BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2017

Date of Reservation	23.10.2017
Date of Judgment	07.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)Nos.998 and 1020 of 2011
and
CMP(MD)No.7973 of 2016

1.CMA(MD)No.998 of 2011:-

1.S.Kasturi
2.P.Kandamani
3.S.Sudhir : Appellants/Petitioners
[3rd Appellant declared as major
vide order, dated 26.11.2016
and made in MP No.1 of 2013
in CMA No. 998 of 2011]

vs.

The Managing Director,
Tamil Nadu Transport Corporation Ltd.,
Dindigul. : Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree, dated 30.04.2009 made in MCOP No.1723 of 2003 on the file of the Motor Accident Claims Tribunal-cum-Fast Track Court No.1, Trichy.

For Appellants : Mr.M.Ajmal Khan, Senior counsel for Mr.M.Subash Babu

For Respondent : Mr.M.Prakash

2.CMA(MD)No.1020 of 2011:-

The Managing Director,
Tamil Nadu State
Transport Corporation,
Dindigul. : Appellant/Respondent

vs.

1.S.Kasturi
2.P.Kandamani
3.S.Sudheer : Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree, dated 30.04.2009 made in MCOP No.1723 of 2003 on the file of the Motor Accident Claims Tribunal-cum-Fast Track Court No.1, Trichy.

For Appellant : Mr.M.Prakash

For R1 and R3 : Mr.M.Ajmal Khan, Senior counsel for Mr.M.Subash Babu

For 2nd Respondent : Mr.B.Prasanna Vinoth

COMMON JUDGMENT

[Judgment of the Court was made by **K.KALYANASUNDARAM,J**]

CMA(MD)No.998 of 2011 is filed by the claimants seeking enhancement of compensation against the award of the Motor Accident Claims Tribunal/Additional District and Sessions Judge (Fast Track Court No.1), Trichy, made in MCOP No.1723 of 2003, dated 30.04.2009, whereas CMA(MD)No.1020 of 2011 has been filed by the Transport Corporation assailing the award passed by the Motor Accident Claims Tribunal/Additional District and Sessions Judge (Fast Track Court No.1), Trichy, in MCOP No.1723 of 2003, dated 30.04.2009.

2.This is a case of fatal accident. S.P.Shanmuga Sundaram aged about 30 years, who is the husband of the first claimant, father of the 2nd claimant and son of the 3rd claimant, died in a mother vehicle accident on 11.01.1998.

3.According to the claimants, the deceased was travelling in his Armada Jeep bearing registration No.45-X—6066 from Chennai to Trichy along with his wife and minor son and the House Assistant

Balakrishnan on the fateful day. When the vehicle was proceeding near Vandipalayam Ammankoil at Ulunthurpet, which comes under the jurisdiction of Thirunavalur Police Station, a bus belonging to the Transport Corporation bearing registration No.TN-57-N-0939 came from the opposite direction in a high speed, rammed the Jeep. On account of the accident, all of them sustained injuries, but S.P.Shanmuga Sundaram died instantaneously. In this regard, Thirunavllur Police have registered a case in Crime No.19 of 1998 under sections 279 and 304(A) of IPC against the driver of the Transport Corporation bus.

4.The further case of the claimants is that the deceased was 30 year old at the time of the accident and he was a Transport Operator and was earning Rs.80,000/- per month and he was the only breadwinner of the family. The first claimant lost her husband at the age of 22 years and they claimed consolidated amount of Rs.20,00,000/- as compensation.

5.The Transportation Corporation in the counter has stated that the accident happened only due to the rash and negligent driving of the Armada Jeep driver and he alone responsible for the accident. It is further contended that the driver of the bus was not responsible for the accident and therefore, the claim has to be made only against the owner of the Armada Jeep.

6.Before the tribunal, the first claimant gave evidence in support of the averments made in the claim petition. It is to be noted that PW1 was one of the passengers in the Armada Jeep at the time of the accident. A perusal of Ex.P1 First Information Report would show that a criminal case was registered against the driver of the bus.

7.The conductor of the bus was examined as RW1 and in his evidence, he has stated that the driver of the Jeep was the cause for the accident. The driver of the bus was not examined before the tribunal and it was stated that he died, but no proof was filed. On appreciation of evidence, both and documentary, the tribunal was of the view that the driver of the bus was reason for the accident. Upon consideration of evidence, the tribunal has awarded a total compensation of Rs.16,97,000/- along with interest @ 7.5% p.a. Challenging the award, both the claimants and the Transport Corporation have preferred these appeals as stated above.

8.We have heard Mr.M.Ajmal Khan, learned Senior counsel as well as Mr. B.Prasanna Vinoth, learned counsel appearing for the claimants and Mr.M.Prakash, learned counsel for the Transport Corporation and perused the materials available on record.

9.It is contended by the learned counsel for the Transport Corporation that the tribunal has not properly appreciated the evidence of RW1 and wrongly fixed the entire negligence on the driver of the bus. It is the case of the Transport Corporation that both the drivers are equally responsible for the accident and the award is on higher side.

10.On the other hand, Mr.M.Ajmal Khan, learned Senior counsel for the claimants submitted that arising out of the same accident, two other injured claimants have made separate claims, wherein also the tribunal fixed entire negligence on the driver of the offending bus, but the Transport Corporation has not challenged the finding and they have satisfied the award, therefore, now they are estopped from contending that the driver of the Jeep also contributed to the accident.

11.The learned Senior counsel further submitted that the evidence of the Auditor (PW2) and Exs.P4 to P7 Income Tax returns would show that the deceased was earning Rs.12,50,000/- for the relevant period, but the tribunal has fixed lesser income and it has to be increased. Further, the claimants are entitled for addition of 50% towards future prospectus by placing reliance on the decision of the Hon'ble Apex Court in **(2013)9 SCC 54** *(Rajesh and others vs. Rajbir Singh and others)*. In that case, it was held that the claimant is entitled for 50% addition towards future prospectus. In **2015(2) TN MAC 289 (DB)** (*New India Assurance Co. Ltd., vs. J.Sakunthala)*, the Division Bench of this court confirmed the award of Rs.1,00,000 and Rs.3,00,000/- awarded towards consortium and loss of love and affection to the claimants.

12.In **Pranay Sethi's** case **[2017(13) SCALE 12]**, five Judges Bench of the Hon'ble Supreme Court has held as under:-

> *"61.In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*
>
> *(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*
>
> *(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the*

deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

In view of the above latest decision, with great respect, we are not able to follow the decisions cited by the learned Senior counsel for the claimants.

13.It is admitted that the award passed in favour of the injured claimants have been satisfied by the Transport Corporation. Further, the tribunal has rightly accepted the evidence of the injured witness PW1 and Ex.P1 for giving a finding that the driver of the bus alone was responsible for the accident. So, the contention of the learned counsel for the Transport Corporation cannot be accepted.

14.As regards quantum, in the claim petition, it is stated that the deceased was self-employed and his income was Rs.80,000/-

per month. PW1 in her evidence has stated that her deceased husband was engaged in clearance of goods from shipment and he owns lorries, trailer and trucker. But during cross examination, she has admitted that she has not produced any documentary evidence to corroborate the oral evidence and the entire income details would be furnished by the Auditor. PW2 is said to be the Auditor of the deceased.

15.PW2 deposed that the deceased was having only one lorry bearing registration No.TN-45-X-3272 in the year 1996-97 and his annual income from the lorry and agriculture was Rs.1,34,000/-. He has further stated that in 1997-1998, the deceased by operating two lorries earned Rs.12,75,000/- including Rs.30,000/- from agriculture and Exs.P6 and P7 income tax returns of the deceased for the year 1996 to 1998 were filed by PW1 after death of her husband. Ex.P4 income tax return filed for 1996-97 shows that the income of the deceased from the business was Rs.42,650/- and Rs.30,000/- from agriculture. In total, the net income was Rs.72,650/- for the relevant period. In Ex.P5, the gross income was stated as Rs.80,660/-.

16.It is to be seen that admittedly, no documentary evidence was produced to substantiate the case that the deceased was the owner of lorries and trucks and he was doing any other business. In the light of the above facts, we find it difficult to accept the contention of the learned Senior counsel that Rs.12,50,000/- is to be taken as income of the deceased. After analyzing the evidence, the tribunal, in our view, rightly fixed the notional income of the deceased at Rs.8,000/- per month and by applying multiplier 17, awarded Rs.16,32,000/- towards loss of income. Ex.P10 PAN Card of the deceased shows that the deceased was born on 20.10.1968 and he died at the age of 30 years.

17.As per the decision reported in **2017(13) SCALE 12** *(National Insurance Company Limited Vs. Pranay Sethi and Ors.)*, 40% addition is made towards future prospectus,, which comes to Rs.11,200 (Rs.8,000/- + Rs.3200/-). From which, 1/3rd has to be deducted for personal income of the deceased. After deducting 1/3rd, the contribution of the deceased to the family comes to Rs.7,500/-. By applying multiplier 17, this court awards **Rs.15,30,000/-** (Rs.7,500/- x 17 x 12) towards loss of income. The tribunal has awarded Rs.25,000/- for loss of consortium and Rs.5,000/- towards funeral expenses. The award of the tribunal under heads of consortium and funeral expenses are modified as per the decision in **Pranay Sethi and Ors** and this court awards **Rs.40,000/-** towards consortium, **Rs.15,000/-** towards funeral expenses, **Rs.15,000/-** towards loss of estate. **Rs.35,000/-** awarded for loss of love and affection is confirmed. In total, the claimants will be entitled for **Rs.16,35,000/-** along with interest @ 7.5% p.a.

18.In the result, **CMA(MD)No.998 of 2011** is dismissed and **CMA (MD)No.1020 of 2011** is partly allowed. Out of the modified award amount, the claimants 1 and 3 being the wife and son of the deceased are entitled to Rs.7,00,000/- each and the 2nd claimant being the mother of the deceased is entitled to Rs.2,35,000/-. The interest awarded by the tribunal is maintained. No costs. Consequently connected CMP is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To,

The Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
(Fast Track Court No.1),
Trichy.

Copy to:
The Record Keeper, V.R Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+ 1 cc TO Mr.V.Nirmal Kumar , Advocate in SR No. 91498
+ 1 cc TO Mr.M.Prakash , Advocate in SR No. 91531

er
AE/SKN RSK/SAR4/06.03.2018/7P/6C

Common Judgment
in
C.M.A(MD)Nos.998 and 1020 of 2011
07.12.2017