IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

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THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. Nos. 2201 to 2203 of 2017
&
C.M.P. Nos. 11767 to 11769 of 2017

C.M.A. No. 2201 of 2017
The General Manager,
Tamil Nadu State Transport Corporation,
Villupuram Limited,
Thiruvannamalai Region,
Thenmalai, Thiruvannamalai. ..Appellant/Respondent

Vs.

1. Minor B. Deepika
2. D. Kala
3. V. Devaraji
4 R. Karpagam
Minor represented by her natural guardian and grandmother 4th respondent R. Karpagam
(Amended as per order in I.A. No. 224/2016 dated 18.02.2016)
..Respondents/Petitioners

Prayer:
Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act 1988 as against the judgment and decree dated 03.03.2016 passed in M.C.O.P. No. 642 of 2014 on the file of the Motor Accidents Claims Tribunal (District Judge II), Kanchipuram.

C.M.A. No. 2202 of 2017

The General Manager,
Tamil Nadu State Transport Corporation,
Villupuram Limited,
Thiruvannamalai Region,
Thenmalai, Thiruvannamalai. ..Appellant/Respondent

Vs.

1. Minor B. Deepika
2. R. Karpagam
   Minor represented by her natural guardian and grandmother 2nd respondent R. Karpagam ..Respondents/Peitioners

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act 1988 as against the judgment and decree dated 03.03.2016 passed in M.C.O.P. No. 11 of 2015 on the file of the Motor Accidents Claims Tribunal (District Judge II), Kanchipuram.

C.M.A. No.2203 of 2017

The General Manager,
Tamil Nadu State Transport Corporation,
Villupuram Limited,
Thiruvannamalai Region,
Thenmalai, Thiruvannamalai. ..Appellant/Respondent

Vs.

1. Minor B. Deepika
2. R. Karpagam
   Minor represented by her natural guardian and grandmother 2nd respondent R. Karpagam ..Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act 1988 as against the judgment and decree dated 03.03.2016 passed in M.C.O.P. No. 56 of 2015 on the file of the Motor Accidents Claims Tribunal (District Judge II), Kanchipuram.

For Appellant in all the appeals :: Mr.K.J. Sivakumar

For Respondents in all the appeals :: Mr.M. Sivakumar

COMMON JUDGMENT

It is disheartening to note that a child has become an orphan in the accident, which occurred on 04.10.2014, in which the other three family members were crushed to death allegedly by the bus belonging to the appellant Transport Corporation. Therefore, three claim petitions were filed seeking compenstion for the loss of father, mother and brother of the minor child.

2. After consideration, the Tribunal found that the bus was driven rashly and negligently and fixed the liability on the Transport Corporation and awarded a sum of Rs.13,19,000/- for the death of the father of the 1st respondent/minor claimant, namely, Babu and a sum of Rs.10,62,000/- for the death of her mother, namely, B. Bharathi and a sum of Rs.3,70,000/- for the death of her brother, namely, Minor B.Jeevanesh @ Jeevananantham. Against the common award passed by the Tribunal, granting the above compensation amounts, the Transport Corporation is before this Court in the above appeals.

3. Heard Mr.K.J. Sivakumar, learned counsel appearing for the appellant in all the three appeals. He would submit that the sum of Rs.6,000/- determined by the Tribunal as income of deceased Babu together with 50% future prospects is on the higher side, in the absence of any proof regarding income. As far as deceased Bharathi is concerned, the Tribunal had fixed Rs.4,500/- as income along with 50% future prospects and in respect of the deceased minor Jeevanesh, a sum of Rs.30,000/- was fixed as notional income, which, according to the learned counsel, are also on the higher side. Therefore, the learned counsel seeks reduction of the amounts.

4. However, Mr.M. Sivakumar, learned counsel appearing for the claimants would submit that Rs.6500/- determined by the Tribunal as income, in respect of deceased Babu, who was aged about 23 years and who was working as a Welder in Larsen & Toubro Company, at the time of accident, is on the lower side. So also, the income fixed in respect of deceased Bharathi as well as minor Jeevanesh. Therefore, the learned counsel seeks enhancement of the compensation amounts awarded.

5. Heard the learned counsel on either side and perused the records.

6. As far as income fixed in respect of deceased Babu is concerned, though the Tribunal had discussed a few judgments regarding income, had finally determined only Rs.6,000/- as his monthly income. Eventhough the income fixed is in consonance with the judgment of the Honourable Apex Court rendered in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627, in the said case, the monthly income of a vegetable vendor, who sustained injuries in the accident, which occurred in the year 2008, was fixed as Rs.6,500/- whereas in this case, the accident had occurred in 2014. Therefore, the income determined by the Tribunal, in respect of deceased Babu, has to be necessarily increased. In fact, the Honourable Apex Court, in the judgment rendered in Munna Lal and another V. Vipin Kumar Sharma and Others reported

in CDJ 2015 SC 476 had fixed the monthly income of a self-employed Pandit, aged about 30 years, who died in the accident, which occurred in 2008, as Rs.12,000/-. However, this Court is inclined to fix the monthly income of deceased Babu at Rs.10,000/-.

7. The deceased Babu was aged about 26 years and therefore, as per the three Judge's Bench judgment of the Honourable Apex Court rendered in Rajesh and Others V. Rajbir Singh and Others reported in 2013 (3) CTC 883, 50% has to be added towards "Future Prospects", which was rightly followed by the Tribunal. Therefore, adding 50% "Future Prospects", the "total monthly income" would be,

= Rs.10,000/- + 50% (Rs.10,000/-)

Total Monthly Income = Rs.15,000/-.

As far as "Personal Expenses" is concerned, one-third deduction has to be made, as rightly done by the Tribunal. Therefore, applying one-third deduction, "Monthly Contribution of deceased Babu to his Family" would be,

	=	Rs.15,000/- (-) 1/3 (Rs.15,000/-)
	=	Rs.10,000/-
Annual Contribution	=	Rs.10,000 x 12
	=	Rs.1,20,000/-

8. It is evident from Ex-P11, Postmortem Certificate and Ex-P8, Identity Card of deceased Babu, that he was aged about 26 years and the appropriate multiplier to be applied, as per the judgment of the Honourable Apex Court rendered in Smt. Sarla Verma & Ors V. Delhi Transport Corporation and Another reported in 2009 ACJ 1298 SC is 17, which was rightly done by the Tribunal. Applying multiplier 17, "Loss of Income" would be,

Loss of Income	=	Rs.1,20,000 x 17
	=	Rs.20,40,000/-

9. The Tribunal has awarded a sum of Rs.50,000/- towards "Loss of Love and Affection" to the minor daughter, which is very low. The child lost her father when she was hardly a year old. The love and affection, which a father would shower on his child, especially, on a girl child, is incomparable and cannot be compensated in terms of money. However, in an earnest attempt to do complete justice, the amount of Rs.50,000/- awarded by the Tribunal is enhanced to Rs.2,00,000/- as the minor child has been deprived of her father's love, affection, care and guidance, throughout her life. The sum of Rs.25,000/- awarded towards "Loss of Love and Affection" to the mother of deceased

Babu is also very low and the same is enhanced to Rs.50,000/-. As far as the amount of Rs.20,000/- awarded towards "Transport Expenses" and "Funeral Expenses" cumulatively is concerned, the same is confirmed. Therefore, the compensation of Rs.13,19,000/- granted by the Tribunal, for the death of Babu/father of the minor claimant is enhanced to Rs.23,10,000/-.

10. The other victim in the accident is, Bharathi, the mother of the minor child, who was aged about 23 years and earning about Rs.4,500/- per month as a milk vendor. Though it is contended that Rs.4,500/- fixed as monthly income of deceased Bharathi is on the higher side, it would have been very difficult to get a labourer or servant on monthly wages of Rs.4,500/- in 2014. Therefore, Rs.4,500/- determined by the Tribunal, as monthly income of deceased Bharathi, is increased to Rs.6,500/-. The Tribunal rightly added 50% towards "Future Prospects" and the same is confirmed. Based on the income now fixed by this Court, adding 50% towards "Future Prospects", the "total monthly income" of deceased Bharathi would be,

	=	Rs.6,500/- (+) 50% (Rs.6,500/-)
Total Monthly Income	=	Rs.9,750/-

One-third deduction was rightly made by the Tribunal towards "Personal Expenses" and therefore, applying the same, "Monthly Contribution of deceased Bharathi to her Family" would be,

	=	Rs.9,750/- (-) 1/3 (Rs.9,750/-)
	=	Rs.6,500/-
Annual Contribution	=	Rs.6,500 x 12
	=	Rs.78,000/-

The Tribunal, considering the age of deceased Bharathi, rightly adopted multiplier 18, as per the judgment of the Honourable Apex Court in Sarla Verma's case (cited supra) and accordingly, applying the said multiplier, "Loss of Income" is arrived at as hereunder:

Loss of Income	=	Rs.78,000/- x 18
	=	Rs.14,04,000/-

11. The minor daughter was awarded only a sum of Rs.50,000/- towards "Loss of Love and Affection", in respect of death of her mother, Bharathi. Nothing in this world could be equated to a mother's love and it is said that even God cannot play the role of a mother, which is a fact also. The mother is responsible for the birth of the child, for grooming the child and her very presence, care and guidance is utmost needed, especially, for a girl child, at the time of puberty and after marriage, during pregnancy and delivery and the minor daughter

has lost the same for the rest of her life and therefore, the sum of Rs.50,000/- awarded towards "Loss of Love and Affection", being inadequate, is enhanced to Rs.2,50,000/-. The amount of Rs.20,000/- awarded towards "Loss of Love and Affection" to the mother-in-law of deceased Bharathi and another sum of Rs.20,000/- awarded towards "Transport Expenses" and "Funeral Expenses" together are confirmed. Hence, the compensation of Rs.10,62,000/- awarded by the Tribunal, for the death of Bharathi/mother of the minor claimant, is enhanced to Rs.16,94,000/-, rounded off to Rs.17,00,000/-.

12. Besides her parents, the minor child had also lost her only brother, who was aged about 2 years, in the accident. The Tribunal, taking Rs.15,000/- as notional income and applying multiplier 15, awarded a sum of Rs.2,25,000/-, apart from awarding a sum of Rs.1,00,000/- towards "Loss of Love and Affection" to the minor claimant and Rs.25,000/- to the grandmother of deceased Jeevanesh and a consolidated a sum of Rs.20,000/- towards "Transport Expenses" and "Funeral Expenses". In all, a sum of Rs.3,70,000/- was awarded by the Tribunal, for the death of Minor Jeevanesh/brother of the minor claimant.

13. However, the issue regarding grant of compensation in respect of death of a minor has been covered by the judgment of the Honourable Apex Court rendered in Kishan Gopal and Another Vs. Lala And Others reported in (2014) 1 SCC 244 wherein the Honourable Apex Court determined the notional income of the minor at Rs.30,000/- and applying multiplier 15, arrived at Rs.4,50,000/-. Following the said judgment, "Loss of Income" with regard to deceased Minor Jeevanesh is calculated at Rs.4,50,000/-. Though Rs.1,00,000/- awarded by the Tribunal towards "Loss of Love and Affection" of sibling to the minor claimant is inadequate, this Court confirms the same. The sum of Rs.25,000/- awarded towards "Loss of Love and Affection" to the grandmother of deceased Minor Jeevanesh is confirmed and so also, Rs.20,000/- awarded towards "Transport-cum-Funeral Expenses". Hence, the award of Rs.3,70,000/- granted by the Tribunal, for the death of Minor Jeevanesh/brother of the minor claimant, is enhanced to Rs.5,95,000/-, rounded off to Rs.6,00,000/-.

14. The rate of interest shall remain the same, as awarded by the Tribunal, at 7.5% per annum.

15. This Court has awarded Rs.2,50,000/-, Rs.2,00,000/- and Rs.1,00,000/- towards " Loss of Love and Affection" to the minor claimant for the death of her mother, father and sibling respectively as it is an extraordinary case wherein the minor claimant lost her entire family, when she was hardly one year old, totally depriving her of love and affection from any of her family members, for the rest of her life.

16. Though there is no appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, in the appeals filed by the Transport Corporation, by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order XLI Rule 33 CPC and Section 151 CPC, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC). This Court need not wait for an appeal or cross-appeal to be filed by the claimant(s). What is required are the facts and facts should justify this Court in enhancing the compensation.

17. Furthermore, the provisions of Motor Vehicles Act are beneficial in nature and are aimed at comforting, consoling and compensating the victims and the family members of the victims of road accidents. The compensation awarded by the Courts should be adequate, just and reasonable and in this case, the minor claimant has lost her entire family, leaving her under the care of her paternal grandmother. Loss of one's parents and sibling, in no way, can be compensated and it is very unfortunate that the minor claimant, in the instant case, has been orphaned, when she was hardly a year old.

18. Therefore, in an endeavour to do justice to the poor child, this Court has enhanced the compensation amounts awarded to the tune of Rs.13,19,000/-, 10,62,000/- & Rs.3,70,000/-, in respect of death of father, mother and brother of minor claimant to Rs. 23,10,000/-, Rs.17,00,000/- and Rs.6,00,000/- respectively. As already stated, the rate of interest @ 7.5% per annum is confirmed.

19. The appellant is directed to deposit the aforesaid compensation amounts, as per the modified award passed by this Court, along with interest and costs, less the amount already deposited, if any, before the Tribunal, on or before 12th April, 2018 failing which the Chairman cum Managing Director and the Chief Accounts Officer-cum-Financial Advisor of the appellant Transport Corporation shall appear before this Court. On such deposit being made, the 2nd respondent in C.M.A. Nos. 2202/***2017** & 2203/***2017**/4th respondent in C.M.A. No.2201/***2017** is entitled to Rs.50,000/- for the death of her son, Rs.20,000/- for the death of her daughter-in-law and Rs.25,000/- for the death of her grandson. As far as the share of the minor claimant is concerned, the same shall be transferred to the account of the minor claimant through RTGS, after getting the Bank Account details and it shall remain in deposit till she attains majority. The 2nd respondent in C.M.A. Nos. 2202/***2017** & 2203/***2017**/4th respondent in C.M.A. No.2201/***2017** is entitled to withdraw interest accruing on such deposit every month till the minor claimant attains majority.

20. The additional court-fee shall be paid on the respective enhanced award amounts, by the 1st respondent/minor claimant in all the appeals and the 2nd respondent in C.M.A.Nos.2202/***2017** & 2203/***2017**, 4th respondent in C.M.A.No.2201/***2017** within a period of two weeks from the date of receipt of a copy of this order.

21. In the result, the Civil Miscellaneous Appeals are dismissed enhancing the compensation amounts awarded by the Tribunal. No costs. Connected M.Ps are closed.

22. Post for reporting compliance on 12.04.2018.

Sd/-
Assistant Registrar(CS IV)

***Correction Carried out as per Order dated 10.10.2018 in CMA.NOs.2201 to 2203 of 2017**
-s/d-
Assistant Registrar(CS IV)
DATED:22.11.2018

//True Copy//

Sub Assistant Registrar

nv

To

1. The MACT (District Court II), Kanchipuram.

2. The Section Officer, VR Section, High Court, Madras-104 (2 Copies)

To be substituted to the Order already despatched on 01.03.2018

3. The Section Officer, Judicial Positing Section, High Court, Madras

+2ccs to Mr.K.J.Sivakumar, Advocate, S.R.No.69022 & 69023
+3ccs to Mr.C.Prabakaran, Advocate, S.R.No.68911, 68912, & 68913

C.M.A.Nos.2201 to 2203 of 2017

GMR(CO)
CS/28/02/18
CS/22/11/2018