



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 21.04.2021

Judgment pronounced on : 03.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS.JUSTICE S. KANNAMMAL

C.M.A. Nos. 40 and 520 of 2020
and
CMP.No.3186 of 2020

C.M.A. No. 40 of 2020:

1. R. Shanthi
2. M. Thannasi .. Appellants/Claimants

Versus

1.Somanna
2.Executive Director,
Karnataka State Road Transport Corporation,
Samraj Nagar Branch,
Samraj Nagar District,
Karnataka State. ..Respondents/Respondents

C.M.A.No.520 OF 2020:

Managing Director,
Karnataka State Road Transport Corporation,
Chamarajanagar, Mysuru.Appellant/2nd Respondent

Versus

1. R. Shanthi
2. M. Thannasi ...Respondents 1 & 2/Petitioners 1 & 2
3. Somanna ..3rd Respondent/1st Respondent

Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.07.2019, made in M.C.O.P. No.455 of 2014, on the file of the Motor Accidents Claims Tribunal, Sub-Court, Gobichettipalayam.



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For Appellants : M/s.T.Thiyagarajan
in CMA.No.40 of 2020
& Respondents 1 & 2 in
CMA.No.520 of 2020

For Respondents : M/s.K. Govi Ganesan
in CMA.No.40 of 2020
appellant & 3rd respondent
in CMA.No.520 of 2020

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

S. KANNAMMAL, J

These appeals are heard through "Video Conferencing".

2. Out of the two appeals, CMA. No. 40 of 2020 has been filed by the claimants, seeking enhancement of the compensation awarded to them, while the other appeal in CMA No. 520 of 2020 has been filed by the Transport Corporation questioning their liability to pay the compensation amount to the claimants inter alia the quantum of compensation awarded. Thus, both these appeals are filed as against the order dated 19.07.2019, made in M.C.O.P. No.455 of 2014, on the file of the Motor Accident Claims Tribunal (Sub-Court), Gobichettipalayam. As both the appeals are filed against the same award, they are taken up together and disposed of by this common judgment.

3. For easy reference, the parties are referred to as 'claimants' and 'Transport Corporation' in these appeals.

4. On perusal of the claim petition, it could be inferred that the claimants are the parents of the deceased T. Vignesh, who was aged 22 years. According to the claimants, on 16.09.2013 at 04.30 a.m while the deceased was travelling in a bus bearing Registration No.KA 57 F 857, which was proceeding from his native place Sathyamangalam to Mysore, the driver of the bus, driven the vehicle in a rash and negligent manner. By reason of such reckless driving, near Kajjahalli gate, the driver of the bus hit the on-going Lorry bearing Registration No. KA 09 A 7889. Due to the impact, the deceased, who was one of the occupants of the bus, sustained several injuries on his abdomen, legs and other vital parts of the body. Similarly, 30 to 40 other passengers who were travelling in the bus also sustained grievous injuries. As far as the deceased is concerned, he was admitted in Apollo BGS Hospital, Mysore as in-patient for seven days. Despite treatment, he succumbed to the injuries on 23.09.2013, at about 04.15 p.m., in the Hospital. In this context, the claimants/parents of the deceased lodged a complaint before the South Police Station, Mysore, based on which, a case in Crime No. 409 of 2013 was registered against the driver of the bus for the offences punishable under Sections 279, 337, 304 (A) of IPC.

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

5. It is contended by the claimants that they have lost their son at their young age. It is also contended that the



deceased was employed as a Systems Engineer at Infosys, Mysore and was drawing a salary of Rs.27,084/- per month. Therefore, for the death of the deceased, the claimants have filed the claim petition claiming a sum of Rs.1,60,00,000/- as compensation.

6. Resisting the claim petition, the Transport Corporation, which was arrayed as the second respondent in the claim petition, filed a counter statement. According to the transport corporation, the driver of the bus had driven the bus carefully in a normal speed. However, in order to avoid a huge pit on the road, the driver attempted to negotiate it. At that time, the driver of the on-going lorry suddenly applied the brake, which resulted in the accident. Thus, the Transport Corporation would contend that there was no negligence on the part of the driver of the bus and the accident had occurred inspite of exercise of due caution. The Transport Corporation also denied the age, income and other particulars furnished by the claimants in the claim petition and prayed for dismissal of the claim petition.

7. In order to prove the averments made in the claim petition, on behalf of the claimants, the second claimant/father of the deceased examined himself as PW1, besides two other witnesses were examined as P.W.2 (Mr.G.T.Thirumal --eye-witness) and P.W.3 (Mr.Kumarasamy, Senior Associate) and 33 documents were marked as Exs.P1 to P33. On the side of the Transport Corporation, the driver of the bus namely Mr.Somanna was examined as RW1 but no document was marked.

8. The Tribunal after analysing the entire evidence came to the conclusion that the accident was the result of rash and negligent driving of the driver of the bus bearing Registration No.KA 57 F 857. Further, the Tribunal considering the age, employment and salary of the deceased at the time of accident, awarded a sum of Rs.52,01,120/- (Rupees Fifty Two Lakhs One Thousand and One Hundred and Twenty Only) as compensation. The break-up details of the amount awarded by the Tribunal under various heads are as follows:

S.No .	Heads under which the amount is awarded by the Tribunal	Amount in Rs.
1.	Loss of Income	45,36,000/-
2.	Transportation	20,000/-
3.	Medical Expenses	5,30,120/-
4.	Funeral Expenses	15,000/-
5.	Love and Affection	1,00,000/-
	Total Compensation	Rs.52,01,120/-

9. The Tribunal has awarded the aforesaid compensation with interest at the rate of 7.5% pa from the date of filing of the petition till the date of deposit and the petitioners shall share the award amount in an equal ratio.



10. Assailing the Judgment of the Tribunal, the claimants have filed CMA No. 40 of 2020 contending that the amount of compensation awarded by the Tribunal under various heads are disproportionate to the evidence made available and seek for enhancement. On the other hand, the Transport Corporation has filed CMA No. 520 of 2020 contending that the Tribunal erred in not considering the fact that it was the driver of the lorry, who, by reason of application of sudden brake, had contributed to the accident. However, the owner of the lorry or it's insurer was not arrayed as party to the claim petition and therefore, the claim petition is liable to be dismissed on the ground of non-joinder of necessary party. Further, the amount of compensation awarded by the Tribunal under various heads is excessive and it is liable to be reduced proportionately.

11. The learned counsel for the appellant/Transport Corporation in CMA No. 520 of 2020 would vehemently contend that the accident was as a result of sudden application of brake by the driver of the on-going lorry. Even in the counter statement filed before the Tribunal, it was specifically stated that the driver of the bus attempted to avoid a huge pit on the road and at that time, he was caught unaware of the act of the driver of the lorry in suddenly applying brake. When such a defence was raised, it was incumbent on the part of the claimants to implead the owner of the lorry as well as it's insurer and failure to do so vitiates the entire claim petition. In the absence of impleadment of the owner of the lorry and it's insurer, the Tribunal fixed the entire negligence on the appellant Transport Corporation and it calls for interference by this Court.

12. According to the counsel for the appellant-transport corporation, the Tribunal erred in coming to the conclusion that the vehicle of the Transport Corporation was responsible for the accident merely relying upon the evidences of PW1 and PW2 and Ex.P1 (FIR) and Ex. P2 (Rough Sketch). However, the Tribunal ought to have fixed the entire negligence on the part of the driver of the lorry and consequently dismissed the claim petition. Even otherwise, if this Court comes to the conclusion that there was contributory negligence on the part of the driver of the bus as well as the lorry, 50% negligence can be fixed on the part of the driver of the bus belonging to the Appellant Transport Corporation.

13. As regards quantum, it was contended by the appellant-Transport Corporation that PW3, employee of the company where the deceased was employed, has admitted in his cross-examination that the deceased was in receipt of Rs.18,683/- as salary, however, the Tribunal had taken a sum of Rs.27,084/- as monthly loss of income and calculated the loss of income, which resulted in awarding excessive amount as compensation. In any event, the amount of compensation awarded by the Tribunal under various heads are disproportionate and therefore, they warrant appropriate reduction by this Court.



14. Per contra, the learned counsel for the claimants/appellants in CMA. No. 40 of 2020 would submit that the quantum of compensation awarded by the Tribunal under various heads are inadequate. It is his contention that no amount was awarded by the Tribunal towards damages to clothing and articles. The learned counsel for the claimants/appellants would further submit that the Tribunal ought to have deducted 1/3 only towards personal expenses but has erroneously deducted 50% and hence, they sought for enhancement of compensation.

15. Keeping in mind the submissions made on either side, we have carefully perused the entire materials available on record.

16. While coming to the issue of liability on the part of the driver of the bus, it is evident that an eye-witness to the accident was examined as PW2. PW2 is also one of the occupants of the bus at the time of accident. According to the appellant/transport corporation, the evidence of PW2 need not be taken into consideration at all since he would have been sleeping at the odd hour when the accident had occurred. But PW2 in his cross-examination has categorically denied that he was sleeping in the bus at the time of accident. When PW2 was one of the occupants of the bus, which met with the accident, his testimony cannot be slightly brushed aside. Apart from PW2's evidence, Ex.P1/first information report was registered based on the complaint given by one Thimmappa against the driver of the bus. According to PW1, it was the driver of the bus, who, by his rash and negligent driving caused the accident. It is to be mentioned that the said Thimmappa had also sustained injuries in the said accident and therefore, the complaint given by him cannot be simply ignored.

17. On the side of the Transport Corporation, Mr.S. Somanna, who drove the bus on the date of accident was examined as RW1. RW1 in his evidence reiterated the same as alleged in the counter to the effect that the negligent act on the part of the driver of the lorry was the sole reason for the accident. According to the evidence of RW1, since he sustained injuries in the accident, he went to the hospital. After taking treatment, when he has given a complaint about the accident it was not entertained, rather, the first information report was registered against him on the basis of the complaint given by the defacto complainant. Thus, RW1 has deposed that police refused to receive his complaint without any valid reasons. He further deposed that he went to Government Hospital, Mysore immediately after the accident and narrated the nature of injuries sustained by him. RW1 has not even produced any document to prove his contentions which obviously shows that they are not true. It is also clear that a criminal case is pending against him.

18. If really the accident had happened due to the sudden application of brake by the driver of the on-going lorry, RW1 would have preferred a complaint against the driver of the lorry. Even assuming that his complaint was not entertained,



he ought to have taken further steps and nothing prevented him from doing so. Further, nothing prevented RW1 to take action against the police who refused to receive his complaint. In the absence of any convincing reason or documents forthcoming from RW1, it is not just and fair to hold that the accident was due to the negligent act of the driver of the lorry. When the entire negligence is attributable on the part of RW1, who drove the bus at the time of accident, the question of impleading the owner of the lorry or it's insurer will not arise. Therefore, we are of the view that the Tribunal is wholly justified in fixing the entire negligence on the part of the driver of the bus and consequently mulcting the appellant-Transport Corporation with the liability to pay compensation to the claimants.

19. Coming to the quantum of compensation, the learned counsel for the claimants has submitted that the Tribunal had erroneously fixed the monthly income of the deceased contrary to the evidence made available which resulted in awarding lesser compensation.

20. On the other hand, the learned counsel for the Transport Corporation has contended that the monthly income of the deceased taken by the Tribunal itself is on the higher side. It is the contention of the appellant-transport Corporation that when PW3 has deposed specifically that the deceased lastly received a salary of Rs.18,683/- the Tribunal is not justified in taking his monthly salary at Rs.27,395/-

21. It is the submission of the learned counsel for the claimants that the deceased was working as a system Engineer in Inforsys at Mysore, Karnataka State and earning Rs.27,084/- per month. In order to prove income of the deceased, one Mr. Kumarasamy was examined as PW3 and through him Ex.P33 offer letter, salary details and salary slips were marked.

22. On perusal of salary slip of the deceased from the month of April-2013, the deceased had received a gross salary of Rs.18,260/- For the months of May, June and July, he had received Rs.18,226/- as gross income with a basic of Rs.6420/-. In the month of August, his basic pay was increased to Rs.7730/- and has received Rs.33,045 including salary arrears of Rs.8712/-. On behalf of the appellant-transport corporation no question was put to PW3 with respect to the enhanced salary. Excluding the salary arrears, it comes to Rs.24,333/- and for the month of September 2013, the deceased was given a gross salary of Rs.24,333/- only. The Tribunal has considered the gross amount of Rs.33,045/- and fixed his monthly income as Rs.30,000/- which is not correct. Since PW3 has deposed that the last salary received by the deceased was Rs.18,683/- the net income of Rs.18,683 shall not be taken for calculating the compensation. Since gross income alone has to be considered, we are of the view that gross income of Rs.24,333/- which was received by the deceased before the accident shall be taken for calculation of the loss of income.



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Gross Income of the deceased before the accident =
Rs.24,333.00

Add 40% of Rs.24,333/- (future prospects) Rs. 9,733.00

Rs.34,066.00

Rs. 34,066 x 12 = Rs. 4,08,792/- (Annual income)

50% to be deducted from Rs.4,08,792/- as deceased was a bachelor

Rs.4,08,792/- / 50 Rs.2,04,396/-

Rs. 2,04,396 /-

Rs.2,04,396 x 18 = Rs.36,79,128/- (Loss of income)

23. Considering the age of the deceased being 22 at the time of the accident, if multiplier "18" is adopted, the amount comes to Rs.36,79,128/-. Therefore, the sum of Rs.45,36,000/- awarded by the Tribunal under the head "Loss of Income" is reduced to Rs.36,79,128/-.

24. The contention of the learned counsel for the appellants/claimants that the Tribunal has deducted 50% from the annual income instead of 40%, is incorrect. The deceased being a bachelor at the time of accident, 50% has to be deducted towards his personal expenditure from the annual income. Hence, 50% of the annual income deducted by the Tribunal and applying multiplier '18' for calculation of income of the deceased cannot be said to be improper.

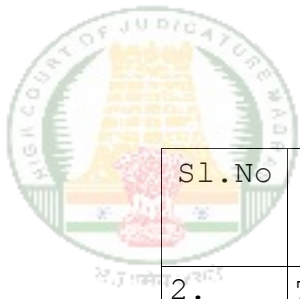
25. In National Insurance Company Limited Vs. Pranay Sethi case, it was held that Rs.40,000/- has to be awarded towards loss of love and affection (Filial consortium). Hence, Rs.40,000/- to be awarded to each of the claimant which comes to Rs.80,000/-. Whereas the Tribunal has awarded excess amount of Rs.1,00,000/-. But the amount awarded shall be enhanced to 10% once in every three years as held in the above said judgment in para No.60, which comes to Rs.88,000/- (Rs.80,000+10%=88000). Since there is no much difference, we do not find any reason to alter the same.

26. The sum of Rs.20,000/- awarded by the Tribunal under the Head "Transport", Rs.5,30,120/- under the head "Medical Expenses" and a sum of Rs.15,000/- under the head "Funeral Expenses" are just and fair and hence, the same are confirmed.

27. The Tribunal has not awarded any amount under the head "Loss of Estate" which is a clear unjust to the claimants. Hence, a sum of Rs.16,500/- is granted for " Loss of Estate".

28. Thus, the total compensation is tabulated below:

Sl.No	Head under which compensation is awarded	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
1.	Loss of income	Rs.45,36,000/-	Rs.36,79,128/-



Sl.No	Head under which compensation is awarded	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
2.	Transport	Rs. 20,000/-	Rs. 20,000/-
3.	Medical Expenses	Rs. 5,30,120/-	Rs. 5,30,120/-
4.	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
5.	Filial Consortium	Rs. 1,00,000/-	Rs. 1,00,000/-
6.	Loss of Estate	---	Rs. 16,500/-
	Total	Rs.52,01,120/-	Rs.43,60,748/-

29. Thus, this Court arrived at a sum of Rs.43,60,748/- as compensation. The claimants/parents of the deceased are entitled to Rs.21,80,374/- each.

30. Thus, the total compensation of Rs.52,01,120/- awarded by the Tribunal is hereby reduced to Rs.43,60,748/-, as indicated above, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The Transport Corporation is directed to deposit the total compensation awarded as determined by this Court in this appeal, before the Tribunal, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, claimants/parents of the deceased are permitted to withdraw their respective shares as mentioned above.

31. With the above observations and directions, the CMA. No. 40 of 2020 is dismissed and CMA. No. 520 of 2020 is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Deputy Registrar(CCAA)

//True copy//

Sub Assistant Registrar

gv/rsh

To

1. The Motor Accidents Claims Tribunal,
Sub-Court, Gobichettipalayam.

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

+2ccs to Mr.T.Thiyagarajan, Advocate SR.No.27410, 27411