

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2018

Coram

The Hon'ble Mr. Justice R. Subbiah
and
The Hon'ble Mr. Justice P. D. Audikesavalu

C.M.A.No.3296 of 2013

1. Tmt. Meena Gopal

2. Gopal

3. Minor Shiyam Deepak Gopal
(R-3 is represented by his mother/next friend
/first appellant)

(Appellants 1 to 3 are represented by their
General Power of Attorney Agent, G. Deenan) ...Appellants

Vs.

1. Haridass

2. The Managing Director,
Tamil Nadu State Transport Corporation (Coimbatore Ltd.,)
No.37, Mettupalayam Road,
Coimbatore - 641 043.

3. S. Sivaprakasam

4. The Branch Manager,
United India Insurance Co. Ltd.,
D.B. Road, R.S. Road,
Coimbatore - 641 002. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicle Act, 1988, against the judgment and decree dated
04.09.2012 made in MCOP No.46 of 2007, on the file of the Motor
Accident Claims Tribunal (Principal District Judge) Vellore.

For Appellants : Mr. V. Parivallal

For Respondent-1 : No appearance

For Respondent-2 : Mrs. R. T. Sundari

For Respondent-3 : Mrs. P. Veena Suresh

For Respondent-4 : Mr. S. Arunkumar

J U D G M E N T
(JUDGEMENT OF THE COURT WAS DELIVERED BY R.SUBBIAH,J.)

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, (Principal District Judge), Vellore, in and by award, dated 04.09.2012 made in M.C.O.P.No.46 of 2007, the claimants have come forward with the present Appeal seeking enhancement of the compensation amount.

2. Since the present Appeal has been filed only questioning the quantum of compensation, we are not traversing into the other aspects of the award passed by the Tribunal.

3. The claimants are the mother, father and minor brother of the deceased Shasi Bhushan Gopal, who died in a motor accident. The averments set out in the Claim Petition are as follows :-

i) On 23.07.2006, at about 4.00 p.m., the said Shasi Bhushan Gopal was travelling as a Pillion Rider in a two-wheeler viz., Hero Honda, bearing Regn No.TN 38-Q-3646, belonging to the third respondent, from his College to Eachanar Temple on the extreme left side of the road. When the said two-wheeler came near Sidco Bus Stop, the Bus bearing Reg.No.TN-38-N-1219 belonging to the second respondent/Transport Corporation, came in a rash and negligent manner and dashed against the two wheeler, thus, caused the accident. In the said accident, the said Shasi Bhushan Gopal sustained severe head injury. Immediately, he was taken to K.G.Hospital, but, inspite of the treatment, he died. The deceased was a brilliant student and he was educated at different Foreign Schools, that is to say, he finished his Kinder Garden I and II at the International School of Paris, France. He studied 1st to 3rd Standard at Anglo American School; Bulgeria; IV Standard at Faridabad, Hariyana; V Standard at Vidhya Public School, New Delhi'; VI to VIII Standards at the British International School at Jeddah at Saudi Arabia; and IX to XII Standards at the American Community School at Beirut Lebanon. At the time of the accident, he was studying First Year Visual Communication at Appasamy College of Arts and Science, Coimbatore. Hence, the claimants have made a claim for a sum of Rupees One Crore as compensation.

4. Before the Tribunal, the Transport Corporation resisted the Claim Petition by filing a counter statement, inter alia contending that the accident had occurred only due to the rash and negligent act of rider of the two wheeler (Hero Honda) alone, and therefore, they cannot be mulcted with any liability to pay compensation. Thus, the Transport Corporation prayed for dismissal of the claim petition.

5. The fourth respondent/Insurance Company, who is the insurer of the two-wheeler, bearing Reg.No.TN 38-Q-3646, filed a counter affidavit, inter alia stating that the accident had occurred solely due to the rash and negligent driving of the driver of the bus belonging to the second respondent/Transport Corporation, and therefore, they are not liable to pay any compensation.

6. Before the Tribunal, on behalf of the claimants, four witnesses were examined as P.W.1 to P.W.4 and thirty five exhibits were marked as Ex.P.1 to Ex..P.35. On the side of the Transport Corporation, one witness was examined as R.W.1 and one document was marked as Ex.R.1.

7. The Tribunal, on evaluation of both oral and documentary evidence held that the accident had occurred due to the rash and negligent driving of the driver of the bus. By coming to such a conclusion, the Tribunal has made the calculation under different heads and passed an award for a total sum of Rs.2,58,000/-. The break up details of the same are as follows:-

(a) Loss of Income	:	Rs.2,10,000/-
((1500x14)		
(b) Love and affection	:	Rs. 40,000/-
(c) Funeral expenses	:	Rs. 5,000/-
(d) Transportation	:	Rs. 3,000/-

		Rs.2,58,000/-

8. The said sum of Rs.2,58,000/- was directed to be paid by the second respondent/Transport Corporation together with interest at 7.5% per annum from the date of petition till the date of realization. Finding the same as insufficient, the present Appeal has been filed by the claimants/appellants, as stated above.

9. Learned counsel appearing for the appellants submit that the deceased was a brilliant student, and had he been alive, he would earned monthly income more than Rs.1 lakh, and, as proof to show his academic skill, the claimants have marked Exs.P.1 to P.5, whereas, the Tribunal without considering all those documents, on its own accord, fixed only a sum of Rs.15,000/- as annual income of the deceased. Further, the Tribunal while fixing the multiplier has taken into consideration the age of the parents of the deceased and fixed the multiplier 14. As per the decision of the Hon'ble Supreme Court in the case of Sarala Verma Vs. Delhi Transport Corporation reported in [(2009) 5 LW 561], the age of the

deceased alone should be taken inconsideration for fixing the multiplier. Therefore, the Tribunal ought to have taken into consideration the age of the deceased, who was 20 years old at the time of death. Hence, according to the learned counsel for the appellants/claimants, the correct multiplier that has to be applied in this case is 18. Thus, the learned counsel for the appellants/claimants prayed that by fixing a reasonable sum as monthly income of the deceased and applying multiplier 18, the compensation amount awarded by the Tribunal under the head of loss of income has to be enhanced.

10. The learned counsel would further contend that the amount awarded by the Tribunal under other heads are also on the lower side. Thus, he prayed for proper enhancement of compensation under other heads also.

11. Per contra, the learned counsel appearing for the second respondent/Transport Corporation made his submission supporting the award passed by the Tribunal.

12. Keeping the submissions made on either side, we have gone through the entire materials on record.

13. It is seen that at the time of the accident, the deceased was studying B.Ss. Visual Communication, and in order to show his academic skill, the claimants have marked several documents, more particularly, Ex.P.1 to P.5. On perusal of those documents, it is seen that as rightly pointed out by the learned counsel for the claimants, had the deceased been alive, he would have been placed in a good position and would have earned income more than Rs.1 lakh. However, since he was only a student at the time of the accident, we find that it would be appropriate to fix a sum of Rs.8,000/- as his monthly income and 50% amount has to be added towards future prospects. Further, as pointed out by the learned counsel for the claimants, the multiplier 14 applied by the Tribunal on the basis of the age of the parents of the deceased is incorrect. The multiplier should be fixed only on the basis of the age of the deceased. In the instant case, the deceased was aged 20 years at the time of death. Hence, the correct multiplier that has to be applied in this case is 18. If the sum of Rs.8,000/- is taken as monthly income of the deceased, 50% amount has to be added towards future prospects and if so added, then the total income comes to Rs.12,000/- (8,000 + 4,000). Since the deceased was a bachelor at the time of death, 50% amount has to be deducted towards personal expenses and if so deducted, the monthly contribution to the family works out to Rs.6,000/-. Then the total loss of income works out to Rs.12,96,000/-. Hence, the sum of Rs.2,10,000/- awarded by the Tribunal for loss of income is hereby modified and enhanced to Rs.13,77,000/-. That apart, it

is seen that the Tribunal has awarded only a sum of Rs.40,000/- for loss of love and affection. Considering the fact that the parents have lost their son at the young age, the compensation of Rs.40,000/- awarded by the Tribunal for love and affection is hereby enhanced to Rs.1,70,000/-. Further, as the sum of Rs.5,000/- awarded by the Tribunal for funeral expenses appears to be very low, the same is hereby enhanced to Rs.15,000/-. Similarly, the sum of Rs.3,000/- awarded by the Tribunal for transportation is on the lower side, hence, the same is hereby enhanced to Rs.20,000/-. Further, it is seen that the Tribunal has not awarded any amount for loss of estate. Hence, a sum of Rs.15,000/- is hereby awarded for loss of estate. Consequently, the total compensation amount of Rs.2,58,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.15,97,000/- (rounded off to Rs.16,00,000/-). The break up details of the modified/enhanced compensation amount are as follows:-

I. Loss of Income	:	Rs.13,77,000/-
II. (1500x14)		
III. Love and affection	:	Rs. 1,70,000/-
IV. Funeral expenses	:	Rs. 15,000/-
V. Transportation	:	Rs. 20,000/-
VI. Loss of estate	:	Rs. 15,000/-

		Rs.15,97,000/-
		(rounded off to Rs.16,00,000/-)

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the total compensation amount of Rs.2,58,000/- awarded by the Tribunal is hereby enhanced to Rs.16,00,000/-. The second respondent/Transport corporation is directed to deposit the enhanced award amount with interest at 7.5% per annum from the date of claim petition till the date of deposit, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants 1 & 2/parents are entitled to withdraw a sum of Rs.7,50,000/- each with proportionate interest and the 3rd appellant is entitled to withdraw the balance amount of Rs.1,00,000/- by making necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.Motor Accident Claims Tribunal/
(Principal District Judge, Vellore.

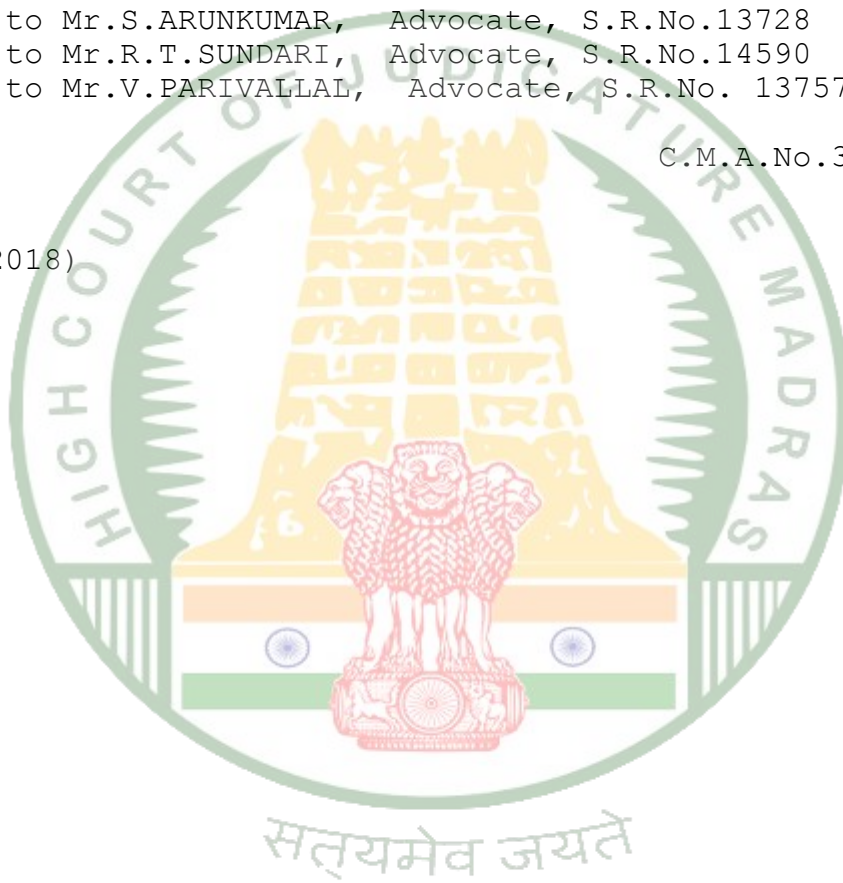
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High Court, Madras.(2 COPIES)

+1cc to Mr.S.ARUNKUMAR, Advocate, S.R.No.13728
+1cc to Mr.R.T.SUNDARI, Advocate, S.R.No.14590
+2cc to Mr.V.PARIVALLAL, Advocate, S.R.No. 13757

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KS (CO)
TR(05/06/2018)



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