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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

CMA.Nos.3135 of 2010 and 3007 of 2013
and M.P.No. 1 of 2013

CMA.No. 3135 of 2010

1.S.Uma Maheswari	...Appellant in both CMA/Claimant in MCOP.No.2537/03 and 2 nd respondent in MCOP.No.2672/2003
2. Minor Praveenkumar rep. By Mother & next friend S.Umamaheswari.	... Appellants/Claimants in MCOP.No.2537/03

..vs..

1.Metropolitan Transport Corporation Limited, Chennai Division -I, Pallavan Salai, Chennai -600002.	...1 st Respondent in both CMA & MCOP
2.Anjali W/o. Srinivasan	..2 nd Respondent in both CMA & MCOP.No.2537/03 & Claimant in MCOP.No.2672/2003

CMA.No. 3007 of 2013

S.Uma Maheswari	... Appellant in both CMA/ Claimant in CMA.2537/03 and 2 nd Respondent in MCOP.No.2672/03
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Vs

1.Metropolitan Transport Corporation Limited, Chennai Division -I, Pallavan Salai, Chennai -600002.	...1 st Respondent in both CMA & MCOPs
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2.Anjali

3.Kalai Arasi

4.Jothi Kumar

5.Raja

...2nd Respondent in both CMA & MCOP
No.2537/03 and Claimant in MCOP.No.2672/03

..Respondents 3 to 5/
Respondent 2 to 4 in MCOP.No.2672/03

Common Prayer : These appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 28.04.2008 in M.C.O.P.Nos.2537 of 2003 and 2672 of 2003 on the file of the Motor Vehicles Accident Claims Tribunal, VI Court of Small Causes, Chennai, Chennai.

For Appellant : Mr. G.Balachandran
(in both CMAs)

For Respondent
(in CMA.No.3135 of 2010): Dr.S.S.Swaminathan - R1
: Mr.S.Udayakumar - R2

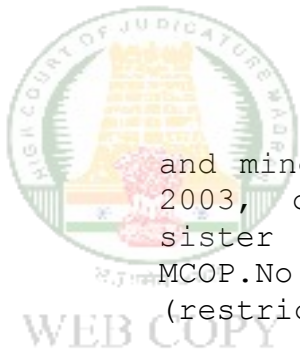
(in CMA.No.3007 of 2013): Dr.S.S.Swaminathan - R1
: Mr.S.Udayakumar - R2 to R5

COMMON JUDGMENT

The matter is heard through "Video Conferencing".
Since the common question of law is involved in both the appeals and the appeals filed against the common award of Motor Accidents Claims Tribunal, they are also disposed of by a common judgment.

2. These Civil Miscellaneous Appeals have been filed by the claimants against the common judgment and decree dated 28.04.2008 in M.C.O.P.Nos.2537 of 2003 and 2672 of 2003 on the file of the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai, Chennai.

3. Common facts involved in these cases is that on 09.04.2003 at about 10.30 while the deceased S.Sivasubramaniam was proceedings in his motor bike near Saidapet, at that time, the transport corporation bus bearing reg.no. TN01-N-2117 driven by its driver, came in a rash and negligent manner and hit the bike from behind. Due to the impact, the deceased Sivasubramaniam died on the spot. The accident had occurred only due to the rash and negligence on the part of the driver of the transport corporation bus, hence, claiming compensation, the wife



and minor child have filed a claim petition in MCOP.No. 2537 of 2003, claiming compensation of Rs.20,00,000/-. The mother, sister and brothers have filed a separate claim petition in MCOP.No. 2672 of 2003, claiming compensation of Rs.20,00,000/- (restricted to Rs.7,00,000/-).

4.The Transport Corporation, filed counter statement before the tribunal and denied the mode of accident. The injuries, period of treatment, expenses, disability have also been denied. It was contended before the tribunal that the accident had occurred only due to the negligence on the part of the deceased who stopped the his vehicle unexpectedly. Therefore, the driver is not responsible for the accident and consequently, the transport corporation is not liable to pay compensation.

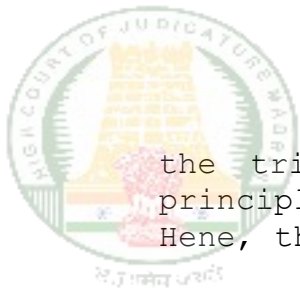
5. Before the Tribunal, the wife and mother of the deceased were examined themselves as P.W.1 & PW2 and examined one T.Madhurai as PW3/eyewitness and marked documents ExP1 to P9. No witnesses and documents were marked on the side of the Transport Corporation.

6.The Tribunal after considering the pleadings, oral and documentary evidence, fixed liability on the part of driver of the transport corporation bus and directed the Transport Corporation to pay the compensation of Rs.7,20,000/-. Out of the said common compensation amount, the claimants in MCOP.No. 2537 of 2003 are entitled to a sum of Rs.4,00,000/- and the claimants in MCOP.No. 2672 of 2003 are entitled to a sum of Rs.3,52,000/- as per the apportionment fixed by the tribunal. Challenging the quantum of compensation and the apportionment fixed to the mother, brothers and sisters of the deceased, the wife of the deceased Sivasubramanian has filed these two appeals.

7. Grounds raised in CMA.No. 3135 of 2010 (Challenging the quantum of compensation)

7.1 The tribunal has awarded low amount of compensation without taking into consideration the future prospects of the deceased. The share of Rs.2,50,000/- to the 1st appellant and Rs.1,50,000/- to the 2nd appellant is low. The other ground raised by the appellant is that the brothers and sisters of the deceased are 2nd class heirs, they are entitled to receive share of compensation only in the absence of 1st call heirs. Therefore, the mother of the deceased alone is entitled for compensation.

7.2 The tribunal has not granted any amount to the appellant towards loss of consortium and the compensation granted is very meagre towards of loss of love and affection. In total,



the tribunal has granted compensation without applying legal principles laid down by the Hon'ble Supreme Court and this Court. Hence, the award passed by the tribunal requires enhancement.

8. CMA.No. 3007 of 2013 (Challenging the share allotted to the brothers and sister of the deceased.)

8.1 The tribunal has erred in awarding compensation to the brothers and sisters of the deceased ignoring the fact that under Hindu Law second class heirs are not entitled to compensation when the first class heirs are alive. The tribunal failed to see that respondents 2 to 5 have not impleaded the minor son of the deceased in their claim petition, as such the tribunal ought to have dismissed the claim petition for non-joinder of proper parties. The main ground raised by the appellant is that there is no dependency of any nature for the respondents 3 to 5 who are sister and brothers, therefore, the share of compensation allotted to them is liable to be set aside.

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

10. The appellant has specifically raised a ground that the brothers and sisters are not entitled for the compensation for the death of the deceased husband Sivasubramani. According to the learned counsel for the appellant, the compensation amount was fixed by the tribunal by taking salary of the deceased at the time of the death at Rs. 5498/- per month. But the tribunal has taken the income of the deceased at Rs.5000/-, deducted 1/3rd of the income towards personal and living expenses, adopted the multiplier 18 and calculated the loss of income at Rs.7,20,000/-. According to the appellant, the quantum fixed by the tribunal is totally inadequate and the same is calculated without following the principles laid down by the Hon'ble Supreme Court and this Court. It is further contended by the learned counsel for the appellant that the deceased was working as Grade-II Police Constable and he would receive higher salary in future, therefore he is entitled for future prospects of 100%.

11. The learned counsel appearing for the respondent/transport corporation submitted that the tribunal has rightly fixed the monthly income at Rs.5000/- and calculated the loss of dependency. The claimant/appellant has also not adduced any oral or documentary evidence to substantiate their claim that the deceased would have received higher salary in future. The learned counsel appearing for the respondent/transport corporation fairly submitted that even though the appellant have



not produced any materials for their claim for fixing 100% towards future prospects, the tribunal, while calculating the loss of income for the deceased, ought to have fixed future prospects as per the decision of Hon'ble Supreme Court (Pranay Sethi's Case). The learned counsel for the respondent/transport corporation fairly agreed to add 50% of the income towards future prospects. Accordingly, as per the salary certificate /Ex.P9, a sum of Rs.5,498/- is fixed as monthly income of the deceased, adding 50% of the additional income towards future prospects, deducting 1/3 of the total income towards personal and living expenses, adopting multiplier 17, the loss of dependency is calculated by this Court at Rs.11,21,592/-.

12. With regard to the contention made by the appellant in CMA.No 3007 of 2013, challenging the apportionment ordered by the tribunal to the sister and brothers, the learned counsel appearing for the respondents 3 to 5 has argued that brothers and sisters of the deceased are dependants to the deceased and they are entitled for compensation. Therefore the compensation granted by the tribunal is valid and does not require any modification.

13. The Hon'ble Supreme Court in Saralaverma's case has held that in the absence of evidence to prove the dependency, the brothers and sisters are not entitled for compensation. The relevant portion of the judgment is extracted below;

....Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

14. As per the decision of the Hon'ble Supreme Court cited supra, the brothers and and sisters should establish their



dependency before the tribunal. But in the present case, and as rightly pointed by the learned counsel appearing for the appellant, the respondents 3 to 5 in CMA 3007 of 2013 have failed to prove that they were depending upon the income of the deceased, therefore, as per decision of the Hon'ble Supreme Court cited supra, the mother of the deceased/1st respondent in CMA.No. 3007 of 2013 alone is entitled for the compensation and the respondents 3 to 5/ sister and brothers are entitled compensation only under the head loss of love and affection. Accordingly, this Court set aside the compensation awarded by the tribunal at Rs.2,52,000/- (Rs.84,000/- each) to the claimants 2 to 4 in MCOP.NO.2672 of 2003 and grants Rs.75,000/- (Rs.25,000/- each) under the head 'Loss of love and affection' to the sister and brothers.

15. Likewise, Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents of the deceased. The greatest agony for a parent is to lose their child during their lifetime. In the present case, the mother of the deceased alone claiming compensation as parent, therefore, this Court is of the view that the interest of justice would be met if liberal compensation is granted to the mother of the deceased.

16. In view of the principles laid down by the Hon'ble Supreme Court cited supra and the facts and circumstances of the case discussed above, this Court modifies the compensation awarded by the tribunal under various heads as follows;

Heads	Compensation awarded by the tribunal Rs.	Compensation enhanced/ Awarded by this Court Rs.
Loss of dependency	7,20,000	11,21,592/
Loss of love and affection (Rs.40,000/- each to the appellants in CMA.No.3135 of 2010)	10,000/-	80,000/-
Filial consortium to mother (2 nd respondent in CMA.No. 3007 /2013)	5,000/-	25,000



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Heads	Compensation awarded by the tribunal Rs.	Compensation enhanced/ Awarded by this Court Rs.
Loss of love and affection to sister and brothers (respondents 3 to 5 in CMA.No. 3007 / 2013)	15,000/-	75,000/- (Rs.25,000/- each)
Loss of estate		15,000
Funeral expenses	2,000	15,000
Total	7,52,000/-	13,31,592/-

17. In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the tribunal at sum of Rs. 7,52,000/- is enhanced to Rs.13,31,592/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

From the aforesaid modified compensation amount of Rs.13,31,592/-, the wife, minor child and the mother of the deceased are entitle to receive compensation of a sum of Rs. 12,56,592/- (excluding a sum of Rs.75,000/- granted to the sister and brothers) as compensation, as per the apportionment fixed by this Court as mentioned below.

- The wife of the deceased (1st appellant in CMA.No. 3135 of 2010) is entitled to 45% of the enhanced compensation, which comes to Rs. 5,65,466/-.
- The minor child of the deceased (2nd appellant in CMA.No. 3135 of 2010) is entitled to 40% of the enhanced compensation, which comes to Rs. 5,02,637/-.
- The mother of the deceased (2nd respondent in CMA.No. 3007 of 2013) is entitled to 15% of the enhanced compensation, which comes to Rs. 1,88,489/-.
- As observed above, the claimants 3 to 5 in CMA No.3007 of 2013 are entitled to withdraw a sum of Rs.25,000/- each.



18. The 1st respondent /transport Corporation shall deposit the compensation amount along with interest, as modified by this Court, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit being made, the 1st appellant and the respondents 2 to 5 are permitted to withdraw the same by filing appropriate applications before the tribunal. The share of the minor 2nd appellant in CMA.No. 3135 of 2010 is directed to be deposited in any one of the Nationalized Bank, till the minor attains majority. The 1st appellant, mother of the minor is permitted to withdraw the accrued interest, once in three months for the welfare of the minor child. No costs.

Sd/-

Assistant Registrar(I)

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Sub Assistant Registrar

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To

1. VI Court of Small Causes,
(Motor Vehicles Accident Claims Tribunal)
Chennai.

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

+lcc to Mr.G.Balachandran, Advocate SR.No.4974

+lcc to Mr.S.S.Swaminathan, Advocate SR.No.4882

CMA. Nos.3135 of 2010
and 3007 of 2013

RSV(CO)
CB(03/01/2022)