



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :09.08.2017

PRONOUNCED ON : 16.11.2017

WEB COPY

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD) .No.130 of 2011

1.Perumayee

2.S.Veluchamy

... Appellants

-Vs-

1. P.Chinnasamy,
Driver,
Tamil Nadu State Transport Corporation Ltd.,
Madurai Division,
Bye Pass road,
Madurai.

2. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Madurai Division,
Bye Pass road,
Madurai.

(The cause title has been amended as per memo
USR.3920 dated 22.10.2010 recorded vide order dated
24.11.2010 made in CMP(MD).No.6664/1987 in CMA(MD)
SR.No.25059 of 1987)

... Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 110-D of the Motor Vehicles Act against the award of the Motor Accidents Claims Tribunal (Subordinate Judge), Madurai dated 30.10.1985 made in M.C.O.P.No.278 of 1984.

For Appellants : Mr.V.Ramajgadeesan

For R1 : Ex.parte

For R.2 : Mr.M.Prakash

J U D G M E N T

This Civil Miscellaneous Appeal has been filed under Section 110-D of the Motor Vehicles Act against the award of the Motor Accidents Claims Tribunal (Subordinate Judge), Madurai dated 30.10.1985 made in M.C.O.P.No.278 of 1984.



2. Originally, the judgment was reserved for orders on 09.08.2017 and as to the circumstances of the case, if the present judgments are applied, the compensation amount would be on the higher side to be payable by the transport Corporation and therefore, this Court thought it fit to give an opportunity to the transport-Corporation to settle the matter amicably coupled with the fact that the claimants themselves were ready for settlement and accordingly, the matter was posted for hearings on 14.10.2017, 30.11.2017, 03.11.2017 and 06.11.2017. However, the respondent - transport Corporation has not come forward to settle the matter amicably and therefore, this Court has no other option but to pronounce the judgment on merits and in accordance with law.

3. The appellant would aver among other things that the case of the appellants is that their son, namely, Gubendran, on 07.04.1984, while he was going on his bicycle, the 1st respondent driver of the 2nd respondent Transport Corporation drove the bus bearing Registration No.PMN 5442 in a rash and negligent manner and the bus ran over against their son and their only son died on the spot. Therefore the appellants filed claim petition for a sum of Rs.50,000/- as compensation for the death of their only son.

4. The respondent filed their counter affidavit contending interalia that the 1st respondent driver is not responsible for the said accident and the deceased alone responsible for the accident and prayed for dismissal of the above said claim petition.

5. Before the tribunal, the claimants examined two witnesses as P.Ws.1 and 2 and marked five documents as Ex.P.1 to Ex.P.5. On the side of the respondent, one witness was examined and no documents were marked.

6. The Learned Principal Sub Judge, (Motor Accident Claims Tribunal), Madurai, after appreciating the oral and documentary evidence produced on either side and also gone through the exhibits produced on the side of the appellants as well as the respondents was pleased to award a sum of Rs.15,000/- towards compensation with 9% interest from the date of the filing of the petition filed before the Tribunal and held in para No.8 of the judgment to the effect that there is no chance of the deceased victim to take care of their parents at the old age and awarded only a sum of Rs.15,000/- even though the Tribunal accepted the age of the deceased as 11 years.

7. As against the above said award of Rs.15,000/- passed by the Learned Principal Sub Judge, (Motor Accident Claims Tribunal), Madurai, the appellants herein preferred C.M.A.S.R.No.25059 of 1987 with a delay of 87 days and filed the above said appeal for enhancement of compensation amount. The above said delay of 87 days has been condoned by this Hon'ble Court on



25.10.2010 and also the name of the respondent has been stood as the Managing Director, Pandian Road Corporation, at the time of filing the above said claim petition before the Tribunal. Pending the above said appeal, the name of the Corporation has been changed as The Managing Director, Tamil Nadu State Transport Corporation Ltd., Madurai Division, Bye Pass road, Madurai. Therefore, the appellants filed a memo to accept the cause title as the Managing Director, Tamil Nadu State Transport Corporation Ltd., Madurai Division, Bye Pass road, Madurai. This Hon'ble Court has ordered the above said memo on 24.11.2010 and accepted the cause title pursuant to the memo filed by the counsel for the appellants and the 2nd respondent has been added as party respondent as The Managing Director, Tamil Nadu State Transport Corporation Ltd., Madurai Division, Bye Pass road, Madurai.

8. Learned counsel for the appellants would submit that the compensation awarded by the Court below is very meagre and the appellants have lost their only lovable son. He is a bright student and therefore, prays for appropriate orders.

9. Per contra, the learned counsel for the respondent would submit that the amount awarded by the tribunal is just and reasonable and no interference is required at this stage. Hence, he prays for the dismissal of this civil miscellaneous appeal.

10. Heard the learned counsel for the appellants and learned counsel for the respondents.

11. On a perusal of the judgment, it is seen that the deceased was aged about 11 years at the time of accident i.e., on 07.04.1984. While dealing with the similar issued on hand, the Supreme Court in the case of Kishan Gopal and another Vs Lala and others, reported in (2014) 1 SCC 244, wherein, it is held as follows:-

"34. Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious issue Nos.1 & 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.

https://hcservices.courts.gov.in/hcservices/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.[2], 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.

36. 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.

37. 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.

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 agricultural occupation which is an undisputed fact. We have

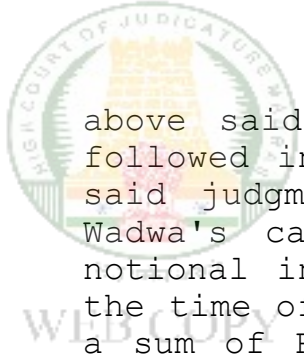


also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard.

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[3], 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[4], 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[5], 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."

12. But, in the case on hand, the Tribunal has not awarded the just and reasonable compensation, even though a meager amount of compensation had been claimed by the appellants. Therefore, the appellants filed the present appeal before this Hon'ble Court for enhancement of the award amount. Even though the amount has been awarded by the Tribunal is not a just compensation in view of the settled principle of law decided by the Hon'ble Apex Court reported in 2001 (8) SCC 197, Lata Wadhwa Vs State of Bihar, of the judgment wherein, it has been categorically held that in so far as the children of the age of group between 10 to 15 years are concerned, they are all students of class 6 to 10 and are children of employees of TISCO and taken the contribution of the children should be Rs.24,000/- and the appropriate multiplier has been taken as 15 and awarded a sum of Rs.4,10,000/- for each of the claimants of the



above said deceased children. The above said judgment has been followed in Kishan Gopal's cited supra, wherein at para 38 in the said judgment has categorically considered the judgment in Lata Wadwa's case and awarded a sum of Rs.4,50,000/- by taking the notional income at Rs.30,000/- and also the age of the parents at the time of accident and applied the multiplier 15 and also awarded a sum of Rs.50,000/- under conventional heads and total a sum of Rs.5,00,000/- with interest at 9% per annum should be paid to the appellants from the date of filing of the application till the date of the payment.

13. In the present case, the condoning the delay of 87 days is not on the part of the appellant and it is nothing but pendency of the proceedings before this Hon'ble Court and therefore, the appellants cannot be allowed to suffer for the pendency of the above said appeal before this Hon'ble Court and they are entitled for interest from the date of their filing of the application till the date of payment of realisation of amount.

14. Since the afore-stated judgments referred supra squarely applies to the facts of the present case. The appellant's son is aged about 11 years at the time of accident and the age of the parents of the deceased was also 35 with regard to the 1st appellant and 45 years with regard to the 2nd appellant which has been considered by the Tribunal as para No.6 of the judgment. Applying the ratio decided in Lata Wadwa case and Kishon Gopal's case, the appellants are entitled for a lump sum of Rs.5,00,000/- as compensation for the death of deceased son with interest at 7.5% per annum from the date of filing the civil miscellaneous appeal till the date of realisation. The award amount shall be equally apportioned to the claimants.

15. The Transport Corporation is directed to deposit the entire enhanced compensation, as awarded by this Court, after deducting the amount, if any, already paid to the claimants, within a period of four weeks from the date of receipt of a copy of this judgment. The claimants are entitled to withdraw their share as apportioned by this Court without filing any formal application in the Tribunal.

16. On payment of additional Court fees by the claimants before the Court below, the Tribunal is directed to transfer the entire award amount, as apportioned by this Court in this Civil Miscellaneous Appeal, along with accrued interest and costs directly to the respective Personal Savings Bank Account Numbers of the appellants-claimants, through RTGS/NEFT system, after getting their Account Details, within a period of four weeks, thereafter; and in the facts and circumstances of the case, there shall be no order as



Accordingly, this civil miscellaneous appeal is allowed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar

To,

The Motor Accidents Claims Tribunal
(Subordinate Judge),
Madurai

Copy to:-

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Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (Two Copies)

+1cc to M/S.Rathina Asokhan, Advocate SR.No. 87563

+1cc to M/S.M.Prakash, Advocate SR.No. 87681

C.M.A (MD) No.130 of 2011
16.11.2017

ssm

JM/JC/SAR 1/12.02.2018/7P/6C