

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2329 of 2011

1.Periyasamy
2.Vijayalakshmi @ Vijaya
3.Minor.Muthulakshi
4.Minor.Suriyapriya ... Appellants/Claimants
(Minor 3 &4 rep by
Father Periyasamy)

...Vs...

1.Sri Adhi Iyyappan Thirukovil,
Matriculation School,
Unnamalaipalayam, Chengam Taluk.
2.The Divisional Manager,
United India Insurance Company Ltd.,
Vellore. ...Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment in MACT.O.P.No.68 of 2008, dated 18.02.2010 on the file of the Motor Accident Claims Tribunal, District Judge, Thiruvannamalai.

For Appellants : Mr.M.Malar

For Respondents : Mr.S.Vediappen for R1
: Mr.N.Vijayaraghavan for R2

JUDGMENT

The appellants are the claimants in M.A.C.T.O.P.No.68 of 2008 dated 18.02.2010 on the file of the Motor Accidents Claims Tribunal, District Judge, Thiruvannamalai. The appellants/claimants filed the above claim petition under Section 166 of the Motor Vehicles Act, seeking for the enhancement of compensation to Rs.10,00,000/- for the death of their son, who was aged about 5 years, on the date of the accident.

2.The brief facts of the case of the appellants/claimants are as follows:

On 22.09.2007, the deceased Naveen Kumar, was returning home from his school in the bus bearing

Registration No.T.D.M.3345 belonging to the first respondent and insured with the second respondent. When the deceased got down from the bus and was walking along the road, the driver of the bus drove the vehicle in a rash and negligent manner and hit the deceased as a result whereof the said Naveenkumar died on spot.

3. According to the appellants/claimants, the rash and negligent driving of the driver of the first respondent was the cause of the accident and that since, the owner of the bus had insured the bus with the second respondent, both the respondents are jointly and severally liable to pay the compensation to the claimants.

4. The trial Court, after analysing the evidence on record, awarded a compensation of Rs.1,60,000/- to the claimants together with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit. The various heads under which the compensation amount was awarded are extracted hereunder:

S.Nos.	Heads	Amount granted
1.	Loss of Income	1,50,000/-
2.	Love & Affection (Rs.2000/- each)	8,000/-
3.	Funeral Expenses	2,000/-
Total		1,60,000/-

5. Aggrieved over the quantum of compensation awarded by the trial Court, the appellants have filed the present appeal.

6. Mr.M.Malar, the learned counsel appearing for the appellants contented that the child was aged about 5 years and as per the decision rendered in Kishan Gopal & another Vs. Lala & others reported in 2013 (2) TN MAC 358 (SC), awarding a compensation of Rs.5,00,000/- to the claimants together with interest at the rate of 7.5% per annum, would meet the ends of justice.

7. Per contra, Mr.N.Vijayaraghavan, the learned counsel for the second respondent/Insurance Company would contend that the trial Court's award is based on the settled principles of law which were in vogue when the award was passed and therefore, it need not be disturbed. However, in the light of the decision rendered in Kishan Gopal & another Vs. Lala & others reported in 2013(2) TN MAC 358 (SC) (cited supra), I am of the view that awarding a sum of Rs.5,00,000/- to the claimant would be just and reasonable.

(i) The appeal is allowed. No costs.

(ii) the appellants/claimants are entitled to a sum of Rs.5,00,000/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit.

(iii) The appellants/claimants are directed to pay deficit court fee.

(iv) The second respondent is directed to deposit the said amount along with interest, less the amount if any, already deposited by them within a period of four weeks from the date of receipt of a copy of this order

(v) On such deposit being made, the appellants/claimants are at liberty to withdraw the entire amount as per the apportionment made by the Tribunal. The claimants shall pay additional Court fee, if any.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dna

To

1. The District Judge, (Motor Accidents Claims Tribunal),
Thiruvannamalai.

2. The section officer,
VR Section,
High court
Madras

+1cc to Mr.N.Malar, Advocate SR.No. 82105

+1cc to Mr.N.Vijayaraghavan , Advocate SR.No. 8193

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A.SK(06/02/2019)

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