

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on: 15.12.2016

Judgment Pronounced on: 04.08.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.3664 of 2013

Ekambaram (Died)

1.Indrani

2.Kavitha

.. Appellants

(Cause-title accepted vide order of the Court dated 6.7.2012
made in MP.No.2 of 2012 in CMA.SR.No.51761 of 2010)

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation Limited
(Villupuram Division)
Chennai.

2.Govindammal

3.Revathy

4.Kumaravel

5.Prema

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 29.01.2008 made in MCOP.No.4562 of 2004 before the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant : Mr.J.Ramakrishnan

For R1 : Mr.K.J.Sivakumar

For RR2 to 5 : No Appearance

J U D G M E N T

The parents of the victim of a fatal accident have approached this Court

seeking enhancement of compensation for the loss that they are enduring.

2. On 26.2.2004 at about 08:40 hours, the deceased, aged 26 years and a bachelor at that relevant time, was waiting in a traffic signal in his motorcycle, when a bus belonging to the respondent came from behind and knocked him fatally. He died on the spot. Seeking a compensation of Rs.13,00,000/-, his parents and sister approached the Tribunal and on appreciation of evidence, the Tribunal has determined the compensation at Rs.3,95,000/-. It fixed the monthly income of the deceased notionally at Rs.4,500/- and after deducting 1/3rd towards his personal expenses, the Tribunal capitalized the loss of dependency at 10 and arrived at [Rs.3,000x12x10] Rs.3,60,000/- as compensation on the head of support. The award of compensation assessed by Tribunal is as follows :

Heads	Amount awarded by Tribunal (Rs.)
Loss of support / dependency	3,60,000.00
Funeral expenses	5,000.00
Loss of love and affection	30,000.00
Total :	3,95,000.00

3. The learned counsel for the appellant contended that the Tribunal's approach is wrong and the method adopted too is not consistent with the principles generally applied by the Tribunals. He argued that the

compensation amount should be enhanced in terms of **Sarla Verma &**

Ors. Vs Delhi Transport Corporation Ltd & Anr. [2009(2) TNMAC 1], and even though the appellants for want of affordability to litigate have limited their claim of enhancement to Rs.1,00,000/- this Court may enhance the compensation to such just and fair extent as the facts and evidence in the case may warrant.

4. Per contra, the learned counsel appearing for the insurance company submitted that everything is in order.

5. There is some merit in the argument of the counsel for the appellant. The Tribunal has capitalised the loss of support that the victim had given to his family for 10 years as if the compensation is determined in a land acquisition proceedings. Necessarily this has to be rectified for the duty is cast only on the court to determine the compensation.

6. Reckoning the notional monthly income at Rs.3,000/-, half of it must be deducted towards personal expenses of the victim. The remaining half being his monthly support to his family, the annual value of the support is determined at Rs.18,000/-. Based on **Sarla Verma case** stated supra, another 50% must be added to this and this would make the annual value support to family as Rs.27,000/-, Based on **Amrit Bhanu Shali &**

others Vs. National Insurance Co. Ltd., & Others [2012(2) TNMAC 321 (SC)], the multiplier to be adopted should correspond to the age of the victim, and as per **Sarla Varma & Ors. Vs Delhi Transport Corporation Ltd.** [2009(2) TNMAC 1], the multiplier applicable to one who dies at the age of 26 is 17. The gross value of loss of dependency is thus determined at Rs.4,59,000/- For loss of love and affection for the parents and sister Rs.25,000/- each is awarded. For funeral expenses, another Rs.10,000/- is awarded.

Heads	Amount Enhanced (Rs.)
Loss of dependency	4,59,000.00
Funeral expenses	15,000.00
Loss of love and affection @ Rs.25,000/- each	75,000.00
Total :	5,49,000.00

7. In the result, the appeal is allowed without costs and the award of the Tribunal dated 29.01.2008 in MCOP.No.4562 of 2004 is set aside and the compensation is enhanced from Rs.3,95,000/- to 5,49,000/-. The first respondent/insurance company is directed to pay the enhanced award of compensation along with the accrued interest, in the ratio of apportionment as determined by the Tribunal, less if any already deposited, within a period of six weeks from the date of receipt of a copy

of this order. It is reported that the father of the deceased is died and his share of award amount may apportioned equally to the appellants herein and the appellants are entitled to withdraw the same forthwith. The appellants are directed to pay the necessary court fee for the enhanced portion of the award. It is also made clear that the appellants are not entitled to the award of interest during the period of delay in filing the appeal.

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Index : Yes/No
Internet : Yes/No

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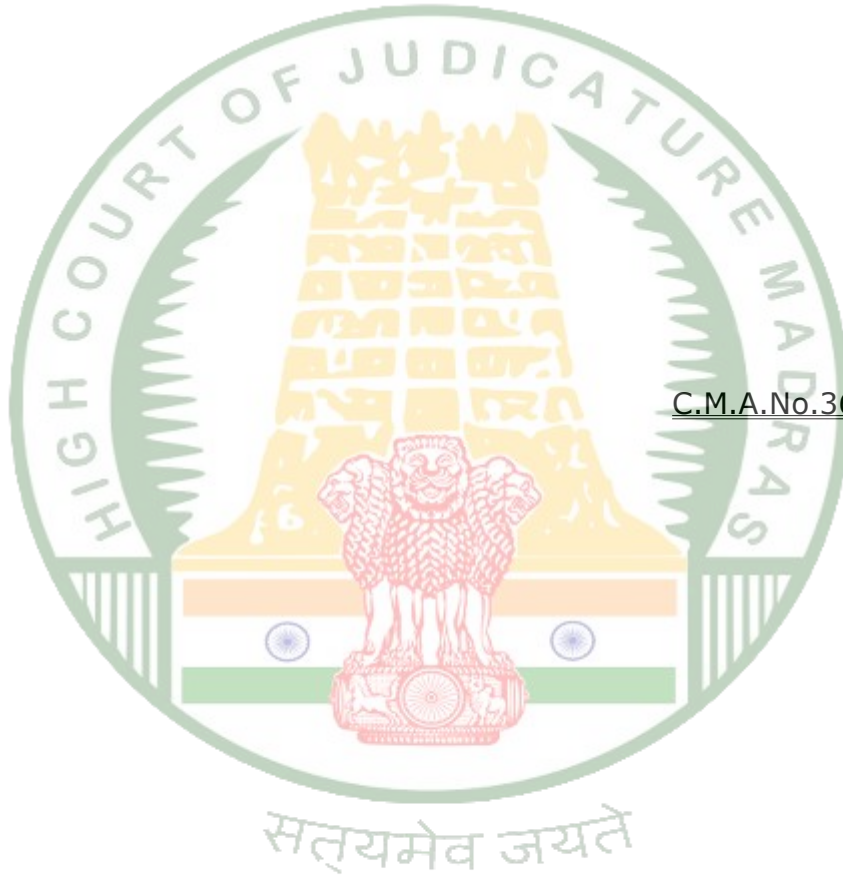
1. The Motor Accident Claims Tribunal
Court of Small Causes No.II,
Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras - 104.



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N.SESHASAYEE, J.,

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