



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2016

CORAM:

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THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A(MD)No.715 of 2013 & M.P(MD)No.1 of 2013
and M.P(MD)No.1 of 2013 &
C.M.P(MD)No.12015 of 2016

The Branch Manager,
National Insurance Company Ltd.,
Nagerkovil,
Nagerkovil Village,
Agasteeswaram Taluk,
Kanyakumari District.

... Appellant/Respondent 3

Vs.

1. M.K.M.K.Peer Mohamed
2.Saitha Beevi
3.Beema Kudai
4.Nabeel Mohamed

(R3 and R4 are declared as major and R1 is
discharged from guardianship for R3 & R4 vide
order dated 22.12.2016 passed in C.M.P(MD) Nos.
1203 & 12014 of 2016)

... Respondents 1 to 4/Petitioners

5.Kannan @ Ponraj

... Respondent 5/ Respondent 1

6. Athiswamy

...Respondent 6/ Respondent 2

7. Sheik Peer Mohamed

....Respondent 7/ Respondent 4

8.Suyambu

... Respondent 8/ Respondent 5

9.The Branch Manager

New India Assurance Co.Ltd.,

Nagerkovil Branch,

Nagerkovil Village,

Agastheeswaram Taluk,

Kanyakumari District.

..Respondent 9/ Respondent 6

(Respondent No.9 is given up)

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act,
1988, against the order and decreetal order dated 28.01.2005 made
in M.C.O.P.No.80 of 2001, on the file of the Motor Accident
Claims Tribunal, Nagerkovil, Chief Judicial Magistrate, Nagerkovil and praying
to set aside the same.



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For Appellant : Mr.Athimoolapandian
for Mr.A.K.Baskarapandian

For Respondents : Mr.C.K.M.Appaji for R1 & R2
: Mr.P.T.Mahesh Raja for R3 & R4
: No appearance for R5 to & R8
: R9- Given up -Vide EB

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant- Insurance Company against the award of Rs.2,42,500/- (Rupees Two Lakhs Forty Two Thousand Five Hundred only) as compensation for the death of Muneera Bagam aged about 14 years in the accident occurred on 16.02.2001 when she was travelling in a Auto which was hit by a Tempo driven in a rash and negligent manner causing the accident. Therefore, the claim petition is filed.

2. On contest, the Tribunal found that the driver of the Tempo alone was responsible for the accident and awarded a sum of Rs.2,42,500/- (Rupees Two Lakhs Forty Two Thousand Five Hundred only). The said award is being challenged before this Court by the appellant-Insurance Company.

3. Heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the respondents.

4. The accident as well as the death of the child of 14 years old are admitted.

5. The only question to be decided is with regard to the quantum of amount awarded by the Tribunal. However, the Honourable Supreme Court in Kishan Gopal and another -Vs- Lala and others reported in 2014 (1) SCC 244 granted a sum of Rs.5,00,000/- for the death of ten years old child and the annual notional income of Rs.30,000/- was taken and as per the age of the mother, the multiplier '15' was applied and Rs.4,50,000/- was awarded. Regarding the other conventional heads towards loss of love and affection and funeral expenses a sum of Rs.50,000/- was awarded, totalling Rs.5,00,000/- and paragraphs 38 to 40 are extracted hereunder:-

"38.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 natural 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.

39. 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 reported in (2009) 6 SCC 121, the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas reported in (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.

40. 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 reported in (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."



the time of accident was at 39 and the appropriate multiplier is '15' and therefore, the loss of income would be Rs.30,000/- x 15 = Rs.4,50,000/- (Rupees Four Lakhs Fifty Thousand only).

7. Under the conventional heads, like, loss of love and affection, funeral expenses Rs.50,000/- (Rupees Fifty Thousand only) was granted by the Honourable Supreme Court. Therefore, the award of Rs.2,42,500/- (Rupees Two Lakhs Forty Two Thousand Five Hundred only) is enhanced to Rs.5,00,000/- (Rupees Five Lakhs only) along with interest at the rate of 9% per annum.

8. Though the appeal has been preferred by the Insurance Company against the award of Rs.2,42,500/- as per the judgment of the Honourable Supreme Court in 2014 1 SCC 244 this Court enhanced the compensation to Rs.5,00,000/- even in the absence of appeal or cross appeal by the claimants.

9. The award amount granted by this court is apportioned among the respondents 1 to 4/claimants 1 to 4 as per the following proportion:-

1 st claimant	Rs.1,50,000/-
2 nd claimant	Rs.1,50,000/-
3 rd claimant	Rs.1,00,000/-
4 th claimant	Rs.1,00,000/-
Total	Rs.5,00,000/-

10. This court by order dated 04.04.2013 passed in M.P.(MD) No.1 of 2013 granted interim stay on condition that the appellant insurance company deposits 50% of the award amount granted by the Tribunal to the credit of M.C.O.P.No.80 of 2001 on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate Court, Nagercoil. Therefore, the appellant-insurance company is directed to deposit the balance award amount as ordered and apportioned as above by this Court along with interest and proportionate costs by way of transfer to the personal Savings Bank Account numbers of the respondents 1 to 4/claimants 1 to 4 through RTGS/NEFT System, after getting the Savings Bank Account details from the respondents 1 to 4/claimants 1 to 4 by the officials of the appellant insurance company within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit by the appellant insurance company, the respondents 1 to 4/claimants 1 to 4 are permitted to withdraw their respective shares with accrued interest and proportionate costs by filing necessary application before the Tribunal.

<https://hcservices.courts.gov.in/hcservices> 11. The respondents 1 to 4/claimants 1 to 4 are directed to pay necessary additional court fee towards the enhanced award amount immediately.



12. This Civil Miscellaneous Appeal is disposed of as above.
No costs. Consequently, connected miscellaneous petitions are
closed.

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Sd/-

Assistant Registrar

Sub Assistant Registrar

To
The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal-
Nagerkovil.

Copy to:

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/S.P.T.Ramesh Raja, Advocate, SR.No. 83328

+1CC to M/S.C.K.M.Appaji, Advocate, SR.No.83054

C.M.A (MD) No.715 of 2013

22.12.2016

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