

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2830 of 2011
and 1046 of 2019

C.M.A.No.2830 of 2011 & 1046 of 2019:

Poonga @ Poongavanam .. Appellant in
CMA.No.2830 of 2011 &
2nd Respondent in CMA.No.1046 of 2019/
Petitioner in MCOP.No.801 of 2000
and 2nd Respondent in MCOP.No.616 of 2000

(cause title accepted as per the order of this
Court dated 07.06.2011 made in M.P.No.1
of 2011 in CMA.SR.No.36200 of 2011)

Vs.

1. The Managing Director,
Tamilnadu State Express Transport Corporation Limited,
PallavanSalai - 600 002.

(Formerly known as Thiruvalluvar Transport
Corporation Limited,
Mount Road, Chennai - 600 002).

... 1st Respondent in Both CMA's/
1st Respondent in MCOP's

2.Parameswari

3.Minor.Devendran

.. 2nd & 3rd Respondents in
CMA.No.2830 of 2011 &
Applicants in CMA.No.1046 of 2019/
2nd & 3rd Respondents in
MCOP.No.801 of 2000
and Petitioners in MCOP.No.616 of 2000

(Minor 3rd respondent represented by his
mother Parameswari, 2nd respondent herein)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.10.2010 made in M.C.O.P.No.801 of 2000 and 616 of 2000 respectively on the file of the Motor Accident Claims Tribunal, Sub Court, Madurantakam.

For Appellant : Mr.M.Sivakumar
in CMA.2830 of 2011 & for Mr.V.Jaganathan
2nd Respondent in
CMA.No.1046 of 2019

For R1 : Mr.K.Kathiresan
in CMA.No.2830 of 2011

For R1 : Mr.K.J.Sivakumar
in CMA.No.1046 of 2019

For R2 : Mr.A.Babu
in CMA.No.2830 of 2011
and Appellants in
CMA.No.1046 of 2019

C O M M O N J U D G M E N T

C.M.A.No.2830 of 2011 is filed against the order of dismissal dated 22.10.2010 made in M.C.O.P.No.801 of 2000 on the file of the Motor Accident Claims Tribunal, Sub Court, Madurantakam.

2.C.MA.No.1046 of 2019 is filed against the order of dismissal dated 22.10.2010 made in M.C.O.P.No.616 of 2000 on the file of the Motor Accident Claims Tribunal, Sub Court, Madurantakam.

3.Both the appeals are arising out of the same accident and hence, disposed of by this common judgment. The parties are referred to as per their respective rank in C.M.A.No.1046 of 2019.

4.The appellant in C.M.A.No.2830 of 2011 is the claimant in M.C.O.P.No.801 of 2000 and the appellants in C.M.A.No.1046 of 2019 are the claimants in M.C.O.P.No.616 of 2000 on the file of the Motor Accident Claims Tribunal, Sub Court, Madurantakam.They filed the above said claim petitions claiming a sum of Rs.4,00,000/- and Rs.2,50,000/- respectively as compensation for the death of one Loganathan, who died in the accident that took place on 19.02.1996.

5.According to the appellants and 2nd respondent, on 19.02.1996 at about 20.45 hours, while the deceased along

with one Ragupathy was returning home by riding his bicycle on the G.S.T.Road and while nearing M.G.R.Depot, the driver of the bus belonging to the 1st respondent-Transport Corporation drove the same in a rash and negligent manner and dashed against the deceased and caused the accident. In the accident, the said Loganathan died on the spot. Therefore, the appellant in C.M.A.No.2830 of 2011 filed M.C.O.P.No.801 of 2000 claiming a sum of Rs.4,00,000/- and the appellants in C.M.A.No.1046 of 2019 filed M.C.O.P.No.616 of 2000 claiming a sum of Rs.2,50,000/- as compensation against the 1st respondent-Transport Corporation.

6.The 1st respondent-Transport Corporation filed counter statement in M.C.O.P.No.801 of 2000 and denied various averments made by the 2nd respondent. According to the 1st respondent-Transport Corporation, the accident has not occurred as alleged by the 2nd respondent. According to the 1st respondent-Transport Corporation, the driver of the bus stopped the bus at Maduranthagam bus stop where passengers alighted and boarded the bus. After whistling of the conductor, the driver of the bus drove the same slowly and suddenly the deceased having the pillion rider is his bicycle crossed the road very closely in front of the bus. On seeing this, the driver of the bus sounded horn and applied braked. Inpsite of his efforts, the deceased hit the bus and invited the accident. Therefore, the 1st respondent-Transport Corporation is not liable to pay any compensation to the 2nd respondent. The 2nd respondent has to prove the age, avocation and income of the deceased by producing valid documents. In any event, the quantum of compensation claimed by the 2nd respondent is highly excessive and prayed for dismissal of the claim petition.

7.The 1st appellant filed separate counter statement in M.C.O.P.No.801 of 2000 and contended that the 2nd respondent is not the legally wedded wife of the deceased and she cannot claim the wife status. She is not the legal heir of the deceased and hence, she is not entitled to any compensation. The appellants 1 and 2 are the legally wedded wife and child of the deceased and they alone are entitled to get compensation and they also filed a claim petition in M.C.O.P.No.616 of 2000 on the file of the Motor Accident Claims Tribunal, Sub Court, Madurantakam. The 2nd respondent is not entitled to any amounts as claimed for and prayed for dismissal of the claim petition.

8.The 2nd respondent filed counter statement in M.C.O.P.No.616 of 2000 and denied various averments made by the appellants and contended that the 1st appellant is not the legally wedded wife of the deceased and she cannot claim

the status of wife. The 1st appellant is not the legal heir of the deceased and she is not entitled to claim compensation for the death of the said Loganathan. The 2nd minor appellant was also not born to the 1st appellant and he is also not entitled to claim compensation. The 1st appellant concocted many documents with a main intention of claiming compensation and filed the said claim petition. The 2nd respondent is the legally wedded wife of the deceased and she is the only legal heir of the deceased and filed claim petition in M.C.O.P.No.801 of 2000 on the file of the Motor Accident Claims Tribunal, Sub Court, Madurantakam, which is pending. Only the M.C.O.P.No.801 of 2000 has to be tried and evidence to be recorded and the appellants are not entitled to any compensation and prayed for dismissal of the claim petition.

9.Before the Tribunal in M.C.O.P.No.801 of 2000, the 2nd respondent examined herself as P.W.1 and one Arumugam was examined as P.W.2 and one Nawab John was examined as P.W.3 and 7 documents were marked as Exs.P1 to P7. The 1st respondent-Transport Corporation examined one Munusamy as R.W.1 but no document was filed.

10.Before the Tribunal in M.C.O.P.No.616 of 2000, the 1st appellant examined herself as P.W.1, one ThulasiNayakkar was examined as P.W.2 and one Rajasekar Nayakkar was examined as P.W.3. 17 documents were marked as Exs.P1 to P17. The 1st respondent-Transport Corporation examined one Munusamy as R.W.1 and marked one document as Ex.R1.

11.The Tribunal considering the pleadings, oral and documentary evidence dismissed both the appeals on the ground that the claimants are not the legal heirs of the deceased.

12.Challenging the said order of dismissal dated 22.10.2010 made in M.C.O.P.Nos.801 and 616 of 2000, the claimants/appellants have come out with the present appeals.

13.The learned counsel appearing for the appellants in both the appeals contended that the Tribunal erroneously dismissed both the claim petitions on the ground that the appellants in both the appeals are not the legal heirs of the deceased. The 1st appellant is the wife of the deceased and the minor 2nd appellant is the son of the deceased and they are entitled to get compensation and the 2nd respondent is the wife of the deceased and she has produced Ex.P4/marriage invitation and Ex.P5/legal heir ship certificate. Both the appellants as well as the 2nd respondent are entitled to get compensation. The deceased was aged 37 years and he was the Proprietor of Siva Sakthi Welding Works, Madurantakam and was earning a sum of Rs.3,000/- per month and prayed for setting

aside the order of the Tribunal by awarding compensation to the appellants and 2nd respondent.

14. Per contra, the learned counsel appearing for the 1st respondent-Transport Corporation in both the appeals made submissions supporting the award passed by the Tribunal and prayed for dismissal of both the appeals.

15. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 1st respondent-Transport Corporation and perused the entire materials on record.

16. From the award passed by the Tribunal, it is seen that the Tribunal dismissed both the appeals on the ground that the claimants are not the legal heirs of the deceased. The reason given by the Tribunal for dismissing the claim petitions is not correct and the appellants as well as the 2nd respondent are entitled to get compensation. It is the contention of the appellants and 2nd respondent that the deceased was aged 37 years and he was the Proprietor of Siva Sakthi Welding Works, Madurantakam and was earning a sum of Rs.3,000/- per month. But they failed to prove the said contention. The accident occurred in the year 1996 and a sum of Rs.3,500/- per month is fixed as notional income of the deceased. The deceased was aged 37 years at the time of accident. Hence, the appellants as well as the 2nd respondent are entitled to 40% enhancement towards future prospects. The proper multiplier applicable is '15' as per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others vs. Delhi Transport Corporation & another]. There are three dependants of the deceased and 1/3rd should be deducted from the monthly income towards personal expenses of the deceased. Thus, the appellants as well as the 2nd respondent are entitled to a sum of Rs.5,88,000/- {Rs.4,900/- [Rs.3,500/- + Rs.1,400/- (40% of Rs.3,500/-)] X 12 X 15 X 2/3} towards loss of dependency. The appellants as well as the 2nd respondent are entitled to a sum of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

17. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimant has claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. Thus, the compensation awarded by this Court is as follows:

S. No	Description	Amount awarded by this Court (Rs)
1.	Loss of dependency	5,88,000/-
2.	Loss of consortium	40,000/-
3.	Funeral expenses	15,000/-
4.	Loss of estate	15,000/-
	Total	Rs.6,58,000/-

18. The appellants and the 2nd respondent are entitled to a sum of Rs.6,58,000/- as compensation with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants as well as the 2nd respondent are directed to pay the necessary Court fee on the enhanced amount of compensation now determined by this Court. Out of the total award amount, the claimant in M.C.O.P.No.801 of 2000 (appellant in C.M.A.No.2830 of 2011) is entitled to a sum of Rs.2,63,200/- towards 40% of the total award amount as compensation and the claimants in M.C.O.P.No.616 of 2000 (appellants in C.M.A.No.1046 of 2019) are entitled to a sum of Rs.3,94,800/- towards 60% of the total award amount as compensation. Out of the award amount in C.M.A.No.1046 of 2019, the 1st appellant is entitled to a sum of Rs.2,00,000/- and the minor 2nd appellant is entitled to a sum of Rs.1,94,800/-. The 1st respondent-Transport Corporation is directed to deposit the respective award amounts within a period of twelve weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.Nos.801 and 616 of 2000 respectively on the file of the Motor Accident Claims Tribunal, Sub Court, Madurantakam. On such deposit made by the 1st respondent-Transport Corporation, the appellant in C.M.A.No.2830 of 2011 and the 1st appellant in C.M.A.No.1046 of 2019 are permitted to withdraw their respective share of the award amount along with interest and costs. The share of the minor 2nd appellant in C.M.A.No.1046 of 2019 is directed to be deposited in any one of the Nationalized Banks, till the minor 2nd appellant attains majority. On such deposit made by the 1st respondent-Transport Corporation, the 1st appellant in C.M.A.No.1046 of 2019, being the mother of the minor 2nd appellant is permitted to withdraw the accrued interest once in three months for the welfare of the minor 2nd appellant by making necessary applications before the Tribunal.

19.In the result, C.M.A.No.2830 of 2011 is partly allowed and C.M.A.No.1046 of 2019 is allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

krk

To

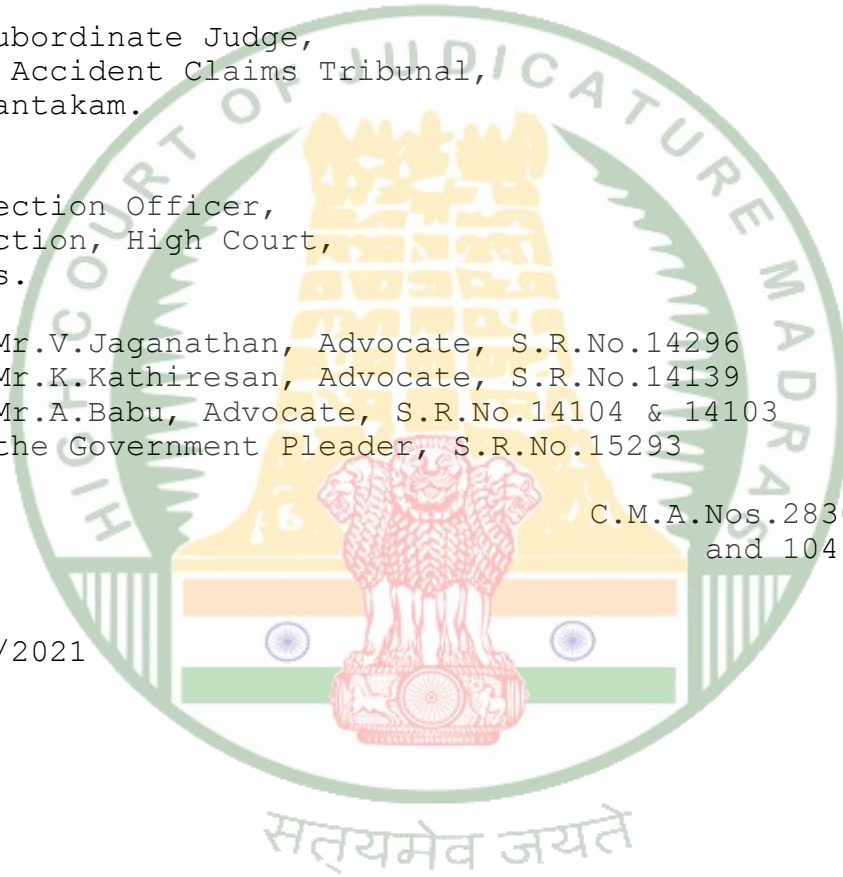
1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Madurantakam.

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

+1cc to Mr.V.Jaganathan, Advocate, S.R.No.14296
+1cc to Mr.K.Kathiresan, Advocate, S.R.No.14139
+2cc to Mr.A.Babu, Advocate, S.R.No.14104 & 14103
+1cc to the Government Pleader, S.R.No.15293

C.M.A.Nos.2830 of 2011
and 1046 of 2019

SR(CO)
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