IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.04.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.370 of 2025
and CMP.No.2745 of 2025

The Branch Manager,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
Tiruppur, Tiruppur Zone Branch – I,
Kangeyam Road, Tiruppur – 641 601.

... Appellant

Vs.

1.Kowsalya

2.Malleswaran

3.Paranjothi ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to allow the claim in MCOP.No.852 of 2020, dated 15.04.2024, on the file of the Special District Judge, Special District Court to deal with MCOP Cases, Tiruppur.

For Appellant	: Mr.M.Murali Vinodh
For Respondents	: M/s.Ilamparithi D.K for R1 and R2 Notice Dispensed with For R3

J U D G M E N T

The present appeal has been filed by Tamil Nadu State Transport Corporation (Coimbatore) Limited, challenging the award passed by the Special District Judge, Special District Court to deal with MCOP Cases, Tiruppur.

2. The respondents 1 and 2/claimants filed claim petition seeking compensation for the death of five months old child viz., Yaswanth, son of respondents 1 and 2/claimants 1 and 2. It was their case that the first claimant travelled as a pillion rider along with her five months old child in a Motor Bike. The same was driven by second claimant husband of the first claimant. When they were proceeding in Dharapuram Road, near Kakkapallam Ramu Kutty's house, the driver of the appellant Corporation had driven his bus in a rash and negligent manner without adhering to traffic rules and colluded with the bike. Due to the said impact, the first claimant sustained injuries and her child Yaswanth succumbed to the injuries sustained in the accident. Therefore, the claim petition was filed seeking compensation of Rs.30,00,000/-.

3. The second respondent in claim petition namely the

appellant Corporation filed counter disputing the manner of accident as averred in the claim petition. It was appellant's case before the Tribunal that the second claimant who had driven the two wheeler came from the opposite direction by overtaking another vehicle at high speed and on seeing the two wheeler driven by the second claimant, the driver of the appellant bus had stopped the bus on the left hand side of the road. However, the second claimant dashed against the right side of the bus. Therefore, according to the appellant, the accident had occurred only due to the rash and negligent driving of the motor bike by the second claimant.

4. The Tribunal based on the evidence available on record, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the bus by 3rd respondent, herein, the driver of the appellant Corporation. The compensation payable to the claimants was quantified at Rs.11,24,000/-. Aggrieved by the said award, the appellant Corporation has come before this Court.

5. Though very many grounds were raised in the grounds of

appeal, at the time of arguments, the learned counsel appearing for the appellant mainly submitted that annual notional income of Rs.1,04,000/- fixed by the Tribunal for the five months old child is on higher side.

6. The learned counsel appearing for the claimants by relying on the judgment of the Apex Court in ***Miss Rushi @ Ruchi Thapa Vs. M/s.Oriental Insurance Company Limited and another in SLP.No.6176 of 2023, Serial No.1*** in the typed set and judgment in ***R.K.Malik and others Vs.Kiran Pal and others***, reported in ***Manu/SC/0809/2009*** submitted that the annual notional income of Rs.1,04,000/- fixed by the Tribunal cannot be stated to be excessive.

7. It is not in dispute that the age of the victim was only five months old at the time of accident. Therefore, there is difficulty in fixing notional income for five months old child and calculating the loss of dependency by applying proper multiplier. As per law laid down by the Apex Court in ***Sarla Verma*** case, the maximum multiplier in case of motor accident case is 18. In the case on hand, the age of the victim is only five months and therefore, the parents are expected to support the child atleast

for another 18 years till his attainment of majority. In reality, a child will acquire earning capacity only at the age of 21 after finishing his graduation. Therefore, we have to take into consideration, the enormous expenses to be incurred by the parents are supporting the child for another 18 to 20 years. If the expenses to be incurred by the parents are taken into consideration, ultimately the amount arrived at by adopting 18 multiplier will get considerably reduced. Further, even for adopting notional income, we have no yardstick in view of the fact, we are not in a position to decide what would be the avocation of the child when he attains the age of 21.

8. In the case of ***Miss Rushi @ Ruchi Thapa Vs. M/s.Oriental Insurance Company Limited and another*** relied on by the learned counsel for the claimants, the age of the child was 12 years. The notional income was fixed at Rs.5,250/- p.m. by taking into consideration, the minimum wages payable to a skilled workman as per notification of the Government and 15 multiplier was adopted. However, in the case on hand the child is aged about five months who is incapable of earning any amount. Therefore, we cannot apply minimum wages for a child aged about five months, we should also take into consideration the prohibition of child labour up to 14

years under prohibition of Child Labour Act.

9. In ***R.K.Malik*** case cited by the learned counsel for the respondents 1 and 2, the Apex Court held that the notional income of Rs.15,000/- per annum as per the schedule to Motor Vehicles Act need not be disturbed as the accident had taken place nearly three years, after enactment. That apart, the Apex Court in the said case, affirmed High Court order granting Rs.75,000/- under the head non pecuniary damages, taking into consideration, pain and suffering, loss of amenities, enjoyment of life etc.

10. ***In Kurvan Ansari and others Vs. Shyam Kishore Murmu and others*** reported in ***(2022) 1 SCC 317*** equivalent to MANU/SC/1068/2021, while considering the death of a child aged about 7 years, the Apex Court fixed notional income at Rs.25,000/- and applied multiplier of 15. In addition to the loss of dependency, the Appellate Court also awarded filial consortium and funeral expenses, as per the law laid down by ***Pranay Sethi*** case. In Kurvan Ansari case, the Apex Court also referred to the earlier judgment in ***R.K.Malik*** case. Considering the tender

age of the victim in the present case (5 months), this Court is inclined to follow the law laid down by the Apex Court in ***Kurvan Ansari*** case. In the said case, Rs.25,000/- was fixed as notional income for the child aged about seven years, taking into consideration, the date of accident which was 06.09.2004. In the case on hand, the age of the child is five months and the accident had occurred on 23.02.2020, taking into consideration, the date of accident and the tender age of the child, the notional income is fixed at Rs.35,000/- per annum. If multiplier 15 is adopted, the loss of dependency would be Rs.5,25,000/-. The claimants 1 and 2 are entitled to Rs.40,000/- (each) under the head loss of filial consortium. The claimants are entitled to Rs.15,000/- (each) towards loss of estate and funeral expenses. The Tribunal granted 20% enhancement on the non-pecuniary damages. The accident in the present case had occurred within three years from the date of judgment in ***Pranay Sethi case (31.10.2017***). Therefore, no enhancement need to be given under the head non-pecuniary damages, as per the law laid down in ***Pranay Sethi*** case.

11. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of monetary benefits (pecuniary damages)	10,40,000/-	5,25,000/-
2.	Loss of estate	18,000/-	15,000/-
3.	Loss of filial consortium	48,000/-	80,000/-
4.	Funeral expenses	18,000/-	15,000/-
	Total	Rs.11,24,000/-	Rs.6,35,000/-

In view of the discussions made earlier, the award passed by the Tribunal is reduced to Rs.6,35,000/- from Rs.11,24,000/-. The appellant/ Transport Corporation is directed to pay the amount of Rs.6,35,000/- to the claimants 1 and 2. The appellant is directed to deposit the above mentioned sum with interest at the rate of 7.5% to the credit of MCOP.No.852 of 2020, on the file of the Special District Judge, Special District Court to deal with MCOP Cases, Tiruppur, within a period of four weeks from the date of receipt of copy of this judgment. On such deposit, the claimants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn, by making formal application before the Tribunal.

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2025

Index : Yes/No
Speaking order:Yes/No
Neutral Citation:Yes/No
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To
1.The Motor Accident Claims Tribunal,
Special District Judge, Special District Court
to deal with MCOP Cases, Tiruppur.

2.The Section Officer
VR Section,
High Court, Madras.

S.SOUNTHAR, J.

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