

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2017

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. NO. 449 of 2015

&

M.P. No. 1 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram - III) Limited,
Kanchipuram Region,
Kanchipuram.

..Appellant/Respondent

Vs.

1. S. Jayanthi
2. G. Subburayalu

..Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal as against the judgment and decree 21.02.2012 passed in M.C.O.P. NO. 706 of 2008 on the file of Motor Accidents Claims Tribunal (Additional District and Sessions Judge, FTC-III), Chennai.

For Appellant :: Mr.K.J. Sivakumar

For Respondents :: Mrs.Saleem Fathima

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Transport Corporation as against the quantum of compensation of Rs. 3,32,000/-, awarded by the Motor Accidents Claims Tribunal (Additional District and Sessions Judge, FTC-III), Chennai, in M.C.O.P. No. 706 of 2008, for the death of one S. Balaji, aged 20 years, alleged to be earning Rs.7000/- per month as a Welder in an industry, in the accident, which occurred on 07.11.2007, when the victim travelling as a pillion rider was hit down by a bus bearing Registration No. TN-21-N-0668 belonging to the appellant Transport corporation, driven in a rash and negligent manner.

2. The only question to be decided is with regard to the quantum of compensation awarded by the Tribunal.

3. Heard Mr.K.J. Sivakumar, learned counsel for the appellant and Mrs. Saleem Fathima, learned counsel for the respondents.

4. Since the appeal is canvassed only on the point of quantum, the question of going into the aspect of negligence does not arise. In any event, the Tribunal appreciating the evidence of P.W.2, who was an eye-witness to the accident and the filing of FIR, as against the driver of the appellant Transport Corporation, held that the accident occurred only because of the rash and negligent driving of the bus.

5. Mr.K.J. Sivakumar, learned counsel for the appellant would submit that in the absence of any proof regarding the monthly income, the Tribunal fixed Rs.4000/- as the monthly income and that it is on the higher side.

6. However, considering the fact that in respect of a house wife, even in the absence of any income proof, the Honourable Apex Court, in the judgment rendered in New India Assurance Company Limited V. Smt.Kalpana and Others reported in 2007 (1) Supreme 514 determined the "monthly contribution" as Rs.3000/-. The accident in the said case took place in the year 1999 whereas the accident in the case on hand took place on 07.11.2007. Therefore, this Court is of the opinion that the victim would have earned not less than Rs.5000/- per month, which is also in consonance with the judgment of the Honourable Apex Court cited supra.

7. No amount was awarded towards "Future Prospects" of the deceased. Hence, as per the judgment of the Honourable Apex Court rendered in Sarla Verma V. Delhi Transport Corporation reported in 2009 (2) TN MAC (1) SC, this Court adds 50% towards "Future Prospects" and determines the total monthly income as "Rs.5000/- + 50% (Rs.5000/-)" = "Rs.7500/-". As the victim died as a bachelor, 50% requires to be deducted towards "Personal Expenses" as per Sarla Verma's case and accordingly, applying the said deduction, "Monthly Contribution of the deceased to his family" would be,

= Rs.7500/- (-) 50% of Rs.7500/-

= Rs.3750/-

The Tribunal committed a serious error by determining the multiplier as 13 as per the age of the mother of the deceased, namely, 38 years. The Honourable Supreme Court in the judgment rendered in Amit Bhanu Shali and others Vs. National Insurance Co.Ltd. And others reported in 2012 ACJ 2002 held that the age of the deceased alone is required to be taken for determining the multiplier. In the light of the said judgment, multiplier 13 determined by the Tribunal is set aside. Since the deceased was aged about 20 years, as per the postmortem certificate, Ex-P2, the appropriate multiplier to be adopted would be 18, as per Sarla Verma's case (cited supra). Applying the said multiplier,

"Loss of Dependency" is determined as follows:

Loss of Dependency :: Rs.3750/- x 12 x 18
:: Rs.8,10,000/-

8. Since the respondents/claimants were deprived of their one and only son, Rs.15,000/- awarded towards "Loss of love and affection" is too low and the same is enhanced to Rs.60,000/-. No amount was awarded towards "Transportation Expenses" and only Rs.5000/- was awarded towards "Funeral Expenses". Hence, a consolidated sum of Rs.15,000/- is awarded towards the said expenses. A further sum of Rs.15,000/- is awarded towards "Loss of Estate", which has been omitted to be given by the Tribunal. In all, a sum of Rs.8,95,000/- rounded off to Rs.9,00,000/- is payable to the respondents/claimants as compensation. The rate of interest awarded by the Tribunal at 7.5% per annum remains intact.

9. Though the appeal has been filed by the Transport Corporation, this Court, on re-appreciating the evidence on record, applying the latest law and invoking Order XLI Rule 33 CPC and Section 151 CPC, has enhanced the compensation payable to the claimants, in an endeavour to award just and reasonable compensation, in the light of the judgment of the Honourable Apex Court rendered in Nagappa V. Gurudayal Singh reported in 2004 (2) TN MAC 398 (SC),. Besides, the provisions of Motor Vehicles Act are beneficial in nature, which aim at consoling, comforting and compensating the victims of road accidents and therefore, even in the appeal filed by the Insurance Company, in the absence of any appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation amount. Furthermore, an appeal is a continuation of the original proceedings and this Court is bound to re-appreciate the pleadings and evidence on record and award just compensation as contemplated under the Act. Hence, in an endeavour to do complete justice, the award of the Tribunal to the tune of Rs.3,32,000/- is enhanced to Rs.9,00,000/-.

10. The appellant Transport Corporation is directed to deposit the entire amount, as per the modified award passed by this Court, along with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to get the details of Bank Account of the claimants and thereafter, transfer the amount directly to the claimants, who would be entitled to equal share in the said amount, through RTGS, within a period of two weeks thereafter. The claimants shall pay the appropriate court-fee for the enhanced amount.

11. In the result, the Civil Miscellaneous Appeal stands dismissed and the award passed by the Tribunal is enhanced from

Rs.3,32,000/- to Rs.9,00,000/- together with interest @ 7.5% per annum. No costs. Connected M.P.is closed.

Sd/-

Asst.Registrar

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Sub Asst. Registrar

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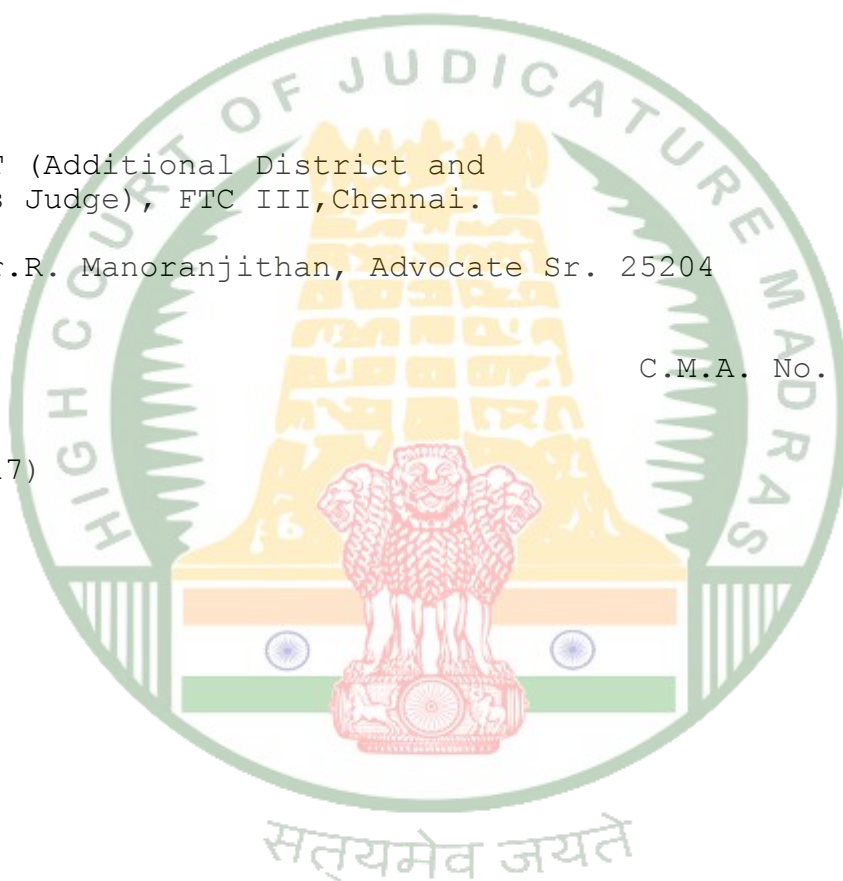
To

The MACT (Additional District and
Sessions Judge), FTC III, Chennai.

+1cc to Mr.R. Manoranjithan, Advocate Sr. 25204

C.M.A. No. 449 of 2015

NM(CO)
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