

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.619 of 2013

1.L.Pushpa
2.L.Karthic
3.L.Muthu
4.V.Suguna

... Appellants/Petitioner

Vs

Metropolitan Transport Corporation
(Chennai Division) Ltd., rep. by its
Managing Director, Pallavan Salai,
Chennai - 600 002. ... Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal filed against the
Judgment and Decree dated 30.08.2012 MACTOP.No.1749 of 2010 on
the file of the XV Additional Judge, City Civil Court, Chennai -
600 001 (Motor Accidents Claims Tribunal).

For Appellants : Mr.N.M.Muthurajan

For Respondent : Mr.K.S.Suresh

J U D G M E N T

The instant appeal has been filed by the claimants seeking enhancement of compensation challenging the order dated 30.08.2012 passed by the learned Motor Accident Claims Tribunal, XV Additional Judge, City Civil Court, Chennai - 600 001 in MACTOP.No.1749 of 2010.

Brief facts of the case are as follows:

2. On 26.04.2010 at about 20.30 hours the deceased V.Loganathan along with his relative sekar was walking along Mettupalayam Road, Maduvankarai, in the direction south to north. While they were walking opposite to Door No.4/39, a corporation bus bearing registration No.TN-01-N-7445 which was driven by its driver in a rash and negligent manner came from behind and dashed against both of them in which the deceased sustained severe injuries and died on the way to hospital. The claimants preferred a compensation claim before the Motor Accident Claims Tribunal seeking a compensation of

Rs.12,00,000/- against the respondent Corporation for the death of V.Loganathan.

3. On behalf of the claimants, PW1 who is the wife of the deceased Loganathan and PW2, an eye-witness to the accident were examined and on behalf of the respondent Corporation, RW1 who is the driver of the bus was examined before the Tribunal. On the Appellants' side, Ex.P1 copy of the FIR, Ex.P2 Rough Sketch, Ex.P3 Postmortem report, Ex.P4 Death report, Ex.P5 Charge Sheet, Ex.P6 Legal heirship Certificate, Ex.P7 Copy of vote I.D. of PW1 and Ex.P8 copy of family ration card were marked as exhibits and no documents were marked as exhibits on the respondent's side.

4. After examining various aspects the Tribunal came to the conclusion that the negligence is on the part of the Corporation bus and therefore fixed the liability on the Corporation and passed an Award dated 30.08.2012 and directed the respondent Corporation to pay the appellants a sum of Rs.6,10,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

5. Aggrieved by the Award dated 30.08.2012, the appellants preferred this appeal seeking enhancement of compensation.

6. Learned counsel for the Appellants submitted that the deceased Loganathan was aged 40 years at the time of accident and was an owner cum driver of the Motorised Auto Rickshaw and earning Rs.450/- per day which amounts to Rs.13,500/- per month, whereas the Tribunal has taken the income of the deceased as Rs.4,500/- which is very much lower than the standard income as determined by the Hon'ble Supreme Court. The learned counsel drew the attention of this Court to the Division Bench Judgment of the Hon'ble Supreme Court in the case of Syed Sadiq, etc vs. Divisional Manager, United India Insurance Co. Ltd., reported in 2014 (1) TN MAC 459 (SC) wherein the Hon'ble Supreme Court has fixed the income for the Vegetable vendor as Rs.6,500/- per month for the accident of the year 2008 for the purpose of calculation of the loss of income of the dependents/Appellants. The Learned counsel for the Appellants also drew the attention of this Court to the unreported Division Bench judgment of this Court in the case of Jaghan v. Saradha and others and referred to paragraph 15 of the said Judgment which reads as follows:

" 15. It is contended by the learned counsel for the insurer that when Ex.P-6 is not reliable, there is no other acceptable evidence to prove the avocation and income of the deceased. Whereas, Mr.Muthurajan, learned counsel for the claimants submitted that even as per the

Minimum Wages Act, the monthly salary is to be taken at Rs.7,500/- per month. We are of the considered view that while fixing the monthly income of the deceased, we have to take notice of the present day salary i.e., being paid even to a manual labourer or a domestic servant. No manual labourer is available for a salary less than Rs.300/- per day, therefore, the monthly income of the deceased could be safely fixed at Rs.300/- per day and if so, the monthly income will be Rs.9,000/-. Mr.S.Arunkumar, learned counsel for the insurer submitted that the deceased, being bachelor, as per the dictum laid down in Sarla Verma's case, 50% should be deducted towards the personal expenses of the deceased, but the Tribunal has wrongly deducted the same at 1/3rd, whereas Mr.Muthurajan learned counsel for the claimants submitted that only 1/3rd should be deducted."

7. Learned counsel for the Appellants submitted that in the above referred judgment, the notional income of the deceased who was a driver of the vehicle was fixed at Rs.9,000/- per month for the accident of the year 2007. Therefore, the learned counsel for the Appellants insisted this Court to fix the notional income of the deceased at the time of the accident as Rs.9,000/- in the present case also.

8. The learned counsel for the Appellants also submitted that the Tribunal has not awarded future prospects and wrongly deducted 1/3rd towards his personal expenses. The learned counsel for the Appellants also submitted that the compensation awarded under the heads Funeral Expenses, loss of consortium and loss of love and affection is also very meagre.

9. Per contra, learned counsel for the respondent would submit that the amount awarded by the Tribunal is a fair and just compensation.

10. After examining the impugned award and after hearing the submissions of the learned counsels and considering the facts and circumstances of the instant case and as per the principles laid down by the Hon'ble Apex Court in the Syed Sadiq's case, it would be appropriate for this Court to fix the notional income of the deceased at the time of accident for the purpose of calculating the pecuniary benefits a sum of Rs.6,500/- per month. As per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in (2017) 16 SCC 680, future prospects is fixed at 25%, since the injured

was a driver cum owner (self-employed) and aged 40 years at the time of accident. This court also feels that 15 multiplier is correct for the calculating the loss of dependency as per the dictum laid down by the Hon'ble Supreme Court in the case of Sarla Verma v. Delhi Transport Corporation reported in (2009) 6 SCC 121. Since the dependents of the deceased are four in number, $1/4^{\text{th}}$ is reasonable to deduct towards his personal expenses as per the dictum laid down by the Hon'ble Supreme Court in the Sarla Verma's case cited supra. Therefore, calculation for loss of dependency is that $\text{Rs.}6500 \times 12 \times 15 = 117000 + 25\% = 1462500 - 1/4^{\text{th}} = \text{Rs. } 10,96,875/-$.

11. The Tribunal has awarded only a sum of Rs.5.000/- towards Funeral Expenses, Rs.15,000/- towards loss of consortium to the first Appellant. However, this Court is also inclined to award a sum of Rs.15,000/- towards Funeral Expenses, Rs.40,000/- towards loss of consortium to the first Appellant as held by the Hon'ble Supreme Court in the Pranay Sethi's case cited supra. The Tribunal has not awarded any compensation towards loss of estate. However, this Court is inclined to award a sum of Rs.15,000/- towards loss of estate as held by the Hon'ble Supreme Court in the Pranay Sethi's case cited supra.

12. The Tribunal has awarded only a sum of Rs.50,000/- towards loss of love and affection. However, this Court is inclined to increase the award amount to Rs.1,25,000/-, i.e., for the second and third Appellants are entitled for a sum of Rs.50,000/- each and the fourth respondent who is the mother of the deceased is entitled for a sum of Rs.25,000/-.

13. The Tribunal has also not awarded any compensation towards transportation charges, whereas this Court is of the considered view that a sum of Rs.10,000/- is reasonable to fix as compensation towards transportation.

14. Hence the total compensation payable to the appellants are as follows:-

Head	Award Amount (Rs.)
Loss of Dependency	10,96,875/-
Loss of consortium	40,000/-
Loss of love and affection	1,25,000/-
Loss of estate	15,000/-
Funeral expenses	15,000/-
Transportation	10,000/-
Total	13,01,875/-

Out of the total compensation amount of Rs.13,01,875/-, the first Appellant is entitled for Rs.6,00,000/-, the second and third Appellants are entitled for Rs.3,00,000/- each and the fourth Appellant is entitled for Rs.1,01,875/-.

15. In the light of the above observations, the amount awarded by the Tribunal is modified by enhancing the award from Rs.6,10,000/- to Rs.13,01,875/- and the respondent corporation is directed to deposit the modified award amount, after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order to the credit of MACTOP.No.1749 of 2010 on the file of the learned XV Additional Judge, City Civil Court, Chennai, failing which, the Chairman-cum-Managing Director and Chief Financial Officer-cum-Chief Accounts Officer shall appear before this Court on 26.06.2019. The Appellants are directed to pay deficit court fees.

16. On such deposit being made, the Tribunal shall transfer the amount to the respective claimants bank account through RTGS within a period of one week thereon.

17. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

1. The XV Additional Judge, City Civil Court,
Chennai - 600 001

2. The Section Officer,
VR Section,
High Court, Madras.

3. The Managing Director,
Metropolitan Transport Corporation Chennai Division Ltd.,
Pallavan Salai,
Chennai 600 00.

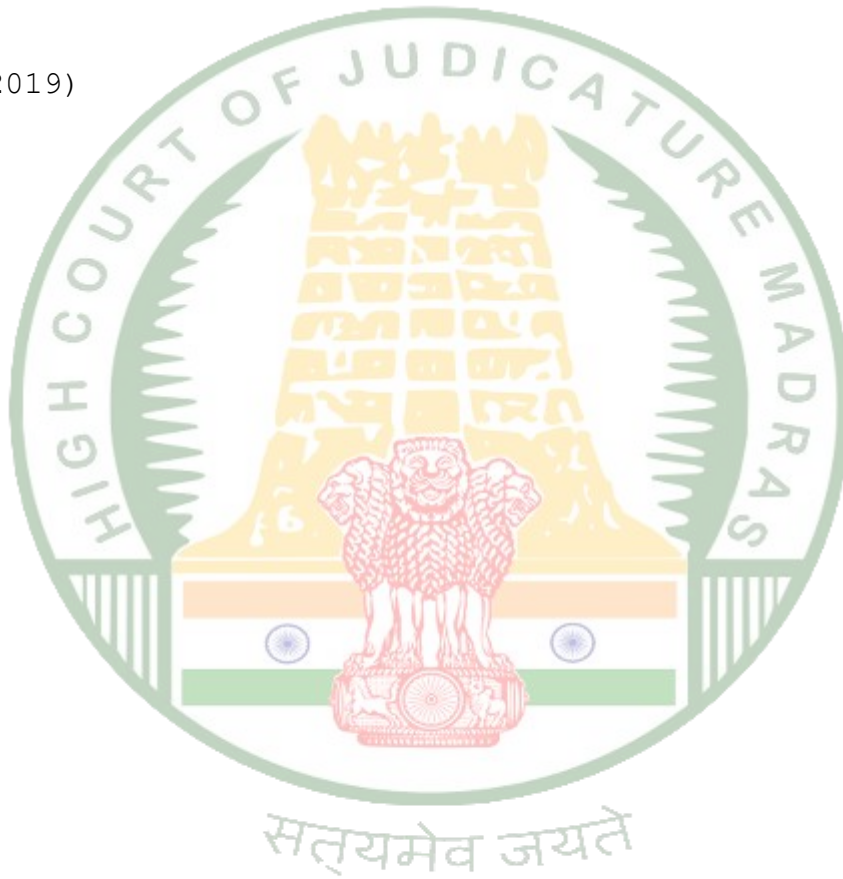
4.The Chief Finance Officer cum
Chief Accounts Officer,
Metropolitan Transport Corporation Chennai division Ltd,
Pallavan Salai, Chennai.

5.The Sub Assistant Registrar,
Judicial Section,
High Court, Madras.

+lcc to Mr.N.M.Muthurajan, Advocate, S.R.No. 9903

C.M.A.No.619 of 2013

RSV(CO)
GN(05/04/2019)



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