

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2016

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.746 of 2014

1. J.Kanagaraj  
2. K.Glory ... Appellants / Petitioners

versus

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

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree 01.10.2013 made in M.C.O.P.No.3724 of 2009 on the file of the Motor Accident Claims Tribunal (Special Sub Judge-I), Chennai.

For Appellants : Mr.S.Vijayakumar  
For Respondent : Mr.K.S.Suresh

JUDGMENT

Let us remember: One book, one pen, one child,  
and one teacher can change the world  
- Malala Yousafzai

One Samuvel Jayakumar, aged 12 years, studying 7<sup>th</sup> Standard, died in an accident on 19.06.2009. In respect of the same, the parents filed a claim petition in M.C.O.P.No.3724 of 2009 before the Motor Accident Claims Tribunal (Special Sub Judge-I), Chennai, claiming compensation of Rs.6,00,000/-.

1.1. As against the claim of Rs.6,00,000/-, the Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.2,80,000/- as compensation, payable by the Transport Corporation along with interest at the rate of 7.5% 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) as per the Judgment reported in 2013 (2) TNMAC 358 SC (Kishan Gopal and another vs. Lola), the Tribunal should have fixed a sum of Rs.30,000/- as notional income, instead of Rs.15,000/- and

(b) Rs.25,000/- towards funeral expenses as per the Judgment reported in 2013(2) TNMAC 55 SC (Rajesh and others vs. Rajbir Singh and others).

(c) the Tribunal ought to have awarded Rs.1,50,000/- towards loss of love and affection instead of Rs.75,000/- as the claimants have lost their only son.

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, studying 7<sup>th</sup> standard, the Tribunal has fixed the notional income of the deceased at Rs.15,000/- p.a. Considering the age of the mother of the deceased as 45, the Tribunal has adopted the multiplier as 13 as per the II Schedule of the MV Act and quantified the pecuniary loss at Rs.1,95,000/- (Rs.15,000 x 13). Awarding Rs.75,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses, the total compensation has been quantified at Rs.2,80,000/-.

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 offset by deduction towards personal expenses of the deceased. Adopting the multiplier of 13 as per the age of the mother of the deceased, the pecuniary loss is quantified at Rs.7,80,000/-.

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.

4.3. It is claimed that the deceased is their only son. The mother is aged 45 years at the time of accident. The chance of begetting another child by natural means is remote. Therefore, the mother has to undergo fertility treatment. According to report, if the mother requires advanced technological assistance in IVF, the cost can go much higher. For instance, an ICSI treatment will require an additional Rs. 1,50,000 to Rs. 2,50,000. An FET (Frozen Embryo Transfer) procedure will cost about Rs. 1,20,000. If the mother is not able to conceive, then the option of taking a child in adoption and to bring up the child also will involve considerable expenditure. Considering the same, a sum of Rs.2,00,000/- is awarded to the parents.

5. In the result, the Civil Miscellaneous Appeal is allowed, enhancing the compensation from Rs.2,80,000/- to Rs.12,05,000/-.

6. The Transport Corporation shall deposit the enhanced compensation of Rs.12,05,000/-, 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, (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 ratio of the apportionment made by the Tribunal. The claimants shall pay the court fee for the enhancement compensation. No costs.

Sd/-  
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

The Motor Accident Claims Tribunal  
Special Subordinate Judge-I,  
Chennai.

Copy to:-

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

+1cc to M/S.S.Vijayakumar, Advocate Sr. 72313

+1cc to M/S.K.S.Suresh, Advocate Sr. 72549

सत्यमेव जयते

C.M.A.No.746 of 2014

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

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