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C.M.A(MD)No.386 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

and

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A(MD)No.386 of 2017

and

C.M.P(MD)No.4130 of 2017

The Managing Director,
Tamil Nadu State Transport Corporation
Division-II,
having its office at Milaguparai,
Trichy Taluk and District

: Appellant /Respondent

Vs.

1.Ramya @ Rasool Beevi,

2.Minor Mohammada Beevi

3.Minor Aneesha

(The second and third minor respondents are represented by their
monther, the first respondent herein)

4.Jai Punnisha

: Respondents/ Petitioners

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No.720 of 2013, dated 26.10.2016, on the file of the Motor Accident Claims Tribunal(Special District Court), Thanjavur.

For Appellant : Mr.P.Prabhakaran

For R-1 to R-4 : Mr.R.Rajaraman

JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

Being aggrieved by the Award and Decree, dated 26.10.2016 passed by the Motor Accidents Claims Tribunal/Special District Court, Thanjavur in M.C.O.P.No.720 of 2013 in respect of the quantum of compensation awarded to the claimants for the death of the deceased Ibrahim in a road traffic accident occurred on 3.6.2013, Appellant - The Tamil Nadu State Transport Corporation, Division-II, Trichy, has preferred this appeal.

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2. Brief facts are that on 3.6.2013 at about 7.00 p.m., while the deceased Ibrahim was proceeding in his two wheeler bearing Registration No. TN 49 AD 5900, which belonged to one Sriram, No.1, **vallam** Road, in front of Thajanvur Government ITI Ground, after repairing the same in the workshop where he worked, at that time, the bus belonging to the appellant-Transport Corporation bearing Registration No. TN 45 N 2986 was driven by its driver in a rash and negligent manner and hit against the deceased, in which, he had sustained severe injuries on his head and immediately he was taken to the hospital, where he died on 4.6.2013. Hence the respondents herein, as legal heirs of the deceased, has filed this claim petition claiming a compensation of Rs.25 lakhs.

3. Resisting the Claim Petition, Appellant - Transport Corporation has filed a counter affidavit contending that the accident had occurred only due to the reckless act of the deceased and the quantum of compensation claimed by Claimants is highly excessive and without any basis.

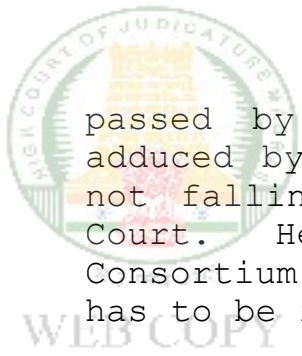
4. Before the Tribunal, the wife of the deceased, the first respondent herein was examined as P.W.1 and one Tamilvanan as P.W.2 and Ex.P1 to Ex.P12 were marked. On the side of the appellant one Thiru Azhagar, driver of the Transport Corporation bus was examined as R.W.1 and Ex.R1 was marked.

5. Upon consideration of the evidence of P.W.2 and R.W.1, the Tribunal held that the accident was due to rash and negligent driving of the driver of the appellant/Transport Corporation Bus and that the deceased subsequently died of the injuries sustained in the accident. The Tribunal further held that the appellant Transport Corporation is liable to pay compensation to Claimants and had awarded a total compensation of Rs.21,16,148/- under various heads.

6. Heard the learned counsels appearing on either side and perused the materials available on record.

7. Though the learned counsel appearing for the appellant/Transport Corporation argued on the point of negligence, a perusal of the award would show that after considering the evidence in detail, the Tribunal came to the conclusion that driver of the Appellant Transport Corporation Bus was responsible for the accident and directed the appellant/Transport Corporation to pay the compensation. Therefore, we find no reason to interfere with the findings on the negligence aspect.

8. With regard to quantum, the learned counsel appearing for the Appellant/Transport Corporation contended that the award



passed by the Tribunal is disproportionate with the evidence adduced by the Claimants and the quantum is huge as the same is not falling in lines with the decisions of the Hon'ble Supreme Court. He further contended that especially under the head of Consortium, the Tribunal has awarded excess amount and the same has to be reduced.

9. In support of his contention, the learned counsel placed reliance on the decision of the Honourable Supreme Court in **United India Insurance Company Limited vs. Satinder Kaur @ Satwinder Kaur & Ors.** Reported in **2020 (2) TN MAC 1 (SC)**, wherein, the decision in **National Insurance Company Limited v. Pranay Sethi and Others** reported in **2017(2) TN MAC 609(SC)** and **Magma General Insurance Co. Ltd., v. Nanu Ram & Others.**, reported in **2018 (1) TN MAC 452 (SC)**, were referred to and the relevant portion of the above decision in **Satinder Kaur's** case(cited supra), is extracted hereunder:

"8..... At this stage, we consider it necessary to provide uniformity with respect to the grant of Consortium, and Loss of Love and Affection. Several Tribunal and High Courts have been awarding Compensation for both Loss of Consortium and Loss of Love and Affection. The Constitution Bench in Pranay Sethi (supra), has recognized only three conventional heads under which compensation can be awarded viz., Loss of Estate, Loss of Consortium and Funeral Expenses.

In Magma General(supra), this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of Love and Affection is comprehended in Loss of Consortium.

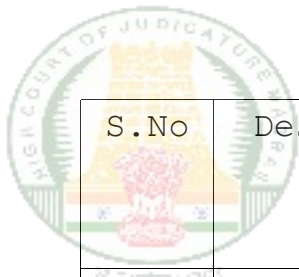
9.7. Insofar as the Conventional Heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependants. On the basis of the judgments in Pranay Sethi (supra) and Magma General (supra), the following amounts are awarded under the Conventional Heads:

- (i) Loss of Estate :Rs.15,000
- (ii) Loss of Consortium:
 - (a) Spousal Consortium: Rs.40,000
 - (b) Parental Consortium:Rs.40,000 X 3 =
Rs.1,20,000
- (iii) Funeral Expenses: Rs.15,000



10. Insofar as the quantum of compensation is concerned, the deceased was 28 years old at the time of death. Though it is stated that he was a mechanic, there was no evidence for his income. The claimants have produced Ex.P5- Salary Certificate produced by one R.K.Motors. Though the salary certificate says that he has been earning a sum of Rs.15,000/-p.m., since the author of the document was not examined, the same was not believed by the Tribunal. The Tribunal presumed that the deceased had a valid driving licence at the time of accident. Therefore he must be earning Rs.300/- per day and arrived at a conclusion that the income of the deceased at the time of accident is Rs.7500/-p.m. The learned counsel for the appellant would submit that in the absence of any proof, the notional income has to be taken into account placing reliance on **syed sadiq etc .vs. The Divisional Manager, United India Insurance Company Limited reported in 2014(1) TN MAC 459 SC**. Therefore the monthly income of the deceased should be notionally fixed at Rs.6,500/-p.m. So far as the future prospects is concerned, as per the decision in **National Insurance Company Limited v. Pranay Sethi and Others reported in 2017(2) TN MAC 609(SC)**, only 40% has to be added for future prospectus and thus it comes to Rs.6,500+Rs.2,600=Rs.9,100/-. Out of the same, one fourth of the amount has to be deducted towards the personal expenses of the deceased and it comes to Rs.6,825/-(Rs.9,100-Rs.2,275 =Rs.6,825/- and hence the annual income comes to Rs.6,825 x 12 = Rs.81,900/- The deceased was aged 28 years at the time of accident. As per **Sarla Verma's case**, the proper multiplier to be adopted to his age of 28 is '17'. Accordingly the loss of income is arrived at Rs.13,92,300/-(Rs.81,900 x 17=Rs.13,92,300/-). So far as the loss of love and affection as per the decision in **Magma General Insurance Co. Ltd., v. Nanu Ram & Others.**, reported in **2018 (1) TN MAC 452 (SC)**, the claimants 2 and 3 each are entitled to Rs.40,000/- which comes to Rs.80,000/-(Rs.40,000 x 2=Rs.80,000/-). The Tribunal has awarded a sum of Rs.1 lakh towards consortium to the first respondent/wife and the same is reduced to Rs.40,000/- as per the decision cited supra. The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, Rs.10,000/- towards transport expenses, a sum of Rs.10,000/- towards loss of estate and another sum of Rs.50,000/- towards loss of love and affection to the fourth respondent and the same stands confirmed and in all the claimants are entitled to a sum of Rs.16,07,300/- as total compensation.

11. Accordingly, the Award of the Tribunal is modified as follows:-



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	17,21,148/-	13,92,300	reduced
2.	Loss of Consortium to the 1 st petitioner, wife of the deceased	1,00,000	40,000	reduced
3.	Loss of love affection to the two minor children (Respondents 2 and 3)	2,00,000/-	80,000 (40,000 X 2)	reduced
4.	Funeral Expenses	25,000	25,000	confirmed
5.	Transport Charges	10,000	10,000	confirmed
6.	Loss of Estate	10,000	10,000	confirmed
7.	For loss of love and affection to the fourth Petitioner	50,000	50,000	confirmed
8.	Total	Rs.21,16,148/-	Rs.16,07,300/-	Reduced by Rs.5,08,148/-

12. In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

(i) The Award of the Tribunal is reduced to Rs.16,07,300/- from Rs.21,16,148/-/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The Award amount is apportioned as per the ratio of apportionment made by the Tribunal.

(iv) This Court vide order, dated 26.4.2017 directed the appellant/Transport Corporation to deposit a sum of Rs.10 lacs from the date of receipt of a copy of the

order. It is represented by the learned counsel for the



appellant that they had deposited a sum of Rs.10 lakhs to the credit of the claim petition. The appellant Transport Corporation is directed to deposit the balance award amount to the credit of claim petition within a period of four weeks from the date of receipt of a copy of this order. Further the claimants 1 and 4 have also withdrawn a portion of their share in the award amount as per the apportionment made by the Tribunal.

(v) The respondents 1 and 4/claimants 1 and 4 are permitted to withdraw their remaining share in the award amount with proportionate accrued interest and costs. The share of the minor claimants/ Respondents 2 and 3 are permitted to be kept in any of the Nationalised Bank till they attain majority and the guardian / first respondent is permitted to withdraw the interest amount once in three months and utilize the same for the welfare of the minor children.

No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

vsn

To

The Special District Judge,
Motor Accident Claims Tribunal,
Thanjavur.

Copy to

The Section Officer-2 copies
VR Section, Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.RAJARAMAN, Advocate (SR-4805[F] dated 12/02/2021)

+1 CC to Mr.P.PRABHAKARAN, Advocate (SR-4808[F] dated 12/02/2021)

Judgment made in
C.M.A(MD)No.386 of 2017
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