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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:27.11.2020

DELIVERED ON:04.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.2623 of 2019

and

C.M.P.Nos.12708 & 27542 of 2019

The Divisional Manager,
Reliance General Insurance Co. Ltd.,
Adams Road, Nunkapakkam,
Chennai.

.. Appellant/2nd Respondent

Vs.

1. Govindaraji
2. Devi
3.Thirumoorthy

.. Respondents 1 & 2/ Claimants
.. 3rd Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 12.10.2018, made in M.C.O.P.No.397 of 2015, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Tirupattur.

For Appellant	:	Mr.S.Arunkumar
For Respondents 1 & 2	:	Mr.S.Udayakumar for M/s.Karnan & Uday
R3	:	Exparte

J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal, in M.C.O.P.No.397 of 2015, dated 12.10.2018, the appellant/insurance company is before this Court with this appeal.

2. The brief facts leading to the filing of this appeal are as follows:

(i) It is a case of fatal accident. The deceased was a 12 years old school going boy by name Mukesh. The respondents 1 and 2 / claimants are the parents of the deceased.

(ii) According to the respondents 1 & 2 / claimants, on 24.08.2015 at about 07.30 a.m. the deceased Mukesh was riding a



bicycle in Kasinaikanpatti to Kunichi main road in Vellore district. At that time, a tractor and trailer owned by the third respondent herein came in the same direction in a rash and negligent manner and hit the bicycle from behind in which, the minor boy sustained serious injuries and he was immediately taken to CMC Hospital, Vellore, where he succumbed to his injuries.

(iii) Thereafter, a criminal case was registered against the third respondent / owner cum driver of the tractor and trailer in Crime No.251 of 2015 by Kandhili Police Station under Sections 279 and 304(A) of I.P.C.

(iv) According to the respondents 1 and 2 / claimants the accident had taken place due to the rash and negligent driving of the third respondent. According to them, the deceased was a school going boy and he was only maintaining the family from his income, had the deceased been alive, he would have a bright future and would have earned more money. Hence, claiming a sum of Rs.15,00,000/- as compensation, the respondents 1 and 2 / claimants filed the claim petition before the Tribunal.

3. The third respondent / owner of the offending vehicle remained ex parte before the Tribunal. The appellant / insurance company contested the claim petition on the ground that the accident had taken place due to the negligence of the deceased. The deceased without noticing the tractor suddenly came across the road and he only contributed to the accident. Hence, no negligence can be fixed on the driver of the tractor. That apart, there is a violation of policy condition, at the time of the accident three persons were travelling in the tractor which is not permissible. The appellant/insurance company has also claimed that the compensation claimed for the death of a 12 year old boy is speculative and highly excessive.

4. In order to prove the claim, the first respondent herein examined himself as P.W.1 and marked as many as nine documents as Exs.P1 to P9. On the side of the respondents therein, officer belonging to the insurance company was examined as R.W.1 and they marked the insurance policy as Ex.R1.

5. The Tribunal after considering the materials available on record came to the conclusion that the accident took place due to the rash and negligent driving of the driver of the tractor and hence the respondents therein are liable to pay the compensation. So far as the quantum of compensation is concerned, the Tribunal fixed the notional income of the deceased at Rs.5,000/- per month and the annual income at Rs.60,000/- p.a. The Tribunal deducted 1/3 towards his personal expenses and arrived at the annual notional income of the deceased at Rs.40,000/- and applying the multiplier of 18



arrived at the loss of dependency at Rs.7,20,000/-. In respect of other conventional heads the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of love and affection; Rs.15,000/- towards funeral expenses; Rs.15,000/- towards loss of Estate; Rs.5,000/- towards transportation charges; Rs.32,255/- towards medical expenses and Rs.80,000/- towards filial consortium, thus, totalling a sum of Rs.9,67,255/- was awarded as compensation. Aggrieved over the same, the appellant / insurance company filed the present appeal.

6. Mr.Arun Kumar, learned counsel appearing for the appellant/insurance company would contend that the accident had taken place due to the negligence of the deceased minor boy and without considering the evidence in its proper perspective, the Tribunal fixed the liability on the driver of the tractor. So far as the quantum of compensation is concerned, the learned counsel submitted that the deceased was a school going boy aged about 12 year and without any reason whatsoever the Tribunal fixed the notional monthly income of the deceased as Rs.5,000/- and applying multiplier of 18 arrived at the loss of dependency at Rs.7,20,000/-. According to the learned counsel, the notional monthly income fixed by the Tribunal is highly excessive. In case of minors, the Hon'ble Supreme Court in number of cases awarded consolidated amount as compensation, and the Tribunal without assigning any reason fixed the notional monthly income of the deceased minor boy as Rs.5,000/- and arrived at the annual income as Rs.60,000/-. That apart, the Tribunal also wrongly deducted 1/3 towards his personal expenses without considering the fact that the deceased was a minor and the claimants are parents and as per the decision of the Hon'ble Supreme Court in Sarla Verma Vs. Delhi Transport Corporation reported in (2009) 6 SCC 121 and National Insurance Company Limited vs. Pranay Sethi and Ors reported in (2017) 16 SCC 680 50% of the monthly income should be deducted. That apart, so far as applying of multiplier is concerned, law is settled by the Hon'ble Supreme Court that in cases of minors aged below 15 years, the maximum multiplier should be 15. However, the Tribunal wrongly fixed the multiplier at 18 and arrived at the loss of dependency at Rs.7,20,000/-. In support of his submissions, the learned counsel relied to the following judgements viz.,

- (i) New India Assurance Co. Ltd., Vs. Satender reported in 2006 (13) SCC 60;
- (ii) R.K.Malik Vs. Kiran Pal reported in 2009 ACJ 1924 (SC);
- (iii) Kishan Gopal Vs. Lala reported in 2013 ACJ 2594; and
- (iv) Rajendra Singh Vs. National Insurance Co. Ltd., reported in CDJ 2020 SC 585.

7. Per contra, Mr.S.Udayakumar, learned counsel appearing for the respondents 1 and 2 / claimants would submit that the



deceased is a bright student and a school going boy. The respondents 1 and 2 / claimants are the parents of the deceased aged about 38 and 35 years and lost their only son. Considering the above circumstances, the Tribunal fixed the notional monthly income as Rs.5,000/-. The claimants who are only two in number, the Tribunal has deducted 1/3 towards his personal expenses. That apart, since the deceased was below the age of 15, as per the Schedule to the Motor Vehicles Act, 1988 multiplier 18 was applied by the Tribunal. After awarding correct compensation on conventional heads, the total compensation was fixed at Rs.9,67,255/-, which is not excessive, it is only a just and fair compensation and therefore there is no reason to interfere with the same. In support of his submissions, the learned counsel referred to the following judgements viz.,

(i) National Insurance Co. Ltd., Vs. R.Vimala reported in 2015 (2) TN MAC 490 (DB);

(ii) J.Kanagaraj Vs. Metropolitan Transport Corporation reported in 2017 (2) TN MAC 702;

(iii) National Insurance Co. Ltd., Vs. K.Sugumar reported in 2017 (2) TN MAC 805 and

(iv) Rajendra Singh Vs. National Insurance Co. Ltd., reported in CDJ 2020 SC 585.

8. I have considered the rival submissions.

9. The deceased was a 12 years old school going boy and he was earning nothing. However, as a school going boy he had great prospects of earning in future and there may not be any actual pecuniary benefit derived by his parents during his life time. However, it will not bar the parents from claiming for the prospective loss by the untimely death of the minor child. The parents are emotionally attached to the child and the loss will have devastating effect on the family and for the sufferings of loss of happiness, the parents should be necessarily compensated. Awarding compensation for the loss of life cannot be weighted in golden scales and the parents are entitled for a just compensation, and it cannot be neither a windfall nor a pittance. In R.K.Malik Vs. Kiran Pal reported in (2009) 14 SCC 1 the Hon'ble Supreme Court has held as follows:

"22. It is extremely difficult to quantify the non pecuniary compensation as it is to a great extent based upon the sentiments and emotions. But, the same could not be a ground for non-payment of any amount whatsoever by stating that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy.

23. Human life cannot be measured



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only in terms of loss of earning or monetary losses alone. There are emotional attachments involved and loss of a child can have a devastating effect on the family which can be easily visualized and understood. Perhaps, the only mechanism known to law in this kind of situation is to compensate a person who has suffered non-pecuniary loss or damage as a consequence of the wrong done to him by way of damages/monetary compensation. Undoubtedly, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness etc., which is sometimes described as compensation paid for "loss of expectation of life".

10. For assessing the notional income of a child, the Hon'ble Supreme Court in *Lata Wadhwa Vs. State of Bihar* reported in (2001) 8 SCC 197 has held that in case of death of a child, there is no actual pecuniary benefit derived by its parents during the life time of the child. However, the parents are entitled to claim for the prospective loss they suffered and that they had a reasonable expectation of pecuniary benefit had the child lived and the loss of the child to the parents is irrecompable and no amount of money can compensate them. Considering the facts of that case, the Hon'ble Supreme Court has held that in cases of children between the age group of 10-15 years, the annual contribution can be fixed at Rs.24,000/- and multiplier of 15 be applied. The relevant portion of the judgement is as follows:

"11.....In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's life-time. But this will not necessarily bar the parents claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. Loss of a child to the parents is irrecompable, and no amount of money could compensate the parents. Having regard to the environment from which these children were brought, their parents being reasonably well placed officials of the Tata Iron and Steel Company, and on considering the



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submission of Mr.Nariman, we would direct 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 the conventional figure of Rs.50,000/- should be added and thus the total amount in each case would be Rs. 2.00 lakhs. So far as the children between the age group of 10 to 15 years, they are all students of Class VI to Class X and are children of employees of TISCO. The TISCO itself has a tradition that every employee can get one of his child employed in the company. Having regard to these facts, in their case, the contribution of Rs.12,000/- per annum appear to us to be on the lower side and in our considered opinion, the contribution should be Rs.24,000/- and instead of 11 multiplier, the appropriate multiplier would be 15. Therefore, the compensation, so calculated on the aforesaid basis should be worked out to Rs.3.60 lakhs, to which an additional sum of Rs.50,000/- has to be added, thus making the total amount payable at Rs.4.10 lakhs for each of the claimants of the aforesaid deceased children."

11. The above judgement was followed in Kishan Gopal Vs. Lala reported in (2014) 1 SCC 244. In the said case, for the death of a 10 year old boy, the notional income was fixed at Rs.30,000/- p.a. and multiplier 15 was applied.

12. In yet another judgement, the Hon'ble Supreme Court in New India Assurance Co. Ltd., Vs. Satender reported in CDJ 2006 SC 953, has held that in case of death of minor children neither the income of the child is capable of assessment on estimated basis nor financial loss suffered by the parents is capable of mathematical computation. Hence, in that case, a sum of Rs.1,80,000/- was awarded for the death of a child aged about 9 years old.

13. Recently, the Hon'ble Supreme Court in Rajendra Singh Vs. National Insurance Company Limited reported in CDJ 2020 SC 585 has confirmed the award passed by the Tribunal for a sum of Rs.2,95,000/- for the death of a 12 year old boy. Further, in respect of future prospects, the Hon'ble Supreme Court has noted that the judgement in R.K.Malik case (cited supra) does not considered Satender case (cited supra). The relevant paragraph of the said judgement is as follows:



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"15. The deduction on account of contributory negligence has already been held by us to be unsustainable. The determination of a just and proper compensation to the appellants with regard to the deceased child, in the entirety of the facts and circumstances of the case does not persuade us to enhance the same any further from Rs.2,95,000/- by granting any further compensation under the separate head of "future prospects". It may only be noticed that R.K. Malik (cited supra) does not consider Satender (cited supra) on the grant of future prospects as far as children are concerned."

14. Further, a Division Bench of this Court in National Insurance Co. Ltd., Vs. R.Vimala reported in 2015 (2) TN MAC 490 (DB) for the death of a 9 year old boy fixed the notional monthly income as Rs.5,000/- and deducted 1/3 towards personal expenses and awarded a sum of Rs.8,92,000/-.

15. In the instant case, the deceased was a 12 year old school going boy and his parents are 38 and 33 years old at the time of the accident. It is also stated that the deceased is a very bright student and he is having a very good future. The Tribunal fixed the notional monthly income of the deceased at Rs.5,000/- p.m. and arrived at the notional annual income at Rs.60,000/- and deducted 1/3 towards the personal expenses and applied multiplier of 18 and arrived at the loss of dependency at Rs.7,20,000/-.

16. However, considering the fact that the Hon'ble Supreme Court in Lata Wadhwa case (cited supra) has fixed the notional annual income of the deceased between age group of 10-15 years at Rs.24,000/-. In that case the accident had taken place during the year 1989. Subsequently in Kishan Gopal case (cited supra) the Hon'ble Supreme Court fixed the notional annual income at Rs.30,000/- for an accident which had taken place in the year 1992 for the death of a 10 year old minor boy. In the instant case, the accident had taken place in the year 2015 and considering the age of the deceased at 12 years and the age of the parents, this Court is of the view that fixing a sum of Rs.3,500/- as notional monthly income would be a just and fair, therefore, the notional annual income of the deceased would be Rs.42,000/-.

17. So far as deduction towards personal expenses is concerned, the Tribunal has deducted 1/3 towards personal



expenses. Mr. Arun Kumar, learned counsel appearing for the appellant / insurance company would contend that the deceased being a minor, the claimants are parents and applying the law laid down by the Hon'ble Supreme Court in Sarla Verma case (cited supra) 50% of the notional monthly income should be deducted towards personal expenses. For deduction towards personal expenses of the deceased, the Hon'ble Supreme Court in Sarla Verma case (cited supra) has considered the case of adult earning members, where they spent for their personal and living expenses to arrive at the contribution to the dependants. The Hon'ble Supreme Court noticing that it is difficult to arrive at the actual personal expenses of the deceased, in order to standardize the deduction for personal expenses, for a married person as 1/3, where dependent family members are between 2 to 3; 1/4 where dependent family members are between 4 to 6; 1/5 where dependent family members exceed 6. In case of a bachelor 50% of the monthly income has been deducted towards personal expenses. In paragraphs 25, 26, 30 and 31 of the Sarla Verma case (cited supra) the Hon'ble Supreme Court has held as follows:

"25. We have already noticed that the personal and living expenses of the deceased should be deducted from the income, to arrive at the contribution to the dependents. No evidence need be led to show the actual expenses of the deceased. In fact, any evidence in that behalf will be wholly unverifiable and likely to be unreliable. Claimants will obviously tend to claim that the deceased was very frugal and did not have any expensive habits and was spending virtually the entire income on the family. In some cases, it may be so. No claimant would admit that the deceased was a spendthrift, even if he was one.

26. It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardize the deductions to be made under the head of personal and living expenses of the deceased. This led to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was a



* * *

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or



married, or be dependent on the father....."

18. So far as minors are concerned, they are non earning members and there is no occasion for them to spend money towards the personal expenses and there cannot be any deduction towards their personal expenses. In Lata Wadhwa case (cited supra) and Kishan Gopal case (cited supra). The Hon'ble Supreme Court after fixing the notional monthly income of the minor applied the multiplier and taken the entire amount as the loss of dependency and no deduction was made for their personal expenses. In the above circumstances, this Court is of the view that there cannot be any deduction towards personal expenses from the notional income of deceased minors.

19. So far as applying multiplier, the Tribunal has applied multiplier of 18. However, in the case of children below the age of 15 years, even though Sarla Verma case (cited supra), the Hon'ble Supreme Court did not fix any multiplier. Subsequently, the Hon'ble Supreme Court in Reshma Kumari Vs. Madan Mohan reported in (2013) 9 SCC 65, has held that for children upto the age group of 15, the appropriate multiplier would be 15. The relevant portion of the said judgement is as follows:

"40. In what we have discussed above, we sum up our conclusions as follows:

(i) In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in Sarla Verma read with para 42 of that judgment.

(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed.

(iii) As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years,



there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act."

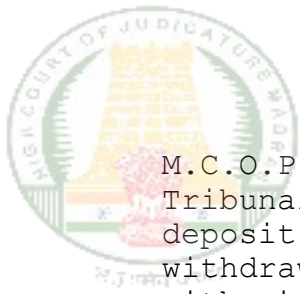
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20. In the said circumstances, the appropriate multiplier in case of a child aged 12 years would be 15. Hence, applying the above, the loss of dependency would come to Rs.6,30,000/- (Rs.3500x12x15). Even though the Tribunal has awarded a sum of Rs.1,00,000/- towards love and affection and a sum of Rs.80,000/- has been awarded towards Filial Consortium. As the filial consortium was granted, there is no need to award another sum of Rs.1,00,000/- towards love and affection to the parents. So far as other heads are concerned, the Tribunal has rightly granted compensation and there is no reason to interfere with the same.

21. In view of the above, the compensation awarded by the Tribunal is modified as follows:

Sl. No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Loss of income (dependency)	7,20,000	6,30,000	Reduced
2.	Love and Affection	1,00,000	-	Rejected
3.	Funeral Expenses	15,000	15,000	Confirmed
4.	Loss of Estate	15,000	15,000	Confirmed
5.	Transport charges	5,000	5,000	Confirmed
6.	Medical expenses	32,255	32,255	Confirmed
7.	Filial Consortium	80,000	80,000	Confirmed
	Total	9,67,255	7,77,255 (Rounded to Rs.7,78,000/-)	Reduced by Rs.1,89,255/-

22. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,67,255/- is hereby reduced to Rs.7,78,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant / insurance company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of



M.C.O.P.No.397 of 2015, on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Tirupattur. On such deposit, the respondents 1 and 2 / claimants are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The respondents 1 and 2 / claimants are entitled to refund of Court fee, in any, on the reduced amount of compensation now determined by this Court. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Subordinate Judge,
The Motor Accident Claims Tribunal,
Special Subordinate Court, Tirupattur.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.S.ArunKumar, Advocate SR.No. 39634

in C.M.A.No.2623 of 2019 and
C.M.P.Nos.12708 & 27542 of 2019

SV(CO)

B.VC(12.08.2021)