IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	03.10.2018
DELIVERED ON	29.01.2019

C O R A M:

THE HONOURABLE TMT. JUSTICE S.RAMATHILAGAM

C.M.A.No. 1592 of 2006
and Cross Objection No. 56 of 2018
and CMP. No. 7066 of 2006

C.M.A. No. 1592 of 2006

The New India Assurance Co.Ltd.,
Arcot Woodlands Buildings,
No.1, Bharathi Road,
Cuddalore-607001 ..Appellant/2nd Respondent

Vs.

1. R.Baskar ..Respondents 1 & 2/Claimant
2. Malliga
3. Chandra ..3rd Respondent/1st Respondent

Cross Objection No. 56 of 2018

1. R.Baskar
2. Malliga .. Cross Objectors/Respondents1 & 2

Vs

1. Chandra ..1st Respondent/3rd Respondent

2. The New India Assurance Co.Ltd.,
Arcot Woodlands Buildings,
No.1, Bharathi Road,
Cuddalore. ..2nd Respondent/Appellant

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of MV Act 1988against the Judgment and decree dated 24.06.2005 passed in MCOP. No. 125 of 2004 on the file of the Motor Accidents Claims Tribunal (Principal District Judge), Cuddalore.

Prayer in Cross Objection 56/2018 : Cross Objection filed under order 41, Rule 22 of CPC preferred against the judgment and decree dated 24/06/05 and made in MCOP No.125/04 on the file of Motor Accident Claims Tribunal, Principal District Judge, Cuddalore.

In CMA No.1592 of 2006

For Appellant : Mr. V. Soundarajan
For Respondents : M/s. Ramya V.Rao - R1 & R2

JUDGMENT

This Civil Miscelleneous has been preferred against the judgement and decree 24.06.2005 passed in MCOP. No. 125 of 2004 on the file of the Motor Accidents Claims Tribunal (Princpoal District Judge), Cuddalore.

Brief facts leading to the claim application are as follows;

2. On 07.12.2003 at about 01.30 p.m the claimant was carrying his daughter Poonkuzhali, aged 9 years on the carrier of the bicycle and riding the bicycle towards cuddalore market and while he was proceeding near clock tower by adhearing to his left side, at the time a lorry bearing registration no. PY01 J 4595 belonged to the first respondent and insured with the 2nd respondent and driven by its driver in a rash and negligent manner and dashed as against the bicycle from behind and caused death of the child Poonkuzhali due to left wheel of the lorry having ran over her. For the death of his daughter, her father claimed compensation for a sum of Rs.2,50,000/-

3. The 2nd respondent in the counter statement has denied the involvement of the alleged vehicle in the said accident and also denied the insurance and other documents inrespect of the said vehilce. The other aspect raised in the counter statement is that the compensation claimed by the claimant is on the higher side.

4. The tribunal upon analysing the evidences and documents placed, has given a finding that it is the driver of the lorry, who came behind the bicycle in a rash and negligent manner and dashed against the bicycle and caused fatal injuries to the minor child Poonkuzhali. Hence the tribunal has fixed the liability on the respondents 1 and 2 and directed to pay compensation awarded by the tribunal at Rs.2,25,000/- jointly and severally.

5. Aggreived agaisnt the said award, the 2nd respondent / Insurance Company has preferred this appeal by stating that the tribunal has failed to deduct 1/3 of the amout towards personal expenses of the deceased. It is also the grievance raised in the appeal that the deceased Poonkuzhali was a non earning person and if at all she can earn, it would be only after 20 years and the contribution would be till her marriage. The other grievance raised is that the tribunal has failed to see that the principles laid down in the Trilok Chandra case reported in 1997 (4) SC Page 362 has been over ruled and fresh guidelines have been fixed by the Apex Court and the multiplier is reduced and has to be fixed according to the circumstances and merits of the case. The compensation arrived by the tribunal at Rs.2,25,000/- is arbitrary and excessive and unsustainable both in law and on facts.

6. The respondent/Claimant has filed Cross Objection and in the ground of cross objection, it has been stated that the tribunal ought to have fixed notional income at Rs. 30,000 per annum and calculte the loss accordingly. The other objections raised is that the tribunal has not awarded any amount for loss of love and affection and funeral expenses and loss of consortium and conventional heads...

7. Heard bothsides and persued the documents available on record.

8. On the side of the appellant it is argued that the tribunal has not deducted 1/3 of amount towards personal expenses and the contribution of the minor child can be after 20 years and the said contribution will be for a limited period.

9. On a perusal of the records, it is seen that the tribunal while observing the fact that the deceased was non earning person, has taken the annual income at Rs. 15,000/- and by taking multiplier 15, had arrived the compensation at Rs. 2,25,000/-. It is the argument of the Appellant/Insurance Company that fresh guidelines of the Hon'ble Apex Court to be considered with regard to the applying of multiplier.

10. On the side of the respondent/ cross objectors, it is aruged that the notional income has to be taken at Rs.30,000/- per month and the conventional heads are also to be properly considered. It is also seen from the award that there is no sum awarded by the tribunal for the said conventional heads as argued by the respondent/cross-objectors.

11. In view of the arguments advanced by bothsides and also on persual of the records, it is observed that the notional

income of the deceased who is the minor child has to be considered in view of the judgment quoted on the side of the respondents/cross-objectors reported in 2014 1 SCC 244 in the case of Kishan Gopal and another Vs. Lala and Others. The relevant portion of the said judgments reads as follows;

> "36. After noting the submission made on behalf of TISCO in Lata Wadhwa 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 cae would be Rs.2 lakhs.
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> 37. Further, in Lata Wadhwa case it was observed that insofar 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 tothe 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.
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> 38. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa 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 the accident, by applying the legal principles laid donw in Sarla Verma Vs. DTC, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000 under conventional heads towards loss of love an affection, funeral expenses, last rites as held in Kerala SRTC Vs. Susamma Thomas, which is referred to in Lata Wadhwa Case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 yeras old. In this cae 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."

12. In view of the detailed observation made in the above said judgment and arguments advanced, it would be appropriate to calculate the loss of income of the decased girl who was 9 years at the time of the accident by fixing the annual income of at Rs.30,000/- and also by applying multiplier 17 by taking age of the mother. Accordingly, the loss of income would be Rs.5,10,000/- (30000 x 17). Since, no amount has been awarded by the tribunal under conventional head, awarding a sum of Rs, 15,000/- for loss of consortium and Rs.15,000/- for Funeral expenses would be reasonable and proper.

Accordingly, the sum awarded by the tribunal is modified by this Court as follows;

Head	Sum awarded by the tribunal	Sum modified by this Court
Loss of Income	Rs. 2,25,000/- (15,000 x 15)	Rs. 5,10,000/- (Rs. 30,000 x 17)
Loss of Consortium	--	Rs. 15,000/-

Head	Sum awarded by the tribunal	Sum modified by this Court
Funeral Expenses	--	Rs. 15,000/-
Total	Rs. 2,25,000	Rs. 5,40,000

13. In view of the above enhancement, this Civil Miscellenous Appeal is dismissed and the Cross objection filed by the respondent/ claimant is partly allowed. No costs. Consequently, connected Miscellaneous Peition is closed. The respondent/cross objectors are directed to pay additional court fee for the enhanced award amount.

14. The appellant/Insurance Company is directed to deposit the entire award amount as per the modified award passed by this Court, with interest at 7.5% per annum and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the claimant's bank accounts thro' RTGS within one week thereon. The rate of interest for the modified amount shall carry the same as ordered by the tribunal.

Sd/-
Assistant Registrar(Insp.cell

//True copy//

Sub Assistant Registrar

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To
The Principal District Judge,
The Motor Accidents Claims Tribunal,
Cuddalore.

+2cc to Mr.A.N.Viswanatha Rao, Advocate SR.No.7456

C.M.A.No. 1592 of 2006
and Cross Objection No. 56 of 2018
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VD(CO)
GMY(01/08/2019)