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CMA NOs.1295 & 1788 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 10 / 12 / 2024

JUDGMENT DELIVERED ON: 07 / 01 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NOs.1295 & 1788 OF 2023

AND

CMP NO.12906 OF 2023

IN

CMA NO.1295 OF 2023

CMA NO.1295 OF 2023

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
No.12, Ramakishna Road, Salem - 7.

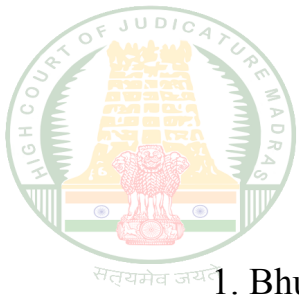
... Appellant / Respondent

Vs.

1. Bhuvaneswari
2. A.Sakthivel
3. Manimekalai
4. Ravichandran
5. Minor . Manickavelan
Rep. by Next friend / Guardian /
Mother - Bhuvaneswari

... Respondents/ Petitioners

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1. Bhuvaneswari

2. A.Sakthivel

3. Manimekalai

4. Ravichandran

5. Minor . Manickavelan

Rep. by Next friend / Guardian /

Mother - Bhuvaneswari

... Appellants / Petitioner

Vs.

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
No.12, Ramakishna Road, Salem - 7.

...Respondent/ Respondent

PRAYER IN CMA.No.1295 of 2023 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated October 10, 2022 passed in M.C.O.P.No.202 of 2020 on the file of the Motor Accidents Claims Tribunal (Special District Court), Salem.

PRAYER IN CMA.No.1788 of 2023 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking enhancement of the Compensation awarded vide the Award dated October 10, 2022 made in M.C.O.P.No.202 of 2020 on the file of the Motor Accidents Claims Tribunal (Special District Court), Salem.



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For Appellant in CMA.No.1295 of 2023 &
Respondent in CMA.No.1788 of 2023

: Mr.D.Nitin

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For Respondents in CMA.No.1295 of 2023 &
Appellants in CMA.No.1788 of 2023

: Mr.MA.P.Thangavel

COMMON JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated October 10, 2022 passed by the 'Motor Accidents Claims Tribunal (Special District Court), Salem' ('Tribunal' for short) in M.C.O.P.No.202 of 2020, the respondent / Transport Corporation therein has preferred CMA.No.1295 of 2023. The claimants therein have preferred CMA.No.1788 of 2023 seeking enhancement of compensation.

2. For the sake of convenience, the parties will hereinafter be referred to as per their rank in the Motor Claim Original Petition.

3. The case of the claimants is that on November 27, 2019, the first claimant's husband - Singaravelan was riding a two-wheeler bearing Registration No.TN.29-BJ-1571 with a pillion rider in Dharmapuri – Salem Main Road near Deevattipatti at about 22 hours. At that time, the bus bearing Registration No.TN-30-N-1438 belonging to



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the first respondent, driven by its driver in a rash and negligent manner from Salem towards Dharmapuri, suddenly turned without any signal or indicator, and hit against the deceased's two-wheeler, due to which the deceased sustained grievous injuries and passed away on the way to Government Hospital, Salem. At the time of accident, the deceased was 24 years old and earning a sum of Rs.35,000/- per month as a Police Constable. The first claimant is the wife, the second and third claimants are the parents, the fourth claimant is the brother and the fifth claimant is the infant of the deceased. The claimants filed the claim petition seeking compensation of Rs,1,00,00,000/-.

4.The respondent filed a counter affidavit denying the averments made in the petition. The respondent averred that the claim petition is bad for non-joinder of the owner and insurer of the two-wheeler ridden by the deceased. According to the respondent, while the bus was slowly turning to the right, due to the rash and negligent riding of the deceased, the two wheeler hit the rear side of the bus and the rider of the two wheeler fell down. Therefore, it was the deceased who is solely responsible for the accident and not the respondent's bus driver. Hence, the respondent prayed to dismiss the petition.



5. During enquiry, on the side of petitioners, the first claimant

was examined as P.W.1 and Ex-P.1 to Ex-P.11 were marked through him; one Senthilkumar, Assistant attached to the office of District Crime Branch, Salem, was examined as P.W.2 and Ex-X.1 – Pay Slips for August 2019 to October 2019 were marked through him; one Manimaran, who is the eye witness to the accident, was examined as P.W.3. On the side of the respondents, R.W.1 was examined but no document was marked.

6. The Tribunal after considering the evidence available on record came to the conclusion that the driver of the first respondent was driving the bus in a rash and negligent manner at the time of the accident and thereby caused the accident. With regard to quantum of compensation, the Tribunal took a sum of Rs.22,769/- as the deceased's basic salary, applied multiplier of 18, deducted 1/4th towards his personal expenses and computed the compensation as tabulated below:-

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1.	Loss of Income (22,769 x 12x18) = 49,18,104 - 1/4 (12,29,526)	Rs.36,88,578/-
2.	Loss of love and affection (20,000 x 5)	Rs.1,00,000/-
3.	Loss of consortium	Rs.40,000/-
4.	Funeral expenses	Rs.25,000/-
	Total	Rs.38,53,578/-



7. Feeling aggrieved by the Award, the respondent -

Transport Corporation has filed the appeal in CMA.No.1295 of 2023 praying to set aside the Award. The claimants have filed the appeal in CMA.No.1788 of 2023 praying for enhancement of compensation.

8. Mr.D.Nitin, learned Counsel appearing for the respondent -

Transport Corporation would submit that the accident had occurred only due to the rash and negligent riding of the deceased. When the first respondent's driver was turning the bus right side near Deevattipatti in a careful manner, the deceased rode the motorcycle in a rash and negligent manner and hit the rear side of the bus. The respondent's driver was not negligent in driving the bus. The manner of the accident itself would show that the deceased caused the accident. Further he would submit that the alleged ocular witness, namely P.W.3, is an interested witnesses who was riding pillion along with the deceased. The Tribunal without appreciating the said fact and without considering the materials and evidence available on record, erroneously fastened the liability of the accident on the respondent.

8.1. With regard to quantum of compensation the learned Counsel would argue that 1/4th deduction towards personal expenses is

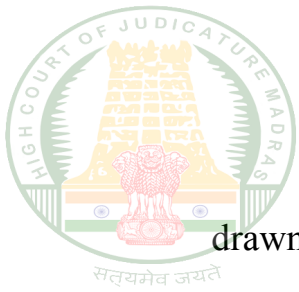


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not justifiable. The Tribunal ought to have deducted 1/3rd of the monthly income towards the same. The second claimant is aged 46 years, the third claimant is aged 43 years and the fourth defendant is 23 years at the time of accident. The claimants 2 to 4 are earning members, and hence they are not financially dependent on the deceased. The Tribunal failed to consider the said fact. Accordingly, he would pray to allow the appeal in CMA.No.1295 of 2023 and set aside the Award.

9. Per contra, Mr.MA.P.Thangavel, learned Counsel appearing for the claimants would argue that the First Information Report (FIR) was registered against the respondent's driver and the claimant proved that the respondent's driver was the sole reason for the accident through P.W.3, eye witness. The evidence of P.W.3 as well as the evidence of R.W.1 would clearly show that the respondent's driver drove the bus negligently, leading to the accident. The Tribunal rightly came to conclusion that the accident had happened due to the negligence of respondent's driver. Hence, there is no need to interfere with the findings of the Tribunal with regard to negligence.

9.1. As far as quantum of compensation is concerned, he would argue that the Tribunal did not take into consideration the last



drawn salary. The Tribunal failed to take into account that the deceased was drawing a gross salary of Rs.27,399/- in the month of October 2019.

There is no reason to reject it. On the other hand, the Tribunal had taken the net pay mentioned in the earlier pay slip for August 2019, which is not right. Accordingly, he prayed for enhancement of the award amount.

10. This Court has considered the submissions made on either side and perused the materials available on record.

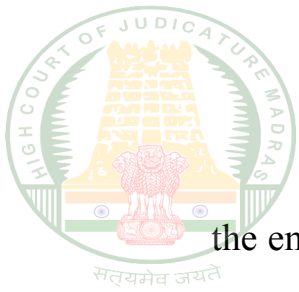
11. The Ex.P1-First Information Report has been registered against the driver of the respondent – Transport Corporation. The claimant side witness – P.W.3 is none other than the pillion rider who was travelling along with the deceased on the fateful day. He has substantiated the case of the petitioners that the driver of the respondent was driving in a rash and negligent manner at the time of the accident and turned the bus right without any indication causing the accident. R.W.1, the respondent's bus's driver, deposed that upon hearing a sharp sound, he alighted the bus and observed that the back side had dashed against the deceased. He further admitted in his cross-examination that departmental action was initiated against him and he was suspended for some time. From his evidence, it is discernible that he failed to take due care and caution while



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turning the bus. Further, there is no sufficient evidence available on record to doubt or shake the credence of the evidence of P.W.3, who is the competent to depose about the manner of accident as he had witnessed the accident. In these circumstances, the Tribunal has rightly concluded that the accident happened due to the negligence of the respondent's driver and that the respondent - Transport Corporation is liable to pay the compensation to the claimants. There is no infirmity or perversity with the said findings of the Tribunal.

12. As far as the quantum of compensation goes, at the time of accident, the deceased was working as a Constable in the Police Department and earned a gross sum of Rs.27,399/- in the month of October 2019 which was his last drawn salary. It is settled proposition of law that deductions towards family benefit fund, festival advance, insurance scheme, Contributory Pension Scheme (CPS), special provident fund *etc.*, being contributed by the deceased from his salary, shall not be excluded while computing the salary of the deceased. In other words, generally, gross salary is to be considered [See ***National Insurance Company Limited Vs. Indira Srivatsava***, reported in (2008) 2 SCC 763]. However, this is not exempt from exceptions. Allowances such as food allowance, travel allowance, *etc.*, which are intended to meet the expenses



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the employee would normally incur in the course of his employment shall not be included while computing income. Further, at the material point of time, the deceased's income would not have attracted income tax. The respondent side also has not let in any evidence to suggest that the deceased was paying income tax. They did not even put a suggestion to P.W.2 in this regard. Hence, this Court is of the view that the deceased - Singaravelan earned a sum of Rs.27,400/- per month, which is the last drawn gross salary of the deceased (October 2019), as per Ex-X.1. The Tribunal erred in taking the deceased's net income in August 2019 as his income.

13. The Tribunal has rightly adopted the multiplier of 18 as per the Judgment of the Hon'ble Supreme Court in *National Insurance Company Limited vs. Pranay Sethi [(2017) 16 SCC 680]*, as the deceased was born on May 8, 1994 (as evident from Ex-P.10 – Identity Card issued by the Police Department and Ex-P.11 – Driving Licence) and his completed age was 25 years at the time of accident. Further, the Tribunal failed to add future prospects. The deceased being a permanent employee, is entitled to 50% future prospects.

14. The deceased passed away leaving behind his wife and his

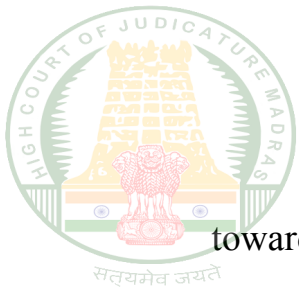


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one year old child as his dependents. To be noted, the child was *en ventre sa mere* i.e., in the 1st petitioner / mother's womb at the time of accident and born on March 9, 2020; that is the reason why the child was not included in the Legal Heir Certificate (Ex-P.4) issued on December 27, 2019. The petitioners 2 to 4 / parents and brother, aged 46, 43 and 22 years respectively, were not dependents of the deceased at the material point of time. Hence, 1/4th deduction towards personal expenses of the deceased is not just and proper in view of Paragraph Nos.30 and 31 (as per SCC) of *Sarla Verma Vs. Delhi Transport Corporation [(2009) 6 SCC 121]*. The standardized deduction for a married person as per *Sarla Verma's Case* is 1/3rd of the income.

15. Thus, taking the income of the deceased at Rs.27,400/- per month and applying 50% increase for future prospects and deducting 1/3rd thereof as his personal expenses, this Court arrives at a sum of Rs.59,18,400/- as compensation under the head 'loss of income'.

16. That apart, the first claimant / wife is entitled to a sum of Rs.40,000/ towards spousal consortium, the second and third claimant / father and mother are entitled to a sum of Rs.40,000/- each towards filial consortium and the fifth claimant is entitled to a sum of Rs.40,000/-



towards parental consortium. The claimants are also entitled to a sum of

Rs.15,000/- towards 'funeral expenses' and another sum of Rs.15,000/-

towards 'loss of estate'. Considering the young age of the 4th petitioner /

brother, this Court is of the view that he is also entitled to loss of

consortium, as he is deprived of the love, affection, guidance, support,

etc., from the deceased. The Tribunal is wrong in simultaneously

awarding compensation under the head of 'loss of consortium' as well as

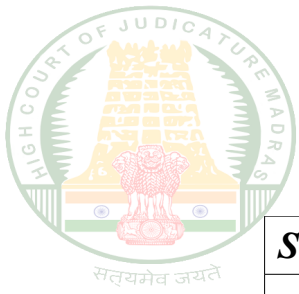
'loss of love and affection' to the claimants. Moreover, the amount

awarded by the Tribunal is not in tune with the guideline laid down in

Pranay Sethi's Case.

17. Accordingly, the claimants are entitled to get an enhanced compensation of Rs.61,48,400/- (Rupees Sixty One Lakhs Forty Eight Thousand and Four Hundred only) from the respondent – Transport Corporation as tabulated hereunder:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1.	Loss of Income {[Rs.27,400/- (I) + 50% (FP)] X 2/3 (PD) X 12 (m) X 18 (M)}	Rs.59,18,400/-
2.	Loss of Filial Consortium	Rs.80,000/-
3.	Loss of Spousal Consortium	Rs.40,000/-
4.	Loss of Parental Consortium	Rs.40,000/-
5.	Loss of Consortium (Brother)	Rs.40,000/-



<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
6.	Loss of Estate	Rs.15,000/-
7.	Funeral expenses	Rs.15,000/-
Total		Rs.61,48,400/-
Note: 'T' denotes 'income', 'FP' denotes 'Future Prospects', 'm' denotes 'months', 'PD' denotes 'Personal Deduction' and 'M' denotes 'multiplier'		

18. In view of the foregoing narrative, the respondent is directed to deposit the enhanced compensation of Rs.61,48,400/- (Rupees Sixty One Lakhs Forty Eight Thousand and Four Hundred only) along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount if any already deposited, to the credit of M.C.O.P.No.202 of 2020 on the file of Motor Accidents Claims Tribunal Special District Court, Salem, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.

18.1. Upon such deposit, the 1st petitioner / wife and the 5th petitioner / minor son is entitled to Rs.25,00,000/- each, while the 3rd petitioner / mother is entitled to Rs.10,68,400/- and the 2nd and 4th petitioners / father and brother are each entitled to Rs.40,000/-, with proportionate interests and costs awarded by the Tribunal.

18.2. The share amount of the 5th minor claimant shall be



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invested in any one of the Nationalized Banks until he attains the age of majority and the first claimant being his mother and natural guardian is permitted to withdraw the accrued interest thereon once in a year for the maintenance and welfare of the minor. The deficit court fee, if any, shall be paid by the claimants within a period of four weeks from the date of receipt of a copy of this Judgment.

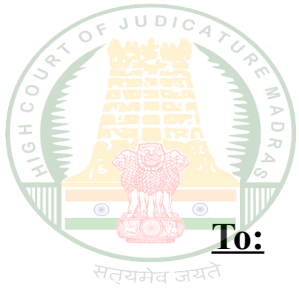
19. Resultantly, the appeal in CMA.No.1295 of 2023 preferred by the respondent – Transport Corporation is dismissed, and the appeal in CMA.No.1788 of 2023 preferred by the claimants is allowed by awarding an enhanced compensation in the manner narrated above. In view of the facts and circumstances of this case, the parties shall bear their own costs for these Civil Miscellaneous Appeals. Connected Civil Miscellaneous Petition is closed.

[J.N.B., J.]

[R.S.V., J.]

07 / 01 / 2025

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CMA NOS.1295 & 1788 OF 2023

To:

WEB COPY The Motor Accidents Claims Tribunal,
Special District Court, Salem.



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CMA NOs.1295 & 1788 OF 2023

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

av / TK

PRE-DELIVERY JUDGMENT MADE IN
CMA NOs.1295 & 1788 OF 2023

07 / 01 / 2025