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.S.S.Swaminathan

For Respondents: Mr.F.Terry Chellaraja

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J U D G M E N T

(JUDGMENT OF THE COURT WAS MADE BY M.GOVINDARAJ, J.)

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Special Sub Judge - II to deal with MCOP Cases),Chennai, in M.C.O.P.No.95 of 2011, dated

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11.07.2014, Metropolitan Transport Corporation Limited, has preferred the above appeal.

2. After service of notice in the appeal, the respondents / claimants have preferred Cros.Obj.No.73 of 2015.

3. On 30.01.2010 at about 07.00 hours, when the deceased was riding his motorcycle bearing Registration No.TN04-R-0038, the MTC Bus, bearing Registration No.TN01-N-5044, driven in a rash and negligent manner, hit behind the motorcycle and the deceased and his vehicle were dragged for a long distance and the deceased had sustained multiple fatal injuries all over his body and died on the way to Hospital.

4. The respondents/claimants, who are wife, parents and son of the deceased, have filed claim petition in M.C.O.P.No.95 of 2011 before the Motor Accidents Claims Tribunal (Special Sub Judge II to deal with MCOP cases) Chennai, seeking compensation of Rs.40,00,000/-.

5. The claim was objected by the appellant Transport Corporation on the grounds that the MTC Bus was not driven in a rash and negligent manner and it was driven with due care and caution. The deceased was driving the motorcycle at a great speed and attempted to overtake on the left side of the Bus and lost balance due to the repair work carried on by the Corporation of Chennai and hit front left side body of the Bus and sustained fatal injuries. Therefore, negligence cannot be attributed to the driver of the Transport Corporation.

6. Before the Tribunal, three witnesses were examined on the side of the claimants. The first respondent / wife deposed as P.W.1 and P.W.3 was the eyewitness. On the side of the claimants, 28 documents were marked as Exs.P1 to P28. On the side of the Transport Corporation, the driver of the Bus was examined as R.W.1 and no documents were marked.

7. Based on the materials available before the Tribunal, the Tribunal has framed issues as to liability, quantum of compensation to be awarded. The Tribunal has recorded the evidence of P.W.1, who narrated the accident that had occurred on 30.01.2010. The same was corroborated by the evidence of P.W.3, who was the eyewitness. While discussing the issues, the Tribunal has found that the accident was taken placed due to the rash and negligent act of the Driver of the Bus, taking support from the evidence of P.W.3 as well as Ex.P1 - First Information Report.

8. The Tribunal has discussed about the evidence of R.W.1 - driver of the Bus, wherein it has been stated that if

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there is an accident or breakdown due to any mechanical defects, the trip will be closed by the crew of the Bus after making entry in the invoice and trip sheet. Further, if the Bus is at fault, the same will be recorded and if the motorcyclist is at fault, the crew of the Bus will definitely continue their trip without any break. Since it was not proved by producing evidence that they have not involved in the accident, an adverse inference was drawn against the transport corporation.

9. According to the appellant, the observation made by the Tribunal that if the accident had taken place on the negligence on the driver of the Bus, it would have been recorded in the trip sheet and non-production of the same would entail in adverse inference and if the negligence is on the part of the rider of the motorcycle, it will not amount to negligence, the trip will be continued is not a correct observation and the finding in this regard is erroneous.

10. But in the case on hand, P.W.1 has not witnessed the accident. First Information Report has been lodged against the driver of the transport corporation bus in FIR No.59/P2/2010 under Sections 279 and 304(A) IPC. Eyewitness - P.W.3 has supported the version of P.W.1 as to the manner of accident. The testimony of both P.W.1 and P.W.3 is corroborated by Ex.P1 - First Information Report. On the contrary, R.W.1 - driver of the bus alone has been examined. There is no supportive evidence. Finding of negligence in motor transport cases is fixed on the principles of preponderances of probability. In the instant case, P.W.3 has stated that when the deceased drove his motorcycle in a slow and cautious manner, he had seen the accident. As such, his evidence was reliable one and the same has not been shaken in any way by the cross examination of the respondents. In the light of the above, we are unable to accept the contention of the learned counsel for the appellant - transport corporation that there is perversity in the finding. We deem it fit to sustain the finding.

11. In so far as the quantum is concerned, the deceased was aged about 28 years at the time of accident. It is stated that he was employed as an Assistant Engineer in Best and Crompton Engineering Limited. In support of his income, the claimants have produced Ex.P16, salary slip of the deceased, which shows his income as Rs.16,060/- per month. Apart from that, it is stated that he was earned through his extra curricular activities viz., Karate. The claimants have produced documents in support of his income and certificates received by him towards Karate vide Exs.P6 to P18. The claimants would claim Rs.7,500/- per month towards income from Karate teaching. However, the Tribunal has fixed Rs.4,000/- towards monthly income derived from Karate classes and has taken the salary

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received from the employer vide Exs.P16 and P27 as Rs.16,000/-, put together a total sum of Rs.20,000/- per month.

12. On the basis of above, the Tribunal has fixed the age of the deceased as 28 and applied multiplier 17. There are totally four claimants. Therefore, on the basis of the judgment of the Hon'ble Supreme Court in SARLA VERMA (SMT) AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER [2009 (6) SCC 121] the Tribunal has deducted $1/4^{th}$ towards personal and living expenses and remaining $3/4^{th}$ was treated as contribution to the family. Applying the same, the Tribunal has awarded compensation as under:

Loss of dependency to the family	-Rs.30,60,000.00
Loss of consortium to wife	-Rs. 1,00,000.00
Loss of love and affection to parents (Rs.50,000/- to each)	-Rs. 1,00,000.00
Loss of love and affection to minor son	-Rs. 1,00,000.00
Funeral expenses	-Rs. 25,000.00
Total	-Rs.33,85,000.00

13. The Tribunal has considered the judgment of the Supreme Court in RAJESH AND OTHERS VS. RAJBIR SINGH AND OTHERS [2013 (3) CTC 883 (SC)]. But considering the judgment of the Delhi High Court in NEW INDIA ASSURANCE CO. LTD., VS. HARPAL SINGH AND OTHERS [2013 (2) TN MAC 423 (DEL)] and the judgment of the Hon'ble Supreme Court in NATIONAL INSURANCE CO. LTD., VS. SANTOSH KHANDELWAL AND OTHERS [2013 (2) TN MAC 74 (SC)] the Tribunal has held that conflicting views are taken by the Three - Judges Bench, and therefore, has restrained from awarding future prospects.

14. On the aspect of future prospects, in a recent judgment in M/S.ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD., SALEM VS. TMT.VENNILA (C.M.A.NOS.3273 OF 2014, 723 AND 2386 OF 2015, DATED 13.10.2015) a Division Bench of this Court, to which, one of us (SMKJ), is a party, after considering the ''Per Capita Income'', ''Gross Domestic Product'' and ''Consumer Price Index'' etc., at paragraphs 54 to 68, held as follows:-

> "54.Taking into consideration the above illustrative cases of some of the employees, engaged by the Government, on daily rated basis and being revised periodically, we wish to state that the factors taken into consideration or the reasons stated by the Central Government or the District Collector, as the case may be, while revising the wages, from time to time,

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whether a person is employed in an organised or unorganised sector, would remain the same and consequently, decide the living conditions of different classes of persons, whether engaged in organised or unorganised sectors, as the case may be, to meet out the day to day expenditure and basic amenities. The difference in the rates of wages between the persons employed in a salaried structure, revisable periodically, though not, in strict sense, be applied with the same percentage to those, engaged in unorganised sectors, but it cannot be contended that there will not be any change in the earning or income.

55.The government servants have an expectation of periodical revision. So also, the employees working in Public Sector, Boards, Corporation, Companies owned and controlled by the Government. In respect of Private Limited Companies, it is more on the basis of terms and conditions of the contract, in which, they are governed. But in the case of self-employed or those, engaged in unorganised sectors, revision of wages or salary or in the case of self-employed, though may not be on par with the salaried structure in organised sectors or on the terms and conditions of the contracts in limited companies, still the important factor, Consumer Price Index, the deciding factor, would be the same, for a change in the earning of the self-employed or revision of salary or wage, even in unorganized sectors and that the expectation of a future event, ie., possibility of a change in wage or financial expectation, cannot be ruled out, for the simple reason that nothing has remained static, in this country.

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

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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 selfemployed, 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

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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

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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

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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,

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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.''

Therefore, on the basis of the above judgment, this Court is of the considered opinion that future prospects has to be awarded as argued by the learned counsel appearing for the respondents / claimants.

15. The Tribunal has fixed the monthly income of the deceased at Rs.20,000/-. We are in agreement with the same, as it was supported by documents. If 50% is awarded towards future prospects, the salary will be Rs.30,000/- (Rs.20,000 X 50 / 100 = 10,000 + 20,000) per month. However, the Tribunal has not deducted any amount towards income tax. The income tax deduction has to be made and accordingly, calculation of income is arrived as under:

Monthly income -	Rs. 20,000.00	
Future prospects-	Rs. 10,000.00	
Total -	Rs. 30,000.00	
Annual income (Rs.30,000 X 12)		Rs.3,60,000.00

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Tax rate			
Rs.1,60,000/-	Nil		
Rs.1,60,000/- to Rs.3,00,000/-	14,000/-		
Rs.3,00,000/- to Rs.5,00,000/-	12,000/-		
	26,000/-		
Cess 3%	780/-		
	26,780/-		
Less tax		Rs.	26,780.00
		Rs.	3,33,220.00

(Living expenses Rs.3,33,220 X 3/4 = Rs. 2,49,915.00)

Loss of dependency to the family (Rs.2,49,915 X 17)	Rs.42,48,555.00
Loss of consortium to the wife	Rs. 1,00,000.00
Loss of love and affection to parents	Rs. 1,00,000.00
Loss of love and affection to minor	Rs. 1,00,000.00
Funeral expenses	Rs. 25,000.00
Total compensation	Rs.45,73,555.00

Thus, the total compensation awarded by the Tribunal is enhanced from Rs.33,85,000.00 to Rs.45,73,555.00.

16. Based on the above discussion, the Civil Miscellaneous Appeal filed by the appellant Transport Corporation is dismissed. The cross objection raised by the claimants is allowed in part as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

17. Record of proceeding shows that there is an interim stay granted by this Court on 02.03.2015 to deposit 50% of the award amount with interest and costs. It is not clear as to whether the amount has been deposited or not and the same has been withdrawn or not. Hence, the appellant - Transport Corporation is directed to deposit the entire award amount, with interest at the rate of 7.5% per annum, from the date of claim and costs, of this appeal, less the amount already deposited, if any, including statutory deposit, to the credit of MCOP No.95 of 2011, on the file of Motor Accidents Claims Tribunal (Special Sub Judge II to deal with MCOP cases) Chennai, within a period of six weeks from the date of receipt of a copy of this order.

18. On such deposit being made, the respondent nos.1 to 3 / claimants are permitted to seek for withdrawal of the same, by making necessary applications before the Tribunal. In so far as the share apportioned to the minor is concerned, the same should be deposited in favour of the minor in a Nationalised

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Bank, in a reinvestment scheme, till he attains majority. The first respondent / mother is entitled to withdraw interest accrued thereon, for the welfare of the minor. The apportionment given by the Tribunal can be applied for the rest of the amount.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

TK

To

1.The Special Sub Judge II,
The Motor Accidents Claims Tribunal
Chennai.

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

+1cc to Mr.S.S.Swaminathan, Advocate Sr.18626
+1cc to Ms.M.Malar, Advocate Sr.18556

C.M.A.NO.346 OF 2015

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