IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.1653 of 2017 and 2471 of 2019
and C.M.P.No.11454 of 2019

1. Arumuga Nainar
2. A.Manikandan (Minor)
   Rep. by father and next friend
   Arumuga nainar
3. Muthulakshmi
4. Subramanian ... Appellants in CMA No.1653 / 2017 / & Respondents in CMA No.2471/2019 / Claimants

..vs..

The Managing Director,
Metro Transport Corporation Limited,
Pallavan Salai,
Chennai - 600 002. ... Respondent in CMA No.1653/2017 & Appellant in CMA No.2471/2019

Appeals filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree, dated 15.09.2012 made in M.C.O.P.No.78 of 2009 on the file of the Motor Accident Claims Tribunal cum Chief Judge, Court of Small Causes, Chennai.

For Appellants in CMA No.1653 / 2017 & For respondent in CMA No.2471/2019 : Mr.R.Arun Dattan for Mr.C.Munuswamy
For Respondents in CMA No.1653 / 2017 & For appellant in CMA No.2471/2019 : Dr.S.S.Swaminathan

COMMON JUDGMENT

The brief facts of the case is that on 23.09.2008 at about 12.45 hours, while the deceased Jayalakshmi was riding a motorcycle bearing registration NO.TN-07-BB-0886 towards north to south direction by the side of Anna Salai, at that time, MTC bus bearing Registration No.TN-01-N-3285 driven by its driver in a rash and negligent manner at dangerous speed and hit against motorcycle of the deceased from backside. Due to the impact, the fatal accident occurred. The claimants who are the legal heirs of the deceased Jayalakshmi claimed a sum of Rs.15,00,000/- as compensation under various heads. As against the claim, the Tribunal awarded a sum of Rs.8,29,940/-

2. Aggrieved over the quantum of compensation as exorbitant, the Transport Corporation has preferred CMA No.2471 of 2019. Claiming the award as insufficient, the claimants / Legal Representatives of the deceased have filed CMA No.1653 of 2017.

3. Since the issues involved in both these Civil Miscellaneous Appeals are inter-linked, they are taken-up together and a common judgment is passed. For the sake of convenience, the parties are referred to as claimants and Transport Corporation.

4. The grievance of the claimants in the grounds of appeal is that the monthly income taken by the Tribunal is very much meager, when P.W.3 an employer of the deceased was examined and and salary certificate/Ex.P10 also marked before the Tribunal . Hence, it is contended that the Tribunal ought to have taken the monthly income as Rs.10,000/-. Further, when there is a clear evidence regarding the occupation is produced that apart from the her regular job, the deceased was doing Amway business and also working as an agent in Max New York Life Insurance Company, these aspects were not considered by the Tribunal and hence the monthly income of the deceased ought to be assessed atleast to the extent of Rs.15,000/-.

5. The multiplier adopted by the Tribunal is also very much aggrieved by the claimants. Hence, it is contended that when there is a clear documentary and oral evidence, 100% ought to have been considered for future prospects of the deceased. Further, the Tribunal ought not to have been deducted 1/3 towards personal expenses from the income of the deceased while computing loss of income and pecuniary benefits. Further, it is also a grievance of the claimants that a sum awarded under the heads, funeral expenses and loss of love and affection is not under the principles of this Court and the Hon'ble Supreme Court.

6. Per contra, the Transport Corporation denied the mode of accident as stated by the claimants in the claim application. It is also stated that the deceased who was driving the motorcycle came in left side, tried to overtake across the left side of the bus and hence fallen down, thereby the accident occurs. Since, the negligence aspect is on the part of the deceased, the sum claimed by the claimant as an exorbitant one, in the absence of any proof.

7. The Tribunal after analyzing the evidence and documents placed before him, the eyewitness and also the rough sketch, Ex.P2/ the charge sheet, given a finding that the accident occurred only due to the rash and negligent manner of driver of the bus and the liability is also fixed on the Managing Director of the MTC bus. While determining the compensation, the Tribunal has considered the age of the

deceased, income and loss sustained by the claimants due to loss of future aspects, loss of love and affection etc. and awarded a sum of Rs.8,29,940 under the following heads:

S.No.	Heads	Award amount Rs.
1	Loss of pecuniary benefits	7,79,940
2	Loss of Consortium (to the 1st legal heir)	10,000
3.	Loss of love and affection (to the legal heirs 2 to 4)	30,000
4.	Funeral expenses	10,000
	Total	8,29,940

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

9. It is contended by the Transport corporation that the Tribunal has taken the notional income at Rs.5,000/- per month instead of Rs.4,500/- inspite of the fact that the Tribunal did not believe the evidence and the documents filed by the claimants. Further, it is contended that the claimants 3 and 4 are not depending on the deceased since they are mother in law and father in law of the deceased, the sum awarded at Rs.10,000/-to them is not legally valid. In the absence of any proper proof, the future income assessed by the tribunal at 30% is not justified one. On the whole the award made by the Tribunal in various heads is highly excessive.

10. But, on a perusal of records, while considering the assessment of the Tribunal, it is pertinent to note that the deceased was aged 39 years at the time of accident which has been proved by way of Ex.P4. On a perusal of the statement given in the proof affidavit of P.W.3, the deceased was working as office and site incharge in M/s NPL Sekar & Co, Chennai and earned a sum of Rs.10,000/- per month. Ex.P9 is the authorization letter issued to P.W3 to give evidence and Ex.P10 is the salary certificate. In Ex.P10, the name of the post held by the decease is not mentioned. Further, the Tribunal has also observed the fact that there is no appointment order filed by P.W.3 while he deposed before the Court. Hence, in the absence of these documents, especially the attendant register, pay register to prove the income derived by the deceased was doubt. Another grievance of the Transport Corporation is that the Tribunal ought to have been awarded a sum of Rs.4,500/- per month towards income instead of Rs.5,000/-, in the absence of any proof regarding occupation as well as income of the deceased. But while considering the age of the deceased at 39 years, it has been very much proved that a person of 40 years can earn atleast Rs.300/- per day with any definite job and hence the deceased

could earned a sum of Rs.9,000/- per month. On verifying the date of the accident which took place in the year 2008, the monthly income of the deceased has to be taken at Rs.5000/- per month. Regarding the future prospects, 30% of the income awarded by the Tribunal is not proper one. whereas considering the age of the deceased, it is to be taken at 40%. Hence the monthly income of the deceased is modified by this Court at Rs.7,000/- (5000+2000 (40%)=7000) instead of Rs.6,500/-. Another aspect which is very much aggrieved by the Transport Corporation is that the claimants 3 and 4 being in laws of the deceased, they are not dependents of the deceased. But this Court is of the opinion that a considerable sum has to be enhanced in other head viz., Loss of Consortium, Funeral expenses and Loss of Love and affection since they are parents of the deceased. Furer a sum of Rs.15,000/- is granted towards Loss of Estate. Accordingly, the compensation awarded by the Tribunal is modified as follows:

S.No.	Heads	Sum awarded by the tribunal Rs.	Sum modified by this Court Rs.
1	Loss pecuniary benefits	7,79,000 (6500X12X15X2/3)	8,40,000 (7000X12X15X2/3)
2	Loss of consortium	10,000	40,000
3.	Funeral Expenses	10,000	15,000
4.	Loss of Estate	--	15,000
5.	Loss of Love & affection	30,000	40,000
		8,29,940	9,50,000

11. In view of the above enhancement, the CMA No.2471 of 2019 filed by the Transport Corporation is dismissed and the CMA No.1653 of 2017 filed by the claimants is partly allowed. The total amount of compensation is quantified at Rs.9,50,000/- from Rs.8,29,940/-, which is payable with interest at 7.5% per annum, from the date of petition till the date of deposit.

12. The Transport Corporation shall deposit the enhanced amount of compensation, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of the judgment. The claimants shall pay the necessary court fee for the enhanced compensation before receiving the copy of the judgment. On the deposit being made, the Tribunal shall transfer the compensation amount of the major claimants to the Savings Bank Accounts of the claimants, as per the apportionment made by the Tribunal. The

share of the minor claimant shall be deposited in any one of the National Banks, in a Fixed Deposit, till the minor claimant attains majority and the father of the minor claimant is entitled to withdraw the accrued interest, once in three months, directly from the Bank, under direct intimation to the Tribunal. Consequently, the connected civil miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

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To

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

2. The Section Officer, V.R.Section,
   Madras High Court, Chennai 104

+1cc to M/s.S.S.Swaminathan, Advocate SR.No.57983

+1cc to Mr.C.Munuswamy, Advocate SR.No.57894

C.M.A.Nos.1653 and 2471 of 2017
and C.M.P.No.11454 of 2019

RSV(CO)
GMY(09/01/2020)