

W.P(MD)No.9762 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2024

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.9762 of 2018

and

W.M.P(MD)No.9169 of 2018

1.S.Nilavathi
2.P.Selvamani

... Petitioners

Vs

1.The Union of India,
Represented by the Secretary,
Department of Road Transport and Highways,
G 5 & 6 Sector 10, Dwarka,
New Delhi – 10.

2.The National Highways Authority of India,
Represented by its Deputy General Manager
cum Project Director,
No.314E, K.P.Road,
Near Ayyappan Koil,
Parvathipuram, Nagercoil,
Kanyakumari District – 629 003.

3.The Assistant Divisional Engineer,
The National Highways,
Vivekandhapuram,
Kanyakumari Post,
Kanyakumari District.

4.The Inspector of Police,
Kanyakumari Police Station,
Kanyakumari.

... Respondents

(R - 4 is *suo motu* impleaded vide order
dated 04.11.2024 in W.P(MD)No.9762 of 2018)



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PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 and 3 to pay a sum of Rs.20,00,000/- as compensation for the death of the petitioners son namely Mr.Vasan @ Manikandavasan with an interest of 7.5% within the time frame stipulated by this Court.

For Petitioners : Mr.S.Rajasekar
for M/s.T.Lajapathi Roy

For R – 1 : Mr.S.Jeyasingh
Central Government Standing Counsel

For R – 2 : Mr.C.Arulvadivel @ Sekar
Standing Counsel

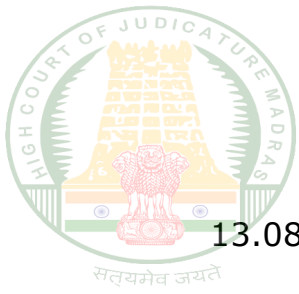
For R – 3 : Mr.D.Gandhi Raj
Special Government Pleader

For R – 4 : Mrs.M.Aasha
Government Advocate (Crl. Side)

ORDER

This Writ Petition has been filed for a direction, directing the respondents 2 & 3 to pay compensation with interest for the death of the petitioners' son.

2.The petitioners' son, namely Vasan @ Manikanda Vasan, was a driver in a private concern by name Krishnaveni Tempo Service on a daily wage basis. While being so, on



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13.08.2011 at about 06.00 a.m., when the petitioners son was driving a tempo bearing Registration No.TN-76-B-1837 with load of stones on Kanyakumari to Nagercoil National Highway road from Pottaiyadi towards Kanyakumari, due to sudden fall of a big branch of jamun tree, which was planted adjacent to the road from the opposite side, on the rooftop of the Tempo, the petitioner sustained head injury. The vehicle also upsets down on the left hand side into Nanchil Nadu Puthanar canal. Immediately with the help of the general public, the branch of the tree was removed from the tempo and the petitioners son was taken to Asaripallam Medical College Hospital. However, he was declared as brought dead. On the complaint, F.I.R has been registered in Crime No.643 of 2011 under Section 174 of Cr.P.C. The accident was occurred only due to negligence on the part of the respondents 1 to 3 herein by not maintaining the trees planted on both sides of the road, the damaged branches in a huge branch of tree fell down on the Tempo which was driven by the petitioners son. He was aged about 27 years at the time of his death. Therefore, the petitioners, who are being the mother and father of the deceased, submitted a representation, dated 20.04.2018 seeking compensation of Rs. 20,00,000/-.



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3.The learned counsel appearing for the respondents 1 and 2 filed a counter affidavit and on the submissions made by the learned counsels appearing for the respondents 1 and 2 would reveal that the Writ Petition is not maintainable. Since the disputed question of facts cannot be decided under Article 226 of the Constitution of India, the petitioner has to approach the civil Court seeking compensation by letting evidence to prove the negligence on the part of the respondents 1 to 3 herein. That apart, the petitioner submitted a representation after a period of 7 years from the date of the accident of the petitioners son seeking compensation. Therefore, the claim of the petitioners itself is barred by limitation. In order to save the limitation instead of filing a suit for compensation, the petitioner approached this Court by way of filing this Writ Petition under Article 226 of the Constitution of India. In support of their contentions, the learned counsel appearing for the respondents 1 and 2 relied upon the Judgment of the Hon'ble Supreme Court of India in ***Karnataka Power Corporation Limited and another Vs. K.Thangappan and another*** reported in ***2006 (4) SCC 332*** in which the Hon'ble Supreme Court of India held that the delay or laches is one of the factors that is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution of India. Therefore,



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this Court may refuse to allow the claim petition, if there is such negligence or omission on the part of the applicant to assert his right. In the same manner, the Hon'ble Supreme Court of India held in **Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T.Murali Babu** reported in **(2014) 4 SCC 108** and **Tukaram Kana Joshi and others Vs. Maharashtra Industrial Development Corporation and others** reported in **(2013) 1 SCC 353**. They further submitted that the tempo in which the deceased was driving had a roof made available of low gauge sheeting. It had no ability to withstand the broken branch. Therefore, it is impossible to believe that the deceased died due to the fall of the branch of a tree. Further, the deceased lost his control and the vehicle fell into Nanchil Nadar Puthanar canal. Therefore, whether he died due to the sudden fall of the branch of tree or due to drowning in the water canal is not known. They further submitted that even assuming that the deceased died due to sudden fall of the branch of the tree, it is only an act of God and as such, there is no negligence on the part of the respondents 1 and 2 to compensate the petitioners.



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4.The third respondent filed a separate counter-affidavit and stated that the road in which the accident took place ie., on 13.08.2011, belonged to the respondents 1 and 2. Therefore, the third respondent is not responsible for any compensation. The National Highways Department of Tamil Nadu was not maintaining the road properly in which the accident taken place. All assets and liabilities are transferred to the National Highways Authority of India vide Gazette notification of India in S.O.1399 (E) dated 27.09.2005. Once again, as per Gazette Notification of India S.O.675 (E) dated 05.03.2014, the said road was omitted and the said road is maintained by the third respondent.

5.As directed by this Court, the fourth respondent submitted a status report and stated that after registration of the F.I.R in Crime No.643 of 2011 under Section 174 of Cr.P.C, as per G.O.No.C3/11504/2020, dated 24.11.2020 issued by the Inspector General of Police, South Zone, Madurai, to destroy the old case records, the Superintendent of Police, Kanyakumari District issued instruction vide Ref.No.D7/143-1/DCRB/Gnl/KK1/2021 dated 22.10.2021 to destroy the old expired case records in all the Police Station, Kanyakumari District. As per the above instruction, the file



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in respect of registration in Crime No.645 of 2011 is not available with the Inspector of Police, Kanyakumari Police Station.

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6.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7.The points for consideration arising in this Writ Petition are that:

'(i) Whether the sudden fall of one of the branches of tree happened due to negligence on the part of the respondents 1 and 2 or due to other reasons?

(ii) Whether the petitioners are entitled for compensation for the death of their son due to sudden fall of the branch of the tree which is standing on both sides of the road maintained by the respondents 1 and 2?'



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8. On perusal of the post mortem report of the deceased would reveal that he died due to head injury. Though the learned counsels appearing for the respondents 1 and 2 specifically contended that the vehicle fell down into Nanchil Nadar Puthanar canal and as such, he died not due to the sudden fall of the branch of tree, on perusal of the record would reveal that the deceased was driving the tempo from Potthaiyadi towards Kanyakumari on the Kanyakumari Nagercoil National Highways road, a big branch of jamun tree suddenly fell on the tempo, due to which, the entire roof top of the tempo was crushed and the deceased sustained head injury. Therefore, he lost his balance and the vehicle fell into Nanchil Nadar Puthanar canal. The canal is not filled up with any water to assume that the deceased drowned and died. It is also not the case of the respondents 1 and 2 that the deceased fell down into the water channel and died due to drowning. The post mortem report says that the deceased died due to a head injury. It is also evident from the photographs produced by the learned counsel appearing for the petitioner.

9. The sudden fall of the branch of tree happened due to non-maintenance of the trees properly. Admittedly, the road was



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maintained at that juncture by the respondents 1 and 2. They failed to remove the old and worn-out trees in the public road and it would amount to negligence on their part. On account of failure to discharge their statutory duties resulting in tort, they are liable to pay compensation. The accident was caused not due to other reasons, but only because of the negligence on the part of the respondents 1 and 2 by not maintaining the trees properly. This Court can easily visualize that if the tempo goes at the speed of 50 to 60 kms speed and anything falls on the vehicle even by a small stone, it would cause heavy damage. In the case on hand, a huge branch of the tree suddenly fell down on the tempo which was driven by the deceased at normal speed in the National Highways. It caused a crush on the rooftop of the tempo and the deceased sustained grievous head injury and died on the spot. Therefore, when he was taken into hospital, he was declared as brought dead.

10.It is also not the case that the branch of the tree fell due to heavy wind and on that day, there was no rain or heavy wind. To say, it fell down not due to any natural calamity. Therefore, the respondents 1 and 2 are duty bound to maintain the trees by cutting the worn out branches and trees located on both sides of the

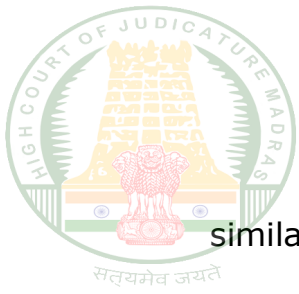


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road to protect the commuters. It is dangerous to leave those branches or trees to the life of any living thing.

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11.The learned counsel appearing for the petitioner relied upon the Judgment of the Hon'ble Division Bench of this Court in the case of the **Commissioner Vs. State of Tamil Nadu** reported in **2017 (2) CTC 119**. The Hon'ble Division Bench of this Court after relying on several judgments held that where a fall of tree in a car resulted in the death of the parents of the petitioner therein since the Municipal Corporation failed to remove the old and worn-out trees in public road the same would amount to negligence when there is prima facie negligence, on account of failure to discharge statutory duties, resulting in tort, Mandamus can be issued to compel the competent authorities to pay compensation to the victims. In the case on hand also, on the failure of the respondents 1 and 2 to remove the old and worn-out trees in the National Highways road, it would amount to negligence on their part. Therefore, the petitioner made out a *prima facie* negligence on account of failure to discharge the statutory duties of the respondents 1 and 2, resulting in tort, the compensation can be very well ordered payable by the respondents 1 and 2 herein. In the



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similar Judgment, the Hon'ble Division Bench of this Court discussed in detail about the quantum of compensation to be fixed in the Writ Petition. It is relevant to extract the relevant portion of the judgment hereunder:

'40. On the contention that the compensation awarded to the second respondent, is a windfall, and that, even the Motor Accident Claims Tribunal would not have awarded such quantum of compensation as done by the writ court, perusal of the order impugned shows that while estimating the loss of income, love and affection and such other factors to be taken into consideration, the writ court has held as follows:

"18. There is no codified law for arriving at the quantum of compensation in cases of this type. The enactments like Motor Vehicles Act, 1988; Workmen Compensation Act, 1948; and Fatal Accidents Act, 1855 may be applied for arriving at the just compensation. In the decision reported in (1969) 3 SCC 64 (C.K.Subramania Iyer v. T.Kunhikuttan Nair) the Supreme Court held that there is no exact uniform rule for measuring the value of human life and the measure of damages cannot be arrived at precisely. In the decision reported in (2001) 8 SCC 151 (M.S.Grewal v. Deep Chand Sood) the Supreme Court held that multiplier method may be adopted to arrive at the just compensation. The age of the deceased can also be taken for arriving at a correct multiplier as per the judgment of the Supreme Court reported in 2011 (5) LW 408 (P.S.Somanathan & Others v. District Insurance Officer & Another).

19. How the Court should decide the cases of this nature is emphasised by the Supreme Court in the decision reported in (2011) 10 SCC 634 (Ibrahim v. Raju). In para 9 it is held thus,



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"9. This Court has time and again emphasised that the officers, who preside over the Tribunals adopt a proactive approach and ensure that the claims filed under the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure keeping in view the relevant factors. Unfortunately, despite repeated pronouncements of this Court in which guiding principles have been laid down for determination of the compensation payable to the victims of road accidents and/or their families, the Tribunals and even the High Courts do not pay serious attention to the imperative of awarding just compensation to the claimants."

In (2009) 13 SCC 422 (Reshma Kumari v. Madan Mohan) the Supreme Court pointed out the need of giving just compensation to the victim. In paragraphs 26 and 27 it is held thus,

"26. The compensation which is required to be determined must be just. While the claimants are required to be compensated for the loss of their dependency, the same should not be considered to be a windfall. Unjust enrichment should be discouraged. This Court cannot also lose sight of the fact that in given cases, as for example death of the only son to a mother, she can never be compensated in monetary terms.

27. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore,



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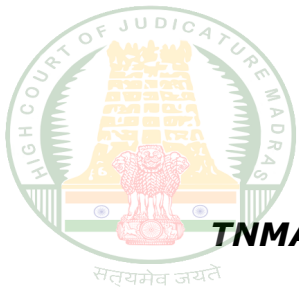


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difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so."

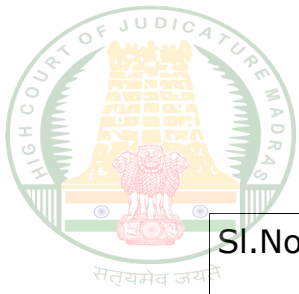
12. At the time of accident, the deceased was aged about 27 years on 13.08.2011. According to the petitioner, he was paid a sum of Rs.600/- per day on a daily wage basis. On perusal of the legal heirship certificate would reveal that he was the only son of the petitioners and he was the sole bread winner of his family. He had valid licence to drive light motor vehicle. The petitioners were aged about 48 & 50 years at the time of demise of their son and as such, the deceased has to be compensated. Therefore, the parents of the deceased have to be compensated under the head of future prospects also.

13. However, there is no proof to show that the deceased earned a sum of Rs.600/- per day. Considering the nature of employment of the deceased, this Court is of the considered view that the income of the deceased is fixed as Rs.10,000/- per month. The Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **2017(2)**



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TNMAC 609 (SC) held that if the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. Applying the dictum laid down in **Pranay Sethi's case**, taking note of the age of the deceased, 40% of the income is added towards future prospects and by addition, it comes to Rs.14,000/- {Rs.10,000 + Rs.4,000/- (40% of the income)}. Since the deceased was bachelor, 50% of the income has to be deducted towards personal and living expenses of the deceased and after such it come to Rs.7,000/- {Rs.14,000 - Rs.7,000}. As per the decision of the Hon'ble Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **2009 (2) TNMAC 1 (SC)**, the proper multiplier would be '17'. Hence the loss of dependency would be Rs.14,28,000/- (Rs.7,000/- X 12 X 17). The petitioners are being the parents of the deceased are entitled to get Rs.1,00,000/- each towards loss of love and affection, a sum of Rs.25,000/- is awarded towards funeral expenses and a sum of Rs. 25,000/- is awarded towards transportation and other miscellaneous expenses. Accordingly, the petitioners are entitled to get the compensation as follows:



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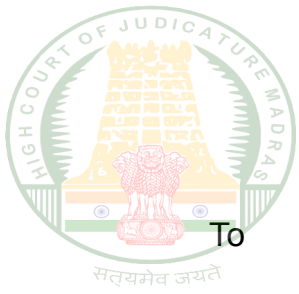
Sl.No.	Description	Amount awarded Rs.
1.	Loss of dependency	14,28,000/-
2.	Loss of love and affection to the petitioners 1 and 2	2,00,000/-
3.	Funeral Expenses	25,000/-
4.	Transportation and other charges	25,000/-
Total		16,78,000/-

14. In view of the above, the petitioners are entitled for a sum of Rs.16,78,000/- as compensation. The respondents 1 and 2 are jointly and severally pay the sum of Rs.16,78,000/- along with interest at the rate of 6% per annum from the date of the representation submitted by the petitioner, dated 20.04.2018 till the date of realization, to the petitioners, within a period of four weeks from the date of receipt of a copy of this order. The compensation amount shall be apportioned by petitioners 1 and 2 as 50% each.

15. With the above directions, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

11.11.2024

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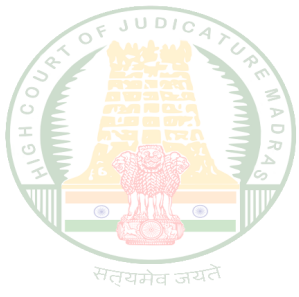


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To

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- 1.The Secretary,
Represented by the Union of India,
Department of Road Transport and Highways,
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- 2.The National Highways Authority of India,
Represented by its Deputy General Manager
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G.K.ILANTHIRAIYAN, J.

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Order made in
W.P(MD)No.9762 of 2018

11.11.2024