

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1081 of 2009

S.Rajkumar

... Appellant /Petitioner

Vs.

1. K.Mohan Doss

2. Royal Sundaram Alliance Insurance Co., Ltd.,
No.46, Whites Road,
Chennai 600 014.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.10.2007 made in M.C.O.P.No.2814 of 2004, on the file of the Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.Shanmugaraj

For R2 : Mr.N.Vijayaraghavan

R1 :Mr.K.Mohan Doss (No appearance)

J U D G M E N T

सत्यमेव जयते

This appeal arises out of the Judgment and Decree dated 30.10.2007 passed by the Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai, in M.C.O.P.No.2814 of 2004.

2.The case in brief, is as follows:

On the fateful day, i.e., on 12.10.2003, at about 03.30am, one Kowsika, 6 years old child, along with her, was traveling in Omni Van bearing Registration No.TN-01-O-1913. When the vehicle was plying on Madurai -Trichy National Highway, a lorry bearing Registration No.TN-09-AD-7466 belonging to the first respondent and insured with the second respondent, came from the opposite

direction in a rash and negligent manner and dashed against the Omni Van. As a result of the same, the said Kowsika and her mother succumbed to the injuries. The father, who is the only surviving legal heir of the deceased, filed a claim petition seeking compensation of Rs.4,00,000/-. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,80,000/- with interest at the rate of 7.5% per annum from the date of petition. Feeling aggrieved and being dissatisfied with the quantum so awarded, the appellant/claimant has come out with this appeal seeking enhancement of the same.

3. The learned counsel for the appellant/claimant submitted that the Tribunal has fixed a lesser sum of Rs.15,000/- towards notional income of the deceased. Placing reliance on the decision of the Hon'ble Supreme Court in *Kishan Gopal and another v. Lala & others* [2013(2)TNMAC 358(SC)], he submitted that the award of Rs.1,60,000/- towards pecuniary loss has to be re-determined by fixing the income of the deceased at Rs.30,000/-; further, the compensation awarded by the Tribunal under other heads is also meagre; and hence, the same has to be enhanced substantially.

4. Per contra, the learned counsel for the second respondent/insurance company submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation, which is just and reasonable and hence, the same does not require any interference in the hands of this Court.

5. Heard the learned counsel on either side and perused the materials available on record.

6. This is the claimant's appeal seeking enhancement of the compensation awarded by the Tribunal. Hence, there is no requirement for this Court to go into the findings of the Tribunal on negligence and liability of the insurance company to pay compensation to the claimant.

7. As regards the quantum of compensation, the Tribunal, considering the age of the appellant/claimant, has adopted the multiplier of 16 and taken the notional income of the deceased at Rs.15,000/- and after deducting 1/3rd amount towards personal expenses, determined the pecuniary loss at Rs.1,60,000/-, which in the opinion of this Court, is inadequate and the same has to

be recalculated, in view of the dictum laid down by the Supreme Court in Kishan Gopal case (cited supra), as rightly contended by the learned counsel for the appellant/claimant. In the said decision, for the death of a 10 year old boy in an accident that took place on 19.07.1992, the Supreme Court has fixed his notional income at Rs.30,000/-, taking note of the facts that the rupee value drastically come down from year 1994, when Second Schedule introduced in Motor Vehicles Act and the deceased assisted his family in their agricultural occupation and also in the light of the earlier decision in the case of Lata Wadhwa and others v. State of Bihar and others [2001(8) SCC 197]. Following the same and also having regard to the facts that as per Ex.P3 post mortem certificate, the deceased died due to the injuries sustained in the accident and she was 6 year old girl and was studying in 1st standard in Chettinad Vidyashram, Chennai; the father of the deceased/PW1 is the only surviving legal heir and he lost his wife/mother of the deceased in the very same accident; and loss of child is irrecoupable and no amount of money could compensate the parent, this Court deems it just and proper to fix the notional income of the deceased at Rs.20,000/-. Accordingly, the pecuniary loss is redetermined at Rs.3,20,000/- (Rs.20,000 x 16) and the award of the Tribunal under this head is enhanced to the said sum. However, there is no modification with regard to the compensation awarded towards funeral expenses, loss of estate, loss of expectation of life and loss of happy life at Rs.5,000/- each. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,80,000/- to Rs.3,40,000/-, the break-up details of which are as follows:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Loss of Income	1,60,000/-	3,20,000/-
Funeral expenses	5,000/-	5,000/-
Loss of estate	5000/-	5,000/-
Loss of expectation of life	5000/-	5,000/-
Loss of happy life	5,000/-	5,000/-
Total	1,80,000/-	3,40,000/-

It is made clear that the enhanced sum of Rs.1,60,000/- (Rs.3,40,000/- (-) Rs.1,80,000/-) shall carry interest at 7.5%pa only from the date of filing of this appeal.

8.In fine, this appeal is partly allowed. No costs. The second respondent/Insurance Company is directed to deposit the entire compensation amount, as awarded by this Court, with interest and costs, after deducting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the appellant/claimant, through RTGS within a period of one week thereafter.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The IV Small Causes Court, Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.A.Shanmugaraj, Advocate Sr.67006

+lcc to M/s.M.B.Gopalan Associates, Advocate sr.66833

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