

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

|                     |            |
|---------------------|------------|
| Date of Reservation | 22.03.2021 |
| Date of Judgment    | 20.04.2021 |

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**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

C.M.A(MD)Nos.421 and 422 of 2013  
and  
MP(MD)Nos.3 and 3 of 2013

**(1)CMA(MD)No.421 of 2013:-**

The Managing Director,  
Tamil Nadu State Transport Corporation  
(Coimbatore) Ltd.,  
Coimbatore-641 043.

: Appellant/Respondent

Vs.

1.P.Paramasivam  
2.P.Amsavalli  
3.P.Arjunan

: Respondents/Claimants

PRAYER in CMA(MD)No.421 of 2013:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 05.08.2011 made in MCOP No.753 of 2007 on the file of the Motor Accident Claims Tribunal (II Additional Subordinate Judge), Trichy.

**(2)CMA(MD)No.422 of 2013:-**

The Managing Director,  
Tamil Nadu State Transport Corporation  
(Coimbatore) Ltd., Coimbatore-641 043.

: Appellant/Respondent

Vs.

1.Deviammal  
2.Kandasamy  
3.Maruthayee  
4.Minor Kannan

: Respondents/Petitioners

PRAYER in CMA(MD)No.422 of 2013:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 05.08.2011 made in MCOP No.1138 of 2007 on the file of the Motor Accident Claims Tribunal (II Additional Subordinate Judge), Trichy.



For Appellant : Mr.M.Prakash  
(In both cases)

For Respondents : Mr.M.Saravanan  
(In both cases)

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**COMMON JUDGMENT**

The Appellant Transport Corporation has preferred these appeals challenging the award passed by the Motor Accident Claims Tribunal (II Additional Subordinate Judge), Trichy, in MCOP Nos.753 and 1138 of 2007, dated 05.08.2007. Since both the appeals arise out of the same accident, they have heard jointly and disposed of by this common judgment.

2.The brief facts of the case are that on 02.10.2006 at about 12.45 pm, the deceased P.Baskar was driving the motor cycle TN-48-D-4746, while the deceased Mani was travelling as a pillion rider, the Transport Corporation Bus TN-38-N-1251 came in a rash and negligent manner and dashed against the motor cycle. Due to the impact, both the rider P.Baskar and the pillion rider Mani have died on the spot. The legal heirs of the deceased P.Baskar as well as the Mani filed a separate claim petition in MCOP Nos.753 and 1138 of 2007 claiming compensation of Rs.10,00,000/- respectively, on the ground that the driver of the offending vehicle is responsible for the accident.

3.The appellant Transport Corporation filed a counter affidavit denying the allegations made in the claim petitions and they also disputed the age, income and avocation of the deceased.

4.Before the Tribunal, on the side of the claimants, 4 witnesses were examined and marked Exs.P1 to P15. On the side of the appellant Transport Corporation, one witness was examined and one document was marked. The Tribunal, after considering the oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the bus was responsible for the accident and awarded compensation of Rs.4,51,000/- in respect of MCOP No.753 of 2007 and Rs.7,18,000/- in respect of MCOP No.1138 of 2007 together with interest at the rate of 7.5% pa. Aggrieved over the same, the Transport Corporation is before this court as appellant(s) with these Civil Miscellaneous Appeals.

5.Heard both sides and perused the materials available on record.

6.The manner of the accident and the finding on negligence are not in dispute and these appeals are confined only to quantum of compensation awarded by the Tribunal.

7.Learned counsel for the appellant(s) would submit that the award passed by the Tribunal is excessive and it has to be reduced. On the other hand, the learned counsel for the claimants argued in



support of the judgment of the tribunal.

**CMA(MD) No.421 of 2013:-**

8.It is not in dispute that the deceased P.Baskar died at the age of 33 and he was doing Banana Selling, Lorry Booking Agent and Agriculture Coolie. The tribunal has taken Rs.3,000/- as notional income of the deceased and adopted 11 multiplier by taking the age of the mother as 52 and awarded Rs.3,96,000/- towards loss of income. Further, the tribunal has awarded Rs.45,000/- towards loss of love and affection to the claimants 1 to 3; Rs.5,000/- for transportation and Rs.5,000/- towards funeral expenses. In total, the tribunal has awarded Rs.4,51,000/- to the claimants along with interest @ 7.5% pa.

9.Perusal of the records would reveal that it is stated that the deceased was doing Banana Selling, Lorry Booking Agent and Agriculture Coolie and he was earning Rs.6,000/- per month, but no proof was filed on the side of the claimants. However, considering the facts and circumstance of the case and also considering the cost of living at the relevant point of time, this court fixed the notional income of the deceased at Rs.4,500/- per month.

10.It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. In the instant case, the tribunal has not added any amount towards future prospects. Hence, this court is of the considered view that 40% has to be added towards future prospects to calculate the income of the deceased, as per the decision of the Hon'ble Supreme Court reported in **2017(6) CTC 493 (National Insurance Company Limited vs. Pranay Sethi and others)**. By doing so, the monthly loss of income of the deceased is calculated at Rs.6,300/- (Rs.4,500/- + Rs.1,800/-). Since the deceased being an unmarried man, 50% is to be deducted towards personal expenses. After deducting 50% towards his personal and living expenses, the monthly income is arrived at Rs.3,150/- (Rs.6,300/- x 50%). By applying proper multiplier 16, this court awards **Rs.6,04,800/-** (Rs.3,150/- x 12 x 16) towards loss of income. In addition to that, under the conventional heads, as per the decisions in **Pranay Sethi's case and Magma General Insurance's case**, this Court awards Rs.1,20,000/- towards filial consortium to the claimants 1 to 3; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.7,54,800/-** together with interest @ 7.5% p.a.

**CMA(MD) No.422 of 2013:-**

11.It is not in dispute that the deceased Mani died at the age of 27 and he was doing Plumbing, Motor Mechanic, Electrical Works, Agriculture works and Bore-well works, thereby he was earning more than Rs.10,000/- per month. The tribunal has taken Rs.3,000/- as notional income of the deceased and adopted 18 multiplier and awarded Rs.6,48,000/- towards loss of income. Further, the tribunal



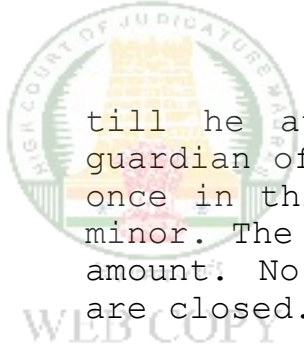
has awarded Rs.45,000/- towards loss of love and affection to the claimants; Rs.15,000/- towards loss of consortium to the 1<sup>st</sup> claimant; Rs.5,000/- for transportation and Rs.5,000/- towards funeral expenses. In total, the tribunal has awarded Rs.7,18,000/- to the claimants along with interest @ 7.5% pa.

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12. Perusal of the records would reveal that it is stated that the deceased was doing Plumbing, Motor Mechanic, Electrical Work, Agricultural works and bore-well works and he was earning Rs.10,000/- per month, but no proof was filed on the side of the claimants. However, considering the facts and circumstance of the case and also considering the cost of living at the relevant point of time, this court fixed the notional income of the deceased at Rs.4,500/- per month.

13. It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. In the instant case, the tribunal has not added any amount towards future prospects. Hence, this court is of the considered view that 40% has to be added towards future prospects to calculate the income of the deceased, as per the decision of the Hon'ble Supreme Court reported in **2017(6) CTC 493 (National Insurance Company Limited vs. Pranay Sethi and others)**. By doing so, the monthly loss of income of the deceased is calculated at Rs.6,300/- (Rs.4,500/- + Rs.1,800/-). After deducting  $\frac{1}{4}$ <sup>th</sup> towards his personal and living expenses, the monthly income is arrived at Rs.4,725/- (Rs.6,300/- x  $\frac{3}{4}$ ). By applying proper multiplier 17, this court awards **Rs.9,63,900/-** (Rs.4,725/- x 12 x 17) towards loss of income. In addition to that, under the conventional heads, as per the decisions in **Pranay Sethi's case** and **Magma General Insurance's case**, this Court awards Rs.40,000/- towards loss of consortium to the 1<sup>st</sup> claimant and Rs.1,20,000/- to the claimants 2 to 4; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.11,53,900/-** together with interest @ 7.5% p.a.

14. In the result, these Civil Miscellaneous Appeals are partly allowed. The award of the tribunal in respect of MCOP No.753 of 2007 is enhanced to **Rs.7,54,800/-** and the award of the tribunal in respect of MCOP No.1138 of 2007 is enhanced to **Rs.11,53,900/-**. The appellant Transport Corporation is directed to deposit the modified award amount together with interest @ 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, all the major claimants are entitled to withdraw the modified award amount together with accrued interest and costs, as per the apportionment of the tribunal. Insofar as the share of the minor 4<sup>th</sup> claimant in MCOP(MD) No.1138 of 2007 is concerned, the Tribunal is directed to deposit his share in any one of the Nationalised Bank, in a fixed deposit scheme initially for a period of three years renewable thereafter,



till he attains majority. The 1<sup>st</sup> claimant/being the mother and guardian of the minor is permitted to withdraw the accrued interest once in three months directly from the Bank for the welfare of the minor. The claimants shall pay additional court fee for the enhanced amount. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

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To,

1.The Motor Accident Claims Tribunal/  
II Additional Sub Court, Trichy.

Copy To:

The Record Keeper,  
Madurai Bench of Madras High Court,  
Madurai. 2 Copies

+2 CC to M/s.N.C.ASHOK KUMAR, Advocate SR-16650 and 16651[F] dated 20/04/2021 )

Common Judgement made  
in CMA(MD)Nos.421 and 422 of 2013

20.04.2021

CN(18.05.2021) 5P 6C