



C.M.A.(MD)Nos.155 and 156 of 2013

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Dated: 04.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)Nos.155 and 156 of 2013

C.M.A.(MD)No.155 of 2013

- 1.K.Vasuki
- 2.Kannadasan (died)
- 3.K.Saranya
- 4.K.Swathi (minor)

Minor 4th Appellant represented by
her mother, next friend / Guardian,
the 1st appellant

... Appellants / Claimants

Vs.

The Managing Director,
M/s.Tamil Nadu State Transport Corporation,
Kumbakonam.

... Respondents / Respondents

C.M.A.(MD)No.156 of 2013

Kannadasan (died)

- 2.K.Vasuki
- 3.K.Saranya
- 4.K.Swathi (minor)

Appellant 2 to 4 are brought
on record as legal heirs of the
deceased sole appellant
vide Court order dated 27.07.2021

... Appellants / Claimants



C.M.A.(MD)Nos.155 and 156 of 2013

Vs.

The Managing Director,
M/s.Tamil Nadu State Transport Corporation,
Kumbakonam.

... Respondents / Respondents

Common Prayer : These Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, to allow this appeal and modify the award passed in M.C.O.P.Nos.1007 and 1008 of 2008 dated 20.09.2010 on the file of the Motor Accident Claims Tribunal / 1st Additional District Court, Trichirappalli.

For Appellants : Mr.M.Jerin Mathew
for M/s. Ajmal Associates

For Respondent : M/s.G.A.Srijala
for Mr.A.V.B.Krishnakumar

(in both cases)

COMMON JUDGMENT

C.M.A(MD)No.155 of 2013, has been filed by the petitioners as against the order passed in M.C.O.P.No.1007 of 2008 on the file of the Motor Accident Claims Tribunal / 1st Additional District Court, Trichirappalli, dated 20.09.2010, wherein this appellants have filed petition for compensation of the death of the son of the appellants 1 and 2 and brother of appellants 3 and 4. The Tribunal has awarded a sum of



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Rs.2,25,000/- with interest at the rate of 7.5% from the date of petition till the date of realization, towards compensation. As against the award passed by the Tribunal, the present appeal in C.M.A(MD)No.155 of 2013 has been preferred by the legal heirs of the deceased, for enhancement of compensation.

2. C.M.A(MD)No.156 of 2013, has been filed by the petitioners as against the order passed in M.C.O.P.No.1008 of 2008 on the file of the Motor Accident Claims Tribunal / 1st Additional District Court, Trichirappalli, dated 20.09.2010, wherein this appellant who is injured in the said accident, has filed this petition for compensation of Rs.20,00,000/-. The Tribunal has awarded a sum of Rs.13,17,704/- towards compensation. Aggrieved by the above said award passed by the Tribunal, the claimant has filed the present appeal, seeking enhancement.

3. The brief facts before the trial Court in M.C.O.P(MD)No.1007 of 2008, are as follows:

On 02.03.2008 at about 8.45 a.m., when the appellants 2 and 3, along with the deceased, travelled in a two wheeler bearing registration



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No.TN 49 AA 5006 from Trichy to Chennai by pass near Trichy Palpannai, the driver of the first respondent vehicle bearing registration No.TN 49 N 1228, drove the vehicle in a rash and negligent manner and dashed against the two wheeler. Due to which, the son of the petitioners 1 and 2 died. At that time of accident, the deceased was aged about only 7 years and they claim compensation for a sum of Rs.5 Lakhs.

4. The brief facts before the trial Court in M.C.O.P(MD)No.1008 of 2008, are as follows:

In the above said accident, the petitioner herein sustained injuries all over his body and he was admitted in the Global Hospital, Trichy and has taken treatment from 02.03.2008 till 20.03.2008. The petitioner was working in the Railway Department, Trichy. Since the petitioner was advised to take complete rest, he lost his employment because of this accident. He was working as Technician Grade-II in the Workshop at Ponmalai, Trichy. At that time of accident, the petitioner was aged about 46 years and earned a sum of Rs.20,000/- per month towards salary and also the petitioner spent a sum of Rs.2,75,000/- towards medical expenses. Therefore, he claimed a sum of Rs. 20,00,000/- towards compensation.



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5. The respondent in both the claim petitions has filed a counter stating that the petitions are not maintainable either in law or facts. The accident has not occurred as alleged in the petition. The accident was not occurred due to the negligence on the part of the driver of the bus. Per contra, the petitioner in M.C.O.P.No.1008 of 2008 rode the vehicle in a rash and negligent manner, without observing the horn raised by the bus driver, dashed against the bus, thereby he himself invited the accident. Therefore, the insurance company is no way liable to pay compensation to the petitioners. The deceased was aged about only 7 years and because he has no income. All the petitions are liable to be dismissed.

6. On the side of the petitioners, they have examined P.W.1 to P.W.7 and marked exhibits Ex.P1 to Ex.P26. On the side of the respondent R.W.1 was marked and no document was marked.

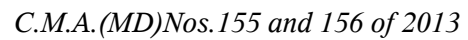
7. After perusing the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.2,25,000/- for the claimants in M.C.O.P.No.1007 of 2009 and awarded a sum of



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Rs.13,17,704/- towards compensation for the claimant in M.C.O.P.No. 1008 of 2008. Aggrieved by the above said award passed by the Tribunal, the claimants have preferred these appeals respectively.

8. Learned counsel for the appellants contended that the accident took place due to the rash and negligence on the part of the driver of the bus and the petitioners in M.C.O.P.No.1007 of 2008 are legal heirs of the deceased. Seven years old son died, due to the accident and the petitioners are dependants and they are entitled for a compensation of Rs.5 Lakhs. Without considering the same, the Tribunal has erroneously awarded a sum of Rs.2,25,000/-. As far as M.C.O.P.No.1008 of 2008 is concerned, the petitioner sustained fracture injuries and he lost his employment due to the accident and he is unable to do his routine work and already he lost his physical condition and also employment. Without considering the above said aspects, the Tribunal has taken the salary of the deceased as Rs. 7,371/-. The petitioner has produced the salary slip of the petitioner and as per the certificate, the gross salary is Rs.17,762/-. But the Tribunal, without any reason only taken a sum of Rs.7,371/- as monthly income of the petitioner. Therefore, the petitioner is entitled to enhancement of the



9. The learned counsel appearing for the respondent would contend that the accident took place only due to the negligence on the part of the owner of two wheeler, but the Tribunal fixed the liability on the side of bus owner. The deceased was only 7 years old, school going boy and the appellations are not the dependants of the deceased. Thereby the Tribunal, has correctly applied multiplier as per the II schedule of the Motor Vehicles Act, 1988. As far as injury case is concerned, the tribunal after taking into consideration of nature of injuries, correctly awarded a just and fair compensation. Hence the present appeal is liable to be dismissed.

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in C.M.A.(MD)No.155 of 2013 is:

i) whether the appeal in C.M.A.(MD)No.155 of 2013, is liable to be allowed or not?



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is :



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11. The point for determination in C.M.A(MD)No.156 of 2013

i) whether the appeal in C.M.A.(MD)No.156 of 2013, is liable to be allowed or not?

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12. In M.C.O.P.No.1007 of 2008, there is no dispute with regard to the negligence on the part of the driver of the bus. The respondent also not filed any appeal, and these appeals are only filed by the petitioners on the ground of inadequacy of compensation. It is an admitted fact that the deceased was seven years old child and the Tribunal has awarded a sum of Rs.2,25,000/- by relying upon the judgment reported in **2005 ACJ 99** in the case of **Manju Devi V. Musafir Paswan**, and applied the multiplier method as per the second schedule of Motor Vehicles Act and taken the income of the deceased as Rs.15,000/- and awarded a sum of Rs.2,25,000/-. According to the appellants / petitioner, the said award is not a fair and responsible.



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13. Learned counsel appearing for the petitioner has relied upon the judgment in **Meena Devi Vs Nunu Chand Mahto @ Nemchand Mahto and others** in **S.L.P.No.5345 of 2019** on the file of the Hon'ble Supreme Court of India. Wherein the Hon'ble Supreme Court after referring various judgments, awarded a sum of Rs.5 Lakhs, towards compensation.

*"13. Thus applying the ratio of the said judgments, looking to the age of the child in the present case i.e.12 years, the principles laid down in the case of **Kishan Gopal**(supra) are aptly applicable to the facts of the present case. As per the ocular statement of the mother of the deceased, it is clear that deceased was a brilliant student and studying in a private school. Therefore, accepting the notional earning Rs.30,000/- including future prospect and applying the multiplier of 15 in view of the decision of this Court in Sarla Verma (supra), the loss of dependency comes to Rs.4,50,000/- and if we add Rs. 50,000/- in conventional heads, then the total sum of compensation comes to Rs.5,00,000/-. As per the judgment of MACT, lump sum compensation of Rs.1,50,000/- has been awarded, while the High Court enhanced it to Rs.2,00,000/- upto the value of the Claim Petition. In our view, the said amount of compensation is not just and reasonable looking to the computation made hereinabove. Hence, we determine the total compensation as Rs.5,00,000/- and on reducing the*



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amount as awarded by the High Court ie., Rs.2,00,000/-, the enhanced amount comes to Rs.3,00,000/-."

14. After carefully going through the judgment, it is clear that the Hon'ble Supreme Court has taken the notional earning of the child as Rs.30,000/- including future prospects and applying multiplier 15 and also Rs.50,000/- towards conventional heads. Total award amount would come to Rs.5 Lakhs. In the case on hand also, the deceased was aged about 7 years, and the said judgment is squarely applicable to the present facts of the case.

15. In view of the above said judgment, this Court also considered and taken a sum of Rs.30,000/- as notional earning of the deceased including the future prospects and by applying multiplier-15, the award amount would come to Rs.4,50,000/- and after awarding Rs. 50,000/- towards conventional heads, the award amount would come to Rs.5 Lakhs (4,50,000 + 50,000). Therefore, the petitioners in C.M.A(MD)No.155 of 2013, are entitled to a sum of Rs.5 Lakhs towards compensation.



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16. But the Tribunal failed to consider the above said aspects and only awarded a meagre amount as compensation. Thereby the order passed by the Motor Accident Claims Tribunal / 1st Additional District Court, Trichirappalli, dated 20.09.2010, in M.C.O.P.No.1007 of 2008, is liable to be enhanced.

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17. In M.C.O.P.No.1008 of 2008, there is no dispute with regard to the negligence on the part of the driver of the respondent that already the Tribunal had come to a conclusion that the accident took place due to the rash and negligence on the part of the driver of the respondent and the respondent has also not filed any appeal as against the decision of the tribunal. Per contra, the petitioners have preferred this appeal on the ground of inadequacy of compensation. The Tribunal has awarded Rs.13,17,704/- towards compensation, after adopting the multiplier method. The contention of the petitioner is that the petitioner was working as an employee in the Railway and he earned a sum of Rs.17,564/- per month and the salary certificate was also marked by the petitioners. But the Tribunal without considering the above said salary



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certificate, without any basis, reduced the salary from Rs.17,564/- to Rs.7,371/-. This Court also perused the salary certificate of the petitioner and the gross salary is Rs.17,564/-. The Tribunal has not given any reason to reduce the salary of the petitioner.

18. It is well settled that after deducting the statutory deductions, the salary has to be taken entirely for calculation of compensation amount. Thereby, the trial Court has committed an error by omitting to take the entire salary as found in certificate. There is no contravention with regard to the disability of the petitioner and as per the disability certificate and as per the medical evidence, the disability arrived at 96% and to that effect, Ex.P.19 also marked. After took into consideration of injuries. The Tribunal has also adopted the multiplier method. The respondent also not denied the adoption of multiplier method for the disability sustained by the petitioner. There is no dispute with regard to the age of the petitioner and as per Ex.P.8, the age of the petitioner was mentioned as 46 years. Therefore, the Tribunal also adopted multiplier of 13, but failed to take the salary as found in the certificate and also failed to add future prospects.



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19. Since the petitioner is a permanent employee of the Railways, 30% of the future prospects has to be added in his monthly salary for calculating income. The salary of the petitioner is Rs.17,564/- by adding 30%, the monthly salary would come to a sum of Rs.22,833 [17564 + 5269 (30% of 17,564)]. By considering the age of the petitioner, multiplier 13 has to be adopted. Therefore, the award amount towards loss of income, would come to a sum of Rs. 35,61,948/- (22,833 x 12 x 13). Further, the petitioner has filed medical bills for a sum of Rs.1,07,828/-. The Tribunal awarded a sum of Rs.50,000/- towards pain and sufferings and Rs.5,000/- towards extra nourishment and Rs.5,000/- towards transport expenses. In respect of the above heads, the compensation of the Tribunal is fair and this Court need not interfere with the order passed by the Tribunal.

20. Further the learned counsel for the petitioner has argued that the petitioner cannot go to his day to day work and there by he is entitled to compensation towards attendant charges and he relied upon a judgment of the Hon'ble Supreme Court in the case of ***Jithendran Vs The New India Assurance and Co. Ltd., and others*** and ***Sidram Vs The Divisional Manager, United India Insurance Co.Ltd and others*** and after careful



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perusal of the said judgment, it is clear that the petitioner is entitled to attendant charges. In the case of *Sidram Vs the Divisional Manager*, the Hon'ble Supreme Court has awarded a sum of Rs.2,000/- per month for the attendant and this Court also considering the nature of the case, taken a sum of Rs.2000/- and thereby the attendant charges would come to a sum of Rs.3,12,000/- (2000 x 12 x 13).

21. In total, the petitioner is entitled for compensation under the following heads:

Loss of income	-	Rs. 35,61,948/-
Pain and sufferings	-	Rs. 50,000/-
Extra nourishment	-	Rs. 5,000/-
Transport expenses	-	Rs. 5,000/-
Medical expenses	-	Rs. 1,07,828/-
Attendant charges	-	Rs. 3,12,000/-

Total	-	Rs. 40,41,776/-

In total, the petitioner is entitled to a sum of Rs.40,41,776/- rounded off to Rs.40,00,000/- (Rupees Forty Lakhs only).



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22. Further, the learned counsel for the appellant also brought to the knowledge of this Court that as per the judgment of the Hon'ble Supreme Court in *Sidram Vs The Divisional Manager*, the petitioner is entitled to compensation for future medical expenses, but there is no evidence to prove the future medical expenses. Thereby the contention of the learned counsel for the petitioner is not acceptable. In view of the above discussions this petitioner is entitled to the award amount as said above.

23. In the result, this C.M.A(MD)No.155 of 2013, is partly allowed with costs and the order passed by the Tribunal is modified to the effect that the petitioners are entitled to Rs.5,00,000/- (Rupees Five Lakhs only) towards compensation, with interest at the rate of 7.5% per annum from the date of filing of the application till the realization of the amount. The respondent is directed to deposit the award amount within a period of two months from the date of order of this Court after deducting the amount, if any already paid.

24. In the result, this C.M.A(MD)No.156 of 2013, is partly allowed and the order passed by the Motor Accident Claims Tribunal / 1st



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Additional District Court, Trichirappalli, dated 20.09.2010,in M.C.O.P.No.

1008 of 2008, is modified to the effect that the appellants in this appeal, is entitled to a sum of Rs.40,00,000/- (Rupees Forty Lakhs only) towards compensation with interest at the rate of 7.5% per annum from the date of filing of the petition, till the realization. The respondent is directed to deposit the amount within a period of two months from the date of the order of this Court. No costs.

04.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No

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To:

1. The Motor Accident Claims Tribunal / 1st Additional District Court,
Trichirappalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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