



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Rev. Aplc (MD) No.49 of 2019

in

CMA (MD) No.1584 of 2008

and

Cross Objection (MD) No.35 of 2012

1. Mariammal (died)
(*)memo filed in USR No.1786/19, recorded as per order dated 05.04.2019
2. V.Selvakumar
3. V.Satheeshkumar ... Review Petitioners/
Respondents 1 to 3 in CMA/
Cross Objectors/Claimants
- ...vs..
1. The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division
Coimbatore. ... 1st Respondent in Review/
Appellant in CMA/
1st Respondent in Cross Obj.
2. Mohamed Abdul Kadhar (Driver)
... 2nd Respondent in Review/
4th Respondent in CMA/
2nd Respondent in Cross Obj.

The prayer in the Review Application is to review the order of this Court made in CMA (MD) No.1584 of 2008 dated 09.11.2017 by including and considering the Cross Objection No.35 of 2012, which was filed by the review petitioners for enhancement of the compensation awarded by the Tribunal in MCOP No.201 of 2000.

Prayer in CMA(MD). 1584/ 2008 :

Civil Miscellaneous Appeal filed Under Section 173 of M.V.Act to Set-aside the Decree and Judgment dated 06.02.2007 and made in MCOP.201 of 2000, on the file of the MACT, Additional District Court, FTC, No.4, Periyakulam and to pass such further or other Orders as may deem fit and proper and thus render justice.

For Review Petitioners/
Cross Objectors/Claimants : Mr.P.Muthuvijayapandian

For 1st Respondent in Review/
1st Respondent in Cross Obj. : Mr.M.Prakash
(No appearance)

**ORDER**

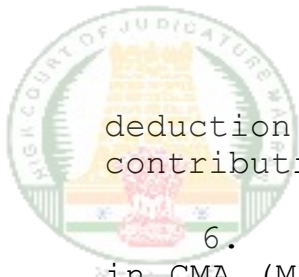
This Review Application is filed by the wife and sons of deceased Vanaraj seeking to review the order dated 09.11.2017 passed in CMA(MD) No.1584 of 2008 on the file of the Madurai Bench of Madras High Court, stating that the Cross Objection No.35 of 2012 filed by them was not considered while passing the order and even the Cross Objection No.35 of 2012 was omitted in the above order.

2. This Court, while deciding the issue on 09.11.2017, the papers relating to Cross Objection No.35 of 2012 were not placed before the Court and hence, based on the Appeal filed by the Transport Corporation in CMA (MD) No.1584 of 2008, order was passed.

3. Since the wife and sons of the deceased filed this Review Application, the matter was heard through Video Conferencing on 22.02.2019 and since the name of the respondent Transport Corporation counsel was not printed, this Court directed the Registry to print the name of Mr.M.Prakash, learned counsel for the Transport Corporation/Appellant in the CMA and accordingly, today the name of the Transport Corporation counsel was printed, but there was no appearance by the respondent counsel, namely, Mr.M.Prakash. The learned counsel for the review petitioners would submit that inspite of he informing in person to the learned counsel for the respondent, there is no appearance for the respondent/Transport Corporation. In view of the above, the matter is heard and decided in the absence of the learned counsel for the respondent.

4. The learned counsel for the Review Petitioners would submit that the review petitioners have filed Cross Objection No.35 of 2012 for enhancement of the compensation stating that the deceased died at the age of 40 years and was working as a Grade-I Constable and if he is alive, he had remaining 18 years of service and there are promotional chances to him and there would be hike in his salary due to annual increment and also due to revision of pay by Pay Commissions, but the future prospects was not considered by the Tribunal and apart from that, the amounts awarded under other heads by the Tribunal are on the lower side and the same may be enhanced. The learned counsel for the review petitioners would submit that the said Cross Objection was not considered by this Court while passing order in CMA and therefore, pray this Court to review the order passed in CMA and enhance the compensation by including and considering the Cross Objection.

5. This Court, considering the above submissions of the learned counsel for the review petitioners, is of the view that if the deceased is alive, there may be 50% enhancement in his future prospects and accordingly Rs.1,650/- p.m (50% of his monthly salary @ Rs.3300/-) is taken as future prospects and out of which, after



deduction of 1/3rd amount towards his personal expenses, his contribution to the family is Rs.1,100/- p.m.

6. In view of the above, this Court Reviews the order passed in CMA (MD) No.1584 of 2008 and modifies the award of the Tribunal made in MCOP No.201 of 2000 as follows:-

S. No	Description	Amount Awarded by the Tribunal in MCOP No.201 of 2000	Amount already awarded by this Court in CMA (MD) No. 1584 of 2008	Amount modified by this Court in this Review (in CMA (MD) . 1584 of 2008 by considering Cross Objection No.35 of 2012)	Award confirmed/enhanced/granted/ rejected in the Review against CMA
1	For loss of income	4,22,400	4,22,400	4,22,400	Confirmed
2	For loss of future prospects (Rs.1100 x 12 x 16)			2,11,200	Granted
3	Loss of consortium to the 1 st claimant	30,000	25,000	25,000	Confirmed
4	Loss of love and affection to the 2 nd and 3 rd claimants	30,000	20,000	20,000	Confirmed
5	Funeral expenses	5,000	10,000	20,000	Enhanced
6	Loss of cloths	...		1,000	Granted
7	Loss of watch	500	500	500	Confirmed
Total		4,87,900	4,77,900	7,00,100	Enhanced

7. In the result,

(i) Review Application is allowed and the order dated 09.11.2017 made in CMA (MD) No.1584 of 2008 is reviewed and Cross Objection No.35 of 2012 is included;

<https://hcservices.ecourts.gov.in/hcservices/>

(ii) CMA (MD) No.1584 of 2008 is dismissed;



(iii) Cross Objection No.35 of 2012 is partly allowed, and the compensation amount awarded by the Tribunal is enhanced from Rs.4,87,900/- to Rs.7,00,100/- (Rupees seven lakhs and one hundred only); the interest awarded by the Tribunal at 7.5% is hereby confirmed;

(iv) Out of the above compensation, the wife/first claimant is entitled to Rs.4,00,100/- (Rupees four lakhs and one hundred only) and the sons/second and third claimants are entitled to Rs.1,50,000/- (Rupees one lakh and fifty thousand only) each;

(v) The first respondent/Transport Corporation is directed to deposit the entire award amount with interest at 7.5% p.a from the date of MCOP till the date of realisation and with costs of MCOP, less the amount already deposited, if any, within a period of 12 weeks from the date of receipt of a copy of this order;

(vi) On such deposit, the review petitioners/claimants are permitted to withdraw their respective shares with proportionate accrued interest and costs, less the amount already withdrawn, if any, by filing formal petition before the Tribunal;

(vii) No costs.

This petition having been posted on Friday, the fifth day of April Two Thousand and nineteen (05.04.2019) under the caption 'for clarification through video conference' in pursuance to the order of this Court dated 15.03.2019 and made herein in the presence of MR.P.MUTHUVIJAYA PANDIAN, Advocate for the Cross Objection and of MR.M.PRAKASH, Advocate for the respondent, Transport Corporation, this Court made the following order:

Since it is stated in the cause title of the review petition that the first review petitioner, viz., Mariammal as 'died', but no proof, viz., death certificate or legal heirship was filed before this court at any stage, this Review Application is ordered to be posted on 29.03.2019 under the caption 'for clarification' to clarify as to whether the first review petitioner/first claimant/wife of the deceased Vanaraj is alive or not.

2. Accordingly, when the matter was posted on 29.03.2019 under the caption 'for clarification' through "Video Conferencing", the learned counsel for the review petitioners and the learned counsel for the respondent Transport Corporation are present. The learned counsel for the petitioner submitted that the first review petitioner was died during the pendency of the Civil Miscellaneous Appeal and the Cross Objection, but the same was not brought to his knowledge at that time by other review petitioners/sons of the deceased and only at the time of filing Review, the same was informed to him. Hence, he requested time to file a memo to that effect, along with death certificate and legal heir certificate of the deceased first review petitioner. Hence, at his request, the matter was adjourned to today ie., 05.04.2019 through "Video Conferencing".



3. Accordingly, a memo dated 01.04.2019 was filed by the learned counsel for the review petitioners to the effect that the first review petitioner/Mariamammal died on 27.10.2014 and also filed additional typed set of papers containing the death certificate of Mariammal dated 17.11.2014 and Legalheirs Certificate of the deceased Mariammal dated 11.12.2014. The same was clarified and the memo is recorded.

4. In view of the memo, this Court modifies clause-(iv) of the order dated 15.03.2019, as follows:-

" (iv). Since the first review petitioner/Mariamammal died, the sons/second and third review petitioners/second and third claimants are equally entitled to Rs.3,50,050/- (Rupees three lakhs fifty thousand and fifty only);"

Except the above modification, the order dated 15.03.2019 remains unaltered.

Sd/-

Assistant Registrar()

// True Copy //

Sub Assistant Registrar(CS)

To:

1. The Additional District Judge
Motor Accident Claims Tribunal
Additional District Court
Fast Track Court No.4, Periyakulam.
2. The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division Coimbatore.

Copy to

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

+1CC TO MR.P.MUTHUVIJAYA PANDIAN, Advocate Sr. No. 59371

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in

CMA (MD) No.1584 of 2008

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Cross Objection (MD) No.35 of 2012

05.04.2019

MA (CO)

TR (25.06.2019) 5P 6C