

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

C.M.A. No. 2574 of 2016

&

C.M.P. No.18437 of 2016

The Managing Director,
State Express Transport
Corporation Limited,
Chennai - 2.

..Appellant/Respondent

Vs.

1. Radha
2. Minor K.B. Harini
3. Krishnan
4. Valliammal
(Minor 2nd respondent is represented
by the 1st respondent, N.F. And
Guardian K. Radha)

..Respondents/Petitioner

Prayer: Civil Miscellaneous Appeal as against the judgment and
decree dated 06.11.2015 passed by the Motor Accidents Claims
Tribunal (Special District Court for Motor Accidents Cases),
Krishnagiri in M.C.O.P. No. 67 of 2014.

For Appellant :: Mr.K.J. Sivakumar

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed by the
Transport Corporation as against the quantum of compensation
awarded to the tune of Rs.14,57,000/- as well as the liability
fastened on the Transport Corporation by the Motor Accidents
Claims Tribunal (Special District Court for Motor Accidents
Cases) in M.C.O.P. No. 67 of 2014 by order dated 06.11.2015, for

the death of one K. Babu, in the accident which occurred on 26.03.2013, which the motor cycle driven by him was hit down by the appellant Transport Corporation bus.

2. Heard Mr.K.J. Sivakumar, learned counsel for the appellant.

3. The claim of the respondents/claimants was that the deceased K. Babu was riding his Hero Honda motor cycle on 26.03.2013 along with one Sathish Kumar as a pillion rider and the bus belonging to the appellant Transport Corporation, bearing Registration No. TN 01 N 9975, driven rashly and negligently, came from behind and hit the motor cycle resulting in the death of said Babu. However, as per paragraph No. 6 of the counter filed by the Transport Corporation, when the appellant Transport Corporation bus was proceeding near the overbridge at Rayakottai Road in Hosur to Krishnagiri NH road, the deceased, who was riding the motor cycle, in a rash and negligent manner, dashed on the wheel of the bus, fell down and died.

4. The Tribunal, took into consideration, the evidence of P.W.2, an eye-witness to the occurrence, who had categorically stated that the bus, which was driven rashly and negligently, hit the motor cycle from behind causing the death of Babu. At the same time, the Tribunal also rejected the evidence of R.W.1, the driver of the bus belonging to the Transport Corporation, who stated that there was no such accident involving the Transport Corporation bus and only when the bus was coming out of Krishnagiri Bus Stand, a person riding a two-wheeler got into the bus and punched him stating that the bus had dashed against a two-wheeler, injuring a person and when the passengers tried to apprehend the said person, he ran away, thereafter, which R.W.1 drove the bus to Krishnagiri Police Station and a complaint was lodged by the Conductor of the bus with the Police. The Tribunal noted that the appellant Transport Corporation did not file the Motor Vehicle Inspector's Report to prove their contention that the bus belonging to the Transport Corporation was not involved in the accident and that there was no damage to the vehicle, when, even as per the evidence of R.W.1, the bus was taken to Krishnagiri RTO Office for inspection.

5. Further, though R.W. 1 contended that even as per the version of the pillion rider of the two-wheeler, based on which Ex-P1 FIR has been registered, it was the deceased, who drove the vehicle rashly and negligently and dashed against the median and fell down and got crushed under the bus, which was coming on the left side of the road, but the pillion rider, based on whose statement, the FIR was registered, was neither summoned nor

examined by the appellant Transport Corporation to prove the accident, as stated in the FIR. The statements in FIR cannot be taken as evidence. It is only a document to set the law in motion and to prove that the accident occurred and there is no information regarding the criminal case. When P.W.2, the eye-witness to the occurrence, has spoken categorically that the bus alone caused the accident by hitting the two wheeler from behind, the Tribunal rightly found that the accident had occurred due to the rash and negligent driving of the bus. Therefore, the finding rendered by the Tribunal, on the negligence aspect, is based on evidence and the same cannot be disturbed.

6. Though the claimants claimed a sum of Rs. 25,000/- as the monthly income of the deceased, who was a partner in running hotel business, in the absence of any proof, in support thereof, the Tribunal took Rs.8000/- as the monthly income and deducted one-fourth towards "Personal Expenses" as the size of the family was four and determined the "Monthly contribution of the deceased to his family" as Rs.6000/- and adopting multiplier 17, arrived at Rs.12,24,000/- as "Loss of Dependency".

7. As far as the monthly income fixed by the Tribunal at Rs.8000/- is concerned, in respect of an accident, which took place in the year 2008, the Honourable Apex Court, in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627, fixed Rs.6500/- as the monthly income for a vegetable vendor whereas in the case on hand, the accident had taken place in the year 2013 and therefore, the monthly income of the deceased fixed by the Tribunal is very reasonable. However, the Tribunal did not consider awarding "Future Prospects". As per the judgment of the Constitution Bench of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi & Others reported in 2017 ACJ 2700, 40% of the actual salary has to be added towards "Future Prospects" since the deceased was a self-employed person aged about 26 years. Accordingly, adding 40% towards "Future Prospects", the "Total Monthly Income" of the deceased comes to,

Monthly Income	::	Rs.8000/-
Add: Future Prospects @ 40%	::	Rs.8000/- + 40% (Rs.8000/-)
	::	Rs.8000/- + Rs.3200/-
Total Monthly Income	::	Rs.11,200/-
Deducting one-fourth towards "Personal Expenses", as rightly done by the Tribunal, "the Monthly Contribution of the Deceased to his family" is arrived at as hereunder:		
Total Monthly Income	::	Rs.11,200/-
Less: 1/4 th towards "Personal Expenses"	::	Rs.11,200/- (-) ¼(Rs.11,200/-)
Monthly Contribution	::	Rs.8,400/-
The appropriate multiplier to be adopted, for the age group		

of 26 to 30 years is 17 as per the judgment of the Honourable Apex Court in Sarla Verma's case (2009 ACJ 1298 (SC)). Therefore, applying the said multiplier, "Loss of Dependency" is calculated as,

Loss of Dependency	::	Rs.8400/- x 12 x 17
	::	Rs.17,13,600/-

8. As far as the amounts awarded by the Tribunal under the other heads are concerned, the sum of Rs.1 lakh awarded towards "Loss of Consortium" is reduced to Rs.40,000/- following the judgment of the Honourable Apex Court in Pranay Sethi's case (2017 ACJ 2700). So also, the amount of Rs.25,000/- awarded towards "Funeral Expenses" is reduced to Rs.15,000/-. The sum awarded towards "Loss of Love and Affection" is set

aside and instead a sum of Rs.15,000/- is awarded towards "Loss of Estate". To sum up, the compensation payable to the claimants is, as detailed below:

Loss of Income	::	Rs.17,13,600/-
Loss of Consortium	::	Rs. 40,000/-
Funeral Expenses	::	Rs. 15,000/-
Loss of Estate	::	Rs. 15,000/-
Total	::	Rs.17,83,600/-

The rate of interest awarded by the Tribunal @ 9% per annum remains intact.

9. Though the appeal has been preferred by the Transport Corporation, the facts and circumstances of the case, enables this Court to enhance the compensation awarded by the Tribunal from Rs. 14,57,000/- to Rs.17,83,600/- by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order XLI Rule 33 CPC and Section 151 CPC as well as Article 227 of the Constitution of India. Moreover, the provisions of Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

10. Out of the enhanced compensation amount, the 1st respondent is entitled to Rs.6,83,600/-, the 2nd respondent is entitled to Rs.8 lakhs and respondents 3 and 4 are each entitled to Rs.1.5 lakhs. The appellant Transport Corporation is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, after deducting the amount already deposited, if any, before the Tribunal, within a period of twelve 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 major claimants, namely, respondents, 1, 3 and 4, as indicated above, to their respective bank accounts, through RTGS, within a period

of one week thereafter. The share of the minor claimant, namely, the 2nd respondent, shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till she attains majority. The 1st respondent is permitted to withdraw interest accruing on such deposit once in three months. The claimants shall pay additional court-fee for the enhanced amount, if any, before the Tribunal, failing which the Tribunal is to deduct the addl. Court fee from the deposited amount.

11. The Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is enhanced from Rs.14,57,000/- to Rs. 17,83,600/-. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nv

TO

1 THE MACT
(SPECIAL DISTRICT JUDGE), KRISHNAGIRI.

2 RADHA, S/O.BABU,
AND MINOR K.B. HARINI D/O.BABU
NARAIKUPPAM VILLAGE, KODIPALI POST,
KRISHNAGIRI TALUK & DIST

3 KRISHNAN, S/O.MUNUSAMY
NARAIKUPPAM VILLAGE, KODIPALI POST,
KRISHNAGIRI TALUK & DIST

4 VALLIAMMAL, S/O.KRISHNAN
NARAIKUPPAM VILLAGE, KODIPALI POST,
KRISHNAGIRI TALUK & DIST

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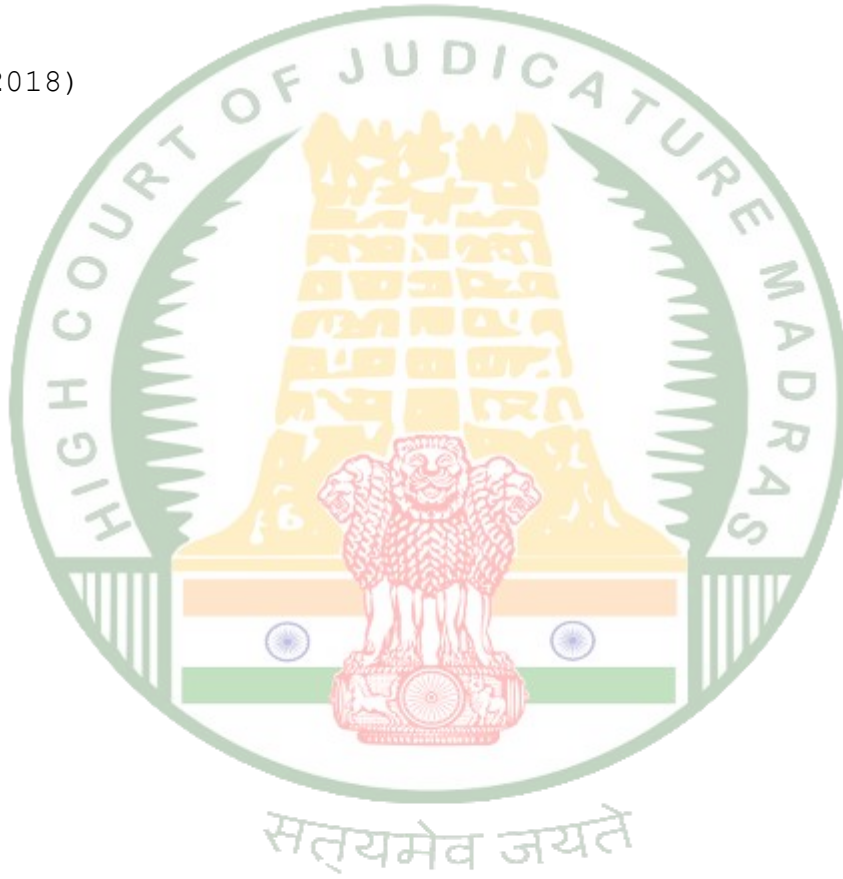
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THE SECTION OFFICER, V.R. SECTION,
HIGH COURT, MADRAS. (2 COPIES)

+1CC TO MR.K.J.SIVAKUMAR, ADVOCATE, S.R.NO. 24572

C.M.A. No. 2574 of 2016

RSY(CO)
TR(21/06/2018)



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