

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 03.07.2019

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.2052 of 2015 and
C.M.A.No.2549 of 2018 and
C.M.P.No.19344 of 2018 in
C.M.A.No.2549 of 2018

IN C.M.A.No.2052 Of 2015

1.P.Uma Mageswari
2.P.Laavanya
3.P.Jagadeeswari
(2nd and 3rd appellants minor rep.
by their mother and natural Guardian
P.Uma Mageswari) Appellants/Claimants

Vs

Metro Transport Corporation,
Rep by its Managing Director,
Pallavan House, Anna Salai,
Chennai 2. Respondent/Respondent

IN C.M.A.No.2549 Of 2018

Metro Transport Corporation,
Rep by its Managing Director,
Pallavan House, Anna Salai,
Chennai 2 Appellant/Respondent

Vs

1.P.Uma Mageswari
2.P.Laavanya
3.P.Jagadeeswari
(2nd and 3rd appellants minor rep.
by their mother and natural Guardian
P.Uma Mageswari) Respondents/Claimants

PRAYER in both C.M.As: Civil Miscellaneous Appeals filed under
Section 173 of the Motor Vehicles Act, 1988 against the decree
and judgment passed in M.C.O.P.No.4024 of 2013 dated 05.02.2015
on the file of the Motor Accident Claims Tribunal, Chief Small
Causes Court, Chennai.

IN C.M.A.No.2052 Of 2015

For Appellants : Mr.S.Natana Rajan

For Respondent : Mr.S.S.Swaminathan

IN C.M.A.No.2549 Of 2018

For Appellant : Mr.S.S.Swaminathan

For Respondents : Mr.S.NatanaRajan

C O M M O N J U D G M E N T

The Metro Transport Corporation, the respondent in MCOP.No.4024 of 2013, on the file of the Chief Small Causes Court, Chennai filed an appeal in C.M.A.No. 2549 of 2018 questioning the quantum of compensation awarded by the tribunal vide its order dated 05.02.2015. While, the claimant in the above said MCOP has filed C.M.A.No. 2052 of 2015 seeking enhancement of compensation awarded by the tribunal.

2. The brief facts leading to the claim petition is that on 17.02.2013, at about 11 a.m., when the deceased Palani was riding his two wheeler bearing Registration No.TN 11 6630 from Nanganallur to Pallavaram and was waiting at the Airport 5th Gate Signal, at that time, the Transport Corporation bus bearing Registration No. TN 01 N 8878 from Tambaram to Chennai, which came in the extreme right side of the road in a rash and negligent manner, hit the said two wheeler behind its back side. As a result of which, the deceased was thrown out of the said two wheeler, sustained grievous injuries and died on the way to the Hospital. He also sustained loss of earning, pain and sufferings, Medical expenses. Hence, the claimants being legal heirs of the deceased, claimed a sum of Rs.13,50,000/- as compensation.

3. The Transport Corporation denied the negligence on the part of the driver of the bus by stating that the driver of the Transport Corporation bus drove the same with due care observing all the traffic rules and regulations. They strongly contended that the claimant was the one who tried to over take the Transport Corporation bus which moving slowly ahead of him and therefore, the claimant himself was totally responsible for the accident. There is no negligence on the part of the driver of the said bus.

4. The Tribunal after analysing the evidence on record, awarded a compensation of Rs.9,94,240/- together with interest at the rate of 7.5% to the claimants, under the following heads:

S.No	Head	Compensation (in.Rs.)
1.	Loss of pecuniary benefits	8,64,240.00
2.	Loss of consortium	25,000.00
3.	Love and affection (each Rs.25,000/-)	75,000.00
4.	Funeral expenses	25,000.00
5.	Transportation	5,000.00
Total		9,94,240.00

5. Aggrieved over the award passed by the tribunal, the claimants as well as the Metro Transport Corporation have filed the present appeals.

6.C.M.A.No.2502 of 2015: On the point of enhancement of compensation, the learned counsel appearing for the claimants contended that the deceased was aged about 48 years at the time of the accident and there is no chance for family pension since he was working as Village Administrative Officer at Maraimalai Nagar only for a period of 2 years and 8 months and earning a sum of Rs.8,310/- per month. He would further contend that the future prospects at 30% has not been properly considered by the Tribunal. The Tribunal has deducted 1/3rd towards the personal expenses of the deceased and the same is not proper.

7. On the side of the claimants PW1 and PW2 were examined as witnesses. On the other hand, the driver of the said bus was examined as R.W.1 on the side of the Insurance Company and it was very much discussed by the Tribunal. A copy of the FIR is marked as Ex.P1 and Charge Sheet is marked as Ex.P2. PW2, an eye witness to the occurrence has deposed that the bus came from behind and hit the motorcycle. R.W.1 has admitted all the contents in the charge sheet (Ex.P2) during cross examination and nothing has been elucidated during the course of cross examination of PW2 to disprove his evidence. Hence, the evidence of P.W.2 is clear and cogent. All the aspects were properly considered by the Tribunal including the FIR (Ex.P1) and Charge sheet (Ex.P2) and the negligence was fixed on the part of the driver of the Metro Transport Corporation bus. Hence, the liability fixed on the Insurance Company is reasonable and proper and hence, the C.M.A.No.2549 of 2018 filed

by the Insurance Company is liable to be dismissed.

8. Now coming to the determination of compensation by the Tribunal, by virtue of the decision of the Supreme Court, the deceased is entitled to 30% towards future prospects and by taking the monthly income of the deceased at Rs.8,310/- and adding future prospects at 30% which would workout to Rs.2,493/-, the monthly income comes to Rs.10,803/- (Rs.8,310/- + Rs.2,493/-) and the annual income would be Rs.1,29,636/-. After deducting 1/3rd towards personal expenses and applying the proper multiplier, the loss of pecuniary benefits would be Rs.11,23,512/- (1,29,636/- x 2/3 x 13), which is proper and reasonable. The Tribunal has awarded Rs.25,000/- towards Consortium to the first claimant / wife of the deceased and also awarded a sum of Rs.75,000/- towards love and affection to the first to third claimants/ wife and daughters of the deceased. The wife is entitled to get a sum under the head of consortium and hence there is no need to award separately towards love and affection to the wife. Hence, this Court is inclined to enhance the sum awarded towards consortium from Rs.25,000/- to Rs.40,000/- and the sum awarded towards love and affection is reduced from Rs.75,000/- to Rs.50,000/- the second and third claimants/daughters of the deceased are only entitled to get the said sum.

9. With regard to the other contention raised by the claimants is that the Tribunal has failed to award any amounts towards loss of estate and this Court is inclined to award a sum of Rs.15,000/- towards loss of estate. Accordingly, this Court modifies the sum awarded by the Tribunal under various heads as follows:

S.No	Head	Awarded by the Tribunal	Enhanced Compensation (in.Rs.)
1.	Loss of pecuniary benefits	8,64,240.00	11,23,512.00
2.	Loss of consortium	25,000.00	40,000.00
3.	Love and affection	75,000.00	50,000.00
4.	Funeral expenses	25,000.00	15,000.00
5.	Transportation	5,000.00	
6.	Loss of estate		15,000.00
Total		9,94,240.00	12,43,512.00

Thus, the claimants are entitled to a sum of Rs.12,43,512/-

together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

10. In the result,

(i) The C.M.A.No.2052 of 2015 is partly allowed. No costs.

(ii) The C.M.A.No.2549 of 2018 is dismissed. No costs.

(iii) The quantum of compensation awarded by the tribunal is enhanced from Rs.9,94,240/- to Rs.12,43,512/-, shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iv) The claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(v) The Metro Transport Corporation, the respondent in MCOP.No.4024 of 2013 is directed to deposit the entire amount, awarded by this Court along with interest and costs before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon. The minor claimant would have attained majority by now and hence, on such application being taken out by them, the guardianship may be discharged and their share can be transferred to their Savings Bank Account.

(vi) On such deposit being made, the claimants are at liberty to withdraw the same as per the apportionment given below after following due process of law.

(a) The 1st claimant is entitled to a sum of Rs.6,43,512/- together with accrued interests and costs.

(b) The 2nd and 3rd claimants are entitled to a sum of Rs.3,00,000/- each.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

vr

To

The Motor Accidents Claims Tribunal,
The Chief Small Causes Court, Chennai.

Copy To
The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.S.Natana Rajan, Advocate SR.No.55526

+1cc to Mr.S.S.Swaminathan, Advocate SR.No.55841

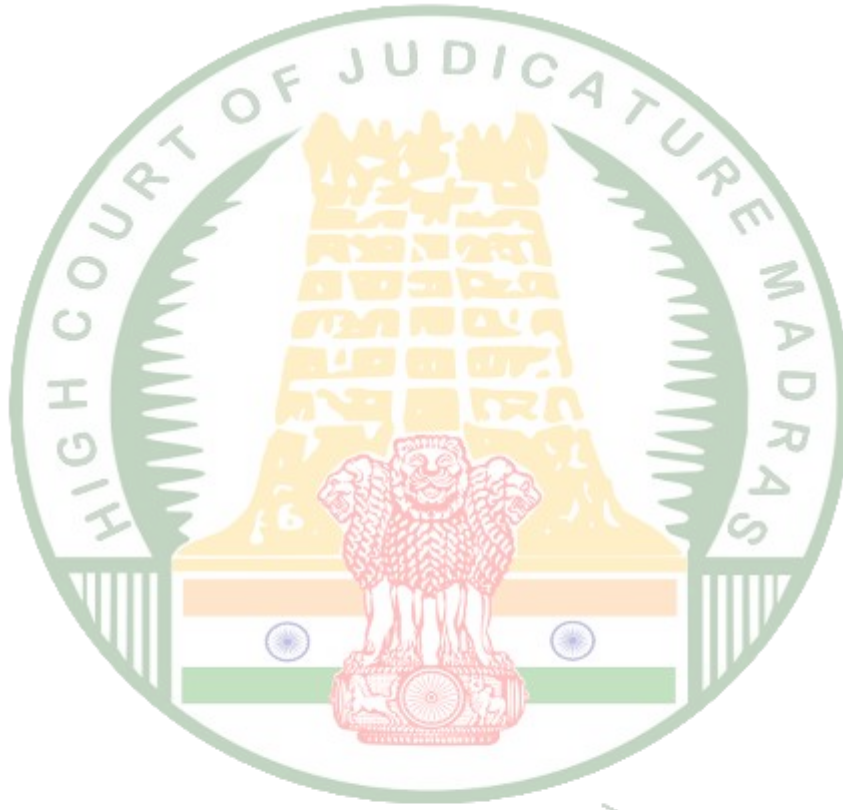
+1cc to Mr.S.Natana Rajan, Advocate SR.No.55525(24/09/2019)

C.M.A.No.2052 of 2015 and
C.M.A.No.2549 of 2018

MG(CO)
GMY(18/09/2019)



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