

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.Nos.2613 of 2015 & 1008 of 2016
&
C.M.P. No. 7620 of 2016

C.M.A. No. 2613 of 2015

1. Dhaniklal
2. Nandini Devi ..Appellants/Petitioners

Vs.

1. The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai,
Chennai - 600 002.
2. M. Ramesh ..Respondents/Respondents

C.M.A. No. 1008 of 2016

The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai,
Chennai - 600 002. ..Appellant/1st Respondent

Vs.

1. Dhaniklal
2. Nandini Devi
3. M. Ramesh ..Respondents

Common Prayer:

Civil Miscellaneous Appeals as against the judgment and decree dated 24.02.2015 passed in M.C.O.P. no. 4664 of 2012 by the Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai.

For Appellants in C.M.A.No.
2613/2015/Respondents

1 & 2 in C.M.A. NO. 1008/2016 :: Mr.P. Chandrasekar

For 1st respondent in C.M.A.No.
2613/2015/Appellant in C.M.A

No. 1008/2016 :: Mr.S. Sivakumar

R2 in C.M.A. No. 2613/2015/

R3 in C.M.A. No.1008/2016 :: Given Up

COMMON JUDGMENT

(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

Two appeals have been preferred, one by the claimants in C.M.A. No. 2613 of 2015 and the other by the Transport Corporation in C.M.A. No. 1008 of 2016, against the very same award dated 24.02.2015 passed by the Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai, in M.C.O.P. No. 4664 of 2012, granting a sum of Rs.8,83,000/- for the death of one Bharat Kumar, aged about 19 years, 1st year B.Tech Student in Sri Venkateswara Institute of Science and Technology, in the accident, which occurred on 29.02.2012, when the victim, who tried to alight from the Transport Corporation bus, fell down and came under the wheels of the bus.

2. For the sake of convenience, the parties are referred to as Transport Corporation and claimants.

3. Heard Mr.P. Chandrasekar, learned counsel for the claimants and Mr.S. Sivakumar, learned counsel for the Transport Corporation.

4. It is evident from the records that the Tribunal, based on evidence of eye-witness P.W.1 and R.W.1, bus driver, found that the deceased, while getting down from the moving bus, fell down and was run over by the bus. Therefore, the Tribunal rightly found that there was negligence on the part of the victim as well by getting down from the running bus and fixed 25% contributory negligence on the deceased and 75% on the driver of the Transport Corporation bus. Even if the victim had tried to get down from the moving bus, the driver should have been cautious enough to see that bus is slowed down so that the victim would not have fallen down or he would have alighted without any problem. The driver could have very well averted the accident and therefore, the Tribunal rightly fixed 75% negligence on the driver of the Transport Corporation bus and

the same is confirmed.

8. Ex-P8 Bonafide Certificate issued by Sri Venkateswara Institute of Science and Technology would prove that the deceased was a first year B.Tech student. Ex-P2 postmortem certificate as well as Ex-P8 would prove that the deceased was aged about 19 years on the date of the accident. Since the deceased was a young student, notional income of Rs.8000/- was fixed by the Tribunal and the said fixation is sought to be enhanced by the claimants.

9. Considering the fact that the accident occurred on 29.02.2012, it would be appropriate to fix the notional income of the deceased at Rs.12,000/- per month, as during the year 2012, it would have been difficult to even avail the services of a domestic maid for salary less than Rs.12,000/- per month. In any event, the determination of notional income at Rs.12,000/- per month is in consonance with the judgment of the Honourable Apex Court rendered in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627. To the said amount, 40% has to be added towards "Future Prospects" following the judgment of the Constitution Bench of the Honourable Apex Court in Pranay Sethi's case reported in 2017 ACJ 2700. therefore, "the total monthly income" of the deceased comes to,

Monthly Income fixed	::	Rs.12,000/-
Add: 40% towards "Future Prospects "	::	Rs.12,000/- (+) 40%(Rs.12,000/-)
Total Monthly Income	::	Rs.16,800/-

The deceased was a bachelor and therefore, 50% has to be deducted towards his "Personal Expenses". Accordingly, deducting 50%, "the monthly contribution of the deceased to his family" would be Rs.8,400/- (Rs.16,800/- (-) 50%(Rs.16,800)). As per the age of the deceased, which is proved to be 19 years, the appropriate multiplier to be adopted is 18. Accordingly, applying the said multiplier, "Loss of Income" comes to Rs.18,14,400/- (Rs.8400 x 12 x 18).

10. As far as the conventional heads are concerned, the amount of Rs.1 lakh awarded towards "Loss of Love and Affection" to the claimants is very reasonable, eventhough Mr.S. Sivakumar, learned counsel for the Transport Corporation would oppose the award of Rs.1lakh relying upon the judgment of the Honourable Apex Court in Pranay Sethi's case. Awarding of amount towards "Loss of Love and Affection" is akin to the amount awarded towards "Loss of Consortium" to the spouse. Therefore, the amount of Rs.1 lakh awarded towards "Loss of Love and Affection"

is confirmed. So also, the amount awarded towards "Funeral Expenses" is confirmed. No amount was awarded towards "Loss of Estate". Hence, a sum of Rs.15,000/- is awarded under the said head. Likewise, Rs.10,000/- is awarded towards "Transport charges" as no amount was awarded under the said head by the Tribunal. Hence, the total compensation is Rs. 19,54,400/-, out of which 25% has to be deducted towards contributory negligence fixed on the deceased. Deducting 25%, the compensation amount to which the claimants are entitled to comes to Rs.14,65,800/-. The rate of interest awarded by the Tribunal @ 7.5% per annum is confirmed. The claimants would be entitled to equal share in the award amount. The claimants shall pay additional court-fee for the enhanced amount, if any, within a period of two weeks from the date of receipt of a copy of this order.

11. The Transport Corporation is directed to deposit the entire award amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, after deducting the amount already deposited, if any, within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of the claimants, as per the ratio fixed by this Court, to their respective bank accounts, through RTGS, within a period of one week thereon. If the award amount is not deposited within the time stipulated by this Court, then the Chairman-cum-Managing Director and Financial Advisor cum Chief Audit Accounts Officer of the Metropolitan Transport Corporation, Chennai, shall appear before this Court on 08.10.2018.

13. In the result, C.M.A. No. 2613 of 2015 is partly allowed and C.M.A. No. 1008 of 2016 is dismissed. No costs. Connected C.M.P. is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nv

To

1. The MACT (III Court of Small Causes),
Chennai.

2. The Chairman-cum-Managing Director,
The Metropolitan Transport Corporation,
Chennai.
3. The Financial Advisor-cum-Chief Audit Accounts Officer,
Metropolitan Transport Corporation,
Chennai.

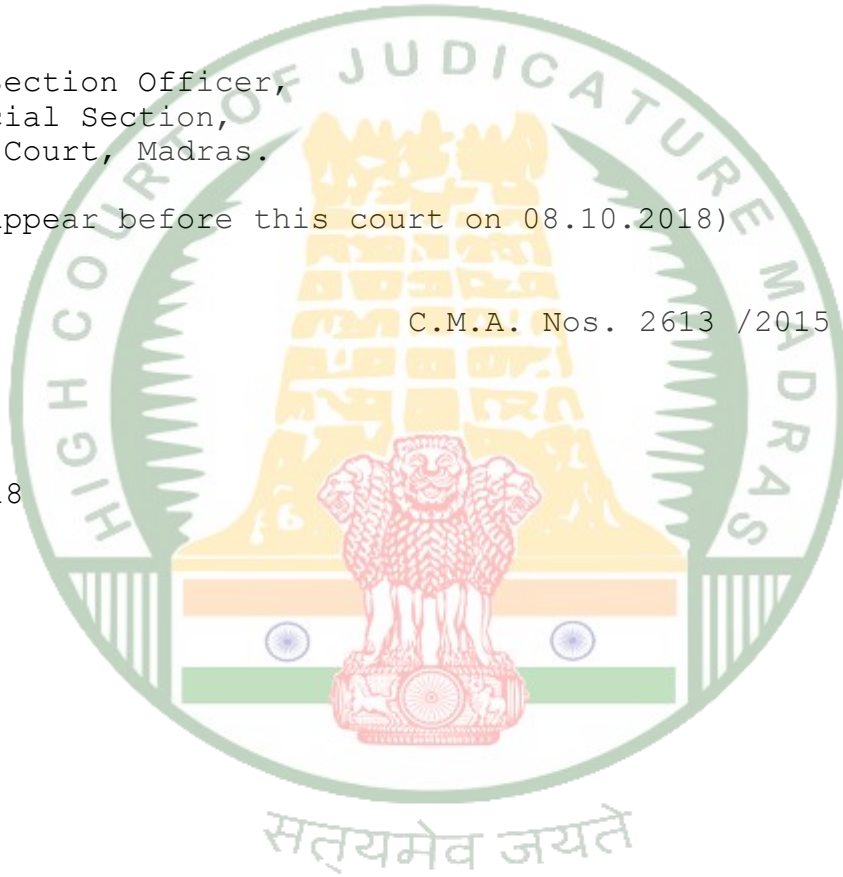
+1cc to Mr.S. Sivakumar, Advocate, S.R.No.39412
+2ccs to Mr.P. Chandrasekar, Advocate, S.R.No.39012

Copy to
The Section Officer,
Judicial Section,
High Court, Madras.

(To appear before this court on 08.10.2018)

C.M.A. Nos. 2613 /2015 & 1008/2016

RK(CO)
CS/09/07/18



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