IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 12.09.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. No. 1712 of 2014

1. Gowrilakshmi
2. Radhakrishnan .. Appellants/Petitioners

versus

Metropolitan Transport Corporation Ltd
Rep. by its Managing Director,
Pallavan Salai, Chennai 600 002 .. Respondent/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Fair and Decreetal dated 11.07.2012 made in M.C.O.P. No.1821 of 2010 on the file of the Motor Accidents Claims Tribunal/XVII Additional Judge, Chennai 1.

For appellants : Ms.Ramya V.Rao

For respondent : Mr.S.Sivakumar

J U D G M E N T

Assailing the quantum of compensation fixed by the Motor Accidents Claims Tribunal, Chennai in awarding a sum of Rs.2,53,000/- against a claim of Rs.10,00,000/- for the loss of life of a school going boy, aged about 15 years, the parents of the deceased boy, came up by way of appeal before this Court.

2. Ms. Ramya A.V. Rao, learned counsel appearing for the appellants would submit that for the death of the deceased, aged about 15 years, who is a student of X standard, the Tribunal has wrongly fixed a sum of Rs.15,000/- as notional income which is not only contrary to the Judgment of the Division Bench of this Court in National Insurance Company Limited Versus R.Vimala reported in 2015 (2) TN MAC 490 (DB), but also to the Judgment of Kishan Gopal Verus Lata & others reported in 2013 (2) TN MAC 358 (SC). In support of her submissions, the learned counsel appearing for the appellants would submit that in the ratio laid down by the Apex Court in the case of Kishan Gopal & Another Versus Lala & others, wherein the deceased was ten year old boy, the Hon'ble Supreme Court has enhanced the notional income from Rs.15,000/- to Rs.30,000/-.

The law laid down by the Hon'ble Apex Court which was subsequently followed by the Division bench has to be applied in the present case also. Therefore, while enhancing the notional income of the deceased from Rs.15,000/- to Rs.30,000/-, the proper multiplier to be adopted as has been held in the case of SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER reported in (2009) 4 MLJ 997 by adding another Rs.25,000/- to meet the ends of justice.

3. No doubt in the present case, the deceased was aged about 14 years at the time of accident which occurred on 11.12.2009. When the claim was made by the parents of the deceased, the Tribunal has fixed a sum of Rs.15,000/- as notional income for the deceased for the purpose of arriving at a compensation. Now this has been questioned taking strength from the Judgment of the Division bench of this Court in National Insurance Company Limited Versus R.Vimala reported in 2015 (2) TN MAC 490 (DB), wherein in paragraph 10, it has been held as under:

> "10.The Learned counsel for the Respondents/claimants cites the decision of the Hon'ble Supreme Court in Kishan Gopal & another Vs. Lala & others reported in 2013 (5) CTC 212 and at special page 214 whereby and where under it is observed and held as follows:
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> "In our considered view, the aforesaid legal principle laid down in Lata Wadhwa & ors. V. State of Bihar & ors., 2001 (8) SCC 197, with all fours 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, 2009 (2) TN MAC 1 (SC):2009 (6) SCC 121, the multiplier of 15 can be applied to the multiplicand. Thus, Rs.30,000/- x 15 = Rs.4,50,000/- and Rs.50,000/- under Conventional heads towards Loss of Love and Affection, Funeral Expenses, Last Rites as held in Kerala SRTC V.Susamma Thomas, 1994 (2) SCC 176, which is referred to in Lata Wadhwa's case and the said amount under the Conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under Conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the Appellants. The said amount will carry interest at the rate of 95 p.a. by applying the law laid down in the case of Municipal Council of Delhi Vs. Association of Victims of Uphaar Tragedy, 2011 (14) SCC 481, for the reason that the Insurance Company has been contesting the claim of the Appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the Appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this Appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the Appellants is legally justified.”

4. It is also useful to extract the relevant portion of the Judgment of the Hon'ble Apex Court in Kishan Gopal & Another vs. Lala & Others reported in 2013 (2) TN MAC 358 (SC), which is as under:

"18....... Since we have set aside the findings and reasons recorded by both the Tribunal and the High court on the contentious Issue Nos 1 and 2 by recording our reasons in the preceding paragraphs of this Judgment and we have answered the point in favour of the Appellants and also examined the claim of the Appellants to award just and reasonable compensation in favour of the Appellants as they have lost their affectionate 10 year old son. For this purpose, it would be necessary for us to refer to Second Schedule under Section 163-A of the M.V.Act, at Clause No.6, which refers to Notional Income for compensation to those persons, who had no income prior to accident. The relevant portion of Clause No.6 states as under:

"6. Notional income for compensation to those, who had no income prior to accident:

(a) Non-earning persons - Rs.15,000/- p.a."

The aforesaid clause of the Second Schedule to Section 163-A of the M.V.Act, is considered by this Court in the case of Lata Wadhwa & Ors. V. State of Bihar & Ors., 2001 (8) SCC 197, while examining the tortuous liability of the tort-feasor has examined the criteria for awarding compensation for death of children in accident between age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs.12,000/- p.a. and multiplier of 11 has been applied taking the age of the father and then under the Conventional heads the Compensation of Rs.25,000/- was awarded. Thus, a total sum of Rs.1,57,000/- was awarded in that case. After noting the submission made on behalf of TISCO in the said case that the Compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecoupable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs.50,000/- should be added and thus, total amount in each case would be Rs.2 lakhs. Further, in the case referred to supra it has observed that in so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs.12,000/- p.a. appears to be on the lower side and held that the contribution of such children should be Rs.24,000/- p.a. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa & Ors. V. State of Bihar & Ors., 2001 (8) SCC 197, with all fours 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, 2009 (2) TN MAC 1 (SC): 2009 (6) SCC 121, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000 under Conventional heads towards Loss of Love and Affection, Funeral Expenses, Last Rites as held in Kerala SRTC V. Susamma Thomas, 1994 (2) SCC 176, which is referred to in Lata Wadhwa's case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under Conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable Compensation to be awarded in favour of the Appellants. The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of Municipal Corporation of Delhi V. Association of Victims of Uphaar Tragedy, 2011 (14) SCC 481, for the reasons that the Insurance Company has been contesting the claim of the Appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the Appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this Appeal. Therefore, awarding 9% interest on the Compensation awarded in favour of the Appellants is legally justified."

5. Therefore, in a case where a school going boy at 14 years died in an accident, Rs.30,000/- is considered as reasonable notional annual income and thereupon the ratio laid down by the Apex Court in the case of Sarla Verma V. Delhi

Transport Corporation reported in 2009 (2) TN MAC 1 needs to be applied. In the present case, the sum of Rs.15,000/- fixed by the Tribunal has been found fault with by the appellant since it is not in consonance with the law laid down in both cases aforementioned. Therefore this Court also agrees with the same, accordingly, on the basis of the aforesaid decisions, this Court, finding no impediment, is inclined to fix a sum of Rs.30,000/- as notional annual income of the deceased. While doing so, I am inclined to hold that applying the ratio of the Apex Court in Sarla Verma V. Delhi Transport Corporation, 2009 (2) TN MAC 1 fixing 15 as multiplier would meet the ends of justice. Accordingly, the notional income of the deceased is fixed at Rs.30,000/- per year and if multiplier '15' is applied thereof, the compensation payable would come to Rs.4,50,000/-. Having regard to the facts and circumstances of the case, this Court is also inclined to award a consolidated sum of Rs.50,000/- under conventional head such as loss of love and affection to the appellants, funeral expenses, transportation etc., Since a sum of Rs.28,000/- is already been awarded by the Tribunal, this Court is awarding Rs.22,000/- by enhancing the amount awarded by the Tribunal under the conventional heads as follows:-

Loss of Love and Affection	:	Rs.35,000.00
Funeral Expenses	:	Rs.10,000.00
Transportation	:	Rs. 5,000.00
		Rs.50,000.00

6. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.2,53,000/- to Rs.5,00,000/- as indicated above. It is made clear that the sum of Rs.5,00,000/- shall be paid by the respondent with interest @ 7.5% per annum as awarded by the Tribunal. It is brought to the notice by the parties that the award amount has already been deposited and withdrawn by the claimants. Therefore, the balance amount shall be deposited by the respondent within period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, it is open to the appellants to withdraw the same with accrued interest.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. Motor Accidents Claims Tribunal/XVI Additional Judge,
   Chennai-1.

2. The Section Officer, VR Section,
   High Court, Madras.

+1cc to M/S.A.N.Viswanatha Rao, Advocate sr.51813
+1cc to Mr.S.Sivakumar, Advocate Sr.51710

C.M.A. No.1712 of 2014

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srg 16/11/2016