IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2465 of 2016
and CMP.No.17395 of 2016
and Cross objection No.90 of 2016

C.M.A.No.2465 of 2016:-

Managing Director
Metropolitan Transport Corporation Ltd
No.2, Pallavan Salai
Chennai 600 002 ..Appellant/1st respondent

vs

1.G.Meenakshi
2.Minor.Rakshna
Rep.by mother & Guardian
G.Meenakshi ..Respondents 1 & 2 /Petitioners

3.Rukmani ..3rd Respondent/2nd respondent

Cross Objection No.90 of 2016:-
1)G.Meenakshi
2)Selvi.Rakshana (Minor)
Rep. By mother and natural guardian
G.Meenakshi ..Cross Objectors 1 & 2

Vs

1.The Managing Director
Metropolitan Transport Corporation Ltd.,
No.2, Pallavan House
Pallavan Salai, Chennai-2

2.Rukmani ..Respondents

Civil Miscellaneous Appeal and Cross Objection filed against the judgment and decree dated 03.03.2010 passed in M.C.O.P.No.4154 of 2004 by the II Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai.
In CMA.No.2465 of 2016:-

For appellant : : Mr.S.S.Swaminathan

For Respondents : :

for R1 and R2 : : M/s.Ramya V.Rao
& A.N.Viswanatha Rao

In Cross Objection No.90 of 2016:-

For Cross Objectors :: M/s.Ramya V.Rao
& A.N.Viswanatha Rao

For Respondent No.1 :: Mr.S.S.Swaminathan

J U D G M E N T

1.1 Civil Miscellaneous Appeal No.2465 of 2016 has been filed by the 1st respondent before the Tribunal viz., the Transport Corporation, against the judgment and decree dated 03.03.2010 passed in M.C.O.P.No.4154 of 2004 by the Motor Accident Claims Tribunal,[II Judge, Small Causes Court], Chennai.

1.2 The petitioners/claimants in the above said M.C.O.P., has filed Cross Objection No.90 of 2016 seeking enhancement of the Award amount.

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

2. The case of the claimants before the Tribunal as per their claim petition is that on 26.12.2003, at about 10.00 hours, when the deceased Sivamani was riding his Motorcycle bearing Regn.No.TSE 9560 at M.T.H.Road, a M.T.C.Recovery Van bearing Reg.No.TMN 8648, belonging to the 1st Respondent/Transport Corporation driven in a rash and negligent manner by its driver, dashed against the deceased Sivamani causing death to him. According to the claimants, the accident took place only due to rash and negligent driving of the said Recovery Van and in that circumstances, a sum of Rs.15,00,000/- was claimed as compensation.

3. On the other hand, refuting the contentions of the petitioner, the 1st respondent/Transport Corporation opposed the petitioners claim by filing a detailed counter. According to the counter averments, on the fateful day on 26.12.2003, the respondent corporation Recovery Van with Reg.No.TMN 8648 was proceeding at normal speed near Ambattur Police Station and at that time, the deceased came in the opposite direction in his Motor Cycle with Reg.No.TSE 9560, overtook car coming ahead of him and came in the wrong side and dashed against the front right side bumper, fell down and suffered injuries. Thus, the

1st respondent Corporation claims that the deceased was solely responsible for the accident and the driver of the Recovery Van was not responsible for the accident since he was driving his vehicle at normal speed and in a careful manner. Thus the 1st respondent/Transport Corporation disputed the nature of accident as well as other averments of the petitioners in respect of the age, avocation and income of the deceased. Thus the 1st respondent/Corporation pleaded for dismissal of the petition.

4. To substantiate the claim before the Tribunal, the petitioners examined P.W.1 and P.W.2 and produced Exhibits P.1 to P.6. On the other hand, the respondent/Corporation examined the driver of the Recovery Van as R.W.1 and did not produce any documentary evidence.

5. After considering the available oral and documentary evidence, the Tribunal awarded compensation of Rs.12,79,200/- with interest at 7.5% p.a., from the date of petition till the date of deposit. The Tribunal categorically held that the accident occurred only due to rash and negligent driving of the driver of the 1st respondent Recovery Van and also held that the Transport Corporation is liable to pay the compensation. The details of the compensation is as follows:-

Sl. No.	Head	Amount granted by the Tribunal
	Loss of pecuniary benefits to the dependants of the deceased including future prospects(Rs.3,700 x 12 x 18)	Rs.7,99,200/-
2	Loss of Love and Affection for 2nd petitioner/daughter of the deceased	Rs.2,00,000/-
3	Loss of consortium	Rs. 20,000/-
4	Loss of future prospects	Rs. 50,000/-
5	Loss of security to wife and child	Rs. 1,00,000/-
6	Loss of Estate	Rs. 30,000/-
7	Loss of companionship	Rs. 50,000/-
8	Loss of expectation of life	Rs.10,000/-
9	Pain and suffering	Rs.10,000/-
10	Funeral expenses	Rs.10,000/-
	Total	Rs.12,79,200/-

6. Aggrieved by the said conclusion arrived at by the Tribunal, the 1st respondent/Transport Corporation has filed the present appeal stating that the Tribunal has wrongly fixed the liability on their driver and the Award passed by the Tribunal is highly excessive. However, the Petitioners/Claimants have

filed their Cross Objection contending that the quantum arrived at by the Tribunal is on the lower side and the Tribunal has filed to consider the future prospects of the deceased properly and as the age of the deceased was 29 years and he was employed as a Police Constable, Commandant, Tamil Nadu Special Police, 2nd Battallion, 100% of the salary of the deceased has to be taken for arriving the compensation for future prospects. It is further stated that the amount awarded under different heads viz., loss of love and affection, loss of consortium, funeral expenses are on the lower side and the same sought to be enhanced.

7. In the case on hand, the Tribunal has considered the oral evidence of P.W.2 who is the eye witness of the accident and also taken into consideration Ex.P.1-FIR, Ex.P.2-Post Mortem Certificate and Ex.P.3-Death Certificate and held that the 1st respondent Transport Corporation vehicle is responsible for the accident. As far as negligence aspect is concerned, no serious dispute is raised by the Transport Corporation. Hence, by going through the available materials on record, this court is of the considered view that the conclusion arrived at by the Tribunal in fixing the negligence on the part of the 1st respondent/Transport Corporation is just and proper and the same needs no interference.

8. It is admitted that the deceased was employed as Police Constable at the time of the accident and his wife who deposed as P.W.1 stated that she is the 1st petitioner and her minor daughter is the 2nd petitioner and mother-in-law is the 2nd respondent. According to her, at the time of the accident, her husband Sivamani was aged 29 years and he was working as Police Constable in Tamil Nadu Special Police, 2nd Battallion, Chennai-54 and was earning Rs.6000/- per month.

9. It is evident from Ex.P.5-Pay slip that the monthly income of the deceased Sivamani was Rs.6000/- per month. Ex.P.6 certificate gives the Service Particulars of the deceased Sivamani.

10. The trial court deducted 2/3rd amount towards personal expenses from the total salary of Rs.6000/- per month of the deceased and calculated the loss of income as Rs.3700/- per month and by applying multiplier of 18, granted Rs.7,99,200/- as loss of Pecuniary Benefits. Further, the trial court awarded Rs.50,000/- towards future prospects. Aggrieved over the said conclusion of the Tribunal, seeking enhancement of the compensation, the claimants have filed Cross Objection.

11. It is evident that 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], while determining the income of permanently employed person, addition of 50% of actual salary to the income of the deceased towards future prospects has to be taken into account. Thus, applying the above decision and by applying correct multiplier of 17, it will be appropriate to calculate the loss of earning of deceased, as under,:-

Actual income = Rs.6000/-

50% addition towards future prospects = Rs.3,000/-

1/3rd deduction towards personal expenses = Rs.3000/-

= Rs.6000/- + Rs.3000/- __ Rs.3,000/-

= Rs.6000/- x 12 x 17 = Rs.12,24,000/-.

In view of the decision cited supra, Rs.12,24,000/- is granted as compensation under the head "Loss of Earning".

12. In respect of awarding compensation under conventional heads, the Supreme Court, in the decision cited supra [2017 (2) TN MAC 609], at paragraph 54, held as follows:-

> "The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads. "

Following the above said Apex court Ruling, towards loss of estate, loss of consortium and funeral expenses, this court is inclined to modify the compensation as under:-

Loss of Estate = Rs.15,000/-
Loss of consortium = Rs.40,000/-
Funeral Expenses = Rs.15,000/-

13. The learned counsel for the Petitioners/Cross Objectors contended that the petitioners are young widow and minor daughter and they are entitled for compensation under the head of "Loss of love and affection". However, it is contended by the learned counsel for the respondent/appellant/Insurance Company that on the above said Apex Court judgment, no amount is provided as compensation under the said head. In that regard, the learned counsel for the Petitioners/Cross Objectors also relied on the decision reported in 2017 (2) TN MAC 824 (DB) [National Insurance Co.Ltd., Vs. K.Hammed @ Shaik Ahammed and others] (C.M.A.No.1351 of 2017 dated 06.11.2017), wherein, a Division Bench of this Court, while partly allowing the appeal filed by the Insurance Company, awarded Rs.1,00,000/- towards "Loss of love and affection" to the claimant/mother of the deceased. However, refuting the contention of the claimants/petitioners, the learned counsel for the respondent/Insurance Company contended that no amount under the head of "loss of love and affection" has been granted by the Apex Court either in the decision reported in (2009) 6 SCC 121 [Sarla Verma and others Vs. Delhi Transport Corporation and another or in the decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others]. It is also pointed out that the Constitution Bench Judgment of the Apex Court dated 31.10.2017 (Pranay Sethi case) was not placed before the Division Bench of this Court and in such circumstances, the claim of the Petitioners/claimants cannot be entertained. The said contention of the respondent/Insurance Company is correct and admittedly, the Constitution Bench Judgment of the Apex Court was not brought to the notice of the Division Bench of this court, which passed the above said judgment on 06.11.2017. Further, this court is of the considered opinion that the amount awarded by the Tribunal, under the other heads are not sustainable and the same is liable to be set aside. Accordingly, the compensation granted by the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	For Loss of earning (Rs.6,000 x 12 x 17 = Rs.12,24,000/-)	Rs.7,99,200/-	Rs.12,24,000/-
2	Loss of Love and Affection for 2nd petitioner/daughter of the deceased	Rs.2,00,000/-	---

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
3	Loss of consortium	Rs. 20,000/-	Rs.40,000/-
4	Loss of future prospects	Rs. 50,000/-	---
5	Loss of security to wife and child	Rs. 1,00,000/-	---
6	Loss of Estate	Rs.30,000/-	Rs.15,000/-
7	Loss of companionship/Loss of love and affection to mother of the deceased.	Rs.50,000/-	---
8	Loss of expectation of life	Rs.10,000/-	---
9	Pain and suffering	Rs.10,000/-	---
10	Funeral expenses	Rs.10,000/-	Rs.15,000/-
	Total	Rs.12,79,200/	Rs.12,94,000/-

There is no objection with regard to interest granted at 7.5% per annum and the same is confirmed.

13. In the light of the foregoing discussion, the award of the Tribunal is modified on the above terms. In the result, the Civil Miscellaneous Appeal filed by the appellant/Transport Corporation is dismissed; Cross Objection filed by the Cross Objectors is partly allowed as follows:-

(1) The award granted by the Tribunal is enhanced to Rs.12,94,000/= from Rs.12,79,000/-.

(2) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(3) The appellant/Transport Corporation is directed to deposit the award amount as ordered by this court within a period of two months.

(4) The apportionment of the modified award amount is as under:-

1st petitioner, wife 40% = Rs.5,17,600/-
2nd petitioner, minor daughter 40% - Rs.5,17,600/-
2nd respondent, mother of the deceased 20% = Rs.2,58,800/-

The share of the minor is directed to be deposited in any one of the nationalised bank till she attains majority. The 1st Petitioner/Wife and the 2nd respondent/mother are permitted to withdraw the award amount as ordered by this court.

(5) There will be no order as to costs in this appeal.

(6) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
II Judge, Small Causes Court, Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras. (2 Copies)

3. The Managing Director
Metropolitan Transport Corporation Ltd
No.2, Pallavan Salai
Chennai 600 002

+2cc to Mr.A.N.Viswanatha Rao, Advocate SR.No.847

C.M.A.No.2465 of 2016
and Cross Obj.90/2016

RV(CO)
GN(05/03/2018)