

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2708 of 2015

1.Indirani
2.Udayakumar

.. Appellants/Petitioners

vs.

The Managing Director,
Metropolitan Transport Corporation,
Chennai - 600 002. ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree dated 6.11.2012 made in MACTOP No.721 of 2011 on the file of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai.

For Appellants : Mr.F.Terry Chellaraja
for M/s.M.Malar

For Respondent : Mr.S.Sivakumar

JUDGMENT

Being aggrieved by the insufficient compensation of Rs.2,70,000/- awarded by the Motor Accident Claims Tribunal / IV Small Causes Court, Chennai in MCOP No.721 of 2011 dated 6.11.2012 for the loss of the life of the deceased girl, aged about 13 years, who was studying VIII Standard, the parents of the deceased have filed this appeal.

2. On 28.1.2011 at about 9.15 a.m, the deceased U.Abhirami was going to school on the Rajiv Gandhi Salai, Kandan Chavadi, near I.G.P. Company and while crossing the road from East to West direction, the driver of the MTC Bus bearing Reg.No.TN 01 N 5263 came in a rash and negligent manner from South to North direction and hit the deceased front side and as a result, the deceased was thrown out by 5 feet from the accident spot and she died on the spot. The first and second petitioners are the mother and father of the deceased and the only legal heirs of the deceased. Though the appellants have computed their compensation for the loss of the life of their deceased daughter, they restricted their claim to a total compensation of Rs.6,00,000/-.

3. The learned counsel appearing for the appellants narrating the manner of the accident happened would submit that the accident had occurred only due to rash and negligent driving of the MTC Bus and the Tribunal has also rightly agreed with the case of the claimants that the accident had occurred only due to rash and negligent driving of the MTC Bus by its driver and also rightly fastened liability of compensation to the claimants. However, the Tribunal has erred in fixing the annual notional income as Rs.15,000/- which is contrary to the ratio laid down by the Apex Court in the case of Kishan Gopal and another V. Lala and others reported in 2013 ACJ 2594 wherein the Apex Court has held that either High Court or Tribunals while fixing compensation it should see that it has been fixed in such a way that the compensation is just and reasonable and in that case, a sum of Rs.30,000/- p.a. has been fixed as notional income of the deceased boy, aged about 10 years. In view of the said decision, the approach adopted by the Tribunal in fixing a sum of Rs.15,000/- as annual notional income of the deceased girl, for aged about 13 years, is irrational and the same is liable to be modified. Adding further, he would submit that only a sum of Rs.40,000/- has been fixed under the head for loss of love and affection and Rs.5,000/- has been fixed for funeral expenses and as such, a total sum of Rs.45,000/- has been fixed under the conventional heads, whereas a sum of Rs.50,000/- has been fixed under conventional heads in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas reported in 1994 ACJ 1 (SC). Finally, he would submit that fixing a sum of Rs.30,000/- as the annual notional income of the deceased for the purpose of computing compensation can be justifiable and reasonable. Similarly, awarding a sum of Rs.50,000/- towards compensation under convention head is justifiable, he pleaded.

4. Per contra, the learned counsel appearing for the Transport Corporation would submit that the deceased being a School going student unfortunately invited the accident by crossing road at Rajiv Gandhi Salai, Kandan Chavadi, near I.G.P.Company, without noticing the Bus coming from South to North. As such, the deceased girl contributed negligence to the accident. Therefore, the finding of the Tribunal that the accident happened only due to rash and negligent driving of the offending Bus belonging to the Transport Corporation by its driver has to be set aside. Considering the fact that the deceased was only a dependent and was not earning, the Tribunal has fixed a sum of Rs.15,000/- as the annual notional income and rightly applied the multiplier 15. Therefore, there is no infirmity or illegality in the conclusion of the Tribunal, hence, the learned counsel appearing for the Transport Corporation would submit that the appeal has to be dismissed.

5. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent Transport Corporation and perused the materials available on record.

6. This Court is unable to find any merit in the contentions of the learned counsel appearing for the respondent Transport Corporation. The reason is that the mother of the deceased, namely, PW.1 in her evidence has clearly stated that the deceased girl was thrown out forcibly by the offending bus of the respondent Transport Corporation in the accident that occurred on 28.1.2011. She suffered multiple injuries and died on the spot due to shock and haemorrhages. Thereafter, mother and father of the deceased girl filed claim petition seeking for compensation of Rs.6,00,000/-. In Ex.P.3 Post-mortem Certificate and Ex.P.5 Death Certificate, the age of the deceased was mentioned as 13 years at the time of death. Therefore, there is no dispute with regard to the age of the deceased girl as 13 years. In that regard, the Tribunal has also taken into consideration the School Certificate of the deceased girl, which was marked as Ex.P.7. Considering all these aspects, the Tribunal has fixed a sum of Rs.15,000/- as annual notional income.

7. Now, the point that arises for consideration in this case is whether the annual notional income fixed by the Tribunal for the deceased girl, aged about 13 years, at the time of the accident, at Rs.15,000/- is proper and correct and whether the compensation awarded by the Tribunal is liable to be enhanced?

8. In this context, it is necessary to refer to the Judgment of the Apex Court in the case of Kishan Gopal and another V. Lala and others reported in 2013 ACJ 2594. In that case, the deceased was 10 years old boy who was assisting his parents in their agricultural operations. Therefore, considering the fact that the rupee value has come down drastically from the year 1994, the Apex Court has held that had the deceased been alive he would have certainly contributed substantially to the family of the claimants by working hard and so holding fixed a sum of Rs.30,000/- as notional annual income of the deceased boy. Again, taking the young age of the parents, namely, mother, who was aged about 36 years old at the time of the accident, by following the ratio laid down in the case of Sarla Verma and others Vs. Delhi Transport Corporation Ltd., and another [(2009) 6 SCC 121], applied the multiplier of 15 and computed the loss as Rs.4,50,000/- (Rs.30,000 X 15). Further, in that case, with regard to the compensation under conventional heads i.e. for loss of love and affection, funeral expenses and last rites, following the ratio laid down by the Apex Court in the case of General Manager, Kerala State Road

Transport Corporation v. Susamma Thomas reported in 1994 ACJ 1 (SC) wherein the Apex Court has held that a sum of Rs.50,000/- under conventional heads can be awarded in relation to the death of children between the age group of 10 and 15 years old, has fixed a sum of Rs.50,000/- under conventional heads.

9. In the present case also, admittedly, the deceased girl was aged about 13 years at the time of the accident and she was killed due to rash and negligent driving of the accident caused by the driver of the offending bus belonging to the respondent Transport Corporation, while she was proceeding to her school on the Rajiv Gandhi Salai, Kandan Chavadi, near I.G.P. Company as stated above. Therefore, following the ratio laid down in Kishan Gopal and another V. Lala and others reported in 2013 ACJ 2594, the annual notional income of the deceased is taken as Rs.30,000 and if it is multiplied by applying the appropriate multiplier 15, a sum of Rs.4,50,000/- is arrived. Therefore, the pecuniary compensation is determined as Rs.4,50,000/-. In the same way, this Court is inclined to enhance the award under the conventional heads as Rs.50,000/- following ratio laid down in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas reported in 1994 ACJ 1 (SC). Therefore, the appellants are entitled to a total compensation of Rs.5,00,000/- (Rupees five lakhs only).

10. Accordingly, the award is modified and the Appeal is partly allowed. No costs. The award amount will carry interest at the rate of 7.5% p.a. from the date of petition i.e. 7.2.2011 till the deposit of compensation. However, it is made clear that while entertaining the delay condone petition, this Court, has ordered that the delay period i.e. 300 days shall be excluded for the purpose of calculating interest. Therefore, the appellants are not entitled to receive interest for the said period alone.

11. Though the learned counsel appearing for the respondent/Transport Corporation, Chennai, has sought eight weeks time to deposit the entire award amount less if any amount already deposited, considering the nature of the case, this Court is inclined to grant four weeks' time to do so.

Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal/
IV Judge, Small Causes Court, Chennai.

+1cc to M/S.M.Malar, Advocate, S.R.No.67928
+1cc to Mr.S.sivakumar, Advocate, S.R.No.67980

C.M.A.No.2708 of 2015

gj (CO)
srg (04/02/2016)



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