

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2265 of 2015

1.Govindaraj

2.Pathamperiyal

.. Appellants/Claimants

Vs.

1.Vasudevan

Sri Harish Traders
No.16F, Thamaraikulam West
Mannargudi,
Thiruvavarur - 614 001.

2.Reliance General Insurance Company Limited,
Reliance House,
Regional Office,
6th Floor, Legal Department,
Haddows Road, Nungambakkam,
Chennai - 600 006.

3.S.K.Ganesan

.. Respondents/Respondents

(Since R3 remained exparte before the
Tribunal his presence may be dispensed
with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of The Motor Vehicles Act, 1988, against the judgment and decree dated 19.12.2012 made in M.A.C.T.O.P.No.5045 of 2010 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellants : Mr.F.Terry ChellaRaja
For Respondent : Ms.P.V.Rajeswari
No.1

For Respondent : Mr.S.Arunkumar
No.2.

Respondent No.3 : Ex parte (Vide in EB)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by award dated 19.12.2012 made in M.A.C.T.O.P.No.5045 of 2010 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

2.The appellants are the claimants in M.A.C.T.O.P.No.5045 of 2010 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai. They filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the death of one Pandhishvaran, who died in the accident that took place on 11.10.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the offending vehicle Mahindra Bolero Pickup

bearing registration No.TN-50-W-0832 and directed the second respondent/Insurance Company to pay compensation on behalf of the respondents 1 & 3 and awarded a sum of Rs.2,95,000/- as compensation to the appellants.

4.Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come out with the present appeal for enhancement of compensation.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in fixing notional income of the deceased at Rs.15,000/- per annum. The Tribunal ought to have applied the multiplier of 20 instead of 15 since the deceased was aged 11 years at the time of accident. The Tribunal has not granted any amounts towards loss of love and affection and loss of estate and the amount awarded by the Tribunal towards funeral expenses is meagre. In support of his contentions, the learned counsel appearing for the appellants relied on the judgments reported in 2001 ACJ 1735 (Lata Wadhwa and others Vs. State of Bihar and others), (2014) 1 Supreme Court Cases 244 (Kishan Gopal and another Vs. Lala and others), 2013

(2) TN MAC 358 (SC) (Kishan Gopal and another Vs. Lala and others), 2015 (2) TN MAC 490 (DB) (National Insurance Co.Ltd., Vs. R.Vimala and others) and 2017 (2) TN MAC 805 (National Insurance Co.Ltd., Vs. K.Sugumar and others). The learned counsel appearing for the appellants further contended that notional income of the deceased minor must be fixed at Rs.16,000/- per month as per the judgments referred to above.

6.Per contra, the learned counsel appearing for the respondents 1 and 2 separately contended that the Tribunal has fixed notional income of the deceased as per II schedule of M.V.Act and applied correct multiplier. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel for the respondents 1 and 2 and perused the materials available on record.

8.The claim petition is filed by the appellants claiming compensation for the death of their minor son aged 11 years. As per II Schedule of M.V.Act a sum of Rs.15,000/- per year has to be fixed as notional income in case of death of minor. This was considered by the Hon'ble Apex Court in the judgment reported in 2013 (2) TN MAC 358 (SC) (Kishan Gopal and another Vs. Lala and others). Taking into consideration the passage of time after passing II schedule and increase in cost of living, the Apex Court fixed a sum of Rs.30,000/- per annum as notional income, while awarding the compensation for the death of a minor. In the judgment reported in (2014) 1 Supreme Court Cases 244 (Kishan Gopal and another Vs. Lala and others), a sum of Rs.24,000/- is fixed as notional income of the minor and the Division Bench of this Court, in subsequent judgment reported in 2015 (2) TN MAC 490 (DB) (National Insurance Co.Ltd., Vs. R.Vimala and others), has fixed notional income of the deceased minor aged 9 years at Rs.16,000/- per month and deducted 1/3rd towards personal expenses and applied multiplier of 18 and awarded compensation. Consequently, the same was followed by this Court in the Judgment reported in 2017 (2) TN MAC 805 (National Insurance Co.Ltd., Vs. K.Sugumar and others), by awarding compensation fixing notional income of the minor aged 8 years at Rs.60,000/- per year and applying multiplier of 13 without any deduction.

9.Considering the ratio in the above judgments and increase in cost of living and prospects of getting a job with high income, in the interest of justice, a sum of Rs.45,000/- is fixed as notional income of the deceased minor. The multiplier applicable for the death of minor below the age of 15 is 15 as per the schedule. Applying the said ratio and adopting the multiplier 15, the amount awarded by the tribunal towards loss of income is modified as follows without any deduction. $\text{Rs.45,000/-} \times 15 = \text{Rs.6,75,000/-}$. The Tribunal has not awarded any amount towards loss of estate and hence, a sum of Rs.15,000/- is granted towards this head. Similarly, Rs.5,000/- granted by the Tribunal towards funeral expenses is hereby enhanced to 15,000/-.

10.The learned counsel appearing for the appellants contended that the Tribunal has not awarded any amount towards loss of love and affection and the said contention is not correct. The Tribunal has awarded a sum of Rs.40,000/- towards

loss of love and affection and the same is confirmed. The amounts awarded by the Tribunal under all other heads are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	2,25,000	6,75,000	enhanced
3.	Loss of Love & affection to the 1 st and 2 nd petitioners (Rs.20,000/- each)	40,000	40,000	confirmed
4.	Loss of estate	-	15,000	awarded
4.	Funeral expenses	5,000	15,000	enhanced
5.	Loss of future prospectus	25,000	25,000	confirmed
6.	Total	2,95,000	7,70,000	Enhanced by Rs.4,75,000

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,95,000/- is hereby enhanced to Rs.7,70,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the enhanced award amount with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw the enhanced award amount together with interest and costs equally, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

sms/tta

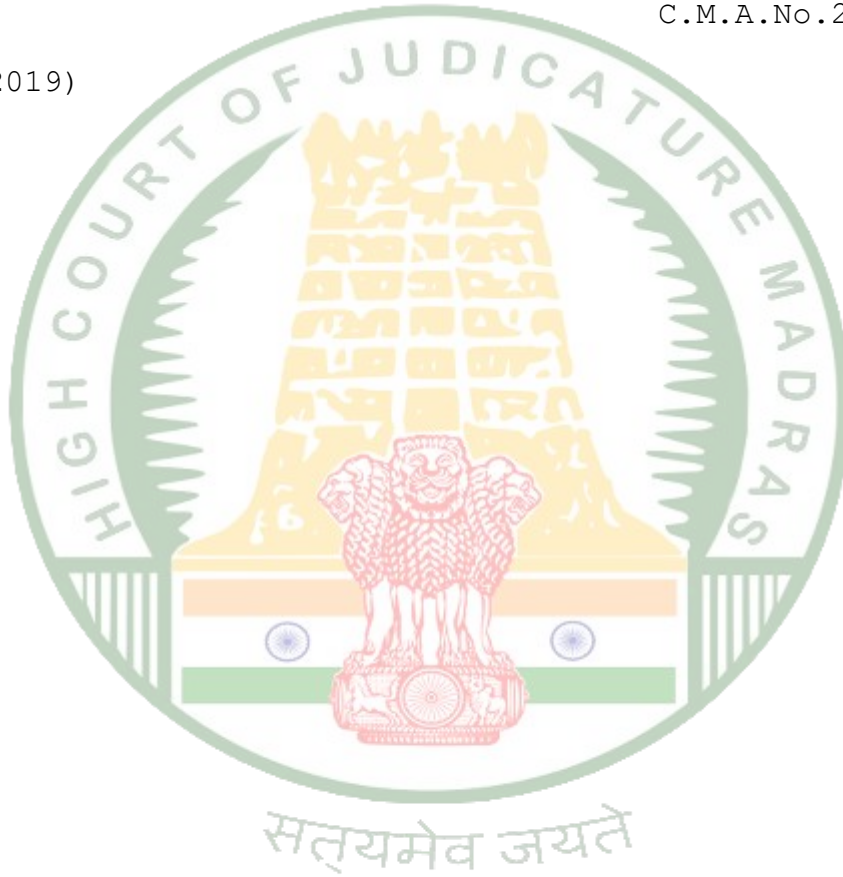
To

1.The IV Judge,
(Motor Accident Claims Tribunal),
Court of Small Causes, Chennai.

+1cc to Mr.M.Malai, Advocate, S.R.No. 80083
+1cc to Mr.P.V.Rajeswari, Advocate, S.R.No. 80025
+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 80584

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TM(CO)
GN(07/02/2019)



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