

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2294 of 2010

(Through Video Conferencing)

1.V.Rajathi
2.K.Velan

... Appellants

vs.

1.K.Senthilkumar
2.R.Nivas
3.The Branch Manager,
United India Insurance Co., Ltd,
280, Ooty Main Road,
Mettupalayam, Coimbatore District.
(The 1st and 2nd respondents are not necessary
party in this appeal . Hence 1st and 2nd
respondents are given up)

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173
of Motor Vehicles Act, 1988 against the award passed by the
Motor Accident Claims Tribunal (1st Additional District Court)
Erode in M.C.O.P.No.870 of 2009 dated 21.06.2010.

For Appellants : M/s.R.Nalliyappan
For R3 : Mr.C.Paranthaman
R1 & R2 : Given up

J U D G M E N T

The appellants were the claimants. They are aggrieved by
the impugned Judgment and Decree dated 21.06.2010 passed by the
Motor Accident Claims Tribunal, (1st Additional District Court)
Erode in M.C.O.P.No.870 of 2009.

2. By the impugned order, the Tribunal has awarded a sum of
Rs.1,65,000/- as compensation together with interest at 7.5%
from the date of the claim petition till the date of deposit, to
the 1st and 2nd respondents-claimants.

3. The Tribunal has awarded under the following heads :

S.No.	Heads	Awarded by the Tribunal
1	Pecuniary loss	Rs.1,50,000
2	Love and affection	Rs. 10,000
3	Funeral expenses	Rs. 3,000
4	Transport expenses	Rs. 2,000
	Total	Rs.1,65,000

4. Aggrieved by the same, this Civil Miscellaneous Appeal has been filed by the appellants-claimants for an enhancement of compensation. The 1st appellant is the mother and 2nd appellant is the father of the deceased minor Preethiya @ Preethi who was aged about 11 years at the time of the death/accident.

5. The brief facts of the case are that on 28.07.2009 at about 4.30 p.m., while the deceased Preethiya @ Preethi was walking on the left side of Sathy to Mettupalayam, road, near Sasthiri Nagar, Murugan temple, the 1st respondent drove the lorry bearing Reg.No.TN 40 B 6888 belonging to the 2nd respondent and insured with the 3rd respondent - Insurance Company, in a rash and negligent manner from the opposite direction and hit the deceased Preethiya @ Preethi, as a result of which, the deceased Preethiya @ Preethi suffered head injury and was admitted in the hospital. Unfortunately, the deceased Preethiya @ Preethi succumbed to the injuries and died.

6. Therefore, the 1st and 2nd appellants-claimants who are the parents of the deceased Preethiya @ Preethi filed a claim petition for compensation of Rs.5,00,000/-. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.1,65,000/- to the 1st and 2nd respondents-claimants.

7. The learned counsel for the appellants submitted that the Tribunal erred in awarding a meager amount of Rs.1,65,000/-. He further submitted that the Tribunal ought to have considered the appellants herein has lost the only child, hence the Tribunal ought to have awarded a sum of Rs.20,000/- each to the claimants under the head of love and affection. It was further submitted that the Tribunal has failed to award the just and reasonable compensation without considering the age of the

deceased and claimants and prayed for enhancement of the award of the Tribunal .

8. Per contra, the learned counsel for the 3rd respondent-Insurance Company submitted that the amounts awarded by the Tribunal is not meagre and the impugned Judgment and decree was well reasoned and requires no interference and therefore this civil miscellaneous appeal was liable to be dismissed.

9. I have heard the learned counsel for the appellants and the 3rd respondent and I have also perused the impugned Judgment and decree and evidence on record.

10. The issue is no longer res-integra in the light of the decision of the Hon'ble Supreme Court reported in Kishan Gopal and another Vs. Lala and others, 2013 (2) TN MAC 358 (SC). There the Hon'ble Supreme referred to its earlier decision in Lata Wadhwa and Others vs. State of Bihar and Others (2001) 8 SCC 197 and observed as hereunder:

37. Further, in Lata Wadhwa case [Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197] 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 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 case [Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197] 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 Sarla Verma v. DTC [(2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002], 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 [(1994) 2 SCC 176 : 1994 SCC (Cri) 335], which is referred to in Lata Wadhwa case [Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197] 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.

11. The Court took a notional income of Rs.30,000/- p.a. of the deceased minor for awarding compensation. The accident was of the year 1992 (19.7.1992).

12. In the case of R.K.Malik and another vs. Kiran Pal and Others, 2009(1) T MAC 593 (SC), the Hon'ble Supreme Court awarded a sum of Rs.1,50,000/- as compensation for the children in the age group of 10 to 15 years and Rs.1,60,000/- for the children in the age group of 15 to 18 years.

13. In the present case, the deceased was aged about 9 years. Considering the age of the appellants and victim, the Tribunal has awarded Rs.1,50,000/- towards pecuniary loss to meet the ends of justice. The appellants lost their child in an unfortunate accident.

14. As noticed above in Kishan Gopal case, the Court has taken a notional income of Rs.30,000/- p.a. of the deceased minor, for an accident, which took place on 19.07.1992. Since the accident in the present appeal is of the year 2009, I am of the view that the notional income of the deceased minor can be fixed at Rs.50,000/- p.a. for computing the compensation to the appellants.

15. By applying the legal principles settled in Sarla Verma vs. Delhi Transport Corporation and another, 2009(2) TNMAC 1 (SC), multiplier of 18 can be applied to the multiplicand.

Therefore, the amount awarded towards loss of income is to be re-computed.

16. Compensation awarded by the Tribunal is also to be partially enhanced in terms of the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680 towards future prospectus at 40% to the income of the deceased. As per the decision of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 compensation towards loss of filial consortium is to be awarded. Consequently, I am inclined to re-quantify the compensation awarded under the various heads as follows:

Heads and Calculation	Re-quantified Amount by this Court
Loss of dependency:- Annual Income of the deceased : Rs.50,000 Add: Future Prospects at 40% : Rs.20,000 (50,000 x 40/100) ----- : Rs. 70,000 Less: Personal Expenses of the deceased at 50% (70,000 x 50%) : Rs. 35,000 ----- : Rs.35,000 ----- Multiplier - 18 (35,000 x 18) : Rs.6,30,000	Rs. 6,30,000
Loss of Love and affection (Filial Consortium) (Rs.40,000 x 2)	Rs. 80,000
Funeral expenses	Rs. 5,000
Total	Rs. 7,15,000

17. In the present case, the deceased was aged about 9 years. Considering the age of the appellants and victim, the Tribunal has awarded Rs.1,50,000/- towards pecuniary loss to meet the ends of justice. The appellants lost their child in an unfortunate accident.

18. As noticed above in Kishan Gopal case, the Court has taken a notional income of Rs.30,000/- p.a. of the deceased minor, for an accident, which took place on 19.07.1992. Since the accident in the present appeal is of the year 2009. I am of the view that the notional income of the deceased minor can be fixed at Rs.50,000/- p.a. for computing the compensation.

19. In the result, the civil miscellaneous appeal is partly allowed. The compensation of Rs.1,65,000/- awarded by the Tribunal is enhanced to Rs.7,15,000/-. Therefore, the 3rd respondent - Insurance Company is directed to deposit the above said amount of compensation of Rs.7,15,000/- together with interest at 7.5% per annum from the date of claim petition till the date of such deposit, less any amount deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

20. On such deposit, the 1st and 2nd appellants/claimants are permitted to withdraw the same equally together with interest accrued thereon, less any amount already withdrawn, by filing suitable applications before the Tribunal. No cost.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

To

The Motor Accidents Claims Tribunal,
(1st Additional District Court) Erode

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.C.Paranthaman, Advocate sr 41521.

C.M.A.No.2294 of 2010

SSV(CO)
SP(10/02/2021)