

In the High Court of Judicature at Madras

Dated : 20.3.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice S.M.SUBRAMANIAM

Civil Miscellaneous Appeal Nos.3667 of 2011 and 2927 of 2012
and MP.No.1 of 2012

- 1.K.Vasanthal
- 2.K.R.Singaram
- 3.S.Kalyani
- 4.Minor K.Sakthi Kalyani
- 5.Minor K.Valliammai

Minors 4 & 5 are rep.by their
mother/guardian 1st Appellant viz.

K. Vasanthal

...Appellants in
CMA.No.3667 of
2011 & Respts. in
CMA.No.2927 of
2012/Claimants

Vs

The Managing Director, Tamil Nadu
State Transport Corporation (Kum)
Ltd., Kumbakonam Division,
No.27, Railway Station New Road,
Periyamilaguparai, Trichy-1.

...Respondent in
CMA.No.3667 of
2011 & Appellant
in CMA.No.2927 of
2012/Respondent

APPEALS under Section 173 of the Motor Vehicles Act, 1988
against the award dated 15.6.2010 made in MCOP.No.221 of 2008 on
the file of the Motor Accidents Claims Tribunal (Additional
District Court/Fast Track Court No.3), Thiruvallur.

For Appellants in
CMA.No.3667 of 2011 &
Respondents in
CMA.No.2927 of 2012 :

Mr.N.Manokaran

For Respondent in CMA.No.
3667 of 2011 : Mr.V.J.Vijay Velliappan

For Appellant in CMA.No.
2927 of 2012 : Mrs.B.Vijayalakshmi

COMMON JUDGMENT

(Judgment was delivered by NOOTY.RAMAMOHANA RAO,J)

Since both these civil miscellaneous appeals arise out of an award rendered by the Motor Accidents Claims Tribunal (Additional District Court -cum-Fast Track Court No.3), Tiruvallur in MCOP.No.221 of 2008 on 15.6.2010, they are heard together by us and they stand disposed of by this common judgment.

2. C.M.A.No.3667 of 2011 is instituted by the claimants seeking enhancement of compensation by awarding a fair and just compensation for the loss suffered by the claimants due to the death of the bread winner in the family due to a motor vehicle caused accident. The above civil miscellaneous appeal was admitted by this Court on 22.12.2011.

3. Though the Tamil Nadu State Transport Corporation (Kumbakonam) Limited (henceforth referred to as the Transport Corporation) has preferred C.M.A.No.2927 of 2012 on 30.3.2011 itself, they took their own time to rectify all the defects pointed out by the Registry repeatedly and ultimately could get the papers represented only on 28.6.2012 and the said civil miscellaneous appeal stood admitted on 05.10.2012 by this Court.

4. It is, hence, appropriate to deal with the case of the Transport Corporation at the first instance, for which purpose, we notice the following uncontroverted facts :

On 12.1.2008, while the deceased Karuppiah was proceeding to Palani - a very famous pilgrimage centre in these parts of the country-by walk, a bus belonging to the Transport Corporation bearing Regn. No.TN-45-N-2595, driven at a high speed rashly and negligently too by its driver, dashed against the said Karuppiah and thus caused the accident, resulting in the instantaneous death of the said Karuppiah. The accident occurred around 5.30 AM. Several hundreds and thousands of pilgrims walk the entire distance upto to hill shrine of Lord Dhandayuthapani (Subramanyeswara) at Palani. One half of Dindigul to Palani Road almost gets filled with religious walkers to Palani. Hence, all motor vehicle Drivers are required to be extra cautious.

5. P.W.2, who was also walking along with the deceased, has clearly narrated how the accident had taken place. The relevant portion of the evidence of P.W.2 reads as follows :

ங்கடந்த 12,1,2008 அன்று சுமார் காலை 5,30 மணியளவில் திண்டுக்கல் படினி நேடுஞ்சாலையில் நானும் இறந்துபுகுபான என் அண்ணன் கருப்பையாகும் எனது மனைவிரும் சாலையில் இடதுபக்க ஓரமாக நடந்துச் சேன்றுக் கோணருந் குதாம், நானும் என் மனைவிரும் பின்னால் நடந்துச் சேன்றுக் கோணருந் குதாம், எங்களுக்கு முன்பாக எனது அண்ணன் கருப்பையா நடந்துச் சேன்றுக் கோணருந் தார், அப்போடது பதிகு எண்,கூகு 45 கு 2595 என்ற எண் கோண்ட ஒரு அரசுப் குபருந்து அதிகுவகமாகும்? அரக்கிரதையாகும்? கவனக் குறைவாகும்? ஆரண் அக்காமலும் வந்து எங்களைத் தாண்டு சேன்று? எங்களுக்கு முன்குன சேன்றுக் கோணருந் த எண் அண்ணன் கருப்பையா மீது இடதுத் தள்ளி குபருந்தின் முன் சக்கரமானது என் அண்ணன் வயிற்றுப் பகுதியில் ஏறி இறுகிவிட்டது, என் அண்ணன் சம்பவ இடத்திலுலகூய இறந்துவிட்டார், இந்த விபத்து என் கண் முன்பாக நடந்தது, இந்த விபத்துக்கு முடி காரணம் கூகு 45 கு 2595 என்ற எண் கோண்ட அரசுப் குபருந்து ஓட்டுனர்தான், இந்த சம்பவம் குறித்து காவல் நிலையத்தில் நான் முகார் கோடுக்குதன்,கு

6. When roughly translated, I believe (since I am not familiar with reading of Tamil, I solicited the help of my learned brother S.M.Subramaniam, J to identify the above passage and translate it to me), it means that they are walking on the left side of the road proceeding towards Palani and the bus came at great speed and ran over the deceased. P.W.2 is none other than the younger brother of the deceased Karuppiyah and he was walking along with his wife right behind the deceased Karuppiyah and therefore, he had witnessed as to how the accident had taken place.

7. Unfortunately, the Transport Corporation has not even cross examined this witness. Therefore, there was not even an iota of doubt in the mind of the Tribunal as well as in our minds that the accident had occurred entirely due to the rash and negligent manner of driving of the bus by its driver. The left front tyre ran over the deceased causing his death instantaneously. Hence, the liability of the Transport Corporation to compensate justly for causing the accident by its driver cannot be avoided.

8. The deceased Karuppiyah was working as a Deputy Manager (Marketing) with M/s.Carborundum Universal Limited at Chennai.

The said company is part of the industrial house Murugappa Group, a leading group in South India. As per Ex.P.6 - the pay slip, the total earnings of the deceased Karupiah were noted as Rs.19,605/-, from out of which, deductions have been worked out to Rs.2,084/-, which included professional tax and his compulsory contribution to provident fund. Apart from that, it also included his voluntary contribution to provident fund. After deducting the said amount of Rs.2,084/-, his net pay was worked out at Rs.17,521/-.

9. However, the Tribunal has taken the net earnings of the deceased only as Rs.15,000/-. Two reasons are assigned in this regard. The first is that the person, who has issued the pay slip - Ex.P.6 namely the Authorized Signatory of M/s.Carborundum Universal Limited has not been examined. Secondly, P.W.3 - a colleague of the deceased Karupiah, during his deposition, mentioned the earnings of the deceased per month as Rs.14,605/-. For these two reasons, reliance has not been placed on Ex.P.6.

10. The learned counsel for the Transport Corporation has contended that in the absence of examining the Authorized Signatory of M/s.Carborundum Universal Limited, the Tribunal ought not to have taken the monthly salary of the deceased as Rs.15,000/- also and in fact, it could be much less and hence, the compensation worked out by the Tribunal was completely erroneous.

11. We are afraid that the contention canvassed by the learned counsel for the Transport Corporation is not tenable. Ex.P.6 - pay slip has been produced by P.W.1. P.W.1 is not only the first claimant in the claim petition, but the wife of the deceased and through her, Ex.P.6 - pay slip is got marked and during the cross examination of this witness, no suggestion has been put that Ex.P.6 is neither an accurate one nor a bona fide one and that it was procured only for the sake of securing higher quantum of compensation, etc. When there was no cross examination on the part of the Transport Corporation leaving even a slightest of a doubt with regard to the genuineness of Ex.P.6, the necessity to examine the Authorized Signatory or for that matter any one else working for M/s.Carborundum Universal Limited would not simply arise. When Ex.P.6 has not been disputed and when no suggestion has been left to the witness, it is wholly impermissible for the Transport Corporation to contend to the contra now. The initial burden having been discharged by P.W.1, it is for the Corporation to lead evidence to the contra. It had failed to discharge this burden. We, therefore, have no hesitation to reject the contention canvassed by the learned counsel for the Transport Corporation, with regard to genuineness of Ex.P.6.

12. P.W.3, nowhere during his deposition, has mentioned that the deceased was earning Rs.14,605/-. On the other hand, his affidavit filed in lieu of chief examination, which is a manuscript affidavit, which we have perused, clearly disclosed that the deceased Karuppiyah was working as a Deputy Manager (Marketing) in M/s.Carborundum Universal Limited and that he was a permanent employee and that he was drawing a monthly salary of Rs.17,605/- and out of which, Rs.7,745/- was the basic pay, Rs.4,650/- was the house rent allowance, Rs.800/- was the conveyance and Rs.4,410/- was the additional special allowance. He also deposed that as a special annual incentive, the deceased was drawing Rs.1,24,180/- per annum.

13. From the above manuscript affidavit, we could gather that the Numeric figures '4' and '7' were repeated few times. At least, the figure '7' appeared in this manuscript exhibit on three different locations and it was noted as follows : "7".

14. Similarly, the following figure has been noted as : "17,605". Whereas the Tribunal has erroneously treated this "7" as "4" and that is the reason why, in its order, it erroneously construed that PW3 deposed that the deceased was earning Rs.14,605/-. It is too obvious an error committed by the Tribunal. P.W.3 never deposed that the deceased was earning Rs.14,605/-. Instead, P.W.3 clearly deposed that the deceased was paid Rs.17,605/- per month after the necessary deductions.

15. Whereas P.W.1, during her deposition, has made a statement that the deceased was earning Rs.27,950/- per month. P.W.3 has clearly stated that the deceased was also earning special annual incentive to the extent of Rs.1,24,180/-, out of which, contribution of Rs.2,085/- was deducted. Net comes to Rs.1,22,095/-. Roughly, it works out to a little more than Rs.10,000/- per month. That is the reason why, to the take home net pay of Rs.17,521/-, when a sum of Rs.10,000/- is added, the earning of the deceased could be treated to be Rs.27,000/- per month. This explains why P.W.1 - the wife of the deceased has deposed the earnings of the deceased as Rs.27,000/- per month. There is nothing improper about it.

16. In the other appeal i.e CMA.No.3667 of 2011, the claimants have sought for enhancement of compensation. The learned counsel for the claimants would urge that the Tribunal has committed a fundamental error in treating the monthly earnings of the deceased as Rs.15,000/- per month. It also erred in deducting 1/3rd thereof as against 1/4th, because the parents of the deceased are alive and they are also the claimants being dependents on him. The deceased has two young children, that too, daughters. Therefore, it could have been safely taken that

he would have been contributing 75% of his earnings to the family.

17. The learned counsel for the claimants has also pointed out the failure of the Tribunal to account for the earnings representing the annual incentive and contended that no component corresponding to its value was added. It is also urged before us by the learned counsel for the claimants that no component towards future prospects has been provided in the award. This apart, it is also urged that the first claimant - wife of the deceased was only 30 years old at the time of accident and for the loss of consortium, she should have been awarded at least a sum of Rs.1 lakh and towards loss of guidance to the two young children, a sum of Rs.1 lakh ought to have been awarded, while an amount of Rs.30,000/-, awarded towards loss of love and affection, ought to have been increased to Rs.1 lakh.

18. Similarly, the funeral expenses, according to the learned counsel for the claimants, have been awarded at a conservative quantum of Rs.5,000/- whereas it ought to have been awarded at the rate of Rs.25,000/- when particularly in metropolitan areas like Chennai, such expenses are so inevitable.

19. The learned counsel for the claimants has placed reliance upon the judgments rendered by the Supreme Court in the case of Sarla Verma Vs. Delhi Transport Corporation [reported in 2009 (6) SCC 121] and in the case of Rajesh Vs. Rajbir Singh [2013 (9) SCC 54].

20. The learned counsel for the claimants has pointedly drawn our attention to Ex.P.6 where the date of birth of the deceased Karuppiiah was recorded as 14.7.1976 and the accident having taken place on 12.1.2008, his age was in fact, less than 32 years. He joined the services of M/s.Carborundum Universal Limited, as can be seen from Ex.P.6, on 01.2.2005. We have, therefore, no hesitation to arrive at a conclusion that it is multiplier 17, which should be applied for working out the compensation.

21. So far as the component representing future prospects is concerned, it is now a settled principle in Santosh Devi Vs. National Insurance Company Limited [reported in 2012 (6) SCC 421] wherein it has been held that it would be reasonable to expect increase in wages in future by a 30% hike at least whereas in Rajesh, decided by a Three Judges Bench of the Supreme Court, in paragraph 11, it has been held as under :

"Since, the Court in Santosh Devi Vs. National Insurance Company Limited and Others [2012 (6) SCC 421] actually intended

to follow the principle in the case of salaried persons as laid in Sarla Verma and others Vs. Delhi Transport Corporation [2009 (6) SCC 121] and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

Therefore, we take it as a settled principle of law that the future prospects should also be provided for, while computing the compensation payable.

22. The learned counsel for the claimants, hence, urges that towards future prospects, 50% of the present earnings of the deceased should be taken.

23. We are conscious that the deceased was around 32 years of young age at the time of accident. He would certainly have had bright prospects of future earnings including earning promotions in a good industrial concern like that of M/s.Carborundum Universal Limited. The prospective increase of 50% is not unrealistic. We, hence, accept the contention of the learned counsel for the claimants that towards future prospects, an increase of 50% should be provided for.

24. Similarly, the first claimant was a young widow of 30 years age at the time of accident and the compensation amount of Rs.10,000/- provided towards loss of consortium is too insignificant an amount. We, therefore, enhance it to Rs.50,000/-. The Tribunal awarded a sum of Rs.30,000/- for claimants 2 and 3, who are the parents of the deceased and claimants 4 and 5 - the two young children of the deceased, put together. While we can understand the claimants 2 and 3 being awarded a sum of Rs.30,000/- towards loss of love and affection due to the death of their young son, who was only 32 years old at the time of accident, we find that claimants 4 and 5, who are very young in age, should be compensated separately in a sum of Rs.50,000/- each not only towards loss of love and affection, but including loss of future guidance in life. Therefore, while

confining the amount of Rs.30,000/- awarded by the Tribunal towards loss of love and affection to claimants 2 and 3, we award a sum of Rs.50,000/- each towards loss of love and affection as well as loss of guidance to claimants 4 and 5, who are minor children of the deceased.

25. Though the original claim petition has been confined in a sum of Rs.30 lakhs, the Supreme Court has clearly brought out that the obligation is to determine a fair and just compensation payable as culled out in the case of Jitendra Khim Shankar Trivedi Vs. Kasam Daud Kumbhar [reported in 2015 (4) SCC 237]. Hence, we uphold the claim for enhancement.

26. Subject to the above modification ordered by us, we find no merit in C.M.A.No.2927 of 2012 and it stands dismissed while C.M.A.No.3667 of 2011 stands allowed. Consequently, the connected MP is also dismissed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The (Additional District Court/Fast Track Court No.3),
(Motor Accidents Claims Tribunal) Thiruvallur.

+2cc to Mr.N. Manokaran, advocate Sr. 17573 & 17574

+1cc to Mrs. B. Vijayalakshmi, Advocate Sr. 17305

+1cc to Mr.V.S. Vijay Veliappan, Advocate Sr. 17337

सत्यमेव जयते

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CMA.Nos.3667 of 2011 &
2927 of 2012 & MP.No.1
of 2012

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