

IN THE JUDICATE OF MADRAS HIGH COURT

DATE : 11.08.2017

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THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.No.2709 of 2013 and C.M.A.No.380 of 2014

and

M.P.No.1 of 2014

1.D.Kannagi

2.Karpagarajan (minor)

3.Gokulaselvi (minor)

(Appellants 2 & 3 rep by  
their mother 1st appellant)

... Appellants in C.M.A.2709/2013

... Respondents in C.M.A.380/2014

Vs.

The Managing Director,  
Metropolitan Transport Corporation Ltd.,  
Anna Salai, Chennai-600 002.

... Respondent in C.M.A.2709/2013

... Appellant in C.M.A.380/2014

Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicle Act, 1988, against the award made in M.C.O.P.No.316 of 2011, dated 08.04.2013 on the file of the Motor Accident Claims Tribunal, Chennai (II Court of Small Causes), Chennai.

Appearance

Mr.K.Varadha Kamaraj - for Appellants in CMA.2709/2013  
& for respondents in CMA.380/2014

Mr.K.S.Suresh - for respondent in CMA.2709/2013  
& for Appellant in CMA.380/2014

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, in and by award dated 08.04.2013 in M.C.O.P.No.316 of 2011, the claimants have preferred the appeal in C.M.A.No.2709 of 2013.

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2.Similarly, challenging the quantum of compensation awarded

by the Tribunal, the Transport Corporation has preferred the appeal in C.M.A.No.380 of 2014.

3.Since both the appeals arise out of the same award, for the sake of convenience, the parties will be hereinafter referred to as claimants and the Transport Corporation.

4.The claimants are the wife, minor son and minor daughter of the deceased G.Dhakshinamoorthy. The case of the claimants before the Tribunal is that on 10.12.2010 at 00.50 hours, when the said Dhakshinamoorthy was going on his cycle at Koyambedu 100 feet Road, Chennai, from North to South direction, the bus belonging to the Transport Corporation bearing Reg.No.TN-01-N-5380 came from behind in a rash and negligent manner at a hectic speed and hit the bicycle, thus, caused the accident, in which he had sustained grievous injuries and died on 19.12.2010 at the Government General Hospital, Chennai. Hence, the claimants, legal heirs of the deceased Dhakirshmoorthy, made a claim for a sum of Rs.12,00,000/- as compensation before the Tribunal.

5.Before the Tribunal, the Transport Corporation has filed a counter denying the rash and negligence on the part of the bus belonging to the Transport Corporation.

6.In order to prove their claim before the Tribunal, on the side of the claimants, the 1st claimant/wife of the deceased examined herself as P.W.1, besides examining one P.Selvam, who was an eye witness to the accident, as P.W.2 and one G.Babu, employer of the deceased, as P.W.3 to speak about the income earned by the deceased, and marked eleven documents as Ex.P.1 to Ex.P.11. On the side of the Transport Corporation, the driver of the bus was examined as R.W.1 and no documentary evidence was adduced.

7.The Tribunal, after analysing the entire evidence adduced on either side, has come to the conclusion that the accident has occurred only due to the rash and negligent driving of the driver of the bus. By coming to such a conclusion, the Tribunal has passed an award for a total sum of Rs.14,58,000/- as compensation. The breakup details of the compensation amount awarded by the Tribunal are as follows-

|                              |                  |
|------------------------------|------------------|
| 1.For Pecuniary Loss         | = Rs.12,48,000/- |
| 2.Loss of Consortium         | = Rs. 1,00,000/- |
| 3.Funeral Expenses           | = Rs. 10,000/-   |
| 4.Loss of love and affection | = Rs. 1,00,000/- |

|       |                        |
|-------|------------------------|
| Total | <u>Rs. 14,58,000/-</u> |
|-------|------------------------|

Not being satisfied with the quantum of Compensation, the Claimants have come forward with the appeal. Similarly, challenging the quantum of compensation, the Transport Corporation has also filed another appeal.

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8.When the matter is taken up for consideration, the learned counsel for the Transport Corporation would fairly submit that

in the present appeal, the quantum of compensation alone is challenged and not the rash and negligence aspect. In view of the submission made by the learned counsel for the appellant/Transport Corporation, it is not necessary for this Court to deal with the rash and negligence aspect.

9. So far as the quantum of compensation is concerned, it is submitted by the learned counsel for the claimants that at the time of accident, the deceased Dhakshinamoorthy was working as a Security Guard and earning a sum of Rs.12,000/- per month as salary. The Tribunal has awarded only a sum of Rs.12,48,000/- under the loss of income. But, the Tribunal has not awarded any amount towards future prospects. Hence, according to the learned counsel for the claimants, the award amount passed by the Tribunal needs to be enhanced.

10. But, it is submitted by the learned counsel for the appellant/Transport Corporation that before the Tribunal, on the side of the claimants, no tangible evidence was produced to prove the income earned by the deceased Dhakshinamoorthy; however, the Tribunal has fixed an exorbitant amount of Rs.12,000/- as monthly income of the deceased and based on that, the Tribunal made the calculation, which resulted in awarding exorbitant amount of Rs.14,58,000/- as compensation. Thus, the learned counsel for the Transport Corporation submitted that by fixing a lesser amount as monthly income of the deceased, the amount awarded by the Tribunal has to be recalculated. Similarly, the amounts awarded by the Tribunal under different other heads are also on the higher side and the same needs to be modified.

11. Keeping in view the submissions made on either side, We have carefully gone through the entire materials available on record. We find that in order to prove the income earned by the deceased, Supervisor-cum-Clerk in Group- Security Services (employer of the deceased) was examined as P.W.3 and he deposed that the deceased was working in their company as Security Guard since 2003 and his job is permanent and his retirement age is 58 years and at the time of accident, a sum of Rs.12,000/- was paid to him as salary and there will be chances for him to the promotion to the post of Security Supervisor and to earn Rs.18,000/- per month. Ex.P.11-Salary Slip for the month of Nov-2010 was produced on the side of the claimants, which would show that the deceased was earning Rs.12,192/- per month. Based on that evidence, the Tribunal has taken a sum of Rs.12,000/- as month income of the deceased. After deducting 1/3rd towards personal expenses and by applying multiplier 13, the Tribunal has awarded as sum of Rs.12,48,000/- ( $8,000 \times 12 \times 13$ ) towards the pecuniary loss.

12. But, as contended by the learned counsel for the claimants, the Tribunal has not awarded any amount towards future prospects. If a sum of Rs.12,000/- is fixed as monthly salary of the deceased, 30% amount has to be added as future prospects. The 30% of the amount works out to Rs.3,600/- and then, the total amount comes to Rs.15,600/-. If 1/3rd amount is

deducted towards personal expenses, the balance comes to Rs.10,400/- (15,600 - 5600=10,400), which would be the monthly loss of income of the claimants. The deceased was aged 46 years at the time of accident. Hence, the correct multiplier would be 13. If multiplier 13 is applied, the total loss of income works out to Rs.16,22,400/- (10,400 x 12 & 13 = 16,22,400). Hence, a sum of Rs.12,48,000/- awarded by the Tribunal under the head of loss of income is hereby enhanced to Rs.16,22,400/-. Except this modification, the compensation amounts awarded by the Tribunal under other heads need not be interfered with, as the same appear to be just and proper compensation. Hence, the total compensation amount of Rs.14,58,000/- awarded by the Tribunal is hereby modified/enhanced to a sum of Rs.18,32,400/-. The breakup details of the modified/enhanced compensation amount are as follows\_

|                              |                        |
|------------------------------|------------------------|
| 1.For Pecuniary Loss         | = Rs. 16,22,400/-      |
| 2.Loss of Consortium         | = Rs. 1,00,000/-       |
| 3.Funeral Expenses           | = Rs. 10,000/-         |
| 4.Loss of love and affection | = Rs. 1,00,000/-       |
| Total                        | <u>Rs. 18,32,400/-</u> |

13.In fine, the appeal filed by the Transport Corporation in C.M.A.No.380 of 2014 is dismissed and the appeal filed by the claimants in C.M.A.No.2709 of 2013 is allowed. The total compensation amount of Rs.14,58,000/- (Rupees Fourteen Lakhs Fifty Eight Thousand only) awarded by the Tribunal is hereby modified/enhanced to a sum of Rs.18,32,400/- (Rupees Eighteen Lakhs Thirty Two Thousand and Four Hundred Only). The Transport Corporation is directed to deposit the entire modified/enhanced award amount, with proportionate interest and cost, after adjusting the amount if any already deposited, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the 1st claimant/wife is entitled to withdraw Rs.7 lakhs and the balance amount shall be equally given to the claimants 2 & 3/minor children. The share amount of the minor children shall be kept in a fixed deposit in any one of the nationalised bank till they attain majority and the 1st claimant is entitled to withdraw the accrued interest once in three months.

Consequently, connected Miscellaneous Petition is closed.  
No costs.

Sd/-  
Assistant Registrar(CS VI)

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Sub Assistant Registrar

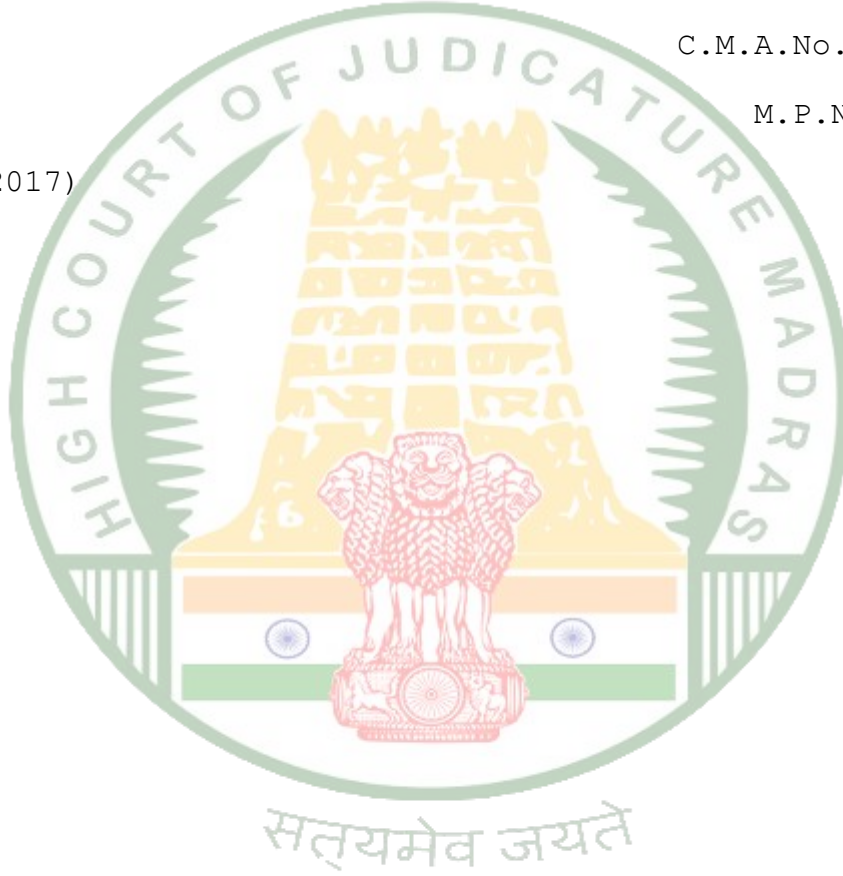
To

The II Court of Small Causes,  
(Motor Accidents Claims Tribunal),  
Chennai.

+1cc to Mr.K.Varadhakamaraj, Advocate SR.No.58371  
+1cc to Mr.K.S.Suresh, Advocate SR.No.58440

C.M.A.No.2709 of 2013  
and  
C.M.A.No.380 of 2014  
and  
M.P.No.1 of 2014

CNR(CO)  
GN(26/10/2017)



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