

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3278 of 2013

and

M.P No.1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation Ltd
No.3/137, Salamedu, Vazhudahareddy
Villupuram. Appellant/Petitioner

..Vs..

1.Arumugam
2.Mullaiarumbu Respondents/Petitioners

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 30.10.2012 in M.C.O.P.No.32 of 2011 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Perambalur.

For Appellant : Mr.S.V.Vasanthakumar

For Respondents : Mr.P.Mani for R1 & R2

JUDGMENT

The appellant is the respondent in M.C.O.P No.32 of 2011 on the file of the Principal District Judge, Perambalur. The claimants have filed a claim petition under Section 166 (1) of the Motor Vehicles Act seeking compensation for the death of their son Arunkumar aged 13 years in a road accident that took place on 21.10.2010.

2. The case of the claimants is that their son Arunkumar was travelling in a bus bearing Registration No.TN 32 N 1833 on Keelacheruvai - Tittakudi Main Road. The driver of the bus drove the bus rashly and negligently and applied sudden brakes near T.Elamamangalam Fire station, as a result of which, the claimants' son Arunkumar fell down from the bus and sustained grievous injuries all over his body. He was immediately rushed to the Government Hospital, Tittakudi. however, he succumbed to the injuries after two days.

According to the claimants, the rash and negligent driving of the driver of the bus belonging to the Tamil Nadu State Transport Corporation Limited was the cause of the accident and therefore, they are liable to pay compensation to them.

3. The learned Principal District Judge / Motor Accident Claims Tribunal, Perambalur, after analysing the evidence on record, awarded a compensation of Rs.3,74,500/- to the claimants together with interest at the rate of 7.5% per annum from the date of the claim petition.

4. Questioning the quantum of compensation awarded by the Tribunal, the Tamil Nadu State Transport Corporation has filed the present appeal.

5. Mr.S.V.Vasanthakumar, learned counsel appearing for the appellant contended that since the age of the deceased was 13 years on the date of accident and studying in a school, the Tribunal awarded exorbitant amount of Rs.3,74,500/-.

6. Per contra, Mr.P.Mani, learned counsel appearing for the respondents / claimants contended that the Tribunal had awarded a meagre amount of Rs.3,74,500/-.

7. In the decision in Kishan Gopal and another v. Lala and others reported in 2013 (5) CTC 212 (SC), the Hon'ble Supreme Court, in the case of road accident that happened on 19.07.1992 for a student aged 10 years, fixed the notional income of the deceased as Rs.30,000/- and adopted the multiplier of 15 as the age of the mother was 36 years on the date of the accident, applying the said ratio, the award amount should be enhanced and awarded a compensation of Rs.5 lakhs.

8. It is also relevant to point out that the claimants have not filed any appeal against the quantum of compensation awarded by the Tribunal. However, a Division Bench of this Court in M/s.Bharathi Axa General Insurance Company Limited vs. Jayalakshmi @ Panchalai and others in CMA.No.3629 of 2013, dated 02.12.2014, held that in the absence of any appeal or cross objection filed by the respondents / claimants, this Court has got powers and jurisdiction under Order 41 Rule 33 and Section 151 of the Code of Civil Procedure and Article 227 of the Constitution of India to enhance the compensation, if it is found that just compensation was not awarded.

9. In the instant case, the deceased was aged 13 years on the date of accident and applying the principles laid down in the decision in Kishan Gopal and another v. Lala and others reported in 2013 (2) TN MAC 358 (SC), the notional income is fixed as Rs.60,000/- per annum and since the age of the mother of the deceased was 37 years, the proper multiplier to be adopted in the instant case is 15 as per the decision in

Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Loss of dependency:

= Rs.60,000 x 15

= Rs.9,00,000/-

10. Apart from the above said amount, the respondents / claimants are entitled to a sum of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- towards loss of estate, loss of love and affection and funeral expenses respectively. The award passed under various heads is extracted hereunder:

S.No.	Head	Amount granted
1.	Loss of dependency	Rs.9,00,000/-
2.	Loss of estate	Rs.15,000/-
3.	Loss of love and affection	Rs.40,000/-
4.	Funeral expenses	Rs.15,000/-
Total		Rs.9,70,000/-

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.3,74,500/- to Rs.9,70,000/-.

12. In the result,

(i) The appeal is dismissed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,74,500/- to Rs.9,70,000/-.

(iii) The respondents/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.

(iv) The appellant, the Tamil Nadu State Transport Corporation Limited is directed to deposit the enhanced compensation amount i.e., Rs.9,70,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the appellant, the respondents/claimants are at liberty to withdraw the same as per the apportionment made by the Tribunal after following the due process of law.

(vi) Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar

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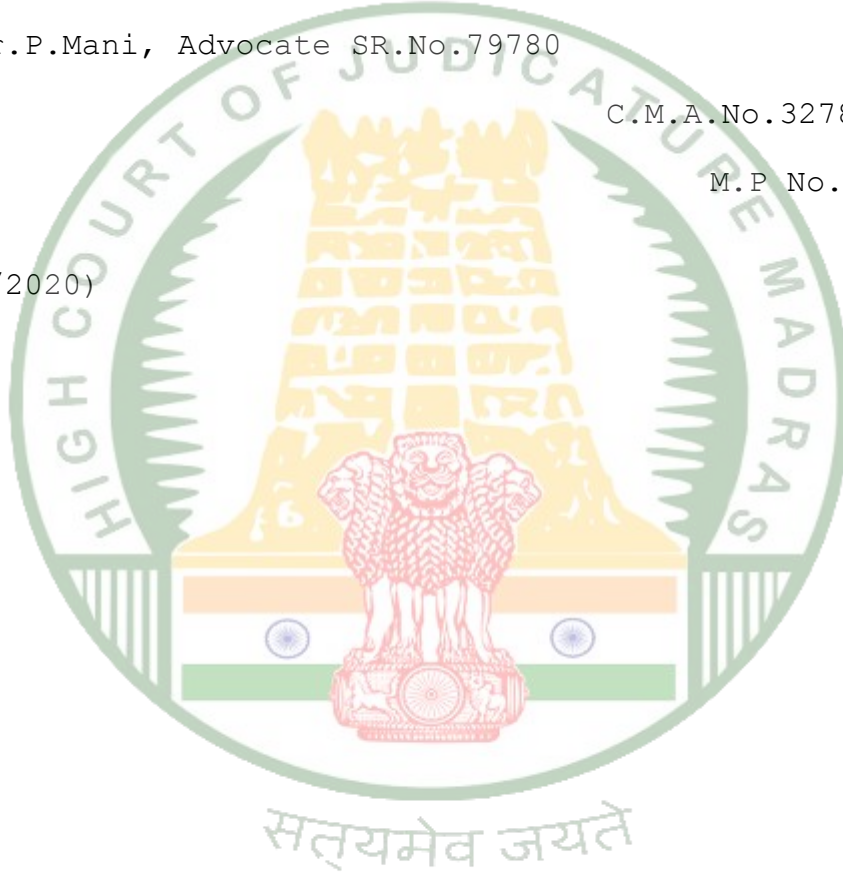
To
The Principal District Judge,
The Motor Accident Claims Tribunal,
Perambalur.

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

+1cc to Mr.P.Mani, Advocate SR.No.79780

C.M.A.No.3278 of 2013
and
M.P No.1 of 2013

VG I(CO)
GMY(16/06/2020)



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