

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

Reserved on : 19.04.2017

Delivered on : 05.06.2017

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CORAM :**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM****and****THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

C.M.A. (MD) Nos.46, 47 and 49 of 2013

and

M.P. (MD) Nos.1, 1 and 1 of 2013

C.M.A. (MD) No.46 of 2013

The Tamil Nadu State Transport Corporation Limited,
Through its General Manager,
Having its Office at Vannarpettai,
Tirunelveli -3.

... Appellant /1st Respondent**Vs.**

1.V.Venkataragavan
2.Minor V.Sreenithi Meenakshi
(Minor 2nd respondent rep.
through her father and
next friend 1st respondent
V.Venkataragavan)
3.V.K.Srinivasan
4.Tmt.S.Alamely
5.S.Shanmugam
6.Sri Ram General Insurance Company Limited,
Hak Road (Ground Floor)
Chinna Chockikulam,
Near ICICI Bank,
Madurai 625 002

... Respondents/Petitioners and
2nd and 3rd Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against judgment and decree, dated 27.02.2012, passed in M.C.O.P.No.782 of 2010, on the file of the Motor Accident Claims Tribunal / 1st Additional District Court, Tirunelveli.

For Appellant : Mr.P.Prabhakaran
For R1 & R2 : Mr.T.Selvakumaran
For R3 to R6 : No Appearance

**C.M.A. (MD) No.47 of 2013**

The Tamil Nadu State Transport Corporation Limited,
Through its General Manager,
Having it's Office at Vannarpettai,
Tirunelveli -3

... Appellant/1st Respondent

Vs

1.V.Kousalya
2.V.Seshagiri Srinivasan
3.V.Venkataragavan
4.S.Shunmugam
5.Sri Ram General Insurance Company Limited,
Hak Road (Ground Floor)
Chinna Chockikulam,
Near ICICI Bank,
Madurai 625 002.

... Respondents/Petitioners
and Respondents 2 and 3

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against judgment and decree, dated 27.02.2012, passed in M.C.O.P.No.781 of 2010, on the file of the Motor Accident Claims Tribunal / 1st Additional District Court, Tirunelveli.

For Appellant	: Mr.P.Prabhakaran
For R1 to R3	: Mr.T.Selvakumaran
For R4 & R5	: No Appearance

C.M.A. (MD) No.49 of 2013

The Tamil Nadu State Transport Corporation Limited,
Through its General Manager,
Having it's Office at Vannarpettai,
Tirunelveli -3.

... Appellant/Respondent

vs

S.Shunmugam

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against judgment and decree, dated 27.02.2012, passed in M.C.O.P.No.981 of 2010, on the file of the Motor Accident Claims Tribunal / 1st Additional District Court, Tirunelveli.

For Appellant	: Mr.P.Prabhakaran
For Respondent	: Mr.T.Selvakumaran

**COMMON JUDGMENT**

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

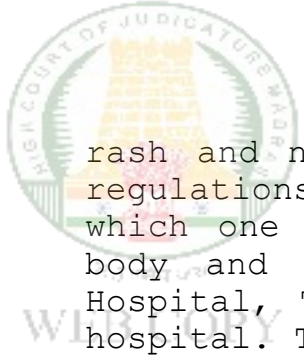
These Civil Miscellaneous Appeals in C.M.A.(MD)Nos.46, 47 and 49 of 2013 have been filed by the appellant/first respondent, against the common judgment and decree dated 27.02.2012 in M.C.O.P.Nos.782, 781 and 981 of 2010 respectively, on the file of the the Motor Accident Claims Tribunal / I Additional District Court, Tirunelveli.

2.Since the issue involved in these appeals is one and the same, they are heard together and disposed of by this common Judgment.

3.For the sake of convenience, the parties are referred to according to their litigative status before the Tribunal.

4.The case of the claimants in M.C.O.P.No.782 of 2010 before the Tribunal, as per the Claim petition is that, on 05.05.2010, the deceased along with his family members were returning from Virudhunagar towards Kadayam in the second respondent's Ambassador Car bearing Registration No.TN-76-B-9909. When the Ambassador Car was nearing Gangaikondan Petrol Bunk on Madurai - Tirunelveli National Highways at 1.15 p.m., the Tamilnadu State Transport Corporation bus belonging to the first respondent Transport Corporation, bearing Registration No.TN-29-N-0989 came from the opposite direction in a rash and negligent manner without observing the traffic rules and regulations and dashed against the Ambassador car. As a result of which, Hema @ Karpagam sustained multiple injuries all over her body and immediately she was taken to Tirunelveli Medical College Hospital, Tirunelveli, in an Ambulance, but she died on the way to hospital. The accident occurred due to rash and negligent driving of the driver of the first respondent. The deceased was a house wife. Due to the accident, the first claimant lost his wife and the second claimant lost her mother and the third and fourth claimants lost their daughter. Therefore, the first respondent is liable to pay a sum of Rs.50,00,000/- as compensation to the claimants.

5.The case of the claimants in M.C.O.P.No.781 of 2010, before the Tribunal, as per the Claim petition is that, on 05.05.2010, the deceased along with his family members were returning from Virudhunagar towards Kadayam in the second respondent's Ambassador Car bearing Registration No.TN-76-B-9909. When the Ambassador car was nearing Gangai Kondan Petrol Bunk on Madurai - Tirunelveli National Highways at 1.15 p.m., the Tamil Nadu State Transport Corporation bus belonging to the first respondent bearing Registration No.TN-29-N- 0989 came from the opposite direction in a



rash and negligent manner without observing the traffic rules and regulations and dashed against the Ambassador car. As a result of which one S. Varadarajan sustained multiple injuries all over his body and immediately was rushed to Tirunelveli Medical College Hospital, Tirunelveli, in an Ambulance, but he died on the way to hospital. The Gangaikondan Police have registered a case against the driver of the first respondent in Crime No.51 of 2010 under Sections 279, 337 and 304-A IPC and the same is pending. The first claimant is the wife of the deceased. The second and third claimants are sons of the deceased. At the time of accident, the deceased was 73 years old. He was a retired Railway employee and was receiving a monthly pension of Rs.9,000/-. Therefore, the first respondent is liable to pay a sum of Rs.10,00,000/- by way of compensation to the claimants.

6. One S. Shanmugam, owner of the Ambassador Car, has filed the claim petition in M.C.O.P.No. 981 of 2010 before the Tribunal. The case of the claimant as per the Claim petition is that, on 05.05.2010, when the driver of the petitioner was driving his Ambassador Car bearing Registration No.TN-76-B-9909 carefully and slowly. When the Ambassador car was nearing Gangaikondan Petrol Bunk on Madurai - Tirunelveli National Highways, at 1.15 p.m, the Transport Corporation bus bearing Registration No.TN-29-N-0989 came from opposite direction in a rash and negligent manner without observing the traffic rules and regulations and dashed against the Ambassador Car and in the accident, the Car got damaged. Therefore, he has claimed Rs.14,000/- towards Labour Charges; Rs.3,89,000/- towards Cost of Spare Parts; and Rs.15,000/- towards Surveyor fees, totalling to Rs.4,18,000/- and restricted his claim to Rs.4,05,000/- from the first respondent.

7. The case of the respondent State Transport Corporation before the Tribunal, as per the counter is that, the accident had occurred not due to the rash and negligent driving of the driver of the first respondent State Transport Corporation bus bearing Registration No.TN-29-N-0989. The driver of the State Transport Corporation drove the bus slowly and cautiously by observing the traffic rules and regulations. On the other hand, the driver of the second respondent was driving the Car from the opposite direction in a rash and negligent manner in a terrific speed by overtaking a lorry, which was going ahead of the car. On seeing this, the driver of the first respondent State Transport Corporation had stopped the bus on the extreme left side, in order to avoid any major accident. But, the Car dashed against the right side body, behind the front wheel of the first respondent bus. As a result of which, one died on the spot and two others died on the way to hospital. The accident occurred only due to rash and negligent driving of the driver of the Car. Therefore, the first respondent is not liable to pay compensation. Further, the income, avocation and other things have to be proved by the claimants.

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8. The case of the third respondent, before the Tribunal, as per the counter is that, the third respondent was added only as a formal

party. Since the accident occurred due to rash and negligent driving of the driver of the first respondent bus bearing Registration No.TN-29-N-0989, a case was also registered against the driver of the first respondent and the accident had not occurred due to rash and negligent driving of the driver of the second respondent. Therefore, the third respondent is not liable to pay compensation and hence, the third respondent has to be exonerated from the proceedings.

9.All M.C.O.P.Nos.782, 781 and 981 of 2010 were tried together and a common award was passed by the Tribunal.

10.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.7 were examined and Exs.P.1 to P.29 were marked and on the side of the respondents, R.W.1 was examined but no document was marked.

11.After considering all the facts and circumstances of the case and oral and documentary evidence let in by the parties, the Tribunal awarded a sum of Rs.41,12,120 in MCOP.No.782 of 2010, Rs. 3,84,000/- in MCOP.No.781 of 2010 and Rs. 4,05,000/- in MCOP.No.981 of 2010 as compensation with interest at 7.5% per annum from the date of petition and details of the same are as under:-

Sl. No.	Head	M.C.O.P. No. 782 of 2010 (Rs)	M.C.O.P. No. 781 of 2010 (Rs)
1	Loss of income	40,53,120	3,60,000
2	Funeral expenses	2,000	2,000
3	Transportation	2,000	2,000
4	Loss of consortium	25,000	10,000
5	Loss of love and affection	30,000	10,000
	Total	41,12,120	3,84,000

Sl. No.	Head	M.C.O.P. No.981 of 2010 (Rs)
1	Spare parts expenses	3,89,000
2	Labour Charges	14,000
3	Surveyor Report expenses	15,000
	Total	4,18,000
	Less: Repaired Parts sales income	13,000
	Grand Total	4,05,000

12.Aggrieved by the impugned award passed by the Tribunal, the



first respondent State Transport Corporation in all the claim petitions has filed the present Civil Miscellaneous Appeals, stating that the Tribunal has wrongly fixed the liability on the driver of the State Transport Corporation bus. Further, the award passed by the Tribunal is highly excessive.

13. Considering the facts and circumstances of the case, documents placed before the Tribunal and award passed by the Tribunal, the following points arise for consideration:-

(i) Whether the accident occurred due to rash and negligent driving of the driver of the first respondent?

(ii) Whether the accident occurred due to rash and negligent driving of the driver of the Car bearing Registration No.TN-76-B-9909?

(iii) Whether both the drivers of the Car and the Bus had contributed their negligence to the accident?

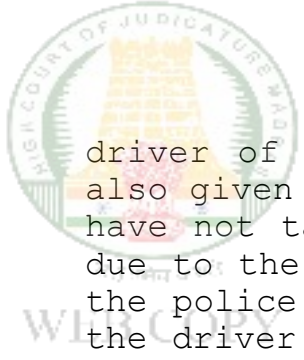
(iv) Whether the award passed by the Tribunal is just and reasonable?

(v) To what relief the parties are entitled to ?

14. As far as the negligence aspects are concerned, according to the claimants, the accident had occurred only due to rash and negligent driving of the driver of the first respondent State Transport Corporation bus, bearing Registration No.TN-29-N-0989. In order to prove the manner of accident and liability, P.W.1 was examined and according to him P.W.1, P.W.2 and P.W.4 were travelling in the said Ambassador Car bearing Registration No.TN-76-B-9909 and they have spoken about the manner of the accident and categorically stated that the accident occurred only due to the negligent driving of the driver of the bus bearing Registration No.TN-29-N-0989 and the bus belongs to the Government Transport Corporation. They have marked Exs.P.1 to P.8. Perusal of Ex.P.1, certified copy of FIR, shows that a case was registered against the driver of the first respondent bus and Ex.P.6 Observation Mahazar and Ex.P.7 Rough Sketch show that the accident took place in a National Highway. According to the claimants, the driver of the Car bearing Registration No.TN-76-B-9909 was driving the Car in the correct direction and slowly in a moderate speed by observing all the traffic rules and regulations and the bus which was coming from the opposite direction in a rash and negligent manner dashed against the Car. As a result of which, they lost 3 of their family members.

15. The learned counsel for the appellant/first respondent would submit that, the bus was coming in the right direction, the car only came in the wrong direction and the driver of the car while overtaking a lorry, dashed against the bus. The driver of the bus R.W.1 has deposed the same. The Tribunal has failed to consider the same and wrongly fixed the liability.

<https://hcservices.courts.gov.in/hcservices/> of Ex.P.8 would show that, a case was registered against the driver of the first respondent and after investigation, charge sheet was laid before the concerned Magistrate against the



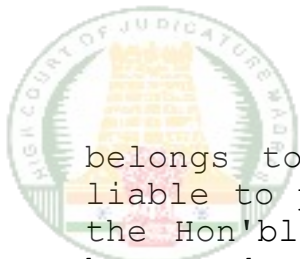
driver of the bus. The driver of the bus had deposed that he has also given a complaint before the Superintendent of Police, but they have not taken any steps. If at all the accident had occurred only due to the rash and negligent driving of the driver of the Car and the police has registered a case only against him, but not against the driver of the car and if no action was taken, then he ought to have filed a private complaint before the concerned Magistrate. In this case, there is no evidence to show that the driver of the bus had made any complaint before the concerned Judicial Magistrate, against the driver of the car bearing Registration No. TN-29 N-0989. Under these circumstances, from the evidence of P.W.1, P.W.2 and P.W.4 and also Exs.P.1 to P.8, the Tribunal has come to the conclusion that the accident occurred only due to rash and negligent driving of the driver of the State Transport Corporation bus, bearing Registration No.TN-29-N-0989.

17.The learned counsel for the appellant would submit, that because the driver of the car died, the police did not register the case against the driver of the car, the police for their convenience had registered the case against the driver of the bus.

18.On perusal of the entire records, since the driver of the car died, it is the prime duty of the driver of the bus to prove that the driver of the car was negligent by causing the accident. Since the Motor Vehicles Act is a beneficial legislation and in the absence of any specific contra evidence produced by the appellant/first respondent and as a case was registered and laid charge sheet against the driver of the bus, in the absence of contra evidence to prove that the driver of the car also contributed his part of negligence to the accident, the Tribunal has come to the conclusion that the accident occurred only due rash and negligent driving of the driver of the bus. We are of the considered view that from the available records, there is no reason to interfere with the findings of the Tribunal in respect of negligence and liability aspects are concerned. Thus for the above reasons, the point Nos.1 to 3, arose for consideration are answered in favour of the respondents/claimants and against the appellant Sate Transport Corporation.

19.As far the quantum of the compensation in MCOP.No.782 of 2010 (C.M.A.(MD)No.46 of 2013) is concerned, the learned counsel for the appellant would submit that the Tribunal has awarded compensation without any basis and the compensation is highly excessive. The deceased was not an earning member and there is no big loss to the family of the deceased and also the notional income fixed by the Tribunal is not correct and therefore, the award passed by the Tribunal is liable to be set aside.

20.The learned counsel for the claimants would submit that the <https://hcservices.courts.gov.in/hcservices/> the husband of the deceased and the 3rd and 4th claimants are the parents of the deceased. The accident occurred due to rash and negligent driving of the driver of the bus, which



belongs to the Government and therefore, the first respondent is liable to pay compensation to the claimants. In view of decision of the Hon'ble Apex Court, 1/3rd income of the spouse of the deceased has to be taken into consideration, accordingly, the Tribunal has considered the said aspect and awarded compensation. There is no reason to interfere with the same. In support of his contention, he has referred to the judgment of the Hon'ble Apex Court, in the cases of, **Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in, 2009 (2) TN MAC 1 (SC) and **Arun Kumar Agrawal and another Vs. National Insurance Co. Ltd. and others**, reported in 2010 ACJ 2161. He would further submit that, the income of the spouse of the deceased at the time of the accident was Rs.95,000/- per month and 1/3rd of the income i.e., Rs.31,665/- has been taken into consideration and from that amount, 1/3rd has been deducted towards the personal expenses, thus, Rs.21,110/- has been taken for calculating loss of income and at the time of accident, the deceased was 45 years old. So, multiplier '16' was adopted and the loss of income would be Rs.40,53,120/- [Rs.21,110 x 12 x 16].

21.The learned counsel for the appellant would submit that, without any basis, the Tribunal has arrived at a wrong conclusion and the income fixed by the Tribunal is highly excessive and does not reflect that the award passed by the Tribunal is just and reasonable compensation.

22.Heard both sides and perused the documents placed before the Tribunal.

23.It is an admitted fact that the deceased died due the accident and she was not employed and was only a housewife. The Tribunal has fixed notional income as per the guidelines given by the Hon'ble Apex Court.

24.Therefore, we have to find whether the award passed by the Tribunal is just and reasonable or excessive?

25.In this regard, it is worthwhile to refer to the decision of the Hon'ble Apex Court, in the case of, **Arun Kumar Agrawal and another Vs. National Insurance Co. Ltd. and others**, reported in 2010 ACJ 2161 and the relevant portion is extracted hereunder:

"23.In India, the Courts have recognised that the contribution made by the wife to the house is invaluable and can not be compensated in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for a particulars hours. She



takes care of all the requirements of husband and children including the cooking for husband and children including the cooking of food, washing of clothes, etc., She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or a maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc, but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

32. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependants of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee who works for fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possible be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the house wife. In its wisdom, the legislature had as early as in 1994, fixed the notional income of a non earning person at Rs. 15,000/- per annum and in case of spouse, 1/3rd income of the earning /surviving spouse for the purpose of computing the compensation. Though Section 163-A does not, in terms apply to the cases in which claim for compensation is filed under section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependants of a non earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments of this Court in General Manager, Kerala State Road Trans.Corp. V Susamma Thomas, 1994 ACJ 1(SC); U.P. State Road Trans.Corp. V. Trilok Chandra, 1996 ACJ 831 (SC) and Sarla Verma V. Delhi Trans.Corp. 2009 ACJ 1298 (SC) and also take guidance from the judgment in Lata Wadhwa's case, 2001 ACJ 1735 (SC). Approach adopted by different Benches of Delhi High Court to compute the compensation by relying upon the minimum wages payable by relying upon the minimum wages payable to a skilled worker does not commend our approval because it is most unrealistic to compare the gratuitous services of the housewife/mother with work of a skilled work."

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26. From a reading of the above citation, there is nothing wrong on the part of the Tribunal in fixing 1/3rd income of the spouse of

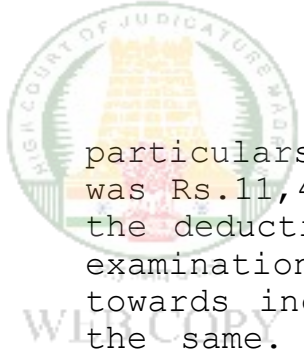


the deceased and adopting multiplier '16', as per the decision of the Hon'ble Apex Court, in the case of, **Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in 2009 (2) TN MAC 1 (SC) and arrived at the compensation.

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27. But, at the same time, whether the Tribunal has correctly fixed the income of the spouse of the deceased has to be considered. In this regard, it would be appropriate to refer to the evidence of P.W.1 and Ex.P.12, P.27 and P.28. Exs.P.12 and P.27 are stated to be the salary certificates of P.W.1, who is the husband of the deceased. Ex.P.28 is a certificate stated to have been given by One Marshal A Antony, Operations Manager, Authorised Signatory, Human Resources of I.B.M. India Private Limited, Bangalore and Ex.P.27 is the annual income certificate of P.W.1, who is the husband of the deceased and wherein, it is mentioned as Rs.11,40,985/- per annum and the Tribunal has relied on Ex.P.27 and fixed monthly salary of the spouse of the deceased as Rs.95,000/- per month and $\frac{1}{3}^{\text{rd}}$ of income has been fixed as notional income of the deceased per month and $\frac{1}{3}^{\text{rd}}$ has been deducted and Rs.21,110/- per month has been fixed for computing the loss of income. No authenticated document has been produced and the documents produced were not proved as the manner known to law. Merely because of marking some documents, it cannot be taken as proof of document. There is no document with regard to his date of joining in the company, designation, basic salary for a month and other emoluments. However, when a person is earning Rs. 95,000/- per month, definitely would be an income tax assessee. PAN Card and Income Tax returns of the spouse of the deceased were not produced before the Tribunal. Therefore, we are of the view that the documents have not been proved in the manner known to law. Under the above said circumstances, We have no hesitation to reject the income of the spouse of the deceased as Rs.95,000/- per month, in the absence of any specific proof. Hence, when the income of the spouse of the deceased is not proved, the fixation of notional income of the deceased at Rs.21,110/- per month is also not correct.

28. In order to prove the income of the spouse of the deceased, P.W.6 was summoned and examined and he has deposed that, he was working as H.R. Analyst, in I.B.M. Bangalore India Private Ltd., and he further deposed that Venkataragavan, spouse of the deceased was working in I.B.M., Bangalore as Client Infrastructure Specialist. He produced Exs.P.27 and P.28, his annual income was Rs.11,40,985/-. He has not produced any monthly income certificate and authenticated documents like acquittance register or pay slip for monthly salary of payment receipt but only produced annual income. He was working as a regular employee and as per Ex.P.28 his employee code is 090366 and his current designation is "Client Infrastructure Specialist" and he was on sick leave from 10.05.2010 to 11.06.2010. Though he has produced annual income certificate, he has not produced monthly income certificate and also the details of the income, which he is receiving per month and also he has not produced any income tax



particulars. Simply, he says that as per Ex.P.27, his annual income was Rs.11,47,985.78, he has not produced any details with regard to the deduction towards Income Tax of the employee. During the cross examination, he has stated that Rs.2,25,000/- has been deducted towards income tax. But, no documents have been produced to prove the same. Though he produced, Ex.P.27, which is said to be the annual income certificate of the spouse of the deceased, it is not clear whether the Gross Salary mentioned as Rs.11,40,958.78 is including or excluding the deduction of the Income Tax amount Rs. 2,25,000/-. Further, Rs.76,126.14 has been mentioned as Retirals. The said Venkataragavan has not produced any income tax particulars to prove his taxable income and Ex.P.27 does not show any other deduction also. Therefore, in the absence of any admissible deduction and also income tax and other particulars, the Tribunal without considering this aspect, has simply divided the annual income into 12 and arrived at Rs.95,000/- as monthly income of the spouse of the deceased. From the evidence of P.W.6, it has been stated that Rs.2,25,000/- has been deducted from his income, the same has not been mentioned in Ex.P.27. Further, P.W.6 has not produced any document relating to his Company's income tax returns or Venkataragavan's income tax returns or any authenticated register in respect of the same. Further, in the absence of income tax returns filed by P.W.1, namely, the spouse of the deceased or the authenticated documents produced by the employer, namely, P.W.6, Ex.P.27 cannot be accepted as it is for the purpose of calculating monthly income of the deceased.

29. In this regard, it is worthwhile, to refer the decision of the Hon'ble Apex Court, in the case of, **Arun Kumar Agrawal** [supra], wherein at paragraphs 33 to 35, it has been held as follows:

33. Reverting to the facts of this case, we find that while in his deposition, appellant No.1 had categorically stated that the deceased was earning Rs.50,000/- per annum by paintings and handicrafts, the respondents did not lead any evidence to controvert the same. Notwithstanding this, the Tribunal and the High Court altogether ignored the income of the deceased. The Tribunal did advert to the Second Schedule of the Act and observed that the income of the deceased could be assessed at Rs.5,000/- per month (Rs.60,000/- per annum) because the income of her spouse was Rs.15,416/- per month and then held that after making deduction, the total loss of dependency could be Rs.6 lacs. However without any tangible reason, the Tribunal decided to reduce the amount of compensation by observing that the deceased was actually a non-earning member and the amount of compensation would be too much. The High Court went a step further and dismissed the appeal by erroneously presuming that neither of the claimants was dependent on the deceased and the services rendered by her could be estimated as Rs.1250/- per month.



35. In the result, the appeal is allowed. The impugned judgment as also the award of the Tribunal are set aside and it is held that the appellants are entitled to compensation of Rs.6 lacs. Respondent No.1 is directed to pay the said amount of compensation along with interest at the rate of 6% per annum from the date of filing application under Section 166 of the Act till the date of payment. The needful shall be done within the period of 3 months from the date of receipt/production of copy of this order. The appellant shall get cost of Rs.50,000/-.

30. In the above referred case, though the annual income of the deceased was claimed as Rs.50,000/-, the Tribunal did not accept the same and fixed the notional income at Rs.5,000/- per month and after deducting 1/3rd income, awarded only Rs.2,50,000/- towards loss of income. The Hon'ble Apex Court observed that without any tangible reason, the Tribunal decided to reduce the amount of compensation by observing that the deceased was not a Coolie/non-earning member and the amount of compensation would be too much, though, in that case, the Tribunal fixed Rs.6,00,000/-, after deduction, fixed only Rs.2,50,000/- as compensation. It is worthwhile to extract paragraphs 5 and 6 of the said judgment as under:

"5. After considering the pleadings and evidence of the parties, the Tribunal held that the accident was caused due to rash and negligent driving of the truck by respondent No.4 and being legal heirs of the deceased, the appellants are entitled to compensation. While dealing with the issue relating to the quantum of compensation, the Tribunal extensively referred to the statement of appellant No.1, who stated that the deceased was earning Rs.50,000/- by engaging herself in paintings and handicrafts. The Tribunal held that the deceased was deeply involved in the family affairs and after her death, the entire family was broken and as a result of that, working capacity of appellant No.1 was decreased. The Tribunal noted that at the time of accident monthly income of appellant No.1 was Rs.15,416/- and held that in view of clause 6 of Second Schedule of the Act, the income of the deceased could be assessed at Rs.5,000/- per month (Rs.60,000/- per annum) and after making deduction of Rs.20,000/- towards personal expenses of the deceased and applying the multiplier of 15, the total loss of dependency comes to Rs.6 lacs. However, instead of awarding that amount as compensation, the Tribunal reduced the same to Rs.2,50,000/- by making the following observations:

"The claimants are entitled to this amount of compensation but keeping in mind that the deceased was actually not an earning member and this is only based on notional income. The amount of compensation is too much and as such a lesser



multiplier could be adopted in the present case. In the circumstances of this case, the claimants are entitled to Rs.2,50,000/- as compensation from the insurance company. This issue is accordingly decided with the above observation."

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6. The High Court dismissed the appeal preferred by the appellants by making the following observations:

"At the time of accident claimant No.1 Arun Kumar Agrawal was getting monthly salary of Rs.15,416/- and at time of filing the appeal Rs.24,042/- per month. Claimant Arun Kumar Agarwal and his son aged about seven years are the only legal representatives of the deceased. Neither of the claimants were dependents upon the deceased. The services rendered by Renu Agrawal, the deceased as house wife may be estimated at Rs.1250.00 per month and thus the annual contribution by rendering services comes to Rs.15,000/- and applying the multiplier of 15 it comes to Rs.2,25,000/- and adding the amount of Rs.3000.00 as funeral expenses, Rs.7,000.00 due to loss of love and affection to the son and Rs.15,000.00 due to loss of comfort consortium, the compensation comes to Rs.2,50,000.00. Thus, considering all the facts and circumstances, the compensation awarded is just and fair."

31.Considering the facts and circumstances of the case and also the observations made by the Hon'ble Apex Court, without any sound reason, and only on assumption and presumption, the Tribunal cannot squarely fix the income of the deceased without specific proof on the side of the spouse of the deceased. The Tribunal has failed to consider all these facts and the counsel for the insurance company, admittedly had not seriously objected the facts. The plea of the claimants that the spouse of the deceased, who is the first petitioner herein is working as Service Delivery Manager in IBM India Private Limited, Bangalore and earning a sum of Rs.95,000/-, however, was not substantiated by any cogent proof. Mere production of certificate Ex.P.27 was found to be insufficient proof for his earning. Therefore, this Court feels, that the Tribunal has not correctly arrived at the conclusion in fixing the income of the spouse of the deceased. It is appropriate to remand the matter to the Tribunal for re-examining the case, for the limited purpose of proving the income of the spouse of the deceased. Therefore, in the interest of justice, we are of the considered view, that it would be better to remit the matter back to the Tribunal for the purpose of proving the income of the spouse of the deceased and fixing the monthly income of the spouse of the deceased. Hence, the award passed by the Tribunal in M.C.O.P.No.782 of 2010 is liable to be set aside and the same has to be remitted back to the Tribunal.

C.M.A. (MD) No.47 of 2013:

32.As it has been already decided that the accident had occurred due the rash and negligent driving of the driver of the State Transport Corporation bus, now, it has to be seen, whether the quantum of compensation is just and reasonable. The claimants have claimed Rs.10,00,000/- under various heads as follows:

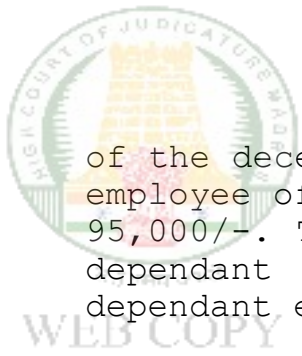
Sl.No	Head	Amount (Rs)
1	Loss of earnings for 7 years at the rate of Rs.9,000/- p.m. [Rs.9,0000 x 12 x 7]	7,56,000
2	Transport expenses	5,000
3	Shock, Mental Agony and Loss of Love and affection to the claimants/petitioners	2,00,000
4	Shock, Mental Agony and Loss of Love and affection to the first petitioner	2,00,000
5	Funeral expenses	10,000
	Total	11,71,000
	Restricted to	10,00,000

33.After considering the facts and circumstances of the case and the materials placed before the Tribunal, the Tribunal has awarded the compensation as follows:

Sl.No.	Head	Award in M.C.O.P. No.781 of 2010 (Rs)
1	Loss of income	3,60,000
2	Funeral expenses	2,000
3	Transportation	2,000
4	Loss of consortium	10,000
5	Loss of love and affection	10,000
	Total	3,84,000

34.The deceased is a retired railway employee. As per Postmortem Certificate Ex.P.15, the age of the deceased is 73. Ex.P. 16 is Pension Payment Order Book. Ex.P.17 is the copy of Bank passbook of the deceased and perusal of the same shows that the deceased was getting pension of a sum of Rs.8,414/- per month, no other oral and documentary evidence to prove the other source of income . But, in the absence of proof of other source of income, the Tribunal has wrongly fixed at Rs.9,000/- per month as income of the deceased. There is no proof with regard to the age of the deceased. As per Ex.P.16, date of retirement is during May 1995. So, on the date of accident i.e. on 05.05.2010, he might have completed 75 years of age and multiplier would be 5. Therefore, the loss of income would be Rs.8,414 X 5 X 12 =5,04,840/-.

35.In this case, the first claimant is the wife of the deceased, she would also get family pension. The second and third claimants are the sons of the deceased, who are not the dependants



of the deceased. The third claimant, in another case, is shown as an employee of I.B.M., Bangalore and his monthly income is shown as Rs. 95,000/-. Therefore, definitely the third claimant might not be the dependant on the deceased. The deceased might have been the dependant either on second or third claimant.

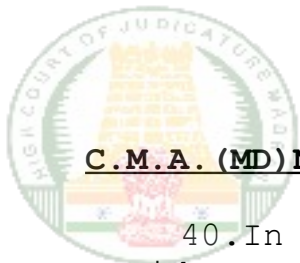
36.As per **Sarla Verma's case [supra]**, if there are 2 to 3 dependants, $1/3^{\text{rd}}$ of the income of the deceased has to be deducted towards personal expenses. But, in this case, on account of the death of the deceased, the first claimant is getting family pension. Further, the age of the deceased at the time of accident was 75, definitely, he might have incurred extra nutritious and other old age expenses. Further, the wife of the deceased would get family pension and other benefits from the Railway Department. Taking into consideration of all the above aspects, 50% of the income is deducted towards personal expenses. So, the loss of income would be Rs.2,52,420/-.

37.The Tribunal has awarded Rs.10,000/- for loss of consortium and the same is enhanced to Rs.1,00,000/-. The Tribunal has awarded Rs.10,000/- towards loss of love and affection and the same is enhanced to Rs.50,000/-. Further, the Tribunal has awarded Rs.2,000/- towards funeral expenses and the same is enhanced to Rs. 25,000/-.

38.The Tribunal has not awarded any compensation towards loss of estate and towards Transportation and loss of articles and this Court awards Rs.5,000/- towards loss of estate and Rs.5,000/- towards Transportation and loss of articles. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

39.The compensation claimed by the claimant, the compensation awarded by the Tribunal and the compensation modified by this Court are as follows [C.M.A.(MD)No.47 of 2013 / M.C.O.P.No.781/2010] :-

HEAD	AMOUNT CLAIMED BY CLAIMANT (Rs.)	AMOUNT AWRDED BY TRIBUNAL (Rs)	AMOUNT AWARDED BY THIS COURT (Rs.)
Loss of income	7,56,000	3,60,000	2,52,420
Transportation	5,000	2,000	5,000 [including loss of articles]
Loss of love and affection	4,00,000	10,000	50,000
Loss of consortium	-	10,000	1,00,000
Funeral expenses	10,000	2,000	25,000
Loss of Estate	-	-	5,000
Total	11,71,000	3,84,000	4,37,420
Claims is restricted to	10,00,000	-	-

**C.M.A. (MD) No.49 of 2013:**

40. In order to prove that the Ambassador Car was involved in accident, P.W.4 was examined and Ex.P.4, Motor Vehicle Inspector's Report was marked. Perusal of witnesses including P.W.4 and the documents shows that it is the admitted case that due to accident the said Ambassador car belongs to the claimant got damaged and he has claimed the compensation for the damages caused to his vehicle in the accident.

41. In order to prove the damages caused to his vehicle in the accident, he has produced Ex.P.21 - Driving Licence, Ex.P.22 - Survey Bill, Ex.P.23 - Survey Report. Though, the claimant has produced the above documents, Ex.P.23 is only a Survey Report, but no document has been produced, in respect of expenses actually incurred or paid towards repairing his vehicle. Ex.P.22 Survey Bill shows that professional fee is 15,000/-, no stamp is affixed and the receipt without any stamp is not admissible in evidence. Stamp duty has not been paid. During the course of examination, the same has not been objected by the respondent. Since upto Rs.5000/- no stamp is required to be affixed in the receipt, if it is above Rs. 5,000/-, as per Schedule I, Article 53 of Indian Stamp Act, it is necessary to affix the stamp in receipt. The Tribunal has failed to take note of that the sufficient stamp duty has not been paid. Therefore, it would be appropriate to direct the learned District Judge, Tirunelveli, to take necessary action against the Staff or Officer concerned, who failed to adhere to the legal provision.

42. Further, nowhere it has been mentioned by the claimant, whether he received any claim amount or not, from the third respondent Insurance Company, in which, his car was insured. But the Tribunal has simply fixed the liability on the first respondent. Therefore, in the absence of such clarifications and the proof for having spent towards repairing the car, we feel it would be appropriate to remit back the matter to the Tribunal for fresh consideration. Hence, the award passed by the Tribunal in M.C.O.P.No.981 of 2010 is liable to be set aside and the same has to be remitted back to the Tribunal for fresh consideration.

43. In the result,

(i) C.M.A. (MD) Nos.46 and 49 of 2013 are partly allowed and the judgment and decree, dated 27.02.2012, passed in M.C.O.P.Nos.782 and 981 of 2010 are partly set aside and both M.C.O.P.Nos.782 and 981 of 2010 are directed to be remanded to the Tribunal only for the purpose of fixing the quantum of compensation. As far as the findings regarding the negligence and liabilities are concerned, the findings of the Tribunal is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

(ii) C.M.A. (MD) No.47 of 2013 is dismissed and the award passed by the Tribunal is modified as shown above. No costs. Consequently, connected miscellaneous petition is closed.



(iii) The appellant Transport Corporation is directed to deposit the compensation amount, as now enhanced by this Court along with proportionate interest and costs from the date of petition till the date of realisation, less the amount already deposited, if any, to the credit of M.C.O.P.No.781 of 2010 on the file of the I Additional District Court, Motor Accident Claims Tribunal, Tirunelveli, within a period of six weeks from the date of receipt of a copy of this judgment. The first claimant, being the wife of deceased as well as the dependant of the deceased is entitled to Rs. 4,37,420/- and the second and third respondents/sons of the deceased are employed and they are not the dependants of the deceased, hence, they are not entitled to any compensation. The first claimant in this case in M.C.O.P.No.781 of 2010 is permitted to withdraw the entire amount that would be deposited by the appellant, less the amount already withdrawn, if any, with proportionate interest and costs, through RTGS by filing necessary Application before the Tribunal.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The I Additional District Judge,
Motor Accidents Claims Tribunal,
Tirunelveli.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+ 3 CC TO Mr.T.SELVAKUMARAN, ADVOCATE IN SR No. 58735 to 58737

SMN2/DSK
TE/GT/SAR-I : 10/08/2017 : 17P/6C

common Judgment made in
C.M.A. (MD)Nos.46, 47 and 49 of 2013 and
M.P. (MD)Nos.1, 1 and 1 of 2013
05.06.2017