

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.08.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No. 3081 of 2008

1. Saroj Agarwal
2. Kunali Jijodia (Minor)
3. Viridhi Jijodia (Minor)
4. Savithri Devi Agarwal - Died
5. Prathik Jijodia (Minor)

(Minors 2, 3 & 5 rep by their Mother
and natural guardian Saroj Agarwal)

Appellants 1, 2, 3 & 5 are recorded as LRS of the deceased
Fourth appellant as per order dated 21/08/2018)

..... Appellants/Petitioners

Vs

1. R. Kumar
(set exparte in lower court)
2. The Oriental Insurance Company Ltd.
Motor Third Party Claims Office,
No.8, Esplanade Road,
Chennai - 600 108.
3. The Managing Director,
Tamilnadu State Express Transport,
Corporation (Division-III) Ltd.,
Kancheepuram.
(R3-given up)

..... Respondents /Respondents

PRAYER: of Civil Miscellaneous Appeal filed under Section 173
of Motor Vehicles Act of 1988 against the judgment and decree
dated 30.3.2007 in MCOP.No.2770 of 2002 on the file of the Motor
Accidents Claims Tribunal, Additional District Judge, IV Fast
Track Court, Chennai.

For Appellants : Mr.S.Gangaram Prasad

For Respondents: Mr.R.Sivakumar (for R2)

: R1- Set exparte before Tribunal

: R3 - Given up

O R D E R

The instant appeal has been filed by the claimant challenging the quantum of compensation awarded by the tribunal in its Award dated 30.03.2007 in MCOP. No.2770 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, IV Fast Track Court, Chennai.

The brief facts leading to the filing of the instant appeal are as follows;

(i) On 29.03.2002, the deceased Ramkrishan Agarwal was travelling as a passenger in Tamil Nadu State Transport Corporation bus bearing Registration No.TN-21-N-0621 which was coming from Pondicherry to Chennai and proceeding from South to North on Anna Flyover in Chennai. While so, the driver of a Container lorry bearing Registration No.TSA-8888 employed by the first respondent came from the opposite direction (North to South) crossed the central line of the said road in a rash and negligent manner and hit against the said Tamil Nadu State Transport Corporation Government bus, resulting in grievous injuries to the passengers and Ramkishan Agarwal who was one of the passengers suffered grievous injuries and he later succumbed to the same in the hospital.

(ii) The appellants who are the dependents of the deceased Ramkishan Agarwal preferred a claim seeking compensation for the death of the deceased Ramkishan Agarwal against the second and third respondents before the Motor Accident Claims Tribunal in MCOP No.2770 of 2002.

3. The Motor Accident Claims Tribunal under the impugned Award directed the second respondent to pay the appellants a sum of Rs.12,00,000/- together with interest at 7.5% p.a. from the date of claim till the date of realization. Insofar as, the third respondent was concerned, the tribunal has absolved its liability

4. Aggrieved by the quantum of compensation awarded by the tribunal, the instant appeal has been filed.

5. Heard Mr. S.Gangaramprasad, learned counsel for the appellant and Mr.R.Sivakumar, learned counsel for the second respondent.

6. According to the learned counsel for the appellant, the tribunal has arbitrarily without any basis, fixed the average annual income of the deceased Ramkishan Agarwal for the period from 1999 to 2003 at Rs.80,000/-, whereas his average annual income as per the Income Tax Returns which were marked as Ex.P12 to Ex.P15 will be Rs.92,560/- per annum. Therefore, according to him, the tribunal has erroneously awarded only a sum of Rs.10,80,000/- as compensation towards loss of annual income, whereas the actual compensation that ought to have been awarded

should have been Rs.16,52,196/- if the average annual income of the deceased Ramkishan Agarwal is Rs.92,560/-.

7. Learned counsel for the appellants would further contend that in respect of the funeral expenses, the amount awarded by the tribunal is meagre and an inadequate sum. Further, he contended that in respect of loss of estate, no compensation has been awarded to the appellants which is an erroneous finding considering the fact that Ramkishan Agarwal died in the accident.

8. Per contra the learned counsel for the second respondent would submit that the appellant have been adequately compensated by the tribunal's Award.

9. According to him, Rs.80,000/- fixed as average annual income of the deceased Ramkishan Agarwal is a reasonable sum considering the nature of the business at the time of the accident.

10. This Court, after having considered the materials available on record and after perusing and examining the impugned Award and after hearing the submissions of the respective counsels observes the following:

- a) Admittedly, the average annual income of the deceased Ramkishan Agarwal was Rs.92,560/- as per the income tax returns namely Ex.P.12 to Ex.P.15. No contra evidence has been produced by the second respondent before the tribunal to disprove the average annual income of the deceased Ramkishan Agarwal.
- b) As seen from the findings of the tribunal, the tribunal has arbitrarily without any basis, assessed the average annual income of the deceased Ramkishan Agarwal at Rs.80,000/- and further reduced the same by another Rs.10,000/- and has finally assessed the average annual income of the deceased Ramkishan Agarwal at Rs.80,000/-. The assessment of the average annual income of the deceased Ramkishan Agarwal is not based on any documentary or oral evidence, but based on surmise and conjecture.
- c) The Award of compensation under the impugned Award towards funeral expenses, loss of estate is not in conformity to the recent decisions of the Hon'ble Supreme Court in the case of National Insurance Company Limited versus Pranay Sethi and others reported in 2017(2) TN MAC 609(SC).

11. In the considered view of this Court, the Award passed by the tribunal is enhanced in the following manner:

S.No.	Head of Damages Awarded	Expected Award
1.	Loss of Annual Income	Rs. 16,52,196/-
2.	Transport	Rs. 5,000/-
3.	Funeral Expenses	Rs. 15,000/-
4.	Loss of Consortium	Rs. 40,000/-
6.	Loss to Estate	Rs. 15,000/-
	Total	Rs. 17,27,196/-

12. A Memo has been filed by the appellant before this Court today confirming that the fourth appellant is dead and a death certificate of the 4th appellant Mrs.Savithri Devi Agarwal is also produced to that effect. It is further stated in the memo that the appellants 1 to 3 and 5 herein are the legal representatives of the deceased 4th appellant.

13. In view of the same, the appellants 1 to 3 and 5 are recorded as legal representatives of the deceased 4th appellant. Therefore, the appellants 1, 2, 3 & 5 who are the only legal representatives of the deceased fourth appellant, are entitled to receive the share of the compensation equally.

14. In the result,

i) the Civil Miscellaneous Appeal is modified by enhancing the compensation from Rs.12,00,000/- to Rs. 17,27,196/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. No costs.

ii) The 2nd respondent/Insurance Company is directed to deposit the enhanced compensation amount of Rs.17,27,196/- along with interest at the rate of 7.5% p.a. from the date of claim till the date of realisation to the credit of MCOP.No.2770 of 2002, after adjusting the amount, if any, already deposited.

iii) On such deposit, being made, the appellants are entitled to receive their respective shares.

iv) The share of the minors shall be deposited in any one of the Nationalised Bank till they attain majority and the 1st appellant/natural guardian of the minor shall be entitled to withdraw the interest on the shares of the minors once in three months.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

msr/mtl

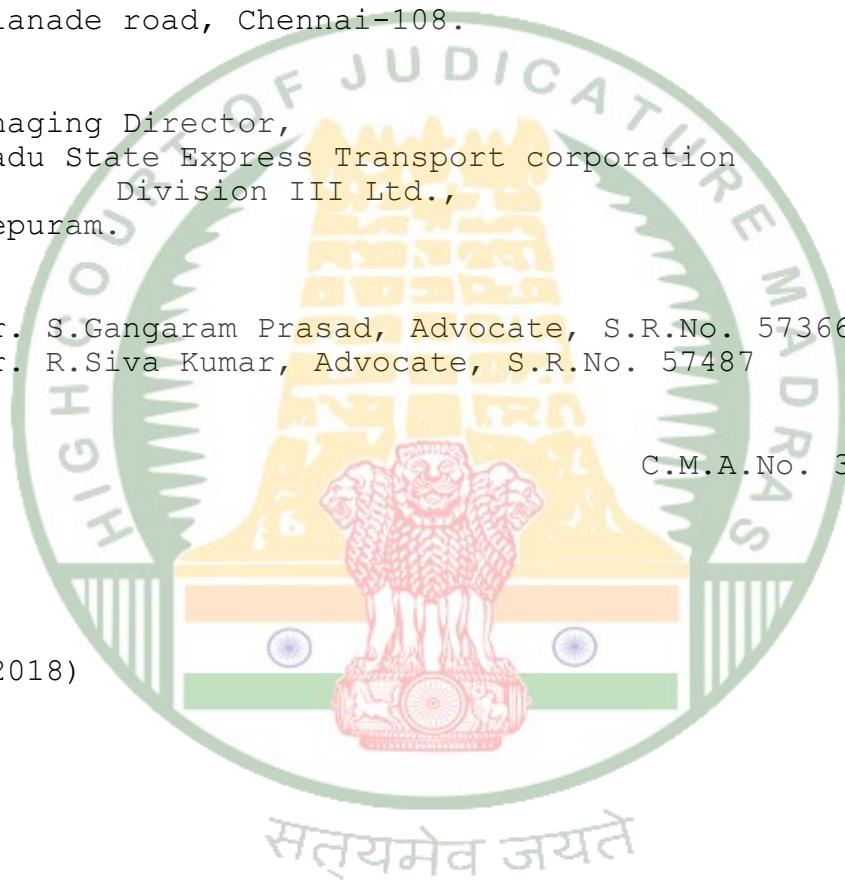
To

1. Additional District Judge,
IV Fast Track Court,
The Motor Accidents Claims Tribunal,
Chennai.
2. The Oriental Insurance company Limited,
8, Esplanade road, Chennai-108.
3. The Managing Director,
Tamilnadu State Express Transport corporation
Division III Ltd.,
Kancheepuram.

+1cc to Mr. S.Gangaram Prasad, Advocate, S.R.No. 57366
+1cc to Mr. R.Siva Kumar, Advocate, S.R.No. 57487

C.M.A.No. 3081 of 2008

KK(CO)
GN(15/11/2018)



WEB COPY