

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3484 of 2013

1.Varalakshmi

2.Gopi

3.Karthikeyan

4.Lakshmi(Died)

Appellants 1 to 3 LRs of the deceased 4th appellant
viz., Lakshmi ;vide court order dated 12.02.2018
and memo dated 12.02.2018 made in CMA.3484/2013

..Appellants/Claimants/Petitioners

Vs.

The Union of India
Ministry of Defence
Rep. By its commandant
Officers Training Academy
Chennai-600 016

..Respondent

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act against the judgment and decree dated
12.01.2012 passed in M.C.O.P.No.3028 of 2009 on the file of
Motor Accidents Claims Tribunal, Chief Judge, Small Causes
Court, Chennai.

For appellants : : Mr.G.Sudhagar
for Respondent : : Mr.Venkataswamy Babu.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the
appellants/Petitioners, challenging the judgment and decree
dated 12.01.2012 passed in M.C.O.P.No.3028 of 2009 on the file
of Motor Accidents Claims Tribunal, Chief Judge, Small Causes
Court, Chennai.

2. For the sake of convenience, the parties are referred to
as per their litigative status before the Tribunal. It is a
fatal case. The case of the Petitioners is that on 31.07.2008 at
about 6 p.m, when the deceased P.Kumar was travelling in the bus
bearing No. 05P017469N belonging to the respondent, the bus was
stopped at a particular place to enable the deceased to get

down; even before he got down, the driver of the bus moved the bus resulting in the fall of the deceased, causing him fatal injuries, resulting in his death subsequently. The accident occurred only due to rash and negligent driving of the respondent bus bearing No.05P017469N. The deceased was aged 42 years and by working as Coy Fatigue Man in the respondent establishment, was getting Rs.10,077/- Per month. The Petitioners, who are the wife, children and mother of the deceased were depending on the earnings of the deceased. Thus, the Petitioners claim a sum of Rs.12,00,000/- as compensation from the respondent.

3. On the other hand, opposing the claim of the Petitioners, by filing counter, the respondent/Union of India contends that the accident does not occur in the manner alleged by the petitioners. It was only due to the fault of the deceased, he fell down from the stationary bus, suffered head injury resulting in his death. The amount claimed by the Petitioner is exorbitant. As the driver of the bus was not negligent, the respondent need not pay any compensation. Thus, the respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined P.W.1 and P.W.2 and produced documents Ex.P.1 to Ex.P.14 to prove their contention. On the side of the respondent, R.W.1 was examined, but no document was produced.

5. The Tribunal, on the basis of available evidence on record, found that the negligence of the respondent bus driver alone caused the accident, passed award for a sum of Rs.6,54,912/- payable by the respondent to the Petitioner.

6. Being not satisfied with the quantum of the award, the Petitioner have come forward with the present appeal.

7. Pending appeal, memo was filed stating that the 4th petitioner/mother of the deceased passed away on 28.01.2016 and the same was ordered. As such, the petitioners 1 to 3 alone are continuing the appeal.

8. The learned counsel for the Petitioners contended that the Tribunal erred in fixing the monthly income of the deceased at Rs.5079/- inspite of Ex.P.12-salary slip produced by the Petitioners, wherein, the monthly salary of the deceased is mentioned as Rs.10,077/-. The Tribunal failed to provide for future prospects. The Tribunal wrongly deducted 1/4th of the income towards personal expenses of the deceased. The Tribunal failed to take note of the revision of pay for the Central Government employees pay structure alone once in six years. The amount awarded under different heads is very nominal. Hence, the Petitioners sought for enhancement of the award amount by entertaining the appeal.

9. Per contra, the learned counsel for the respondent contended that the deceased fell down from the respondent van due to his fault and as such, the driver of the bus is no way connected with the occurrence. Hence, the respondent is not liable to pay any compensation and sought for dismissal of the appeal.

10. The Petitioners state that the deceased Kumar was employed as Coy Fatigue Man in Officer Training Academy at St.Thomas Mount, Chennai-16 and on the occurrence day, viz., 31.07.2008, while he was on duty, as he was trying to get down from the respondent bus bearing No.05P017469N at about 6 p.m., even before he got down from the bus, the driver of the bus moved the bus suddenly, due to that, the deceased fell down and suffered fatal injuries and subsequently, he died in the hospital. The Police registered the case against the driver of the respondent bus under Ex.P.1-FIR. The Rough sketch of the occurrence spot is produced as Ex.P.2. After completing the investigation, the Police laid charge sheet against the driver of the bus bearing Reg.No.05P017469N as per Ex.P.3. It is clear from Ex.P.6-MVI report that there was no mechanical defect in the vehicle. As such, it is clear from the evidence of P.W.1 and the contents of Ex.P.1-FIR as well as Ex.P.3-charge sheet that the negligence of the respondent bus driver alone caused the accident.

11. The contention of the respondent that the deceased while trying to get down from the moving bus, fell down and sustained injuries is unacceptable. It is clear from Ex.P.7-Post Mortem certificate that he died due to head injury and shock suffered by him. Even though it is alleged in the counter statement that the deceased was under the influence of alcohol, there was no evidence to substantiate the same. As such, the respondent has not advanced any valid reason as to why no complaint was lodged with the police about the manner of the accident if what they claim is true. Nothing is evidenced in Ex.P.7 Post Mortem certificate to show that the deceased was in drunken mood. As such, the claim of the Petitioners that the deceased suffered head injuries only because the bus was moved suddenly, while the deceased was getting down from the bus is to be accepted. Therefore, the finding of the Tribunal in that regard is just and proper.

12. The Petitioners claim that the deceased was employed as Coy Fatigue Man in the respondent establishment and his monthly salary was Rs.10,077/- As per Ex.P.7 Post Mortem Certificate, the deceased was stated to be 43 years old as such, his age is fixed by the tribunal as 43 years. The Tribunal considering the contentions made before it, fixed the monthly income at Rs.5,079/-. Pointing it out, the learned counsel for the Petitioners contended that the Tribunal is not justified in

fixing the net salary as per Ex.P.12, while the deductions made were for the benefit of the individual and his family only. As such, the Petitioners sought to take the total salary as mentioned in Ex.P.12-Pay Slip as the income of the deceased. The said contention is acceptable and taking into consideration the fact that as per Ex.P.12, the gross salary is Rs.10,077/-, it will be appropriate to round off the same and the monthly salary of the deceased is fixed at Rs.10,000/-. The deceased being aged 43 years, it will be appropriate to add 30% of the income towards future prospects. As on date, there are only 3 dependants, as the 4th petition has died, it will be proper to deduct 1/3rd of the income towards personal expenses of the deceased. Following Sarla Verma case, [Sarla Verma & Ors vs Delhi Transport Corp.& Another [2009 (2) TN MAC 1 (SC):2009] the multiplier to be applied herein is '14'. Thus the loss of dependency to the family of the deceased is calculated as under:-

Monthly salary : 10,000/-
 Future prospects : 30%
 10,000/- + 3000 = Rs.13,000/-
 Deductions : 1/3rd
 13,000 - 1/3rd (4333) = Rs.8667/-
 8667 x 12 x14 = 14,56,056/-.

Following the Apex court decision reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and Others], the compensation towards conventional heads, is as under:-

Funeral expenses -15,000/-
 Loss of estate -15,000/-
 Loss of consortium -40,000/-
 Add: Loss of dependency 14,56,056/-
 Total = 15,26,056/-.

13. Accordingly, the compensation awarded by the Tribunal stands modified and enhanced from Rs.6,54,912/- to Rs.15,26,056/- and the same is as shown below.

Sl.No.	Heads	Amount awarded by the tribunal	Amount awarded by this Court
1	Loss of dependency	Rs. 6,39,912	Rs. 14,56,056
2.	Loss of consortium to 1 st petitioner	Rs. 10,000	Rs. 40,000
3.	Funeral expenses	Rs. 5,000	Rs. 15,000
4.	Loss of Estate	---	Rs. 15,000

Sl.No.	Heads	Amount awarded by the tribunal	Amount awarded by this Court
	Total	Rs. 6,54,912	Rs. 15,26,056

14. In the result,

(i) This Civil Miscellaneous Appeal is Allowed;

(ii) The award amount is enhanced from Rs.6,54,912/- to Rs.15,26,056/-;

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The respondent /Union of India is directed to deposit the entire award amount along with proportionate interest and cost, as ordered by this court, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(v) The Appellants/Petitioners 1 to 4 are entitled to the award amount on the following apportionment:- 1st Appellant/petitioner/wife-40%; 2nd and 3rd Appellants/petitioners-30% each; The Appellants/Petitioners are entitled to withdraw their respective shares of the award amount along with accrued interest, less the amount already withdrawn. The Tribunal shall pass necessary orders for disbursal of the award amount by following the appropriate procedure. The Appellants shall pay the necessary court fee, if need be. (vi) No costs.

Consequently, connected MP is closed.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

nvsri

1. The Chief Judge
Small Causes Courts
Motor Accident Claims Tribunal, Chennai.

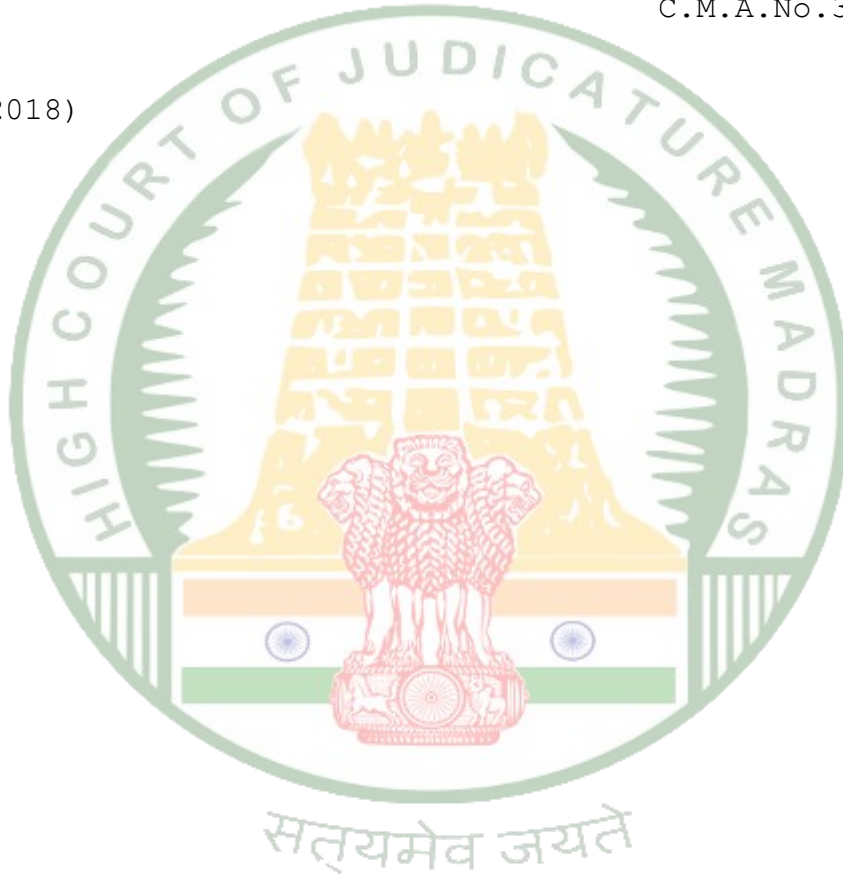
2. The Commandant
Commandant officers Training Academy
Chennai.

Copy to
The Section officer
VR Section, High Court
Madras 104.

+1 CC to Mr.G. Sudhagar, Advocate sr 36564.
+1 CC to M/s. Venkatasamy Babu, Advocate sr 36390.

C.M.A.No.3484 of 2013

SP(03/08/2018)



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