

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.2746 of 2016

and

CMP.No.19822 of 2016

The General Manager,  
Tamil Nadu State Transport Corporation Ltd.,  
Villupuram Division III  
Kancheepuram

(The correct description as per order in  
M.P.No.2934 of 2015 dated 22.12.2015)

..

Appellant/Respondent

versus

1.Nakala Malathi

2.Nakala Vettagadu

Janapanchatram

President Rice Mill

Orakkadu Postmortem Thiruvallur District

(The name of the Claimants were amended as  
per Order in M.P.No.2934 of 2015 dated 22.12.2015)

.. Respondents in all C.M.A.'s

... Respondents/Petitioners

Appeal filed under Section 173 of the Motor Vehicles Act,  
1988, against the order and Decree dated 13.04.2016 made in  
M.C.O.P.No.847 of 2010 on the file of the Motor Accident Claims  
Tribunal, the II Small Causes Court, Chennai.

For appellant : Mr.K.J.Sivakumar

J U D G M E N T

The deceased, Rajkumar, aged 10 years, a student, met with  
an accident on 19.11.2009, in which he died. The parents of the  
deceased Rajkumar filed a claim petition in M.C.O.P.No.847 of  
2010, claiming a compensation in a sum of Rs.6,00,000/-.

2. The Tribunal, on consideration of oral and documentary  
evidence, awarded a sum of Rs.9,95,000/-. The break-up details  
of the same are as under:

|                               |   |               |
|-------------------------------|---|---------------|
| 1. Loss of Pecuniary Benefits | - | Rs.7,20,000/- |
| 2.Loss of Love and Affection  | - | Rs.2,00,000/- |
| 3.Loss of Estate              | - | Rs. 50,000/-  |
| 4.Funeral Expenses            | - | Rs. 25,000/-  |
|                               |   | -----         |
| Total                         |   | Rs.9,95,000/- |
|                               |   | -----         |

Aggrieved against the said award in and by which the Tribunal has granted an amount in excess to what has been claimed, the appellant has filed the present appeal.

3. The learned counsel appearing for the appellant submits that the Tribunal ought not to have fixed the monthly income of the deceased as Rs.5,000/-, as the deceased was a student, aged 11 years. It is his further contention that the amount awarded under the head Love and affection is on the higher side.

4. It has time and again been reiterated that in case of award of compensation for the death of children, who have no income, the Court should be circumspect in fixing the notional income of the deceased. The Tribunal, applying the ratio laid down in the decision in National Insurance Co. Ltd. - Vs - R.Vimal (2015 (2) TNMAC P 490 (DB), fixed the notional income of the deceased at Rs.5,000/=. The Tribunal after deducting 1/3<sup>rd</sup> towards his personal expenses and adopting proper multiplier has quantified the compensation at Rs.7,20,000/=. Though it is contended by the learned counsel for the appellant that the notional income fixed is excessive, however, the said contention is not sustainable as the Tribunal has taken into consideration the precedents on the said issue and has arrived at a just notional income. Further, it is to be pointed out that the future prospective increase in income has not been taken into consideration by the Tribunal while fixing the notional income. Had the deceased been alive, there are all possibilities that he would have earned more than what has been fixed as the notional income. Therefore, this Court is of the considered view that the compensation awarded by the Tribunal under the head loss of pecuniary benefits is not on the higher side and, accordingly, the contention deserves to be rejected. Accordingly, the compensation awarded by the Tribunal under the head loss of pecuniary benefits is confirmed.

5. Insofar as the contention that the compensation awarded by the Tribunal under the head loss of love and affection being excessive, it is to be pointed out that the parents have lost their son, aged 10 years. The pain and suffering that the claimants would have suffered on losing the love and affection of their son cannot be compensated in terms of money. The mental state of the claimants cannot be explained in words and mere sympathy alone can be shown to them. In such view of the

matter, the Tribunal has thought it fit to compensate them for the loss of love and affection by awarding a sum of Rs.2,00,000/=. The said compensation, by no stretch of imagination, could be said to be excessive or unreasonable. Accordingly, the said contention is also rejected.

6. Insofar as the amounts awarded under the heads loss of estate and funeral expenses respectively, the compensation awarded are reasonable and requires no interference at the hands of this Court.

7. Though, it is contended by the learned counsel for the appellant that the amount awarded is over and above what has been claimed by the claimants, it is to be pointed out that the award of compensation should be just and reasonable and it is within the domain of the Court. Just because the claimants, in their ignorance, have claimed a lesser amount would not in any way be an embargo for this Court not to grant higher compensation. The gravity of the matter is what requires to be looked into and the compensation in motor accident cases is only awarded to put the family in the place where they would have come had the untoward incident not happened. In such view of the matter, the Tribunal having applied the law on the subject with regard to award of compensation, has awarded just and reasonable compensation and, therefore, the said award requires no interference.

8. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the Judgment and Decree of the Claims Tribunal, in M.C.O.P.No.847 of 2010 dated 13.04.2016. Consequently, connected Miscellaneous petition is closed.

9. The appellant is directed to deposit the entire award amount, less the amount, if any, already deposited, together with interest and costs, from the date of claim petition till date of deposit to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal shall transfer the same to the Bank Account of the claimants through RTGS within a period of two weeks thereafter.

Sd/-  
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

arr/GLN

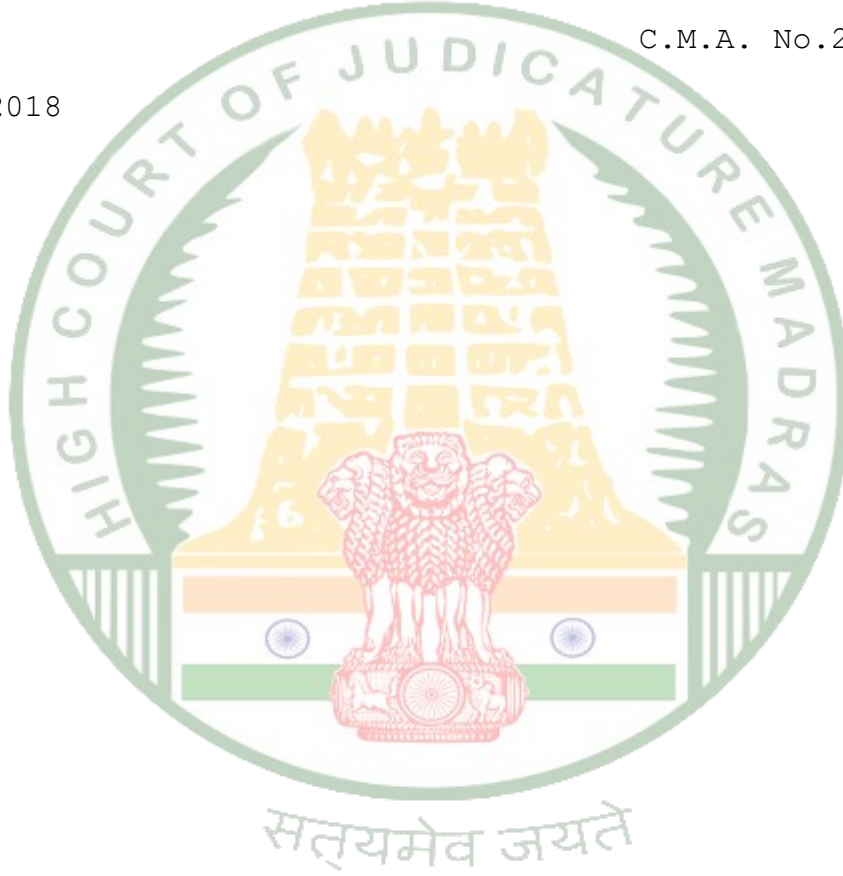
To

1. The Motor Accident Claims Tribunal,  
II Small Causes Court, Chennai.
2. The Section Officer, VR Section,  
High Court, Madras.

+lcc to Mr.K.J.Sivakumar, Advocate sr.no.3233

C.M.A. No.2746 of 2016

nr 05/03/2018



WEB COPY