

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 03.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

WEB COPY

C.M.A(MD)No.1484 of 2016**&****C.M.P(MD)No.12406 of 2016**

The Managing Director,
State Express Transport Corporation,
Chennai-2.

... Appellant/Respondent

Vs.

1.Koothan
2.Pappathi

... Respondents/Petitioners

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree made in M.C.O.P.No.1007 of 2011 dated 08.01.2016, on the file of the Motor Accident Claims Tribunal/ I Additional District Court (PCR), Tiruchirappalli.

For Appellant

: Mr.P.Prabhakaran

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant- State Transport Corporation against the award of Rs.4,80,000/- (Rupees Four Lakhs and Eighty Thousand only) for the death of one Leelavathi, aged about 25 years, an agricultural coolie, earning about Rs.3,000/- (Rupees Three Thousand only) per month in the accident occurred on 23.02.2006, when she was travelling as a pillion rider in a TVS-50 bearing Registration No.TN-45-X-4942, which was hit by the appellant-Transport Corporation bus driven in a rash and negligent manner causing the accident. Therefore, the claim petition is filed.

2. Mr.P.Prabhakaran, learned Counsel appearing for the appellant-Transport Corporation would submit that negligence was wrongly fixed on the driver of the appellant-Transport Corporation as TVS-50 was driven without following the rules and crossed the road and invited the accident. However, the Tribunal has wrongly found that the driver of the bus was responsible for the accident. Further, he would submit that Rs.3,000/- (Rupees Three Thousand only) was taken as monthly income and without deducting 50% towards her personal expenses, as she was a spinster, the Tribunal deducted only 1/3rd amount. Therefore, the said amount has to be reduced.



3. Even though PW1 was examined on the side of the appellant, based on the evidence of eye-witness of PW2 and taking into consideration the filing of the F.I.R-Ex.P1 against the driver of the bus, the Tribunal rightly fixed the negligence on the driver of the appellant-Transport Corporation. Therefore, the finding in this regard is confirmed.

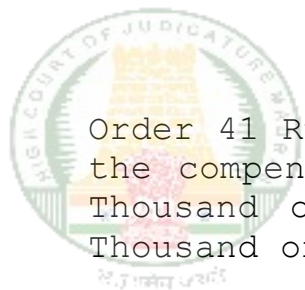
4. The Tribunal taking a sum of Rs.3,000/- (Rupees Three Thousand only) as monthly income, only deducted 1/3rd towards her personal expenses. Therefore, the argument of the learned Counsel appearing for the appellant that 50% has to be deducted towards her personal expenses for a spinster, has got force. However, a sum of Rs.3,000/- taken as monthly income is very low as per the judgment of the **New India Insurance Company -vs- Smt.Kalpana** reported in **2007 (2) TN MAC 1**, wherein for a driver, a sum of Rs.4,500/- (Rupees Four Thousand and Five Hundred only) was taken as monthly income in the absence of any proof for a driver died in the accident occurred in the year 1999.

5. In this case, the accident occurred in the year 2006. Therefore, this Court is inclined to take the monthly income of the deceased as Rs.4,500/- (Rupees Four Thousand and Five Hundred only) and 50% has to be deducted and therefore, this Court deducts 50% towards her personal expenses and determines the monthly income of the deceased as Rs.2,250/- (Rupees Two Thousand and Two Hundred and Fifty only). Since the deceased was aged about 25 years as per Ex.P2, the appropriate multiplier is '18' and therefore, the loss of income would be **Rs.4,86,000/-** (Rupees Four Lakhs and Eighty Six Thousand only) [Rs.2,250/- X 12 X 18].

6. The parents lost their daughter at the age of 25 years and therefore, a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only) **each** awarded by the Tribunal towards loss of love and affection, is confirmed.

7. Similarly, the amounts awarded under the other heads, viz., a sum of **Rs.2,000/-** (Rupees Two Thousand only) awarded by the Tribunal as per Exs.P5 and P6 towards medical expenses; a sum of **Rs.10,000/-** (Rupees Ten Thousand only) towards funeral expenses and a sum of **Rs.10,000/-** (Rupees Ten Thousand only) towards transportation, are all reasonable and they are confirmed. Accordingly, the respondents/claimants are entitled to a sum of **Rs.5,58,000/-** (Rupees Five Lakhs and Fifty Eight Thousand only).

8. Though the appeal has been preferred by the appellant-Transport Corporation against the award passed by the Tribunal for a sum of **Rs.4,80,000/-**, (Rupees Four Lakh and Eighty Thousand only), this Court, by applying the correct law and determining the amounts correctly, and on re-appreciation of the evidence, as per



Order 41 Rule 33 of the Code of Civil Procedure, *suo motu* enhances the compensation from **Rs.4,80,000/-** (Rupees Four Lakhs and Eighty Thousand only) **Rs.5,58,000/-** (Rupees Five Lakhs and Fifty Eight Thousand only), in the absence of appeal or cross appeal.

9. In the result,

(i) This Civil Miscellaneous Appeal is dismissed, with the above enhancement and the interest awarded at the rate of 7.5% per annum, remains unaltered;

(ii) The appellant-Transport Corporation is directed to transfer the enhanced compensation amount, less the amount deposited, if any, as per the apportionment made before the Tribunal to the respondent personal Savings Bank Account Numbers of the respondents/claimants by RTGS/NEFT within a period of eight weeks from the date of receipt of a copy of this order;

(iii) Since this Court *suo motu* enhances the compensation even in the admission stage, the Office is directed to send a copy of the order to the respondents/claimants free of cost;

(iv) The appellant is also directed to write the same to the respondents/claimants calling for the details of their bank accounts. (v) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(co)

/True Copy/

Sub Assistant Registrar

gsr

To

1.THE I ADDITIONAL DISTRICT COURT (PCR)/
MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUCHIRAPPALLI.

2 KOTTHAN S/O.RAMAN,
KADUAKKATHURAI, PATCHUR VIA, MANNACHANALLUR,
TRICHY DISTRICT

3 PAPPATHI W/O.R.KOOTHAN,
KADUAKKATHURAI, PATCHUR VIA,
MANNACHALLUR, TRICHY DISTRICT.

4.THE RECORD KEEPER,
V.R.SECTION, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
+1cc to Mr.P.PRABHAKARAN, Advocate Sr.No. 324

JAM/31.01.2017/ SV-MMS/3P-6C