

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.1858, 1859 and 1860 of 2011

S.Arokia James Anthony ..Appellant in all the C.M.As'

Versus

Metropolitan Transport Corporation,
Chennai Ltd., rep by its,
Managing Director, Pallavan Salai,
Chennai-600 002.

.. First Respondent in C.M.A.No.1860 of 2011
and sole respondent in C.M.A.No.1858 and 1859
of 2011

2.G.George

3.G.Mary Shanthi ..Respondents 2 & 3 in C.M.A.No.1860 of 2011

Civil Miscellaneous Appeals filed against the Common order
and decree dated 28.10.2010 made in M.C.O.P.Nos.1521, 1522, and
1523 of 2008 respectively on the file of the Motor Accident
Claims Tribunal, Chief Judge, Small Causes Court, Chennai.

For Appellant

(In all the C.M.As') : Mr.N.M.Muthurajan

For Respondents

(In all the C.M.As') : Mr.S.V.Vasantha Kumar [for R1]

In C.M.A.No.1860 of 2011 : R2 and R3 Ex-parte

C O M M O N J U D G M E N T

The appellant/claimant has filed these appeals against the
award and decree dated 28.10.2010 made in M.C.O.P.Nos. 1521,
1522, and 1523 of 2008 respectively on the file of the Motor
Accident Claims Tribunal, Chief Judge, Small Causes Court,
Chennai.

2. For the sake of convenience, the parties are referred to
hereunder according to their litigative status before the
Tribunal. The case of the petitioner (the same petitioner in all
three cases) is that on 16.12.2007, while he was travelling with
his wife, the deceased Anitha in two wheeler bearing

Registration No.TN-03-1209 at about 20.45 hours on 16.12.2007 from old Wahermenpet to Tiruvottiyur near Thangam Thirumana Maligai in Old Wahermenpet, the respondent/Transport Corporation bus bearing Registration No.TN-02-N-0316 came at high speed driven in a rash and negligent manner from behind, dashed against the motor cycle, in which the petitioner was proceeding with his wife Anitha as a pillion rider, resulting in the death of his wife Anitha (in M.C.O.P.No.1523/2008) and 6 month old child in the womb (in M.C.O.P.No.1522/2008) and causing grievous injuries to the petitioner herein (M.C.O.P.No.1521/2008).

3. The petitioner contends that the rash and negligent driving of the respondent-bus driver alone resulted in the accident. The petitioner stated that he was aged 29 and employed in the Court of Small Causes, Chennai as a Bench Clerk and was earning Rs.7,900/- per month, while his wife who was a pillion rider of the vehicle, i.e. the deceased Anitha was aged 27 years and she was employed as Teacher in a Private Higher Secondary School, Chennai, earning Rs.12,500/- per month. The petitioner states that due to the death of his wife, her contribution to the family has lapsed and as such, compensation for Rs.16,00,000/- in M.C.O.P.No.1523 of 2008 was claimed for the death of his wife. Further, due to the injury suffered by him, he is not able to attend to his work regularly and for the same, he seeks compensation for Rs.2,00,000/- in M.C.O.P.No.1521 of 2008. Further, the petitioner states that in the accident, 6 month old child in the womb of his wife/deceased Anitha also passed away, and for the same, the petitioner seeks compensation of Rs.3,00,000/- (in M.C.O.P.No.1522 of 2008).

4. On the other hand, opposing the petition by filing counter, the respondent/Transport Corporation contends that their bus bearing Registration No.TN-02-N-0316 was proceeding from Foreshore Estate to Tollgate on a schedule trip and at about 20.55 hours, when the bus was going near Thangam Thirumana Maligai in Thiruvottiyur High Road, a rider of the motorcycle bearing Registration No.TN-03-1209 overtook the vehicle on the left side at high speed and unable to control the speed, grazed on the left side of the bus and he fell down with the pillion rider and both of them sustained injuries and the lady who was the pillion rider died. The accident occurred only due to the negligence on the part of the rider of the two wheeler. The respondent-Transport Corporation contends at the occurrence spot, the bus was proceeding at normal speed and the respondent's driver is no way responsible for the accident. In any event, the injured petitioner in M.C.O.P.No.1521/2008 who is the husband of the deceased in M.C.O.P.No.1523/2008 was guilty of contributory negligence and the claim for compensation by him is highly exorbitant. The claim by the husband/petitioner who lost his wife along with their 6 month old child in the womb (in M.C.O.P.No.1522 of 2008), is also without any basis. The claim

of the petitioner about the age, avocation and income of himself and the deceased wife is denied. Thus, the respondent/Transport Corporation sought for dismissal of the three petitions.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and produced document Exs.P.1 to P.15 to prove his claim. On the side of the respondent-Transport Corporation, the driver of the bus deposed as R.W.1, but no document was produced. The Tribunal, on the basis of the evidence available on record, found that the negligence of the bus driver alone caused the accident and awarded a sum of Rs.10,000/- in M.C.O.P.No.1521/2008, Rs.1,50,000/- in M.C.O.P.No.1522/2008 and Rs.6,30,000/- in M.C.O.P.No.1523/2008 as compensation. Being not satisfied with the quantum of the award passed by the Tribunal, the petitioner/claimant has come forward with the present three appeals.

6. The learned counsel for the petitioner contends that the quantum of the amount awarded by the Tribunal in all the three claim petitions, is on lower side. In M.C.O.P.No.1522/2008, the Tribunal ought to have awarded a sum of Rs.2,25,000/- for the death of his 6 month old child in the womb of the deceased mother. Similarly, the Tribunal failed to apply the proper multiplier of 18 in respect of the deceased Anitha. The income taken into account by the Tribunal for the deceased is also on the lower side. The petitioner in M.C.O.P.No.1521/2008 was not awarded proper compensation for the grievous injuries suffered by him. Hence, the petitioner/claimant seeks to allow all the three appeals and to enhance the amount awarded by the Tribunal.

7. On the other hand, refuting the contentions and the claim of the petitioner/claimant, the learned counsel for the respondent/Transport Corporation contends that the Tribunal on proper appreciation of the evidence available on record, has awarded just and fair compensation and the same needs no interference. Hence, the respondent/Transport Corporation seeks dismissal of all the three appeals.

8. The petitioner who suffered personal injuries in the accident, is the husband of the deceased Anitha and he has come forward with all the three appeals. While deposing as P.W.1, the petitioner stated that while he was proceeding in his two wheeler, the respondent-Transport Corporation's bus came at high speed and dashed against him. The petitioner produced his driving license as Ex.P.4 to show that he was qualified to drive the two wheeler. Further, the police have registered Ex.P.1 - F.I.R against the driver of the respondent-Transport Corporation's bus only. The petitioner also produced Rough Sketch of the occurrence spot marked as Ex.P.2 and the learned counsel for the petitioner contends that the accident occurred only due to rash and negligent driving by the respondent-

Transport Corporation's bus driver and that is why the Police have registered the case against him.

9. On the other hand, refuting the said contentions, the driver of the respondent-Transport Corporation's bus, who deposed as R.W.1 stated that while he was proceeding at normal speed, the two wheeler tried to overtake the bus on the left side and dashed against the bus, resulting in the accident and the same occurred only due to a high speed, in which the two wheeler was driven by its rider who is the petitioner herein. Thus, R.W.1 states the negligence of the petitioner alone caused the accident. Even though R.W.1 stated that the criminal case registered against him, ended in acquittal, he has not produced any copy of judgment passed by the criminal Court. Even assuming that the rider of the two wheeler was trying to overtake on the left side, the burden is on the respondent-Transport Corporation's bus driver to drive the vehicle carefully. If really, the negligence on the part of the two wheeler driver alone has caused the accident, R.W.1 driver would have lodged a complaint to the Police, but he has not done so. In the light of the above said discussion, it is clear that as the Police registered the case against the respondent-Transport Corporation's bus driver and also laid the charge sheet was clearly go to show that the negligence of the bus driver alone caused the accident. In such circumstances, the finding of the Tribunal that the negligence of the respondent-Transport Corporation's driver was the cause for the accident, is justified and the same needs no inference.

10. In M.C.O.P.No.1521/2008, the petitioner/claimant states that he suffered multiple injuries in the accident and he is unable to attend to his work as Bench Clerk in the Court of Small Causes, Chennai. He produced Ex.P.3 - O.P.Chit and Ex.P.5-Salary Certificate. The Tribunal, on the basis of the available materials, found that the petitioner suffered only simple injury and awarded a sum of Rs.10,000/-. The petitioner contends that he is suffering from pain in the injured portion still and due to the injury in the right fore-arm and in the right leg, he is not able to write fastly and unable to stand for long time to attend to Bench Clerk work. However, the petitioner has not examined any medical expert to prove the nature of injury suffered by him. Further, it is clear from Ex.P.3 - O.P. Chit that the petitioner was treated only an out-patient. In such circumstances, considering the reasons stated by the petitioner and the injury suffered by him being only simple injury, this Court is of the view that the award passed by the Tribunal can be enhanced to Rs.15,000/- to meet the ends of justice.

11. Accordingly, in C.M.A.No.1858 of 2011 is Partly Allowed, and the award passed by the Tribunal is enhanced from Rs.10,000/- to Rs.15,000/-.

12. In M.C.O.P.No.1522/2008, the petitioner has produced Ex.P.6 - Post Mortem Certificate, for the unborn child in the womb of the deceased/mother Anitha. It is clear from the evidence of P.W.1 as well as Ex.P.6 - Post Mortem certificate that the unborn child died only due to the impact of the accident. The Tribunal awarded a sum of Rs.1,50,000/- for the same. The learned counsel for the petitioner contended that the petitioner is entitled for higher compensation for the unborn child. It is seen that the wife of the petitioner was pregnant and due to the above said accident, she died consequent to injury suffered by her. In the same accident, due to her death, the 6 month old child in the womb of deceased Anitha also passed away. Hence, the petitioner contends that Foetus of 6 month old is to be treated as a super legal entity and he is entitled to ask for compensation. In support of the same, he relied upon the ruling of this Court reported in 2014 ACJ 353 (Rakhi Kothari Vs. R.Soundaapandian) wherein it is held as follows:-

"30. When right of action for pecuniary damages for the loss of life by wrongful act or neglect or default of another person is recognised under the Motor Vehicles Act, 1988 and when foetus is also considered as a separate legal entity in our statutes, the parent is also entitled to claim compensation for the loss of foetus in the womb. Restitutio in integrum is a question to be decided in a case of death of foetus in the womb. But it is a settled principle that the quantum of compensation should be calculated, so as to put the claimant in an identical position, to put it in other words, the damages should be calculated in the same way and that the victim is put in the same position, as if there was no accident.

31. In the light of the above decisions and medical evidence that there was termination of pregnancy, entitlement of the appellant to payment of compensation, for the loss of foetus, is absolute and as rightly contended by the learned counsel for the appellant, the Claims Tribunal has failed to award a just and reasonable compensation for the loss of the unborn child in the womb, which has to be treated as a child in existence. When the life of a child in the womb is terminated, on account of the injuries or where there is nexus between the injuries and termination of pregnancy, mother/father is entitled to claim a just and reasonable compensation. Hence, following the decisions in National Insurance Co. Ltd. V. G.Parimala, 2012 ACJ 663 (Madras) and National Insurance Co. Ltd. V. Kusuma, 2011 ACJ 2432 (SC), this court is inclined to award a sum of Rs.2,50,000 for the loss of life of the child in the womb."

13. In the above said case, the accident occurred on 14.03.2004. In the present case on hand, the accident took place on 16.02.2007. In such circumstances, following the above said ruling, it is clear that the petitioner's father is entitled to claim just and reasonable compensation for the loss of Foetus in the womb. The loss of foetus occurred only due to the impact of the accident. Thus, in the case on hand as stated earlier Ex.P.6-Post Mortem, clearly establishes the fact of loss of 6 month old child. In such circumstances, following the above said ruling, this Court is inclined to enhance the award for the loss of 6 month old foetus, to Rs.2,00,000/- from Rs.1,50,000/- awarded by the Tribunal in M.C.O.P.No.1522 of 2008.

14. Accordingly, in C.M.A.No.1859 of 2011 is Partly Allowed. The award passed by the Tribunal is enhanced to Rs.2,00,000 /- from Rs.1,50,000/-.

15. In M.C.O.P.No.1523 of 2008, the petitioner stated that the deceased wife Anitha was employed as a Teacher in a private school and was earning Rs.12,500/- per month. The deceased was stated to be 27 years old at the time of the accident, and to prove her age, the petitioner produced Ex.P.9 - X Std. mark statement of the deceased, in which the date of birth of the deceased was mentioned as 21.01.1980. It is also evident from Ex.P-6 Post-mortem Certificate that the deceased was aged 27 years. Further, Ex.P.7 - Death Report, also supports the claim of P.W.1. Hence, the age of the deceased is fixed as 27 years. The petitioner has also produced the certificate of educational qualification of the deceased as Ex.P.9, Ex.P.11 and Ex.P.12. The petitioner also produced Ex.P.13-Sports certificate and Ex.P.14-Attendance certificate in respect of the deceased. The petitioner stated that the deceased was employed as a Teacher and earning Rs.12,500/- per month. Hence, in Ex.P.10 - Service certificate of the deceased, her salary is stated to be Rs.4,500/-.

16. From the facts and circumstances of the case, the Tribunal is justified in fixing the monthly income of the deceased at Rs.6,000/-. Even though the service certificate states that she was earning Rs.4,500/-, this Court is of the view that the monthly income fixed by the Tribunal need not be interfered with. Considering the age of the deceased being 27 years and she being an employed person, addition of 40% towards future prospects is calculated as under:-

40% x Rs.6000	= Rs.2,400/-
Rs.6000 + Rs.2400	= Rs.8,400/-

Further, it is appropriate to deduct 1/3rd towards personal expenses and applying the correct multiplier of 17, the loss of income is calculated as under:-

Notional monthly income = Rs.8400/-
1/3rd deduction towards personal expenses (2800)
Rs.8400 - 1/3 (2800) = 5600

By applying multiplier of 17,

Rs.5600x12x17 =Rs.11,42,400/-

Thus, a sum of Rs.11,42,400/- is granted as compensation under the head "Loss of Income". Further, under the head "Transport Charges" Rs.5,000/- is awarded.

17. In respect of awarding compensation under conventional heads, as per the Constitution Bench judgment of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation be awarded towards loss of estate, loss of consortium and funeral expenses, and hence, this court is inclined to modify the compensation as under:-

Loss of Estate = Rs.15,000.00
Loss of consortium = Rs.40,000.00
Funeral Expenses = Rs.15,000.00

Rs.70,000.00

18. Accordingly, the compensation awarded by the Tribunal in M.C.O.P.No.1523 of 2008, stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of Income of the deceased	-	Rs.11,42,400.00
2	Loss of Pecuniary benefits and loss of estate of the deceased	Rs. 6,12,000.00	-
3	Funeral Expenses	Rs. 8,000.00	Rs. 15,000.00
4	Consortium	Rs. 10,000.00	Rs. 40,000.00
5	Loss of Estate	-	Rs. 15,000.00
6	Transport		Rs. 5,000.00
	Total	Rs.6,30,000.00	Rs.12,17,400.00

19. In the result, in respect of M.C.O.P.No.1523 of 2008, Civil Miscellaneous Appeal in C.M.A.No.1860 of 2011 is Partly Allowed. The award of the Tribunal is modified and enhanced from Rs.6,30,000/- to Rs.12,17,400/-.

20. In the result,

(i) All the three C.M.A's are Partly Allowed, by enhancing the compensation from Rs.10,000/- to Rs.15,000/- in C.M.A.No.1858 of 2011, from Rs.1,50,000/- to Rs.2,00,000/- in C.M.A.No.1859 of 2011 and from Rs.6,30,000/- to Rs.12,17,400/- in C.M.A.No.1860 of 2011.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The 1st respondent/Transport Corporation is directed to deposit the award amount as ordered by this Court, within a period of six weeks from the date of receipt of a copy of this judgment, along with proportionate interest and costs awarded by the Tribunal, less the amount, if any already deposited.

(iv) On such deposit, the injured claimant/Appellant in all the above three CMAs is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(5) Appellant shall pay necessary court fee before receiving the copy of the judgments for the enhanced compensation amount. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

bri
To

1.The Chief Judge, Small Causes Court,
Chennai.

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

+1 CC to Mr.S. Vasantha Kumar, Advocate sr 15441.

+1 CC to Mr.N.M. Muthurajan, Advocate sr 15269.

C.M.A.Nos.1858, 1859
and 1860 of 2011

SVI(CO)
SP(09/07/2018)