



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CMA(MD)No.224 of 2017

and

Cross Objection (MD) No.18 of 2017

and

CMP(MD)No.2611 of 2017

WEB COPY

THE MANAGING DIRECTOR, TNSC (COIMBATORE) LTD.,
CHENNIMALAI ROAD,
ERODE-1.

...Appellant in CMA(MD). No.224 of 2017 /
Respondent in CROSS OBJECTION(MD).No.18 of 2017
Vs

1 MUTHULAKSHMI

2 PALANI SAMY ...Respondent in CMA(MD). No.224 of 2017 /
Cross Objector in CROSS OBJECTION(MD).
No.18 of 2017

Prayer in CMA(MD). No.224 of 2017 :-

Civil Miscellaneous Appeal is filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.11.2016 made in M.C.O.P.No.56 OF 2016 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Court), Theni @ Periyakulam.

Prayer in CROSS OBJECTION(MD).No.18 of 2017 :

Cross objection is filed under Order 41 Rule 22 read with section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.11.2016 made in M.C.O.P.No.56 OF 2016 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Court), Theni @ Periyakulam.

For Appellant in CMA(MD)No.224 of 2017
in Cross Obj.18 of 2017 : M/s.P.Prabhakaran

For Respondent in
CMA(MD)No.224 of 2017
Cross Objector in
Cross Obj.18 of 2017

: Mrs.S.K.R.Shivasankari
for Mr.K.Sureshkumar

**COMMON JUDGMENT**

One Navaneethan, aged about 20 years, a 3rd year Engineering Student, met with an accident on 03.10.2015 and died on the spot. Hence, his parents filed a petition in M.C.O.P.No.56 of 2016 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Court), Theni @ Periyakulam, claiming compensation of Rs.30,00,000/-. The Tribunal, after considering oral and documentary evidence, found that the accident had occurred due to the negligence on the part of the driver of the Transport Corporation Bus and fixed the entire negligence as against the driver of the Transport Corporation and fastened the liability as against the Transport Corporation and awarded a sum of Rs.13,60,000/- as compensation, the break up details of which are as follows:

Loss of dependency	-	Rs.12,15,000/-
Loss of love and affection	-	Rs. 1,00,000/-
Funeral Expenses	-	Rs. 10,000/-
Loss of estate	-	Rs. 25,000/-
Transport Expenses	-	Rs. 10,000/-
Total	-	Rs.13,60,000/-

Challenging the liability as well as the quantum of compensation, C.M.A.No.224 of 2017 has been preferred by the appellant/Transport Corporation, whereas the claimants, who are the parents of the deceased, filed Cross Objection No.18 of 2017 for enhancement of compensation.

2. It is the contention of the learned counsel appearing for the appellant/Transport Corporation that this is a case of head on collision, therefore, the liability should have been fixed 50% as against the owner of the two wheeler, who rode the two wheeler and 50% as against the Transport Corporation. It is further contended that P.W.2, who is an eye-witness of the accident, deposed that when the accident had occurred, he was riding his vehicle only 10 feet ahead of the deceased two wheeler. Therefore, there is no chance for P.W.2 to witness the accident and hence, the deposition of P.W.2 that the accident had occurred due to the negligence on the part of the rash and negligent driving of the driver of the Transport Corporation bus cannot be reliable. Hence, the liability fixed as against the Transport Corporation by the Tribunal is incorrect and therefore, the learned counsel pleaded that 50% liability may be



fixed as against the rider of the Two Wheeler and 50% liability may be fixed as against the Transport Corporation.

3. However, the learned counsel appearing the claimants/respondents contended that when the deceased was proceeding on his Two Wheeler bearing Reg.No.TA59H 8950 on Theni-Periyakulam Road, the Transport Corporation Bus, bearing Reg.No.TN33N2617, proceeding towards Theni, was driven by its driver in a rash and negligent manner and hit against the rider of the Two Wheeler. It is further submitted that the accident had occurred only due to the rash and negligent driving of the driver of the bus; the rider of the two wheeler was riding his vehicle on the left side of Theni-Periyakulam Road, but, the bus was coming from the opposite side of Theni-Periyakulam Road; the accident had occurred on the left side, where, the two wheeler was rode, that means, the bus crossed the median and hit the two wheeler. In this regard, the learned counsel referred the rough sketch, which was marked as Ex.B5.

3.1. Further, the learned counsel appearing for the claimants/respondents referred the FIR, which was marked as Ex.B1 and also the charge sheet, which was marked as Ex.P4, wherein, it has been clearly stated that the accident had occurred due to the rash and negligent driving of the driver of the Bus. Apart from that, P.W.2 also deposed that the accident had occurred due to the rash and negligent driving of the bus. Moreover, P.W.2 was riding his vehicle only 10 feet ahead of the deceased Two Wheeler. Since the bus is a big object, definitely, he would have seen the occurrence, though he was riding his vehicle 10 feet ahead of the deceased vehicle. Based on the same, the Tribunal has come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Bus. Hence, there is no interference on the findings of the Tribunal.

4. On perusal of Ex.B5-rough sketch, it is clear that the Bus crossed the median and hit the motorcycle. Further, P.W.2, who is an eye-witness of the accident, has clearly deposed that the bus coming from the opposite direction came in the right side rash and negligently, which shows that the accident had occurred due to the rash and negligent manner. Therefore, this Court also does not find any infirmities in the order passed by the Tribunal with regard to the fixation of liability on the part of the driver of the bus.

5. With regard to the quantum of compensation, the learned counsel appearing for the appellant/Transport Corporation contended that when the deceased was a 3rd year Engineering Student and he was not an employee, the Tribunal ought not to have fixed the notional income of the deceased at Rs.7,500/- p.m for the accident occurred in the year 2015. Further, as per the **Pranay Sethi's case**, the Tribunal ought to have added only 40% towards future prospects for the age group of 20 years, instead of 50%.



6. On the other hand, the learned counsel for the claimants/respondents relied upon a decision of the Division Bench of this Court in **Royal Sundaram Alliance Insurance Co. Ltd., vs. Chinthamani and others (2018 (2) TNMAC 470 (DB))**, wherein, the Division Bench of this Court has fixed a sum of Rs.15,000/- as notional income of the deceased, who was an Engineering Student and aged about 21 years at the time of accident, that had occurred in the year 2012. In the present case on hand, the accident had occurred in the year 2015. Therefore, the learned counsel submitted that Rs.15,000/- may be fixed as the notional income of the deceased. Further, the learned counsel has also referred a Judgment of the Division Bench of this Court rendered in the case of **Chinnathamani and two others vs. 1.Amman Granties, M.G.Colony, Harur Town & Taluk, Dharmapuri District and 2.National Insurance Company, No.88-F, Bye-pass Road, Dharmapuri, Dharmapuri District, passed in C.M.A.No.584/2018, dated 09.08.2019**, wherein, the Division bench of this Court has also held that whenever the Court is fixing the notional income by referring any of the income fixed by any of the Court in a particular order, the said income could be modified to the extent by providing appropriate weightage in increase in cost of living over a period of time between the date of judgment referred and the date of accident in the case in hand. In the abovesaid judgment, the Court recorded the cost inflation index and held that the cost inflation index should be applied so as to set right the increase in cost of living.

7. Furthermore, the Hon'ble Apex Court in **Syed Sadiq's** case (reported in **2014 (2) SCC 735**) has fixed the notional income for a Vegetable Vendor at Rs.6,500/-, wherein, the accident had occurred in the year 2008. Considering the increase in cost of living, normally, an Engineering Graduate, in the year 2015, would have earned not less than Rs.15,000/- and therefore, Rs.15,000/- should be fixed as notional income of the deceased.

8. But, the learned counsel appearing for the Transport Corporation vehemently opposed for fixation of Rs.15,000/- as notional income of the deceased and relied upon a decision of the Hon'ble Apex Court rendered in the case of **Radhakrishna and another and Gokul and others**, reported in **2013 (2) TN MAC 724 (SC)**, wherein, the Hon'ble Apex Court fixed a lumpsum compensation of Rs.7,00,000/- for the deceased, who was an Engineering Student and that accident had occurred in the year 2003. But, in the present case, the accident had occurred in the year 2015. Therefore, the learned counsel contended that Rs.12,000/- may be fixed as notional income of the deceased.

9. However, the learned counsel appearing for the claimants/respondents contended that the Division Bench of this Court has already fixed the notional income of Rs.15,000/- for the



accident for the year 2012. Therefore, it should be more, if appropriate weightage is provided depending upon the increase in cost of living. However, the learned counsel fairly restricted for Rs.15,000/-.

10. Since there is a controversy over the fixation of notional income of the deceased, this Court is inclined to fix Rs.14,000/- as notional income of the deceased, though this is an appropriate case for fixing the notional income more than Rs.17,000/-. Accordingly, Rs.14,000/- is fixed as notional income of the deceased.

11. At the time of accident, the age of the deceased was 20 years. As held in **National Insurance Company Limited vs. Pranay Sethi and others** reported in **AIR 2017 SC 5157**, 40% should be added as future prospects. Since the deceased was a bachelor, as per the decision of the Hon'ble Apex Court in **Sarla Verma and others vs. Delhi Transport Corporation and another** reported in **2009 (6) SCC 121**, 50% should be deducted towards personal expenses and the multiplier to be adopted is 18. Applying the same, the loss of dependency would be at Rs.21,16,800/- (Rs.14,000/- + 40% x 12 x 18 - 50%).

12. In respect of other heads, the Tribunal has awarded a sum of Rs.10,000/- for funeral expenses and Rs.25,000/- for loss of estate. As held in the **Pranay Sethi's** case, the amount of Rs.10,000/- awarded by the Tribunal towards funeral expenses is too low and the amount of Rs.25,000/- towards loss of estate is high. Therefore, this Court is inclined to increase the amount awarded towards funeral expenses from Rs.10,000/- to Rs.15,000/- and reduce the amount awarded towards loss of estate from Rs.25,000/- to Rs.15,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards transport expenses, which is just and reasonable, therefore, the same is hereby confirmed. The Tribunal has also awarded Rs.1,00,000/- towards loss of love and affection, which is also just and reasonable, therefore, the same is hereby confirmed. Accordingly, the award amount is revised in the manner as stated below.

Loss of dependency	-	Rs. 21,16,800/-
Loss of Love and affection	-	Rs. 1,00,000/-
Funeral Expenses	-	Rs. 15,000/-
Loss of estate	-	Rs. 15,000/-
Transport Expenses	-	Rs. 10,000/-
		Rs. 22,56,800/-



13. In the result, C.M.A.(MD)No.224 of 2017 is dismissed and Cross Obj.(MD)No.18 of 2017 is allowed. The award amount is enhanced from Rs.13,60,000/- to Rs.22,56,800/-.

14. The Transport Corporation is directed to deposit the enhanced amount of Rs.22,56,800/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the respective share of the claimants (as per the apportionment made in M.C.O.P) directly to their Bank Account through RTGS, within a period of three weeks thereafter. The claimants shall pay the court fee for the enhanced amount of compensation, before obtaining copy of Judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

The Motor Accident Claims Tribunal
(Additional District and Sessions Court),
Theni @ Periyakulam.

Copy to:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-100414[F] dated 22/11/2019
+1 CC to M/s. K. SURESHKUMAR, Advocate (SR-101088[F] dated
25/11/2019)

CMA(MD)No.224 of 2017

and

Cross Objection (MD) No.18 of 2017

21.11.2019

_KK/SAR/30.01.2020/6P-6C/