IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.03.2017

C O R A M

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

Civil Miscellaneous Appeal Nos.399 and 705 of 2017
Civil Miscellaneous Petition No.2798 of 2017

The Managing Director
Metropolitan Transport Corporation Ltd
Pallavan Salai
Chennai 600 002. ... Appellant in CMA.No.399/17
Respondent in
CMA.No.705/17

v.

1. Tharakeshvari
2. Minor N.T.Harshini
3. Minor N.T.Bala Ganesh
(Minors rep by their Mother
Natural Guardian and next friend)
4. Chellan Nadar ... Respondents in CMA.No.399/17
Appellants in CMA.No.705/17

Appeal filed under Section 173 of the Motor Vehicles Act, against the fair and decreetal order dated 17.03.2016, passed in M.C.O.P.No.1133 of 2013, by the learned II Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai.

For Appellant in CMA.No.399/17... Mr.S.S.Swaminathan
Respondent in CMA.No.705/17

For Respondents in CMA.No.399/1... Mr.F.Terry Chella Raja
Appellants in CMA.No.705/17

C O M M O N J U D G M E N T
(Judgment of the Court was delivered by S.Manikumar, J)

In the accident, which occurred, on 16/11/2012, an Advocate died. Wife, two minor children and father of the deceased filed M.C.O.P.No.1133 of 2013, on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai, claiming compensation of Rs.2 crores, under various heads.

2. Metropolitan Transport Corporation Ltd., Pallavan Salai, Chennai, disputed the manner of accident and the compensation claimed under various heads.

3. Before the Tribunal, wife examined herself as P.W.1 and reiterated the manner of accident, attributing negligence to the driver of the Transport Corporation bus. P.W.4, Krishnadoss, is stated to be the eye witness. According to him, when the deceased was riding a bike, bearing Registration No.TN75-5945, near Asharkana Bus stop, on G.S.T.Road, a bus, bearing Registration No.TN-01N-7830 (Route No.G-70), which came from the same direction, driven in a rash and negligent manner, by its driver, hit the motorcycle from behind, due to which, the motorcyclist fell down, the bus ran over his head, resulting in death.

4. Ex.P1 - FIR, has been registered against the driver of the bus, by Mount Traffic Investigation Division, in Crime No.1521 of 2012, under Sections 279 and 304 (A) of the Indian Penal Code. Ex.P.2 is the sketch. Police, on investigation, has laid Ex.P.3 charge sheet against the driver of the bus.

5. Rebutting the allegations of rash and negligent driving and on the basis of Ex.R1 - Rough Sketch, prepared by the investigation Officer of the Transport Corporation, marked as Ex.R.1. R.W.1 driver of the bus has deposed that on the fateful day, while he was climbing down the fly over, the deceased, who was riding a motorcycle, on the left side of the bus, attempted to over take the bus and thus invited the accident. However, his oral testimony is not supported by any corroboration, except Ex.R.1 sketch prepared by the investigation Officer of the Transport Corporation.

6. Evaluating the oral and documentary evidence, the Tribunal held that R.W.1 Driver of the bus alone was negligent in causing the accident and accordingly, rejected the contention of the Transport Corporation to exonerate from its liability, to pay compensation. On the quantum of compensation, by producing Ex.P.8 enrolment certificate, Ex.P.9 Visiting card, Ex.P.17 Madras High Court Advocates' Association Identity card, respondents/claimants in C.M.A.No.399 of 2017 have proved that at the time of accident, the deceased was an Advocate.

7. Though on the basis of testimony of P.W.2, the Contractor, P.W.3 and P.W.5 Advocate and Ex.P.13 salary certificate issued by Mr.P.Deivendra, Advocate, Exs.P.16 and 18 bank passbooks, Ex.P.19 construction agreement, Ex.P.20 salary certificate issued by Mr.G.Alexc Benziger, Advocate and Ex.P.22 salary certificate issued by K.Subbu Ranga Bharathi, Advocate, legal representatives contended that his monthly earning was Rs.75,000/-, in the absence of any Income Tax returns, for the

assessment year 2011 - 2012, the Tribunal fixed the monthly income of the deceased as Rs.30,000/-. At the time of accident, the deceased was aged 37 years. Hence following the decision in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another {(2009) 6 SCC 121}, the Tribunal added 50% of the monthly income under the head future prospects. Besides wife, there were two minor children and aged father. As the number of dependants were four, the Tribunal deducted 1/4th towards the personal and living expenses of the deceased. Applying the above said method, the Tribunal determined the monthly loss of monthly contribution to the family as Rs.33,750/-. Multiplier applicable to the age group of the victim is 15. Accordingly, applying the said multiplier, the Tribunal, computed the loss of contribution to the family as Rs.60,75,000/- (33,750/- x 12 x 15). Following the judgment of the Hon'ble Supreme Court in Rajesh and Others Vs. Rajbir Singh and Others {(2013) 9 SCC 54}, the Tribunal awarded, Rs.1 lakh for loss of consortium. The tribunal awarded a further sum of Rs.1 lakh under the head loss of love and affection to the wife.

8. Children being minors and father, aged about 70 years, were granted compensation of Rs.1 lakh each, under the head loss of Love and Affection. In addition to the above, the Tribunal has awarded Rs.1 lakh under the head loss of estate, Rs.25,000/- for funeral expenses. Based on Ex.P.15 transport bills, awarded Rs.40,000/- under the head transportation. Altogether, the Tribunal has awarded compensation of Rs.67,40,000/-, as hereunder:-

Loss of pecuniary benefits	...	Rs.60,75,000/-
Loss of consortium	...	Rs. 1,00,000/-
Loss of Love & Affection	...	Rs. 4,00,000/-
Loss of Estate	...	Rs. 1,00,000/-
Funeral expenses	...	Rs. 25,000/-
Transport expenses	...	Rs. 40,000/-
		Rs.67,40,000/-

9. Reiterating the defence taken before the Tribunal and inviting the attention to Ex.R.1 Sketch, prepared by the investigation Officer of the Transport Corporation and the oral testimony of R.W.1 Driver of the bus, Mr.S.S.Swaminathan, learned counsel for the Transport Corporation, submitted that the accident occurred only due to the negligence of the motorcyclist and not the driver of the Transport Corporation bus. He further submitted that if the Court is not inclined to reverse the finding of negligence in its entirety, on the facts and circumstances of the case, the Court should consider as to whether the motorcyclist had contributed to the accident, thereby apportionment of negligence could be fixed, as between the motorcyclist and the driver of the bus.

10. It is well settled that the finding of negligence in motor accident claims cases is decided on the principles of preponderance of probability and not strict evidence. At this juncture, it is useful to extract the observations of the Hon'ble Division Bench of this Court in Oriental Insurance Co. Ltd., Vs. K.Balasubramanian, reported in 2007 (2) TN MAC 399, wherein, this Court held as follows:-

> "It is a well settled proposition of law that the judgments of the Criminal Courts are neither binding on the Civil Court/Motor Accident Claims Tribunal no relevant in a Civil case or a claim for compensation under the Motor Vehicles Act, except for the limited purpose of showing that there was a criminal prosecution which ended in conviction or acquittal. But there is an exception to the general rule. When an accused pleads guilty and is convicted based on his admission, the judgment of the Criminal Court becomes admissible and relevant in Civil proceedings and proceedings before the Motor Accident Claims Tribunal, not because it is a judgment of the Criminal Court, but as a document containing an admission. Of course, admissions are not conclusive proof of the facts admitted therein. But unless and until they are proved to be incorrect or false by the person against whom the admissions are sought to be used as evidence, the same shall be the best piece of evidence."

11. Negligence attributed to the driver of an offending vehicle in motor accident cases, and rash and negligent driving under Section 279 of the Indian Penal Code, is distinct and different. The above aspect has been succinctly explained by the Hon'ble Apex Court in Jacob Mathew Vs. State of Punjab reported in {2005 (4) CTC - 540}, wherein at paragraph Nos.13 to 17, the Hon'ble Apex Court, explained the difference between tort and crime, as follows:-

> "13. The moral culpability of recklessness is not located in a desire to cause harm. It resides in the proximity of the reckless state of mind to the state of mind present when there is an intention to cause harm. There is, in other words, a disregard for the possible consequences. The consequences entailed in the risk may not be wanted, and indeed the actor may hope that they do not occur, but this hope nevertheless fails to inhibit the taking of the risk. Certain types of violation, called optimizing violations, may be motivated by thrill-seeking. These are clearly reckless.
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> 14. In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was

of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences. Lord Atkin in his speech in Andrews V. Director of Public Prosecutions, [1937] A.C.576, stated,

"Simple lack of care such as will constitute civil liability is not enough; for purposes of the criminal law there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established."

Thus, a clear distinction exists between "simple lack of care" incurring civil liability and "very high degree of negligence" which is required in criminal cases. Lord Porter said in his speech in the same case -

"A higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability. (Charlesworth & Percy, ibid, para 1.13)

15. The fore-quoted statement of law in Andrews has been noted with approval by this Court in Syad Akbar V. State of Karnataka (1980) 1 SCC 30. The Supreme Court has dealt with and pointed out with reasons the distinction between negligence in civil law and in criminal law. Their Lordships have opined that there is a marked difference as to the effect of evidence, viz., the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man, beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

16. Law laid down by Straight, J in the case Reg V. Idu Beg (1881) 3 All. 776, has been held good in cases and noticed in Bhalchandra Waman Pathe V. State of Maharashtra 1968 Mh.L.J 423, a three Judge Bench decision of this Court. It has been held that while negligence is an omission to do something which is a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to

guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

17. In our opinion, the factor of grossness or degree does assume significance while drawing distinction in negligence actionable in tort and negligence punishable as a crime. To be latter, the negligence has to be gross or of a very high degree."

12. Reverting to the case on hand, it could be seen that First Information Report has been lodged against the driver of the State Transport Corporation bus. Ex.P.2 sketch has been prepared by Police. Ex.P.3 charge sheet has been laid against the driver of the State Transport Corporation bus. Ex.R.1 prepared by investigation team is on the information obtained. Unless and until the Transport Corporation examines the persons from whom statements have been recorded, for the purpose of preparing a report, or in the instant case, Ex.R.1 sketch, such document cannot be given any credence, moreso, when it is not supported by any independent witness. Thus, on the facts and circumstances of this case, even taking it for granted that Ex.R.1 Sketch has been prepared, based on the information given by R.W.1, Driver of the bus, his oral testimony is not supported by any independent witness. On the contra, evidence adduced on the side of the claimants is clinching and that the same cannot be brushed aside.

13. Added further, during the course of hearing, we directed Mr.S.S.Swaminathan, learned counsel for the Transport Corporation, to ascertain as to whether any disciplinary action has been taken by the employer Metropolitan Transport Corporation Limited, Chennai against R.W.1. Reverting, he submitted that in the disciplinary proceedings taken, R.W.1 was imposed with a penalty of stoppage of increment for five years with cumulative effect. On appeal, and based on the proceedings No.32330/CB(ON)6/Ma.Pa.K/2012 dated 11/3/2015, the gravity of the punishment alone was reduced, without cumulative effect, retaining the period of punishment. Charges levelled against R.W.1 in the disciplinary proceedings are as follows:-

(i) On 16/11/2012, Mr.D.Dhanasekaran, Driver of Vadapalani Depot, Computer No.D16070, while on his service in Route No.G70/"I", bearing bus service No.VPI 2121, tried to closely over take the motorcycle near Asharkana bus stand, which was driven on the left side, on the same direction, hit that motorcycle, causing the motorcyclist, to fall on the road and caused the death, is an indiscipline, as per the certified order No.25 (x1iii) (A).

(ii) Death caused on account of this incident, as the reason for loss of income to the Management as well as inconvenience to the public is an indiscipline, as per the certified order No.25 (z1iii).

14. Thus, it could be seen that even the transport department has imputed negligence on R.W.1 and after a full fledged enquiry, held the charges, as proved. Preponderance of probability, is the principle applied both in the Claims Tribunal and Departmental proceedings. When the department has imposed a punishment of stoppage of increment for five years, without cumulative effect, we are unable to subscribe to the contrary contentions of the Transport Corporation in this appeal that R.W.1 was not negligent in causing the accident. After analysing the evidence adduced by both parties, we are of the view that Transport Corporation has not made out a strong case to hold that the finding of the Tribunal is perverse, warranting interference. We confirm the finding of the Tribunal.

15. On the quantum of compensation, though Mr.S.S.Swaminathan, learned counsel for the Transport Corporation contended that Rs.30,000/-, fixed as monthly income by the Tribunal is excessive, on the grounds that no income tax return was filed by the deceased and further contended that the Tribunal erred in adding 50% of the said income under the head future prospects, this Court is not inclined to accept the same, for the reason that as per Ex.P.8 enrolment certificate, the deceased had registered his name as an Advocate, on the rolls of Bar Council of Tamil Nadu, on 8/10/2003. Accident has occurred on 16/11/2012, on which date, he had 9 years of experience at the bar. As per the averments, initially, he had started practice under Mr.M.Palani, No.41, Advocate Law Chamber, High Court Buildings, Chennai and lateron, started independent practice, both in Madras and Madurai Bench of this Court and other Courts.

16. Although legal representatives have not marked I.T returns, still, having regard to the prospects in legal profession, after considerable experience, Court/Tribunal has to consider the evidence on record and arrive at a conclusion, as to whether, the deceased would have earned the income claimed. On the facts and circumstances of the case, Ex.P19, Construction agreement with P.W.2 Contractor, filed, can also be taken note of, when the Contractor has adduced evidence. Stating that the deceased entered into a contract, for constructing a house. Testimony of P.W.2 has not been shattered.

17. Though legal profession has ups and downs, as years roll by, acquisition of knowledge in law and experience, and consequently, increase in the earning capacity, cannot be ruled out. Remuneration is not static. Depending upon the nature of the case, complexity of facts and law involved, remuneration is fixed. It also depends upon the paying capacity of the litigant.

If somebody works in a firm, he may be paid a fixed salary. Depending upon the fee charged for the case, assistance rendered to a senior lawyer or in case, he handles the brief independently, remuneration is fixed. A successful young independent lawyer may have more briefs, than an older lawyer with less cases, earning less or with limited cases, the latter may even charge more.

18. Mere number of years of experience, at the bar, alone cannot be the sole criteria. But Courts/Tribunals can consider the background of the office, to which, he was attached, appearance and arguments made before the Courts, ability to excel in the profession and thereby, to earn more, in future. On the facts and circumstances of the case, we are of the view that the deceased would have earned Rs.30,000/-, the sum determined by the Tribunal. At the time of accident, deceased was aged 37 years. Addition of 50% of the income under the head future prospects cannot be said to be erroneous, in the light of the decision of this Court, in C.M.A.No.3273 of 2014, dated 13/10/2015, [Royal Sundaram Alliance Insurance Co. Ltd., v. Tmt.Vennila], to which one of us is a party (S.Manikumar,J). It is useful to extract the following paragraphs,

> "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 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.
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> 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 self-employed, 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 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 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 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, 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."

19. At the time of accident, minors were aged 5 and 4 years respectively. Father was stated to be 70 years. Compensation of Rs.4 lakhs appears to be slightly on the higher side. As per the decision in Rajesh & Others Vs. Rajbir Singh & Others, reported in 2013 (3) CTC 883, children are entitled to compensation of Rs.1 lakh each.

20. A 70 year old man has lost his son and certainly, the same would be lingering in his mind, till he breathes last. Loss of Love and Affection cannot be measured precisely in terms of money. Suffering needs to be compensated and having regard to the above, we are of the view that suffice to compensate him, with Rs.1 lakh under the said head.

21. A sum of Rs.1 lakh has been awarded under the head loss of estate. Though a contention has been made that the said amount is superfluous when the minor dependants and widow have been compensated under the head loss of consortium, Love and Affection, on the facts and circumstances of this case, this Court is not inclined to interfere with the same, for the reason that loss of estate is different from the other heads.

22. 'Consortium' as per the Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owned by a wife to her husband and vice

versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Apex Court, held as follows:

> "In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

Award of Rs.1 lakh under the head loss of consortium can be justified in the light of the above said judgment.

23. Quantum of Compensation of Rs.20,000/- awarded under the head, funeral expenses, is less. On the aspect of funeral expenses, the Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh and others reported in 2013(3) CTC 883, held as follows:

> "21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the

contrary for higher expenses, to award at least an amount of Rs.25,000/-."

24. Transport expenses of Rs.40,000/- is supported by Ex.P.14 Ambulance bill, issued by Taj Ambulance and Freezer service, Chennai, for a sum of Rs.18,100/- (dead body taken from Government Hospital, Chromepet, Chennai to Thirunainarkurichi in Kanyakumari District on 17/11/2012 and 18/11/2012). Claimants have also produced Ex.P.15 Innova Car Transport Bill, dated 16/11/2012, for a sum of Rs.21,590/-. Altogether, they have incurred transport expenses as Rs.18,100/- + 21,590/- = Rs.39,690/-, for which, the Tribunal has rounded off to Rs.40,000/-. Transport expenses is substantiated. Tribunal has not awarded any compensation under the head conventional damages.

25. Though the legal representatives of the deceased have filed Civil Miscellaneous Petition No.13983 of 2016, for enhancement of compensation, on the grounds that the Tribunal has failed to consider the oral testimony of Mr.G.Alexc Benziger, Advocate, Mr.K.Subbu Ranga Bharathi, Advocate, who had issued Ex.P13 and Ex.P.22 - salary certificates and contended that the Tribunal erred in not fixing the monthly income as Rs.75,000/-, for the purpose of computing the loss of contribution to the family, as rightly observed by the Tribunal, in the absence of production of Income tax returns, for the assessment year 2011 - 2012 or for the period, prior to the date of accident i.e., 16/11/2012, income cannot be determined, as a matter of routine, on the basis of certificates issued. They should be corroborated.

26. Though in C.M.A.No.705 of 2017, the legal representatives of the deceased have sought for enhancement, considering the material on record, this Court is not inclined to do so. Reasonable compensation has been awarded under various heads, as stated supra.

27. The only question which require to be considered, in our view, is what would be the loss of contribution to the family, if income tax has to be deducted. Fixing the monthly income of the deceased as Rs.30,000/- and adding 50% of the same, under the head future prospects, monthly income of the deceased would be Rs.45,000/-. Consequently, the annual income would be Rs.5,40,000/-. During the year 2011 - 2012, upto Rs.2 lakhs, there was no income tax. For Rs.2 to 5 lakhs, tax has to be deducted at 10%. Therefore, for the balance amount of Rs.3,40,000/-, income tax works out to Rs.34,000/-. If the said income-tax has to be deducted from the annual income of Rs.5,40,000/-, sum to be taken for computation of loss of contribution would be Rs.5,06,000/-. Dependants are four in number. Therefore, as per the decision in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another {(2009) 6 SCC

121}, 1/4th has to be deducted towards the personal and living expenses. After deduction, loss of contribution, per annum, works out to Rs.3,79,500/-. For the age group of the deceased, 15 is the proper multiplier. Applying the same, loss of contribution to the family, works out to Rs.56,92,500/-. Going through the award, except deduction of Rs.1 lakh, under the head loss of love and affection, compensation due and payable, to the legal representatives of the deceased, works out to Rs.62,46,025/-, with interest, at the rate of 7.5% p.a., from the date of claim, till realisation and costs.

28. Earlier, on the directions of this Court, made in C.M.P.No.13983 of 2016, dated 4/10/2016, Metropolitan Transport Corporation, Chennai, has deposited a sum of Rs.25 lakhs only, and having regard to the plight of the legal representatives, who had lost their sole bread winner, we permitted them to withdraw. Now, in view of the reduction in quantum of compensation as stated supra, Metropolitan Transport Corporation, Chennai is directed to deposit the balance amount of Rs.37,57,500/-, with proportionate interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.1133 of 2013, on the file of the Motor Accident Claims Tribunal (II Judge, Small Causes Court), Chennai, within a period of six weeks. Rs.25 lakhs has already been withdrawn. Rs.1 lakh with proportionate interest awarded to the father of the deceased is permitted to be withdrawn. Balance amount shall be in the bank deposit, till the minors attain majority. Accrued interest on their share is permitted to be withdrawn by mother. On such deposit, share of the majors alone should be withdrawn. In view of the foregoing paragraphs, apportionment to the wife is reduced by Rs.4,82,500/-

29. In the result, C.M.A.No.399 of 2017, filed by the Metropolitan Transport Corporation, Chennai, is allowed in part and C.M.A.No.705 of 2017, filed by the legal representatives for enhancement is dismissed. No costs. Consequently, the connected Miscellaneous Petition No.2798 of 2017 is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

mvs/skm

To

The II Judge, Small Causes Court,
Motor Accident Claims Tribunal, Chennai.

+1 CC to Ms. M. Malar, advocate sr 16131
+2 CCs to Mr.S.S. Swaminathan, Advocate sr 16189, 16190.

Civil Miscellaneous Appeal Nos.399 and 705 of 2017
Civil Miscellaneous Petition No.2798 of 2017

AD(CO)
sp(01/09/2017)