

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A.No. 1982 of 2013

and Cross Objection SR No.112184 of 2018

C.M.A. No. 1982 of 2013

The Managing Director,
Tamil Nadu Transport Corporation Ltd.,
Coimbatore. ...Appellant/Respondent

Vs.

1.Krishna Chandra Chakra
2.Padmavathy Chakra
3.Urimansu Chakra
4.Minor Susandha Chakra
5.Minor. Rubeli Chakra ...Respondents/Petitioners
R4 & R5 rep by father/
natural guardian R1

Cross Objection SR No.112184 of 2018

Vs.

1.Krishna Chandra Chakra
2.Padmavathy Chakra
3.Urimansu Chakra
4.Minor Susandha Chakra
5.Minor. Rubeli Chakra
Minor Petitioners 4&5, rep.by
petitioner and next friend & Father R1.
.. Cross Objectors/Respondents1 to 5 in CMA 1982/13

Vs

The Managing Director,
Tamil Nadu Transport Corporation Ltd.,
Coimbatore. ...Respondents/Appellant in CMA 1982/13

Both Civil Miscellaneous Appeal CMA 1982/13 filed under Section 173 of MV Act and Cross Objection SR No.112184/18 sought to prefer against the Judgment and decree dated 28.09.2012 passed in MCOP. No. 585 of 2011 on the file of the Motor Accidents Claims Tribunal (III Additional Sessions and District Judge), Coimbatore.

For Appellant in CMA
and for Respondents in
Cross.Objection..

: Mr. S.V.Vasantha Kumar

For Respondents in CMA
and for Petitioners in
Cross.Objectors

: Mr.C.Veeraraghavan

JUDGMENT

This Civil Miscellaneous has been preferred against the judgement and decree 28.09.2012 passed in MCOP. No. 585 of 2011 on the file of the Motor Accidents Claims Tribunal (III Additional District Judge), Coimbatore.

2. Not being satisfied with the quantum of compensation awarded by the Tribunal, the respondents/claimants have filed Cross Objection SR.No. 112184 of 2018 for enhancement of the compensation amount.

3. Brief facts leading to the claim application are as follows;

On 22.10.2010 in the evening one Padmalochan Chakra and his friend cum co-worker one Balram had gone to Madampatty for purchasing things and while they were returning to their residence in a town bus at 21.45 hrs and after getting down from the bus, they crossed to east-west siruvani main road from north to south after watching the vehicles on the road. At that time, a town bus bearing registration numebr TN38-N-1349 (Route No. S4) driven by the 1st respondent came in a very high speed in neglignet manner and dashed on them, as a result, they were thrown away and the bus went further for about 25 feet and then stopped, thereby the accident occurred. The said accident had occured only due to the rash and neglignet driving of the 1st respondent/driver of the bus. A Criminal Case was also registered against the 1st respondent/driver by the Perur Police Station in FIR No. 715/2010 under Sections 279 and 304(A) IPC. Due to the said accident, Padmalochan and his friend had sustained multiple head injuries and in spite of treatment given, the said Padmalochan died in the CMC Hospital at about 23.30 hrs on the same day. The legal heirs of the deceased Padmalochan have claimed compensation for Rs.11,02,500/-.

4. The 2nd respondent/Transport Corporation in the counter statement had denied the mode of the accident and also the negligence on the part of the respondent. It is averred by the 2nd respondent that it is the deceased and other persons who

after get down from the bus, cross the road without noticing the vehicles and invited the accident on their own negligence. Hence, the negligence on the part of the driver of the bus was denied and the sum claimed by the claimants as compensation on various head also stated as excessive and exorbitant one, without any valid proof or documents.

5. The tribunal after analysing evidence and documents has given findings that it is the driver of the first respondent bus who had caused the accident by his rash and negligent driving. The tribunal has also analysed the the documents and evidence regarding the age, occupation, income has awarded a sum of Rs.9,62,000/- as compensation under various heads as follows;

Head	Sum awarded by the tribunal
Loss of Income	Rs.9,00,000
Loss of Love and Affection	Rs. 50,000
Transport Expenses	Rs. 1,500
Funeral Expenses	Rs. 10,000
Damages to Cloaths	Rs. 500
Total	Rs. 9,62,000

6. Aggrieved by the the said award, the Transport Corporation has preferred this Civil Miscellaneous Appeal to set aside the award passed by the tribunal.

7. In the grounds of appeal, the Transport Corporation has stated that without any proof of income, the monthly income fixed by the tribunal at Rs, 7500/- is not at all proper and very much on the higher side and also the sum awarded for loss of love and affection at Rs. 50,000/- is also not proper. The tribunal without considering the gross negligence on the part of the deceased, who had crossed the road without noticing the on coming vehicles has awarded the compensation at Rs. 9,62,000/- is very much excessive and therefore prayed to set aside the decree and judgment passed by the tribunal.

8. It is argued by the learned counsel for the respondents/ Cross Objectors that the sum awarded by the tribunal is against the law, weight of evidence and all probabilities of the case. It is also stated that the sum awarded under various heads are very meagre and without considering the age, income and occupation of the deceased, hence the claimants are entitled for a sum of Rs.19,21,000/- as compensation. It is also argued that the evidence placed by PW1 was not properly considered by the tribunal and determination of compensation is also not according to the law. Inspite of various decisions arrived the the Apex

Cour, the sum arrived by the tribunal is not reasonable and hence the sum awarded by the tribunal has to be properly enhanced.

9. Heard both sides and perused the documents available on record.

10. It is argued by the appellant that the compensation arrived by the tribunal is without any proof of income and further argued that the tribunal has erroneously fixed the monthly income at Rs.7,500/- without any proof and wrongly adopted the multiplier 15, which is higher side. The appellant has also denied the sum awarded under various heads.

11. On perusal of the claim petition, it is seen that on the side of the claimant, PW1 was examined. PW1 has deposed that the said deceased Padmalochan was working as watchman in M/s. Sri Senthilmurugan Mills and was earning Rs. 7,500/- per month as salary and to substantiate his employment and the salary drawn, Exhibits P15 to 18 were placed before tribunal. It is also seen that the deceased was 22 years at the time of the accident, for which his Birth Certificate -Ex.P11 was filed before the tribunal, which shows that the deceased was born on 06.04.1989. The tribunal after analysing all these facts, has awarded a sum of Rs. 9,60,000/- as compensation under various heads. It is also seen that there are five claimants and since, the deceased was an unmarried at the time of the accident, the tribunal has taken age of the mother of the deceased for adopting multiplier and calculated the loss of income.

12. The main grievance made by the claimants in the cross objection is that they are depending upon the monthly income of the deceased, who is the only bread-winner of the family and hence the findings of the tribunal is against the law. In view of the same, the sum awarded by the tribunal by taking multiplier to the mother of the deceased, without considering the age of the petitioner who was 22 years at the time of the accident, it has to be properly considered. The learned counsel for respondents/Cross objectors has also submitted a judgment reported in 2015(1) TN MAC 52 (SC) in the case of Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramachandra Sharma and Another and argued on the point of wrong application of multiplier by the tribunal. The relevant portion of the the said judgement is extracted hereunder;

"After hearing the parties, the High Court affirmed the future income of the deceased at Rs.18,000/- per month as determined by the Tribunal and deducted 50% towards personal expenses. It further held that the

Tribunal had erred in considering the age of the deceased at the time of his death rather than the age of the parents for determination of multiplier, since they are the claimants in the case on hand, as per the guidelines laid down in Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.[1]. Therefore, by applying the appropriate multiplier of 13, the High Court determined the loss of dependency at Rs.14,04,000/- as against Rs.23,04,000/- as considered by the Tribunal. After examining the facts, evidence produced on record and circumstances of the case, the High Court was of the view that the contributory negligence on the part of the deceased was higher than 20%, however, it affirmed the contributory negligence as determined by the Tribunal. Therefore, after 20% deduction towards contributory negligence and addition towards other heads, the High Court, by its impugned Judgment and order awarded a compensation under all heads of Rs.11,39,200/- with 9% interest per annum. Aggrieved by the same, the appellant has filed these appeals. "

13. In view of the above decision, this Court finds it proper in applying the multiplier by considering the age of the deceased. Accordingly, as per Ex.P11, the age of the deceased is 22 years and therefore the appropriate multiplier according to the age of the deceased is 17 and the appropriate percentage of future prospects is 40% and the appropriate deduction towards the personal expenses of the deceased is 1/5. Adding 40% towards future prospects and deducting 1/5 towards the personal expenses of the deceased and applying the multiplier of 17, the loss of dependency is computed to be Rs. 17,13,600/-.

14. It is also brought to the notice of this Court that the 4th claimant is blind, for which Ex.P13 was filed before the tribunal. This Court has considered the fact that the claimants have lost their only breadwinner of the family because of the accident, who has contributed his family by way of love and affection and also that the claimants have not only lost their income and also the moral support, which cannot be computed in terms of money. Hence, this Court inclined to modify the sum awarded under the head 'Loss of Love and affection' and 'Funeral expenses'. The sum modified by this Court by enhancing the sum awarded by the tribunal is as follows;

Head	Sum awarded by the tribunal	Sum modified by this Court
Loss of dependency	Rs.9,00,000	Rs. 17,13,600/-
Loss of Love and affection	Rs. 50,000/-	Rs. 70,000/-
Funeral Expenses	Rs. 10,000/-	Rs.15,000/-
Total	Rs.9,26,000/-	Rs.17,98,600/-

15. Though the learned counsel for the Cross Objectors/Claimants have filed the a petition to amend the claim from 11,02500/- to Rs.19,00,000/-, in view of the above discussion and the Memo of Calculation filed by the learned counsel for Appellant and Respondent/Cross Objectors, the compensation is modified to the effect as mentioned above.

16. In view of the above enhancement, this Civil Miscellaneous Appeal is dismissed and the Cross objection filed by the respondent/ claimant is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed. The respondent/cross objectors are directed to pay additional court fee for the enhanced award amount.

17. The appellant/Insurance Company is directed to deposit the entire award amount as per the modified award passed by this Court, with interest at 7.5% per annum and costs, before the Tribunal as per the apportionment ordered by the tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the claimant's bank accounts thro' RTGS within one week thereon. The rate of interest for the modified amount shall carry 7.5% per annum.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
III Additional District Judge,
Coimbatore.

Copy To

The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.S.V.Vasantha Kumar, Advocate SR.No.1258

+1cc to Mr.C.Veeraraghavan, Advocate SR.No.1737

C.M.A.No. 1982 of 2013
and

Cross Objection SR No.112184 of 2018

RJI (CO)
GMY (24/07/2019)



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