

**K. Gajapathi and G. Abishek Vs Metropolitan Transport Corporation Ltd.

Metropolitan Transport Corporation Ltd. Vs K. Gajapathi and G.
Abishek**

Court: Madras High Court

Date of Decision: Aug. 30, 2010

Hon'ble Judges: P.P.S. Janarthana Raja, J

Bench: Single Bench

Advocate: S. Gangaraj Prasad, in CMA. No. 3853/2004 and A. Babu, in CMA. No. 4173/2005, for the Appellant; S. Gangaraj Prasad in CMA. No. 4173/2005 and A. Babu in CMA. No. 3853/2004, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.

C.M.A. Nos. 3853 of 2004 and 4173 of 2005 are filed by claimants and the Transport Corporation

respectively against the award dated 9.9.2004 made in M.C.O.P No. 3222 of 2001 by the Motor Accident Claims Tribunal, Court of Small

Causes, Chennai.

2. Since these appeals arise out of the same order, both the appeals were taken up together and disposed of by this common judgment.

3. Background facts in a nutshell are as follows:

One deceased P. Jayalakshmi, met with motor vehicle accident that took place on 6.5.2001 at about 7 p.m. The said deceased was travelling as a

pillion rider in the motor cycle bearing Registration No. TN 04 F 3413 with her 1 1/2 year old son on her lap. Her husband was the rider of the

motor cycle. When the motor cycle was proceeding from south to north on Kamarajar Salai, Chennai and waiting for traffic signal near Swami

Sivananda Salai, at that time the driver of the bus belonging to the Transport Corporation, the Appellant in C.M.A. No. 4173 of 2005, came in a

rash and negligent manner from behind and hit against the motor cycle, as a result of which, the deceased fell down and sustained grievous injuries

and the child also sustained injuries. The deceased was taken to Government Hospital, Chennai, where she died on the same day. The claimants

are the husband and minor son of the deceased. They claimed a compensation of Rs. 14 lakhs. The Transport Corporation resisted the claim. On

pleadings the Tribunal framed the following issues:

1. Whether the accident happened due to the rash and negligent driving of the driver of the bus bearing Registration No. TN 01 N 2409 ?

2. Whether the claimants are entitled to the compensation?

3. To what relief ?

After considering the oral and documentary evidence, the Tribunal held that accident occurred due to the rash and negligent driving of the driver of

the bus belonging to the Transport Corporation and awarded compensation of Rs. 6,64,104/-with interest at 9% per annum from the date of the

claim petition and the details of the same are as under:

Loss of Income Rs. 6,37,104

Damages to Motor cycle Rs. 2,000

Funeral expenses Rs. 5,000

Loss of consortium, Rs. 10,000

Loss of love and

affection Rs. 5,000

Loss of Expectancy of life Rs. 5,000

Total... Rs. 6,64,104/-

Aggrieved by that award, the Transport Corporation as well as the claimants have filed the present appeals.

4. The learned Counsel appearing for the claimants submitted that the compensation awarded by the Tribunal is very low and meager and the

Tribunal ought to have awarded compensation as claimed by the claimants and the Tribunal has not followed the principles of assessment before

passing the award and seeks to enhance the compensation. The learned Counsel appearing for the claimants also vehemently contended that the

Tribunal is wrong in deducting a sum of Rs. 1,000/-towards provident fund and miscellaneous amounts and thereby fixed the actual salary at Rs.

6,125/-including future prospects without any basis and further, the Tribunal has wrongly adopted the multiplier of "13". Therefore, the award

passed by the Tribunal is not in accordance with law and it is a fit case for enhancement.

5. The learned Counsel appearing for the Transport Corporation submitted that the Tribunal is wrong in holding that the accident was occurred

only due to the rash and negligent driving of the driver of the bus. He further submitted that the amount awarded by the Tribunal is excessive,

exorbitant, without basis and justification and therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set

aside.

6. Heard the learned Counsel for the parties. On the side of the claimants, P. Ws.1 to 4 was examined and Exs.P1 to P19 was marked. P.W.1 is

the husband of the deceased. P.W.2 is the Sub-Inspector of Police. P.W.3 is the representative of the employer. P.W.4 is the Doctor. On the side

of the Transport Corporation, R.W.1 the driver of the bus was examined and no document was marked to substantiate their claim. Ex.P1 is copy

of the First Information Report. Ex.P2 is the copy of the plan. Ex.P3 is the copy of Motor Vehicle Inspector report. Ex.P4 is the copy of the post-

mortem certificate. Ex.P5 is the copy of the charge sheet. Ex.P6 is the death certificate. Ex.P7 is the legal heir certificate. Ex.P8 is the copy of the

SSLC first page. Ex.P9 is the copy of the degree certificate. Ex.P10 is the salary certificate of the deceased. Ex.P11 is the driving license of the

claimant. Ex.P12 is the Government General Hospital Chit. Ex.P13 series is the prescription. Ex.P14 is X rays. Ex.P15 series is medical bills.

Ex.P16 is the birth certificate of the child. Ex.P17 is the authorization letter. Ex.P18 is the service particulars. Ex.P19 is the disability certificate.

After considering the oral and documentary evidence, the Tribunal had given a categorical finding that the accident had occurred only due to the

rash and negligent driving of the driver of the bus and the Transport Corporation is responsible for payment of compensation and the finding is

based on valid materials and evidence. In the accident, the deceased as well as her son sustained injuries. The deceased died in the hospital. Both

the husband and son have filed claim petitions and the same were disposed of by the Tribunal by a common Judgment. In respect of the claim

petition preferred on behalf of the minor child, the Tribunal also awarded compensation against which the transport corporation has not preferred

any appeal and it has accepted the award of the Tribunal without questioning the liability. As against the award passed by the Tribunal in respect of

the husband, the transport corporation has filed the appeal questioning the liability as well as the quantum.

7. P.W.1, in his evidence, has deposed that only the driver of the bus caused the accident and he also lodged a complaint in the police station and

that the driver of the bus was charge sheeted by the Traffic Investigation, D-6 Annasquare Police Station in Cr. No. 189/T1/2001. Ex.P1 is the

FIR. Ex.P2 is the copy of the plan. Ex.P5 is the copy of charge sheet. But, R.W.1 who is the driver of the bus, in his evidence has stated that the

autorickshaw, which was going in front of the bus was suddenly stopped by its driver in the traffic signal and therefore, the bus hit against the

autorickshaw and due to the said impact the rider of the motor cycle also hit against the bus. Thus, in his evidence R.W.1 has stated that the driver

of the bus has not caused the accident. It is further seen from the records that the public assaulted R.W.1, the driver of the bus, and the Inspector

of Police rescued the driver and admitted R.W.1 in the hospital. After considering the above oral and documentary evidence, the Tribunal had

given a categorical finding that the accident occurred only due to the rash and negligent driving of the driver of the bus. It is a question of fact and

therefore, the same is confirmed.

8. The age of the deceased was 43 years at the time of the accident. Ex.P8 is the SSLC first page, in which, it is stated that the date of birth of the

deceased was 12.10.1957. Ex.P9 is the degree certificate of the deceased. After taking into consideration of the same, the Tribunal accepted the

age of the deceased as 43 years at the time of the accident. P.W.1, in his evidence, has deposed that the deceased was employed as Junior

Assistant in the Block Development Office, Minjur and the gross salary of the deceased was Rs. 5,750/-per month and after deductions, the net

salary was Rs. 4,750/ as evident from Ex. A10-salary certificate of the deceased. There is no dispute regarding the same. After taking into

consideration that the the retirement age of the deceased is 58 years and her age at the time of the accident was 43 years and thus, there was still

14 years of future service, the Tribunal fixed the future salary at Rs. 7,500. Thereafter, the Tribunal determined the average of present and future

salary of the deceased at Rs. 6,125/-and from that amount, the Tribunal has deducted 1/3rd of Rs. 2041/-towards personal expenses of the

deceased and arrived at the monthly dependency at Rs. 4,084/-. The Tribunal, by adopting the multiplier of 13, arrived at the loss of income at Rs.

6,37,104/-(Rs. 4084 x 12 x 13). The learned Counsel appearing for the claimants vehemently contended that the Tribunal has wrongly deducted a

sum of Rs. 1,000/-from the gross salary, which amount represents the provident fund and other miscellaneous amounts and hence the Tribunal

ought to have taken into consideration the gross salary. He further contended that after deducting Rs. 1,000/-the Tribunal further deducted 1/3rd

amount towards personal expenses which is unsustainable. In the present case, the provident fund and other miscellaneous amounts cannot be

excluded because it would always form part of the salary. The Tribunal ought not to have deducted a sum of Rs. 1000/-from the gross salary. It is

well settled principle that only the statutory deductions should be deducted from the gross salary as held in the case of National Insurance

Company Ltd., v. Indira Srivastava and Ors. (2008 (1) TNMAC 166 (SC). After taking into consideration the principles enunciated in the

decision cited supra it is clear that the Tribunal ought not to have deducted Rs. 600/-, which was paid towards provident fund, and other

miscellaneous amounts. In this case there is no dispute regarding the income of the deceased. The income of the deceased was Rs. 5,750/-. There

are 14 more years left for retirement of the deceased. The similar issue was considered by the Apex Court in Smt. Sarla Verma and Others Vs.

Delhi Transport Corporation and Another, , wherein it has been held that 30% of the existing salary has to be taken if the age of the deceased is

between 40 -50 years. Hence 30% of the gross salary works out Rs. 1,725/-and if the said amount is added the actual salary comes to Rs.

7,475/-(Rs. 5750 + 1725). Out of the said sum, 1/3rd amount towards personal expenses comes to Rs. 2,492/-and 2/3rd of the actual salary

comes to Rs. 4,983/-. Further, the deceased would have contributed minimum subscription towards miscellaneous expenses and therefore, if

another sum of Rs. 500/-is deducted, the actual salary works out to Rs. 4,483/-. Thus, the annual loss of income could be arrived at Rs. 53,796/-

(Rs. 4,483 x 12). The Tribunal has adopted the multiplier of "13" which is not in accordance with law. Here, if the retirement age is taken as 58,

then 14 years should be taken as the correct multiplier. If multiplier of "14" is adopted the loss of income could be arrived at Rs. 7,53,144/-(Rs.

53,796 x 14). The Tribunal has awarded a sum of Rs. 2,000/-towards damage to motor cycle. It is an expenditure incurred by the claimants and

therefore, the same is confirmed. The Tribunal awarded a sum of Rs. 5,000/-towards funeral expenses, which is very reasonable and the same is

confirmed. The Tribunal awarded a sum of Rs. 10,000/-towards loss of consortium. The age of the husband was 44 years at the time of the

accident. Therefore, it is reasonable to award Rs. 15,000/-towards loss of consortium as against Rs. 10,000/-awarded by the Tribunal. The

Tribunal awarded a sum of Rs. 5,000/-towards loss of love and affection. The son is the minor, who lost the love and affection of his mother.

Therefore, it is reasonable to award Rs. 10,000/-towards loss of love and affection as against Rs. 5,000/-awarded by the Tribunal. The Tribunal

awarded a sum of Rs. 5,000/-towards loss of expectation of life. The age of the deceased was 43 years. Therefore, it is reasonable to award Rs.

10,000/-under this head as against Rs. 5000/-awarded by the Tribunal. The Tribunal has awarded interest at 9% per annum. The accident

occurred on 06.05.2001. Keeping in view the prevailing rate of interest at the time of accident and the date of the award, the rate of interest

awarded by the Tribunal is very reasonable and the same is confirmed. The details of the modified compensation as per the above discussion are

as under:

Loss of Income Rs. 7,53,144

Damages to Motor cycle Rs. 2,000

Funeral expenses Rs. 5,000

Loss of consortium, Rs. 15,000

Loss of love and

affection Rs. 10,000

Loss of Expectancy of life Rs. 10,000

Total... Rs. 7,95,144/-

Less: Already awarded amount Rs. 6,64,104/-

Enhanced Amount Rs. 1,31,040

Therefore, the claimants are entitled to the enhanced compensation of Rs. 1,31,040/-with interest at 9% per annum from the date of petition.

9. The Respondent-Transport Corporation in C.M.A. No. 3853 of 2004 is directed to deposit the enhanced compensation of Rs. 1,31,040/-with

interest at 7.5% from the date of petition within a period of eight weeks from the date of receipt of copy of this order. On deposit of the said

amount, the first claimant-father is permitted to withdraw his share from the enhanced amount as apportioned by the Tribunal by making proper

application. In respect of the award amount of Rs. 6,64,104/-it is stated that entire award amount has already been deposited and the first

claimant, the husband of the deceased was permitted to withdraw 50% of the amount apportioned to him with accrued interest as per order of this

Court dated 22.12.2005. In such circumstances, the first claimant is permitted to withdraw the balance amount on making proper application. In

respect of the share of the minor, it shall be continued to be in deposit till he attains majority. In respect of the share of the minor/second claimant in

the enhanced compensation, the Tribunal is directed to deposit his share in a Fixed Deposit in any one of the nationalized banks for a period of

three years and renewable thereafter till he attains majority and the father of the minor is permitted to withdraw interest once in three months.

10. With the above modification, these Civil Miscellaneous Appeals are disposed of. No costs.