

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.2845 of 2015

1. K.Kalaiselvi
2. K.Kaliamoorthy

... Appellants / Petitioners

versus

The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division-I) Ltd.,
Railway Station New Road,
Kumbakonam - 612 001.

... Respondent/Respondent

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.09.2013 made in M.C.O.P.No.738 of 2012 on the file of Motor Accident Claims Tribunal (Principal District Judge), Cuddalore.

For Appellants : Mr.S.Partheeban

For Respondent : Mr.D.Venkadachalam

JUDGMENT

Childhood means simplicity.

Look at the world with the child's eye - it is very beautiful
- Kailash Satyarthi

One K.Elaiyaraj, aged 12 years, died in an accident on 06.02.2012. In respect of the same, the parents filed a claim petition in M.C.O.P.No.738 of 2012 before the Motor Accident Claims Tribunal (Principal District Judge), Cuddalore, claiming compensation of Rs.15,00,000/-.

1.1. As against the claim of Rs.15,00,000/-, the Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.1,60,000/- as compensation, payable by the Transport Corporation along with interest at the rate of 6% p.a. from the date of petition till the date of deposit.

1.2. Aggrieved over the inadequacy of compensation, the claimants have filed this appeal.

2. The learned counsel appearing for the

appellants/claimants submitted that

(a) the Tribunal ought to have applied the latest decision of the Hon'ble Supreme Court and High Court while calculating the compensation;

(b) the Tribunal ought to have deducted 1/3 towards personal expenses of the deceased, instead of 50%, while calculating compensation towards loss of dependency ;

(c) The Tribunal ought to have awarded a sum of Rs.1,50,000/- towards loss of love and affection.

3. In order to appreciate the contentions, it is necessary to look into the parameters adopted by the Tribunal while awarding compensation.

3.1. Since the deceased was aged 12 years and he was a student, the Tribunal has fixed the notional income of the deceased at Rs.15,000/- p.a. and deducting 50% towards personal expenses, the contribution to the family was determined at Rs.7,500/- (Rs.15,000/- x 50%). Considering the age of the mother of the deceased as 32, the Tribunal has adopted the multiplier as 16 as per the II Schedule of the MV Act and quantified the pecuniary loss at Rs.1,20,000/- (Rs.7,500 x 16). Awarding Rs.10,000/- each towards loss of love and affection, Rs.10,000/- towards funeral expenses and Rs.10,000/- towards Transport expenses, the total compensation has been quantified at Rs.1,60,000/-.

4. In 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 appellants), wherein, 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, this Court takes 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 off-set by deduction towards personal expenses of the deceased. Adopting the multiplier of '16' as per the age of the deceased mother, the pecuniary loss is quantified at Rs.9,60,000/-.

4.1. As per the decision of the Hon'ble Supreme Court in Kanhsingh and another vs. Tukaram and others [Civil Appeal No. 347 of 2015 arising out of SLP (C) No. 976 of 2014], loss of love and affection is awarded at Rs.1,00,000/- to each of the appellants.

4.2. The Hon'ble Supreme Court in the case of Rajesh and others vs. Rajbir Singh and others, reported in 2013(2) TNMAC 55 SC, has awarded a sum of Rs.25,000/- towards funeral expenses. Applying the same, this Court awards a sum of Rs.25,000/- towards funeral expenses. Awarding a sum of Rs.15,000/- towards transport expenses, the total amount of compensation is quantified at Rs.12,00,000/-.

5. In the result, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.1,60,000/- to Rs.12,00,000/-.

6. The Transport Corporation is directed to deposit the enhanced compensation of Rs.12,00,000/-, less the amount already deposited if any, along with interest at the rate of 9% p.a. from the date of petition till the date of deposit, (less the interest amount for the default period, if any), within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimants are permitted to withdraw the same as per the apportionment made by the Tribunal. The claimants shall pay the court fee for the enhanced amount of compensation, before obtaining copy of the Judgment. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claim Tribunal,
(Principal District Judge),
Cuddalore.

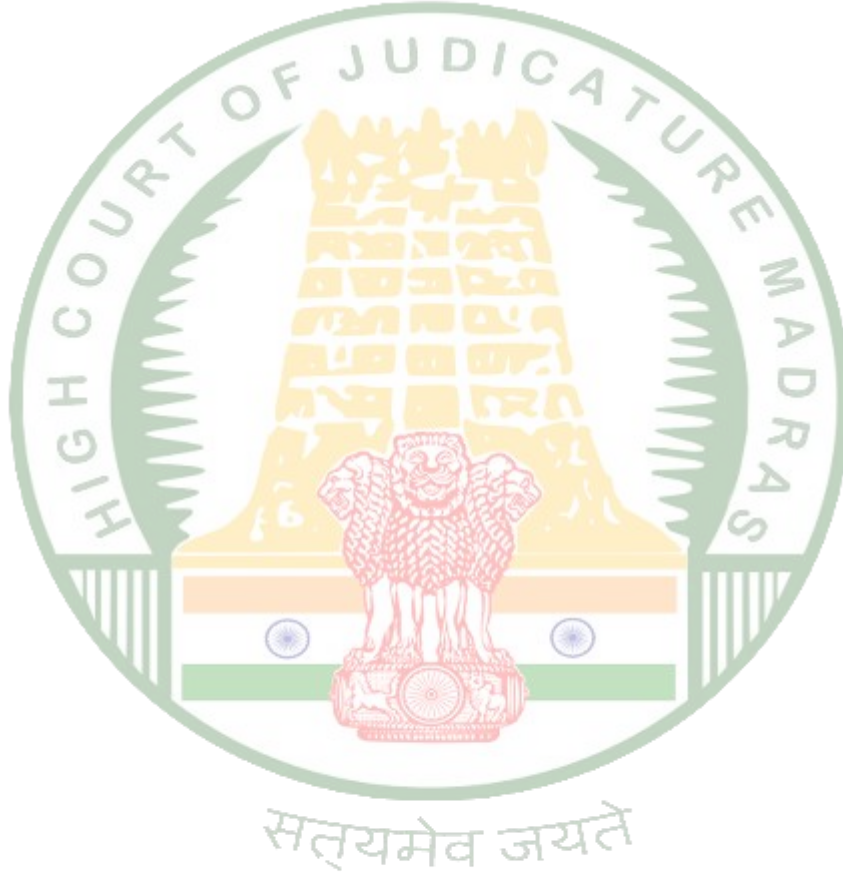
<https://hcservices.ecourts.gov.in/hcservices/>

2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.S.Partheeban, Advocate, S.R.No.72259
+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.72276

C.M.A.No.2845 of 2015

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



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