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C.M.A.No.1913 of 2020 & Cros. Obj. No.31 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11.03.2022
Delivered on	08.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.No.1913 of 2020
and
Cross Objection No.31 of 2021
and
C.M.P.No.14154 of 2020

C.M.A.No.1913 of 2020

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Division II, Peria Milaguparai, Trichy.

... Appellant

Vs.

1.Thaiyamuthu
2.Minor Arumugam
3.Minor Sahanasri
4.Poomalai

... Respondents



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C.M.A.No.1913 of 2020 & Cros. Obj. No.31 of 2021

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the Decree and Judgment dated 12.11.2019 made in MCOP No.960 of 2015 on the file of the Motor Accident Claims Tribunal, (Sessions Judge), Perambalur.

For Appellant : Mr.L.Ramanathan for
Mr.D.Venkatachalam

For Respondents : Mr.A.A.Venkatesan

Cross Objection No.31 of 2021

- 1.Thaiyamuthu
- 2.Minor Arumugam
- 3.Minor Sahanasri
- 4.Poomalai

... Cross Objectors

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Division II, Peria Milaguparai, Trichy.

... Respondents

PRAYER: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure against the Decree and Judgment dated 12.11.2019 made in MCOP No.960 of 2015 on the file of the Motor Accident Claims Tribunal, (Sessions Judge), Perambalur.



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For Cro.Objector : Mr.A.A.Venkatesan
For Respondents : Mr.L.Ramanathan for
Mr.D.Venkatachalam

COMMON JUDGMENT

V.SIVAGNANAM, J.

CMA No.1913 of 2020 is filed by the Transport Corporation assailing the award dated 12.11.2019 passed in MCOP No.960 of 2015 by the Motor Accident Claims Tribunal, Sessions Judge, Perambalur. The claimants in the said O.P, have come up with Cross Objection No.31 of 2021 seeking enhancement of compensation. Since both the appeal and the cross objection arise out of the same order passed in the MCOP dated 12.11.2019, both are heard together and disposed of by this common Judgment. For the purpose of clarity, the parties are referred to as per their rank before the Tribunal.

2.According to the claimants, the deceased was employed as a 'Conductor' in the Transport Corporation's bus bearing Reg.No.TN-45-N-2972. In the said bus,



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on 20.04.2015, the deceased was on duty and when the bus was nearing Sathamangalam bus stop, Keelapalur, its tyre got punctured. In order to attend the puncture, the driver of the bus climbed on the top of the bus and unloaded the stepney tyre by tagging it with a rope. While the tyre was unloaded by the driver, the deceased was helping to him. All of a sudden, the rope got cut off and the tyre fell over the head of the deceased. In the impact, the deceased sustained multiple injuries all over his body. Immediately, he was removed and admitted in the Thanjavur Medical College Hospital. In spite of best treatment rendered to him, he died on 23.04.2015 in the hospital itself. Postmortem was conducted by the Thanjavur Medical College Hospital. At the time of incident, the deceased was 45 years. The accident occurred during the course of employment. Hence, the legal heirs of the deceased filed the claim petition seeking compensation of Rs.30,00,000/-.

3. The Transport Corporation filed a counter disputing the manner of accident. It was also stated that the driver of the bus was no way responsible for the accident. The accident had happened only due to the carelessness of the deceased Conductor.



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4.To substantiate the case, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.7 were marked. On the side of the Transport Corporation, R.W.1 was examined and no document was marked.

5.The Tribunal, after considering the oral and documentary evidence, held that the accident had occurred during the course of employment and hence, the Transport Corporation being the employer of the deceased, is liable to pay compensation and accordingly, the Tribunal awarded compensation of Rs.22,54,000/- along with interest at the rate of 7.5% per annum. Challenging the said award, while CMA.No.1913 of 2020 has been filed by the Transport Corporation on the ground that the award amount is on the higher side, Cross Objection No.31 of 2021 has been filed by the claimants on the ground that the award amount is meagre.

6.The learned counsel appearing for the Transport Corporation Mr.L.Ramanathan submitted that the Tribunal ought to have dismissed the claim



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petition, since the deceased was an employee of the Transport Corporation and the claimants wrongly filed the claim petition under the Motor Vehicles Act. The accident took place when the vehicle was in stationary. Since the accident not arose out of the use of a motor vehicle, the Motor Accident Claims Tribunal have no jurisdiction. He further submitted that the claimants can seek compensation under the Workmen's Compensation Act (Now Employees' Compensation Act). He further submitted that the award is on the higher side and it requires reduction.

7.Per contra, the learned counsel appearing for the claimants Mr.A.A.Venkatesan submitted that the accident had happened during the course of employment and at that time, the deceased was a Conductor and that the accident connected with the use of the motor vehicle, hence, by invoking the option provided under Section 167 of the Motor Vehicles Act, the claim petition has been filed before the Tribunal. Since it is well within the jurisdiction, the claimants are entitled to seek compensation under the Motor Vehicles Act. He further submitted that to prove income of the deceased, the claimants filed Pay Certificate (Ex.P.7), wherein, the income of the deceased is mentioned as Rs.17,722/- per month, but



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the Tribunal, without considering the same, fixed the income at Rs.15,000/- per month. He further submitted that as per the decision of the Hon'ble Supreme Court in the case of **Magma General Insurance Co. Ltd., vs. Nanu Ram and others** reported in **2018 (1) TN MAC 452 (SC)**, all the claimants are entitled to Rs.40,000/- each towards consortium, but the Tribunal has awarded only Rs.40,000/- towards consortium to the wife alone. Hence, the learned counsel for the claimants prays for enhancement of compensation. In support of his contentions, the learned counsel relied on the following decisions:-

“(i) Shivaji Dahanu Patil and another v. Vatchala Uttam More (1991 ACJ 777);

(ii) Rita Devi and others v. New India Assurance Co. Ltd., and another (ACJ 2000 Page No.801);

(iii) New India Assurance Co. Ltd., and another v. Lakshmi and others (2001 ACC VOL.1, 117 Ker. DB); and

(iv) Sherlie Augestin and others v. K.K.Raveendran and others (ACC VOL.2, 265 Ker. DB)”

8.We have considered the rival submissions of the learned counsel appearing for the parties and perused the materials available on record.



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9. In the matter on hand, the contention of the learned counsel appearing for the Transport Corporation is that the claimants had wrongly filed the claim petition under the Motor Vehicles Act and they can seek compensation only under the Workmen's Compensation Act. A perusal of the records shows that the accident had occurred during the course of employment and the claim petition has been filed under Section 166 of the Motor Vehicles Act. In **Shivaji Dahanu Patil's case** (supra), the Hon'ble Apex Court held that the word 'use' has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a breakdown or mechanical defect or accident. Therefore, the claimants are entitled to seek compensation on the ground that the accident was in arising out of the use of the motor vehicle. The relevant portion of the said Judgment reads as follows:-

“26..... that the word 'use', in the context of motor vehicles, has been constructed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some breakdown



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or mechanical defect. Relying on the above-mentioned decisions, the Appellate Bench of the High Court has held that the expression “use of a motor vehicle” in section 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highways No.4(i.e., while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, the word 'use' has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a breakdown or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in use at the time when it was lying on its side after the collision with the truck.”

10.The above said decision was followed in **New India Assurance Co. Ltd., and another v. Lakshmi and others (2001 ACC VOL.1, 117 Ker. DB);** and **Sherlie Augestin and others v. K.K.Raveendran and others (ACC VOL.2,**



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265 Ker. DB)”.

11.Further, Section 167 of the Act gives option to the claimants to seek compensation either under the Workmen's Compensation Act, 1923 or under the Motor Vehicles Act, 1988, but they cannot file a claim petition under the provision of both the Acts. Hence, the contention of the learned counsel appearing for the Transport Corporation in this regard is rejected.

12. Insofar as the quantum is concerned, it is seen that the claimants have produced Pay Certificate (Ex.P.7) to prove the monthly income of the deceased at Rs.17,722/-, but the Tribunal fixed the income at Rs.15,000/- per month, which is against the evidence of Ex.P.7-Pay Certificate. Hence, taking note of this evidence, we fixes Rs.17,000/- as monthly income.

13.At the time of accident, the deceased was aged about 45 years, which is proved through Ex.P.2-Postmortem Certificate. As per the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd., vs. Pranay**



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Sethi and others reported in **2017 (2) TN MAC 609 (SC)**, the claimants are entitled to 25% addition towards future prospects and as per the decision of **Sarala Verma and others vs. Delhi Transport Corporation and another** reported in **2009 TN MAC 1**, proper multiplier would be '14'. Since the claimants are four in number, $1/3^{\text{rd}}$ of the income has to be deducted towards personal expenses. Hence, after adding 25% towards future prospects and after deducting $1/3^{\text{rd}}$ towards personal and living expenses and by applying multiplier '14', the loss of dependency is assessed as Rs.23,80,000/- ($17000+4250=21250 \times 12 \times 14 \times 2/3$). As per the decision of the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd., vs. Nanu Ram and others** reported in **2018(1) TN MAC 452 (SC)**, each of the claimants are entitled to Rs.40,000/- towards consortium and Filial consortium, which comes to Rs.1,60,000/-. Hence, the amount of Rs.40,000/- awarded towards consortium is enhanced to Rs.1,60,000/-. The amount of Rs.15,000/- awarded towards funeral expenses and Rs.15,000/- towards loss of estate are confirmed. The rate of interest fixed by the Tribunal as 7.5% per annum is unaltered.



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14.For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-quantified as follows:-

Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Loss of dependency	21,84,000/-	23,80,000/-	enhanced
Loss of Consortium	40,000/-	1,60,000/-	enhanced
Funeral Expenses	15,000/-	15,000/-	confirmed
Loss of Estate	15,000/-	15,000/-	confirmed
Total	22,54,000/-	25,70,000/-	enhanced

15.In fine, Cross Objection No.31 of 2021 filed by the claimants is partly allowed and C.M.A.No.1919 of 2020 filed by the Insurance Company is dismissed. The award amount of Rs.22,54,000/- is enhanced to Rs.25,70,000/-. Out of which, the first claimant/wife of the deceased is entitled to Rs.12,00,000/-; the claimants 2 and 3/children of the deceased are entitled to Rs.5,00,000/- each and the fourth claimant/mother of the deceased is entitled to Rs.3,70,000/-. The Transport Corporation is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks



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from the date of receipt of a copy of this Judgment. On such deposit, the major claimants are permitted to withdraw their respective share after filing a memo, along with a copy of this Judgment, less the amount if already withdrawn. The Tribunal is directed to deposit the share of the minor claimants in any one of the Nationalised Bank till they attain majority and the first claimant being the mother and natural guardian of the minors is permitted to withdraw the interest once in six months directly from the Bank. The minor claimants/Arumugam and Sahanasri on attaining majority, are permitted to withdraw their respective share. No costs. Consequently, connected miscellaneous petition is closed.

[M.K.K.S.,J.]

[V.S.G.,J.]

08.04.2022

skn

Index : Yes/No

Speaking Order: Yes/No

To

1.Motor Accident Claims Tribunal,
(Sessions Judge), Perambalur.

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



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K.KALYANASUNDARAM, J.
and
V.SIVAGNANAM, J.

skn

COMMON JUDGMENT MADE IN
C.M.A.No.1913 of 2020
and
Cross Objection No.31 of 2021
and
C.M.P.No.14154 of 2020

08.04.2022



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CMA.No.1913 of 2020
and Cross Objection No.31 of 2021
and CMP.No.14154 of 2020

K.KALYANASUNDARAM, J.
and
V.SIVAGNANAM, J.

The matter is being listed under the caption "for being mentioned" at the instance of the learned counsel for the parties.

2. The learned counsels appearing for the parties would state that though the claim petition was filed by four persons, however pending appeal, one claimant died, but it was wrongly mentioned as four in number in paragraph 13 of the judgment.

3. In view of the above submission, the Registry is directed to correct paragraph 13 as "*...As one claimant died, the claimants are three in number, hence....*" instead of "*.... Since the claimants are four in number....*" and in paragraph 15, 6th line '**-add-** since she died, her share amount allotted to remaining legal-heirs equally, and issue fresh order copy forthwith. In all other aspects, the judgment dated 08.04.2022 shall remain intact.

[M.K.K.S, J] [V.S.G., J]
22.04.2022

pvs

15/16



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K.KALYANASUNDARAM, J.
and
V.SIVAGNANAM, J.

pvs

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22.04.2022