

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on: 03.02.2017

Judgment Pronounced on:03.11.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.Nos.2474 & 2475 of 2013

C.M.A.No.2474 of 2013 :

Dhatchinamoorthy .. Appellant/Petitioner
Vs.
The Managing Director,
Tamil Nadu State Transport
Corporation,
Kumbakonam. ... Respondent/Respondent

C.M.A.No.2475 of 2013 :

1. Dhatchinamoorthy
2.Minor Sharmila .. Appellants/Petitioners
Vs.
The Managing Director,
Tamil Nadu State Transport
Corporation,
Kumbakonam. ... Respondent/Respondents

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order dated 30.10.2012 of the Motor Accidents Claims Tribunal / Additional District Court, Ariyalur, passed in MCOP.Nos.186 & 187 of 2009.

For Appellant : Mr.P.G.Rajagopal
(in both CMAs)

For Respondent : Mr.D.Venkatachalam
(in both CMAs)

COMMON JUDGMENT

The claimant who appeared in two different capacities in two separate claim petitions that he filed seeking compensation for the death of his baby son and young wife in an unfortunate road accident has come forward with these twin appeals seeking enhancement of compensation awarded by the Tribunal.

2. On 19.02.2009 at about 8.30 a.m., the appellant/claimants herein was riding his motor cycle bearing NO.1N-49-S-3282. His wife, who was to die shortly, and his

baby son Anandan were in the pillion. About that time a bus bearing No.TN-45-N-2327 belonging to the respondent/State Transport Corporation dashed against the motor cycle killing the pillion riders namely the wife and the son of the appellant on the spot, and besides injuring the claimant himself. Seeking a compensation for himself, for the death of his baby son and his wife, the appellant moved the Tribunal in separate claim petitions in MCOP Nos.184 of 2009, 186 of 2009 and 187 of 2009 respectively. Of them, the awards passed in MCOP Nos.186 of 2009 and 187 of 2009 alone are now under challenge.

3. In MCOP No.186/2009, the appellant had claimed Rs.5,00,000/- as compensation towards the death of his one year old son. In MCOP No.187 of 2009, he claims Rs.10,00,000/- as compensation towards loss of his wife. For the loss of his son, the Tribunal has passed an award of Rs.1,50,000/-, whereas, the loss of Appellant's wife, it awarded a sum of Rs.6,34,000/- and directed the same be paid with interest at 7.5% per annum. Claiming that the aforesaid sum does not represent as just and fair compensation, the claimants has come forward with these appeals.

C.M.A.No.2474 of 2013:

4. This was filed against MCOP No.186 of 2009. The learned counsel for the appellant contended that the Tribunal has passed an award for a consolidated sum of Rs.1,25,000/-. The Tribunal has ignored to note that it was not handing down any exgratia but a compensation that must be just and fair and bears a degree of proportionality to the loss suffered. Relying on the authority of the Hon'ble Supreme Court in the case of Kishan Gopal & Another v. Lala & others [2013 (2) TNMAC 358 (SC)], the learned counsel argued that in a case of a child aged 1 year, it should be awarded by notionally reckoning his income as per the 2nd schedule of Motor Vehicles Act, and accordingly the annual income of the baby must be reckoned at Rs.15,000/- p.a., as one reckoned for someone not-earning as per schedule II. In Kishan Gopal case, for an accident taken place in 1992, the Supreme Court has doubled the income as mentioned in II Schedule. If multiplier is reckoned at 15, the total compensation payable is 4,50,000/-, for the loss of the only male child the appellant shall be compensated to the tune of Rs.1,00,000/-. Besides for the funeral another sum of Rs.15000/- to be awarded. In all, he is entitled for Rs.5,65,000/- as compensation.

C.M.A.No. 2475 of 2013:

5. In this case, appellant has lost his wife aged 31 years, who at the relevant time was working as a lecturer in a private college. The claimant claimed that she was earning Rs.5000/- as per Ext.P-10 Salary Certificate. However, Ext.P10 Salary Certificate read along with Ext-P11 acquittance of the

deceased would indicate that appellant's wife Kavitha was earning Rs.6000/- between January, 2008 and April, 2008. The Tribunal however, has reduced the victim's income to Rs.4,500/- on no rational basis. Now, not only this requires to be corrected but even future prospects in career to the extent of 50% of last drawn salary to be awarded in terms of Sarala verma & Ors. vs. Delhi Transport Corporation & another [(2009) 2 TN MAC 1]. At any rate, the Tribunal should at least fix the income of the deceased at Rs.5000/- as stated by the appellant in his evidence. Compensation on non-pecuniary heads like loss of love and affection for the minor daughter and loss consortium for the appellant must also be suitably enhanced in order they reflect a just and fair compensation.

6.1 The learned counsel for the respondent however contended that the Tribunal has been careful in passing the award and defended it. He added that so far as the compensation payable to one year old son of the appellant is concerned, the authority cited in Kishan Gopal case may not have a bearing since in that case the victim who died in the accident was a boy of 10 years. What is applicable to the boy of 10 years is not made applicable to the one year old child.

6.2 So far as the compensation payable to the appellant's wife is concerned, the learned counsel submitted that the monthly income has been rationally fixed.

Decision of the Court:
C.M.A No.2474 of 2013:

7. There has been a tendency to treat a child of one year as almost valueless as it does not earn anything, and that one needs to pay only so much as might assuage the mental agony of the parents. What is not realised is that every child in this country is born with the hope that it will be safe here. Who knows what the child would have achieved and the contribution it might have made if it was let to live? Is it not then the responsibility of the Society to show greater care to protect our children? Is it then appropriate to devalue a child of one year, who is cent percent dependent on us for seeing its next day, if not next hour in life? Is then the attitude that 'kill a child with your negligence and pay a undervalued compensation', grants premium to negligence of a driver of an automobile? Taking all aspects into consideration this Court therefore, grants Rs.4,00,000/- towards loss of the child, which would grant this unnoticed life of this country some degree of dignity at least in its death.

C.M.A No.2475 of 2013:

8. Rival submissions carefully weighed. Appellant as PW1 has stated that his wife Kavitha was earning Rs.5,000/- per month. Possibly he might have referred to her take home pay since Ext.P-10 states her monthly income as Rs.6000/-. As per

the Sarla Verma dictum 50% of the same must be added to her future prospects. Accordingly, gross monthly income is calculated at Rs.7500/-. From this, 1/4th must be deducted towards her personal expenses and this implies that her contribution to her family would have been Rs.5000/- per month. The appropriate multiplier is 16 and the compensation towards loss of support to her family is (Rs.5000 x 12 x 16) = Rs.7,20,000/-. For the loss of love and affection Rs.50,000/- for the daughter and for loss of consortium Rs.1,00,000/- for the husband of the victim is awarded. For funeral Rs.10,000/- is the right amount to be awarded. In all the claimant is entitled to a compensation of Rs.8,80,000/.

9. In the result, both the appeals are partly allowed. In C.M.A.No.2474 of 2013, the compensation amount is enhanced from Rs.1,25,000/- to Rs.4,00,000/- and in C.M.A.No.2475 of 2013, the compensation amount is enhanced from Rs.6,34,000/- to Rs.8,80,000/-. The respondent/Transport Corporation is directed to pay the enhanced compensation amount along with interest at 7.5% p.a., less the amount, if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order, whereupon the claimant is entitled to withdraw the same forthwith in the same ratio as directed by the court below. The claimant is directed to pay necessary additional court fee, if any. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ssn

To:

1.The Additional District Judge,
Motor Accidents Claims Tribunal
Ariyalur.

2.The Section Officer,
VR Section,
High Court, Madras - 600 104.

+ 2 ccs to Mr. P.G. Rajagopal, Advocate Sr.7763, 7764

C.M.A.Nos.2474 and 2475 of 2013

MG(CO)
EU(06/03/2018)