

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.2395 of 2016
and C.M.P.No.16637 of 2016

National Insurance Co. Ltd.,
D.O.:TP Cell : No.751,
Anna Salai, Chennai - 600 002.... Appellant / 2nd respondent

versus

1. K.Sugumar

2. Ramadevi 1st and 2nd respondents/Claimants

3. V.Subramani 3rd respondent / 1st respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree 15.06.2016 made in M.C.O.P.No.6057 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub Court-II, Small Causes Court), Chennai.

For Appellant : Mr.S.Vadivel
For R1 and R2 : Mr.Terry Chellaraja
for M/s.V.Velu

JUDGMENT

The first claimant as father and the second claimant as mother have filed a claim petition in M.C.O.P.No.6057 of 2014 before the Motor Accident Claims Tribunal (Special Sub Court-II, Small Causes Court), Chennai, in respect of death of their daughter Geetha, claiming a sum of Rs.10,00,000/- as compensation.

1.1. Geetha was studying 3rd standard and she was aged 8 years, on the date of accident on 29.08.2014.

1.2. The Tribunal quantified the compensation and awarded a sum of Rs.14,40,000/-. Challenging the award as excessive, the Insurance Company has filed this appeal.

2. The main contention of the Insurance Company is that the award is against the principles laid down in the decisions of the Hon'ble Supreme Court and the Division Bench of this Court.

3, The break-up details of the award are essential to appreciate the contention raised by the Insurance Company.

Pecuniary Loss (Rs.5,000 + 50%-1/3 x12x18)-	Rs.10,80,000/-
Loss of love and affection	- Rs. 2,00,000/-
Loss of estate	- Rs. 1,00,000/-
Transport	- Rs. 8,000/-
Damage to dress and articles	- Rs. 2,000/-
Funeral Expenses	- Rs. 50,000/-
Total	- Rs.14,40,000/-

4. While admitting the liability to the extent of Rs.5,00,000/-, it is contended that the remaining amount is excessive and the guidelines given in the following decisions have been overlooked by the Tribunal and therefore, the award has to be tested in the light of the following decisions:

a) 2009 (1) TNMAC 593 (R.K.Malik and another vs. Kiran Paul and others);

b) 2015 (2) TNMAC 490 (National Insurance Company vs. R.Vimala);

c) 2013 (2) TNMAC 358 (SC) (Kishan Gopal and another vs. Lala and others).

4.1. In the case of R.K.Malik and another vs. Kiran Paul and others, reported in 2009 (1) TNMAC 593, the observation of the Supreme Court reads as under:

"15. The real problem that arises in the cases of death of children is that they are not earning at the time of the accident. In most of the cases they were still studying and not working. However, under no stretch of imagination it can be said that the parents, who are appellants herein, have not suffered any pecuniary loss. In fact, Loss of dependency by its very nature is awarded for prospective or future loss. In this context, Lord Atkinson aptly observed in Taff Vale Rly. Co. v. Jenkins, (1911-13) All England Reporter 160 as follows:

"In case of the death of an infant, there may have been no actual pecuniary benefit derived by its

parents during the child's lifetime. But this will not necessarily bar the parents' claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived."

18. ... We must point out here that the learned counsel for the appellants had argued that the notional sum of Rs. 15,000/- should be enhanced and increased as the legislature has not amended the Second Schedule and the same continues to be in existence since it was enacted on 14.11.1994. We are not examining and going into this aspect as the accident had taken place in the present case nearly three years after the enactment of the Second Schedule. The time difference between the date of the enactment and the date of accident is not substantial.

In the same case, the Hon'ble Supreme Court has pointed out that the amount specified in the second schedule can be followed with regard to notional income as the time difference is only three years between the enactment of the second schedule and the date of accident. But, in this case, the time difference is more than 25 years. Therefore, the notional income has to be taken at a higher level, considering the inflation and reduction in the value of money.

4.2. So far as the decision of the Hon'ble Supreme Court in the case of Kishan Gopal and another vs. Lola, reported in 2013 (2) TNMAC 358 SC, (as relied upon by the learned counsel for the appellant) is concerned, in the case of road accident that had happened on 19.07.1992, where a student, aged 10 years, died, the Hon'ble Supreme Court has taken the notional income of the deceased at Rs.30,000/-. The relevant portion read as under:

"In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all force is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the

parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma v. Delhi Transport Corporation, the multiplier of 15 can be applied to the multiplicand."

Applying the ratio laid down by the Hon'ble Supreme Court, wherein, the reduction in money value has been pointed out, this Court can take the notional income of the deceased at Rs.60,000/- p.a. The consideration of increase on account of future prospective increase in income would remain offset by deduction towards personal expenses of the deceased.

5. In the light of the Judgments of the Supreme Court, it may not be appropriate to consider the Division Bench Judgment of this Court except where the decisions are distinguishable on facts.

5.1. Taking the notional income at Rs.60,000/- p.a. and adopting the multiplier of '13', considering the age of parents, the loss of dependency would be Rs.7,80,000/-. Awarding a sum of Rs.1,00,000/- to each of the parents for loss of love and affection and a sum of Rs.25,000/- for cremation expenses, the total amount is quantified at Rs.10,05,000/-.

6. In the result, the Civil Miscellaneous Appeal is partly allowed, reducing the quantum of compensation from Rs.14,40,000/- to Rs.10,05,000/-.

7. The Insurance company shall deposit the compensation of Rs.10,05,000/-, less the amount already deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimants are permitted to withdraw the same, as per the ratio of the apportionment made by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

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Sub Asst. Registrar

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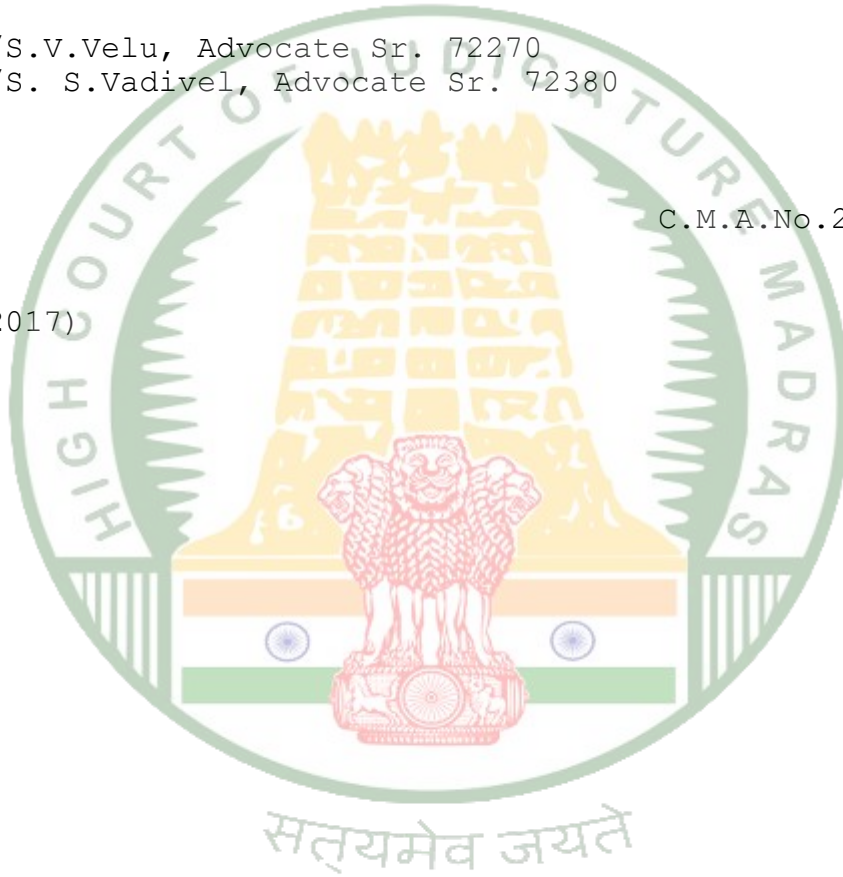
1. The Motor Accident Claims Tribunal
(Special Sub Court-II,
Small Causes Court), Chennai.
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to M/S.V.Velu, Advocate Sr. 72270

+1cc to M/S. S.Vadivel, Advocate Sr. 72380

C.M.A.No.2395 of 2016

MP (CO)
VR(11/10/2017)



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