



C.M.A.Nos.2031 & 1997 of 2019 and 3037 & 3040 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.Nos.2031 & 1997 of 2019 and 3037 & 3040 of 2018

CMA.No.2031 of 2019:

Managing Director, KSRTC,
Central Officer, (Tumkur Division),
K.H.Road, Bangalore – 560 027.

...Appellant

Vs.

1. S.Baby
2. Minor Vaishnavi
3. Minor Sowbarnika
- Both the minors rep. by their G/M. S.Baby
4. Subramaniam
5. Sarojini
6. D.Anilkumar

...Respondents

CMA.No.1997 of 2019:

Managing Director, KSRTC,
Central Officer, (Tumkur Division),
K.H.Road, Bangalore – 560 027.

...Appellant

Vs.



C.M.A.Nos.2031 & 1997 of 2019 and 3037 & 3040 of 2018

1. S.Priyadharshini

2. Minor Yogesh

Minor rep. by guardian mother S.Priyadharshini

3. Savithri

4. Palanisamy

5. D.Anilkumar

...Respondents

CMA.No.3037 of 2018:

1. S.Baby

2. Minor Vaishnavi

3. Minor Sowbarnika

Both the minors rep. by their Mother/Natural Guardian S.Baby

4. Subramaniam

5. Sarojini

...Appellants

Vs.

1. D.Anilkumar

2. Managing Director, KSRTC,
Central Officer, (Tumkur Division),
K.H.Road, Bangalore – 560 027.

...Respondents

CMA.No.3040 of 2018:

1. S.Priyadharshini

2. Minor Yogesh

Minor rep. by guardian mother S.Priyadharshini

3. Savithri



C.M.A.Nos.2031 & 1997 of 2019 and 3037 & 3040 of 2018

4. Palanisamy
...Appellants

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Vs.

1. D.Anilkumar

2. Managing Director, KSRTC,
Central Officer, (Tumkur Division),
K.H.Road, Bangalore – 560 027.

...Respondents

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, as against the common judgment and decree dated 03.01.2018 made in M.C.O.P.Nos.88 & 99 of 2013 on the file of the Motor Accident Claims Tribunal/I Additional District Judge, Tiruppur.

In all CMA's.:

For Appellant(s) : Mr.T.Thiyagarajan
(in CMA.Nos.1997 & 2031 of 2019)
: Mr.Ma.P.Thangavel
(in CMA.Nos.3037 & 3040 of 2018)

For Respondents : Mr.Ma.P.Thangavel
(for R1 to R5 in CMA.No.2031 of 2019)
(for R1 to R4 in CMA.No.1997 of 2019)
: No Appearance
(for R6 in CMA.No.2031 of 2019)
(for R5 in CMA.No.1997 of 2019)
: Mr.T.Thiyagarajan,
(for R2 in CMA.Nos.3037 & 3040 of 2019)
: Exparte
(R1 in CMA.Nos.3037 & 3040 of 2019)

COMMON JUDGMENT

Since all these appeals are arising out of the very same accident, they



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are disposed of by way of this common judgment.

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2. Challenging the common judgment and decree dated 03.01.2018 made in M.C.O.P.Nos.88 & 99 of 2013 on the file of the Motor Accident Claims Tribunal/I Additional District Judge, Tiruppur, the appellants have come up with these appeals.

3. For brevity, the appellants in CMA.Nos.3037 & 3040 of 2018 are hereinafter referred to as claimants and the appellant in CMA.Nos.2031 & 1997 of 2019 is hereinafter referred to as respondent transport corporation and the 1st respondent in CMA.Nos.3037 & 3040 of 2018 is hereinafter referred to as driver of the respondent transport corporation.

4. It is the case of the claimants that, on 21.10.2012 at about 22.15 hours, when the deceased Selvakumar and Shanthakumar were travelling in a car bearing Regn.No.TN-42-B-9596, the respondent transport corporation bus bearing Regn.No.KA-01-F-8398 driven by its driver in a rash and negligent manner came in the opposite direction and dashed against the above said car, as a result of which, the said Selvakumar and Shanthakumar



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sustained fatal injuries and died on spot. Thereby, the claimants filed their respective claim petitions claiming compensation for the death of the said Selvakumar and Shanthakumar. After contest, the tribunal, vide impugned common award dated 03.01.2018 awarded a compensation of Rs.14,53,000/- for the death of the said Selvakumar and Rs.19,44,400/- for the death of the said Shanthakumar. Aggrieved with the said order, the respective claimants have come up with the appeals in CMA.Nos.3037 & 3040 of 2018 and the respondent transport corporation has come up with the Appeals in CMA.Nos.2031 & 1997 of 2019, questioning the quantum of compensation as well as the liability fixed in the respective claim petitions.

5. Learned counsel appearing for the claimants submitted that, the above said accident happened solely due to the rash and negligent driving of the driver of the respondent transport corporation and the same is evident from the Ex.P1, FIR filed as against the driver of the respondent transport corporation and it is also evident from the deposition of PW3 and PW4, who are the eye witnesses to the above said accident and upon careful consideration of the same, the tribunal had fixed the negligence on the part



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of the driver of the respondent transport corporation and thereby fastened the liability on the respondent transport corporation, which does not warrants any interference of this court. The only grievance of the claimants is with regard to the compensation fixed by the tribunal. Even though necessary documents were produced by the claimants before the tribunal to prove the income of the deceased persons, however, without considering the same, the tribunal had fixed the monthly income of the deceased persons as Rs.7,000/- and Rs.9,000/- respectively, which is very meagre and the compensation awarded under other heads are also on lower side and the same has to necessarily be enhanced. Accordingly, he prayed for appropriate orders.

6. Per contra, the learned counsel appearing for the respondent transport corporation submitted that, the above said accident did not occur in the national highways and same took place in a single road, when the vehicles were diverted due to certain construction works and it is one of the deceased person who drove the vehicle in a rash and negligent manner and dashed against the respondent transport corporation vehicle and thereby the



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accident had taken place, for which the tribunal had fastened the entire liability as against the respondent transport corporation alone which is not sustainable. Further, FIR is not a conclusive proof nor is an encyclopedia for deciding the case and it is only to set the criminal law in motion and no further. While so, the mere fact that the FIR has been lodged against the driver of the respondent transport corporation alone cannot be the basis to attribute rash and negligent driving on the driver of the respondent transport corporation. Further, the complaint was given by one Loganathan, however, he was not examined by the claimants before the tribunal. While so, without considering the said facts, the tribunal had fixed the entire liability as against the respondent transport corporation which cannot be acceded to and the same has to be necessarily interfered with. Further, the compensation awarded by the tribunal is already on the higher side and the same does not require any further enhancement. Accordingly, he prayed for dismissal of the appeals filed by the claimants.

7. Heard learned counsel on either side and perused the material documents placed on record.



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8. Though notice was served on the driver of the transport corporation and his name was printed in the cause list, however, none appeared on his behalf. Considering the period of pendency of these Appeals, this Court is inclined to dispose of the same based on the available materials.

9. A perusal of the materials available on record particularly the impugned order reveals that, the FIR for the above said accident came to be registered as against the driver of the respondent transport corporation and further, the claimants examined the P.W.3 and P.W.4, who are the eye witnesses to the occurrence and their depositions categorically establishes that it was the driver of the respondent transport corporation, who was at fault, which also finds place in the FIR which has been marked as Ex.P1, which has been filed against the driver of the respondent transport corporation. However, in order to disprove the same, the respondent transport corporation has not examined any eye-witness to the occurrence.

10. Further, though the transport corporation claim that the claimants have not examined the said Loganathan, who gave the complaint before the



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law enforcing agency and the same is fatal to their case, the same equally applies to the respondent transport corporation and non-examination of the said Loganathan by the respondent transport corporation to negative the information mentioned in the FIR is also fatal to the case of the respondent transport corporation. Hence, in the absence of any contra evidence to the submission of the eye witnesses, the Tribunal had arrived at a conclusion that the accident occurred solely due to the rash and negligent driving of the driver of the respondent transport corporation and as the owner of the offending vehicle, the respondent transport corporation is liable to compensate the claimants, in which this Court does not find any fault with and is not inclined to interfere with the same.

11. Hence, this Court is not inclined to interfere with the findings of the tribunal with regard to the negligence and liability fixed on the respondent transport corporation and thereby the appeals in CMA.Nos.1997 & 2031 of 2019 stand dismissed.

12. Insofar as the compensation awarded in respect of the deceased Selvakumar is concerned, it is the claimed by the claimants that, the



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deceased was employed as Manager in Atlas Textiles and was earning a sum of Rs.20,000/- per month and in order to substantiate the same, Ex.P5, salary certificate of the deceased Selvakumar was marked and PW5, one of the co-worker was examined, who clearly deposed that the deceased was earning a sum of Rs.20,000/- per month. However, without considering the same, the tribunal had fixed the monthly income as Rs.7,000/-, which is not sustainable. It has been the view of the Courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TANMAC 459**, fixing a notional income of Rs.9,000/- and adding future prospects at 30%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.11,700/-. Deducting 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.8,775/- per month and the deceased being aged about 40 years, as



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evidenced from the records, adopting the multiplier of 15 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in *(2009) 6 SCC 121*, the loss of income to the family is arrived at **Rs.8,775/- * 12 * 15 = Rs.15,79,500/-**.

13. Further, this Court is of the view that awarding a sum of Rs.1,60,000/- (Rs.40,000 * 4) under the head “Loss of love and affection” would be just and reasonable. Further, a sum of Rs.10,000/- has been awarded under the head “Transport expenses” which is not sustainable.

14. In the above circumstances, the compensation awarded by the Tribunal in MCOP.No.88 of 2013 is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of dependency	13,23,000/-	15,79,500/-
Loss of estate	15,000/-	15,000/-
Loss of consortium	40,000/-	40,000/-
Loss of love and affection	50,000/-	1,60,000/-
Funeral expense	15,000/-	15,000/-
Transport expenses	10,000/-	-
Total	14,53,000/-	18,09,500/-



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15. In the above compensation arrived at by this Court, the claimants in MCOP.No.88 of 2013 are entitled to the following compensation. The 1st claimant is entitled to a sum of Rs.5,09,500/- along with proportionate interest, the 2nd and 3rd claimants are entitled to a sum of Rs.5,00,000/- each along with proportionate interest and the 4th and 5th claimants are entitled to a sum of Rs.1,50,000/- each along with proportionate interest.

16. Insofar as the compensation awarded in respect of the deceased Shanthakumar is concerned, it is the claim of the claimants, the deceased was self employed and was earning a sum of Rs.50,000/- per month and in order to prove his income, Ex.P.12 to 14, the Certificate of registration and Income tax return for the assessment year 2010-11 were marked. However, without considering the same, the tribunal had fixed the monthly income as Rs.9,000/-, which is not sustainable. It has been the view of the Courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, fixing a notional income of Rs.11,000/- and adding

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future prospects at 40%, as has been held by the Constitution Bench in the

case of *National Insurance Company Limited Vs. Pranay sethi and others*

reported in *2017 (16) Supreme Court Cases 680*, the total income per month is quantified at Rs.15,400/-. Deducting 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.11,550/- per month and the deceased being aged about 32 years, as evidenced from the records, adopting the multiplier of 16 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in *(2009) 6 SCC 121*, the loss of income to the family is arrived at Rs.11,550/- * 12 * 16 = Rs.22,17,600/-.

17. Further, this Court is of the view that awarding a sum of Rs.1,20,000/- (Rs.40,000 * 3) under the head “Loss of love and affection” would be just and reasonable compensation. Further, a sum of Rs.10,000/- has been awarded under the head “Transport expenses” which is not sustainable and the same has to necessarily be interfered with.

18. In the above circumstances, the compensation awarded by the



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Tribunal in MCOP.No.99 of 2013 is modified as under :-

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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of dependency	18,14,400/-	22,17,600/-
Loss of estate	15,000/-	15,000/-
Loss of consortium	40,000/-	40,000/-
Loss of love and affection	50,000/-	1,20,000/-
Funeral expense	15,000/-	15,000/-
Transport expenses	10,000/-	-
Total	19,44,400/-	24,07,600/-

19. In the above compensation arrived at by this Court, the claimants in MCOP.No.99 of 2013 are entitled to the following compensation. The 1st claimant is entitled to a sum of Rs.10,07,600/- along with proportionate interest, the 2nd claimant is entitled to a sum of Rs.10,00,000/- along with proportionate interest and the 3rd and 4th claimants are entitled to a sum of Rs.2,00,000/- each along with proportionate interest.

20. For the reasons aforesaid, the appeals in **CMA.Nos.1997 & 2031**



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of 2019 filed by the respondent transport corporation stand **dismissed** and the appeals in **CMA.Nos.3037 & 3040 of 2018** filed by the claimants are **allowed** and the impugned Award of the Tribunal in MCOP.No.88 of 2013 is modified by enhancing the compensation amount from **Rs.14,53,000/-** to **Rs.18,09,500/-** and the impugned Award of the Tribunal in MCOP.No.99 of 2013 is modified by enhancing the compensation amount from **Rs.19,44,400/-** to **Rs.24,07,600/-**. The respondent transport corporation is directed to deposit the above said amount to the credit of the respective MCOP's along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount apportioned to the major claimants directly to the bank account of the major claimants through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the claimants. Insofar as the apportionment of compensation in favour of the minors concerned, the Tribunal is directed to invest the same in an interest



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bearing fixed deposit initially for a period of three years to be renewed till they attain majority and the quarterly interest accrued thereon shall be paid to the respective 1st claimant/mother of the respective minor claimants for being used for the welfare of the minor by the guardian. No costs.

13.12.2023

skt

NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

To:

1. The Motor Accident Claims Tribunal/I Additional District Judge,
Tiruppur.
2. The Section Officer,
V.R.Section, High Court, Madras.

M.DHANDAPANI, J.

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