IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-04-2016

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

C.M.A.No.2980 of 2014

Sarasu
... Appellant/Petitioner

Vs.

1. B. Varadharaj

2. Royal Sundaram Alliance
Insurance Company Ltd.,
No.1, Club Road, Chennai - 2 ... Respondents/Respondents

Civil Miscellaneous Appeal under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 11-06-2014 made in M.C.O.P.No.3210 of 2012 on the file of Motor Accidents Claims Tribunal/III Judge, Court of Small Causes at Chennai.

For appellant ::Mr. A.N. Viswanatha Rao

For respondents ::No appearance for R1
M/s. N. Vijayaraghavan for R2

ORDER

The mother of the deceased daughter, who met with a fatal accident on 28-11-2011, at about 1:15 hours, while she was walking on the Tambaram GST Road, Mudichur Road hit by a Tata Sumo Car, has filed this civil miscellaneous appeal for enhancement of the compensation of Rs.2,90,000/- (Rupees Two lakhs ninety thousand only) awarded by the Tribunal.

2. The Tribunal has fixed the income of the deceased as Rs.15,000/-(Rupees Fifteen thousand only). In Kishan Gopal V. Lala, ((2014) 1 SCC 244), the annual income of the minor child was fixed at Rs.30,000/-(Rupees Thirty thousand only) and the relevant paragraph reads thus:

“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 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's case 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) 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 Council of Delhi v. 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."

3. Relying on the above judgment of the Honourable Supreme Court, this Court opines that the annual income should have been fixed as Rs.30,000/-(Rupees Thirty thousand only) and

multiplying with multiplier 15, considering the age of the mother of the deceased(38 years), the compensation would be Rs.4,50,000/-(Rupees Four Lakhs Fifty thousand only).

4. The Tribunal has awarded a sum of Rs.15,000/- and Rs.50,000/- on the heads of funeral expenses and loss of love and affection, respectively, and this Court finds it fit and proper and the same warrants no interference.

5. In view of the above, the award amount granted by the Tribunal is enhanced to a sum of Rs.5,15,000/- (Rupees Five Lakhs Fifteen Thousand only).

6. In the result, (i) the Civil Miscellaneous Appeal is allowed in part. (ii) the appellant is entitled to enhanced compensation with interest at the rate of 7.5% per annum from the date of petition till the date of realization; (iii)the second respondent is directed to deposit the enhanced amount within a period of eight weeks. (iv) On such deposit being made, the appellant being the sole legal heir of the deceased shall withdraw the entire award amount with interest.

No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal/III Judge,
Court of Small Causes, Chennai.

2.The Section officer,
V.R Section, High Court, Madras-104.

+1cc to M/S.A.N.Viswanatha Rao, Advocate sr.27672
+1cc to M/S.N.Vijayaraghavan, Advocate sr.27980

C.M.A.No.2980 of 2014

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srg 16/06/2016