

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.1550 and 1551 of 2016
and CMP.Nos.11741 and 11742 of 2016

CMA.No.1550 of 2016:-

The Managing Director
K.S.R.T.C., Mandya Division
having office at K.H.Road
Bangalore

...Appellant
/2nd respondent.

Vs

1.M.R.Venkatachalam
2.V.Sumathi

..Respondents 1 and 2
/Petitioners

3.M.K.Manja Shetty

..3rd respondent/1st
respondent.

4.K.Nagamanickam

5.Royal Sundaram Alliance Insurance
Company Limited, Erode Branch
having Head Office at Sundaram Towers
No.46, Whites Road, Royapettah
Chennai-14

..Respondents 4 and 5
/Petitioners 3 and 4

CMA.No.1551 of 2016:-

The Managing Director
K.S.R.T.C., Mandya Division
having office at K.H.Road
Bangalore

...Appellant/2nd respondent.

Vs

1.M.Palaniammal
2.P.Madheswaran

...Respondents 1 and 2
/Petitioners

3.M.K.Manja Shetty

..3rd respondent/1st
respondent

4.K.Nagamaniackam

5.Royal Sundaram Alliance Insurance
Company Limited, Erode Branch
having Head Office at Sundaram Towers
No.46, Whites Road, Royapettah
Chennai-14

..Respondents 4 and 5
/Petitioners 3 and 4

Prayer in CMA.No.1550 of 2016:- Civil Miscellaneous Appeal is filed Under Section 173 of MV Act, 1988 against the judgment and decree dated 22.12.2015 passed in M.C.O.P.No.99 of 2014 on the file of Motor Accident Claims Tribunal (Special District Court) at Erode.

Prayer in CMA.No.1551 of 2016:- Civil Miscellaneous Appeal is filed Under Section 173 of MV Act, 1988 against the judgment and decree dated 22.12.2015 passed in M.C.O.P.No.141 of 2014 on the file of Motor Accident Claims Tribunal (Special District Court) at Erode.

For appellant/Transport Corporation: : Mr.T.Thiyagarajan
in both appeals.

for Respondents/Petitioners : : Mr.M.Guru Prasad for R1 and
R2 in both appeals.

COMMON JUDGMENT

The Civil Miscellaneous Appeals are filed by the appellant/Karnataka State Transport Corporation, challenging the judgment and decree dated 22.12.2015 passed in O.P.Nos.99 of 2014 and 141 of 2014 on the file of Motor Accident Claims Tribunal (Special District Court) at Erode.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal.

Nature of accident:- The case of the petitioners is that on 08.12.2013, V.Gugan deceased in MCOP.No.99/2014[CMA.No.1550 of 2016] was proceeding with his friends in a Maruthi Ritz car bearing Reg.No.TN-33-AT-7374 driven by one Rajkumar, viz., the deceased in MCOP.No.141/2014 [CMA.No.1551 of 2016] from Erode to Mysore at about 12.30 noon; while going near Swarnarvathi Dam in Punajanur Forest Area on Samrajnagar to Sathyamangalam Road, the 2nd respondent bus bearing Reg.No.KA-11-F-0194 driven by the 1st respondent in a rash and negligent manner came in the opposite direction, dashed against the above said car, in which the deceased was proceeding to Mysore. Due to the injury suffered in the accident, Rajkumar died on the spot itself. The other occupants of the car also suffered severe injuries. The above said Gugan died subsequently on 09.12.2013.

Claim in MCOP.No.99 of 2014:-The petitioners in MCOP.No.99 of 2014 contend that the deceased Gugan was aged 18 years and was a student at that time. Due to sudden death of their son, the petitioners who are the parents of the said Gugan seek a sum of Rs.20,00,000/- as compensation from the respondents who are the owner and insurer of the vehicles involved in the accident.

Claim in MCOP.No.141 of 2014:- The petitioners in MCOP.No.141 of

2014 who are the parents of the deceased Rajkumar contend that the accident occurred due to negligence of the 2nd respondent bus driver. At that point of time, the deceased Rajkumar was 26 years old and by working as driver, he was earning Rs.15,000/- per month. The petitioners who are the parents of the deceased Rajkumar contend that they lost the bread winner of the family and also the love and affection of their son. The 1st respondent/driver of KSRTC Bus, 2nd respondent/KSRTC, the owner and insurer of the car driven by the deceased Rajkumar arrayed as Respondent Nos.3 and 4, are liable to pay compensation. Thus, the petitioners in MCOP.No.141 of 2014 sought for a sum of Rs.15,00,000/- as compensation from the respondents.

3.1. Counter of 2nd respondent:- On the other hand, opposing the claim of the Petitioners, by filing counter, the 2nd respondent KSTRC stated that the accident did not occur in the manner alleged by the petitioners in their claim petitions. The 2nd respondent bus was proceeding from Chamarajaanagara to Coimbatore and as it was proceeding near Suvarnavathi dam, the car bearing Reg.No.TN-33-AT-7374 driven by the deceased Rajkumar came at high speed and as the driver lost control, dashed on the right side of the bus resulting in the accident. The accident took place only due to rash and negligent driving by Rajkumar who drove the car bearing Rg.No.TN-33-AT-7374. As such, the 2nd respondent Transport Corporation contends that their driver who is the 1st respondent is not responsible for the accident and no amount can be claimed from them as compensation. Thus, the 2nd respondent sought for dismissal of the claim petition. The 2nd respondent further contended that the age, avocation and income of the deceased as claimed by the petitioners are not true and they are not entitled for any compensation from the respondents.

3.2. Counter of 3rd respondent:- Likewise, the 3rd respondent owner of the car in which the deceased was travelling filed his counter contending that the accident occurred only due to the negligence of the 1st respondent driver of KSRTC bus and as such, Respondent No.3 is not liable to pay compensation. Further as the car in which the deceased travelled belonging to the 3rd respondent, was insured with the 4th respondent, no amount is payable by the 3rd respondent.

3.3 Counter by 4th respondent:- Similarly opposing the claim of the petitioners, by filing counter, the 4th respondent/Insurance company contended that the accident took place only due to negligence of the 1st respondent driver of KSRTC bus and also negligence on the part of the deceased Rajkumar who drove the car bearing Reg.No.TN-33-AT-7374, hence the the 4th respondent-Insurance company is in no way responsible

to pay the compensation. Thus, the 4th respondent/Insurance company sought for dismissal of the petition(s) against them.

4. Finding of the Tribunal:- Before the tribunal, joint trial was conducted in MCOP.Nos.99 of 2014 and 141 of 2014. The petitioners in both MCOPs examined P.W.1 to P.W.3, produced documents Ex.P.1 to P.16 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in. The tribunal, after analysing the materials on record, passed the award as shown below:-

MCOP.Nos.	Award passed by the Tribunal	Liability
MCOP.No.99/2014	Rs.11,98,560/-	1 st and 2 nd respondents.
MCOP.No.141/2014	Rs.10,39,500/-	1 st and 2 nd respondents.

Thus, the Tribunal, while directing the 1st respondent and 2nd respondent to pay the said compensation amount, dismissed the claim against 3rd and 4th respondents. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Transport Corporation has preferred the present appeals, seeking to set aside the award passed by the Tribunal.

5. Contentions raised on the side of appellant/2nd respondent:- The learned counsel for the appellant/2nd respondent-KSRTC contends that the accident did not occur in the manner alleged by the petitioners. The Tribunal wrongly fixed the negligence on the 1st respondent driver without considering the evidence properly. On the other hand, it is only due to rash and negligent driving of the driver of the car bearing Reg.No.TN-33-AT-7374, the accident occurred. The amount awarded by the Tribunal is highly excessive. Thus, the 2nd respondent Karnataka State Transport Corporation sought for setting aside the award passed by the Tribunal by allowing the appeals.

6. Contentions raised on the side of Petitioners/claimants:- Per contra, the learned counsel for the Petitioners/claimants in both the appeals contended that the negligence on the part of the driver of the 2nd respondent bus alone caused the accident and as such, the 2nd respondent is liable to pay compensation. The amount awarded by the Tribunal is very nominal and no ground is made out to interfere with the same. Hence, the petitioners seeks dismissal of both the appeals.

7. Discussion regarding Negligence aspect:-

(i) P.W.3 who was one of the occupants of the car involved in the accident, deposed about the manner in which the accident occurred. According to him, the 2nd respondent bus came at high speed and dashed against the car which resulted in the accident.

(ii) On the basis of eyewitness account given by P.W.3, the Police registered Ex.P.1-FIR against the 1st respondent driver of the 2nd respondent Corporation bus. It is also clear from Ex.P.5-charge sheet that after investigation, the Police filed final report against the 1st respondent vehicle driver only.

(iii) There is no contra evidence let in by the respondents to disprove the claim of the petitioners about the manner in which the accident occurred. Neither the 1st respondent driver, nor any other witness was examined to prove the manner in which, the accident took place. Therefore, on the basis of P.W.3 evidence as well as contents of Ex.P.1-FIR, Ex.P.5-charge sheet and Ex.P.2-Observation Mahazar of the occurrence spot, it is clear that the accident occurred only due to rash and negligent driving of the 2nd respondent bus by its driver who is the 1st respondent herein and they alone are liable to pay compensation. In such circumstances, it is clear that the 4th and 5th respondents who are the owner and insurer of the car driven by the deceased Rajkumar is no way liable to pay the compensation.

8. Discussion regarding quantum of award in MCOP.No.99/2014 [CMA.No.1550 of 2016]:-

Age:- The Petitioners in MCOP.No.99/2014 who are the parents of the deceased Gudan contends that their son was a student at the time of the accident and he was aged 18 years. The petitioners produced transfer certificate of the deceased as Ex.P.10, wherein, his Date of Birth is mentioned as 10.02.1996. The Petitioners also produced Post Mortem Report and death certificate of Gudan as Ex.P.9 and Ex.P.4 respectively. On the basis of the above said documents, his age is fixed as 18 years.

Multiplier & deductions :-Admittedly, the deceased Gudan was a bachelor. For a bachelor aged 18 years, the multiplier to be applied is 18 and that 50% of the income to be deducted towards his personal expenses.

Income :- The 1st petitioner/father of the deceased in MCOP.No.99/2014 while deposing as P.W.1 stated that his son Gudan was studying 1st year B.Sc, computer course and he is involved in multifarious activities. It is clear from Ex.P.10 that the deceased was studying in SRM University. It is seen from Ex.P.11 that he participated in various other programmes

while studying in the school. In such circumstances, the tribunal, taking into consideration the fact that the deceased was a bright student, fixed the notional income at Rs.6500/-. The same needs no interference.

Future Prospects:- By following the decision of the Apex Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi and Others], addition of 40% is adopted herein for the deceased, instead of 50% adopted by the Tribunal.

Compensation under other heads:- As far as compensation of Rs.10,000/- granted by the Tribunal under the heads "Transportation" , "Medical expenditure" needs no interference.

Loss of dependency:- The computation of loss of dependency to the family of the deceased Gudan is as follows:-

Monthly salary : 6500

Add:40% towards Future Prospects

6500 + 40%(2600) = 9100

9100 - 50% deduction towards personal expenses

= Rs.4550 x12 x 18 = 9,82,800/-

Further, following the above cited decision of the Apex Court reported in 2017 (2) TN MAC 609 (SC) (cited supra), the following amounts are awarded under conventional heads:-

Loss of Estate - 15,000/-

Funeral expenses - 15,000/-

Thus, the modified compensation granted by this court in CMA.No.1550 of 2016 is as shown below:-

Sl.N o.	Heads	Amount awarded by the tribunal in Rs.	Amount awarded by this court in Rs.
1.	Loss of dependency	10,53,000/-	9,82,800/-
2.	Funeral expenses	25,000/-	15,000/-
4.	Transportation	10,000/-	10,000/-
5.	Medical expenditure	1,00,560/-	1,00,560/-
6.	Loss of estate	---	15,000/-
	Total	11,98,560.00	11,23,360/-

The 2nd petitioner/Mother alone is entitled for the award amount of Rs.11,23,360/-.

9. MCOP.No.141 of 2014 [C.M.A.No.1551/2016]:-

The Petitioner in MCOP.No.141 of 2014 contended that the deceased Rajkumar was aged 26 years old and by working as a driver, he was earning Rs.15,000/- per month. The petitioners produced death certificate of the deceased along with Post mortem certificate as Ex.P.16. Further, the driving licence of the deceased was produced as Ex.P.15, wherein his date of birth is stated to be 10.06.1987. As such, on the date of accident, i.e., on 08.12.2013, the age of the deceased Rajkumar was 27 years. As per Ex.P.13 Legal heir certificate, the petitioners are stated to be the legal heirs.

10. The 1st petitioner-Palaniyammal, who deposed as P.W.2 stated that his son was authorised to drive heavy vehicles and also authorised to drive transport vehicle with badge. However, no certificate was produced in proof of income. Hence, the Tribunal fixed Rs.6500/- as income of the deceased. The multiplier to be applied is 17. Further as he was a self employed, 40% of the income has to be added towards Future Prospects. Thus the loss of dependency is calculated as under:-

6500 + 40% Future Prospects. (2600) = Rs.9100

9100 - 50% deduction= Rs.4550/-

4550 x12 x17 = Rs.9,28,200/-

That apart, while confirming the compensation granted by the Tribunal under the head "Transportation", the following amounts are awarded under conventional heads:-

Loss of estate - 15,000/-

Funeral expenses - 15,000/-

11. In view of the foregoing discussion, the modified award amount granted by this court in CMA.No.1551 of 2016 is as show below:-

Sl.N o.	Heads	Amount awarded by the tribunal in Rs.	Amount awarded by this court in Rs.
1.	Loss of dependency	9,94,500/-	9,28,200/-
2.	Funeral expenses	25,000/-	15,000/-
3.	Loss of love and affection	10,000/-	---
4.	Transportation	10,000/-	10,000/-
5.	Loss of estate	---	15,000/-

Sl.No.	Heads	Amount awarded by the tribunal in Rs.	Amount awarded by this court in Rs.
	Total	10,39,500/-	9,68,200/-

12. The Tribunal by following the Ruling of the Apex Court reported in 2009 (2) TN MAC 1 (SC) in Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and Another, held that the 1st petitioner/mother alone is entitled to get compensation. There is no appeal against the same. As such, the mother of the deceased is entitled for the entire award amount in both cases.

13. In the result,

(i) The Civil Miscellaneous Appeals are Partly Allowed;

(ii) The modified award amount in both the appeals are as under:-

CMA.No.1550/2016 (MCOP.99/2014)	Rs.11,98,560.00	Rs.11,23,360/-
CMA.No.1551/2016 (MCOP.141/2014)	Rs.10,39,500/-	Rs.9,68,200/-

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The Appellant/Transport corporation is directed to deposit the entire award amount along with proportionate interest, as ordered by this court, less the amount, if any already deposited. Hence, the Appellant/Transport is entitled to withdraw the excess amount, if any in deposit, after satisfying the order of this court.

(v) The Tribunal shall pass necessary orders for disbursal of the award amount by following the appropriate procedure.

(vi) No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Special District Judge,
The Motor Accident Claims Tribunal,
Erode.

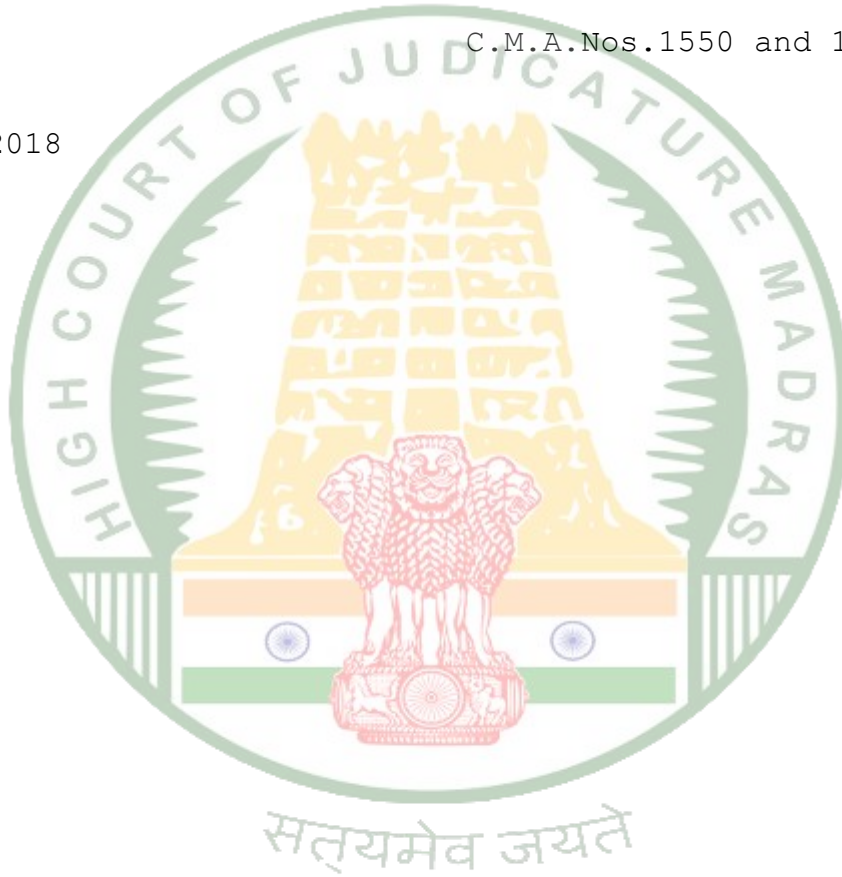
2.The Section Officer,
V.R.Section, High Court, Madras.

+2cc to Mr.T.thiyagarajan, Advocate sr.no.27118,27119

+2cc to Mr.M.Guruprasad, Advocate sr.no.27468,27467

C.M.A.Nos.1550 and 1551 of 2016

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