

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 28.02.2020

Pronounced On : 10.03.2020

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

CMA No.3763 of 2010

1. Dhanam
2. Sanjeevi

... Appellants/Petitioners

Vs

1. The Managing Director,
M/s.Vijayanand Road Lines Ltd.,
Giriraj Annexe,
Circuit House, Hubli.
2. ICICI Lombard General Insurance Co. Ltd.,
Swarnambigai Complex,
Omalur Main Road,
Salem-4

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order passed in M.C.O.P.No.1349 of 2008 dated 29.12.2009, on the file of the Motor Accidents Claims Tribunal [Principal District Judge], Salem.

For Appellants : Mr.K.Kuppusamy

For Respondents: Mr.L.Rajasekar (for R1)
Mrs.R.Sree Vidhya (for R2)

J U D G M E N T

Aggrieved over the award passed by the Motor Accidents Claims Tribunal (Principal District Judge), Salem in MCOP No.1349 of 2008, the appellants herein who are the petitioners in the claim petition, have filed this appeal, in which, they are seeking the relief to enhance the compensation amount, awarded by the claims tribunal.

2. In the claims tribunal, the appellants have filed the claim petition under Section 163A of the Motor Vehicles Act, in

which they have claimed compensation of Rs.10,00,000/- towards the death of their minor child. The 1st respondent herein is the owner of the offending vehicle bearing Regn.No.KA25-B-2157. The 2nd respondent is the insurer for the above said vehicle.

3. After an elaborate enquiry, the claims tribunal has held that only due to the rash and negligent act of the driver of the offending vehicle, the accident had occurred and consequently, awarded a compensation of Rs.1,31,845/-, with interest at the rate of 7.5% per annum, against which the present appeal has been preferred.

4. Before the claims tribunal, the case of the petitioners is as follows:

(i) On 05.08.2008, at about 3.30pm, when the deceased Srinivasan was walking in Thoppur to Mecheri Main Road, near Erumaipatti Primary Health Centre, a lorry bearing Regn.No.KA-25-B-2157, came at his back side in a rash and negligent manner and hit against him. Due to the said accident, he sustained multiple head injuries all over the body and was admitted in the Salem Gokulam Hospital for treatment. In the said hospital, inspite of best treatment given to him, he died.

(ii) At the time of accident, the deceased was aged about five years and was a student. For the said accident, a case has been registered in Cr.No.385 of 2008 under Section 279 and 304 IPC in Mecheri Police Station against the lorry driver. The 1st respondent is the owner of the lorry and the 2nd respondent is its insurer. Since the accident had occurred due to the negligent act of the lorry driver, both the respondents are jointly and severally liable to pay a compensation of Rs.10 Lakhs.

5. Opposing the claim made by the petitioners, 1st respondent herein filed a counter, and states that at the time of accident, the deceased boy, who came with his father in the two wheeler, on the right side of the road, while at the time on seeing his grand mother, who is in the left side of the road, alighted from the vehicle and darted across the road and fell down. Resultantly, he came in contact with the lorry. The insurance for the lorry is in force. The petition may be dismissed.

6. Similarly, the 2nd respondent/insurer, filed his counter and states that the age and studies of the deceased as averred in the petition are denied. The accident had occurred only due to the negligent act of the minor deceased boy. When at the time of accident, only the deceased minor negligently attempted to cross a sensitive main road without noticing the vehicles which were coming on the either side. Only on seeing the lorry

close to him, out of the shock lost his balance and fell down. Quantum of compensation claimed is exorbitant and he prayed to dismiss the claim petition.

7. Before the claims tribunal, the 1st petitioner herein was examined as PW1. He has exhibited three documents as Ex.A1 to A3. On the side of the respondents, no oral or documentary evidence was let in.

8. Having considered the materials placed before the tribunal, as already observed, Rs.1,31,845/- was fixed as total compensation towards the death of the minor child. The tribunal has further held that only due to the rash and negligent act of the driver of the lorry, the accident had occurred and hence both the respondents are jointly and severally liable to pay the said compensation.

9. In respect to the liability fixed by the claims tribunal, the learned counsel appearing on behalf of the 2nd respondent, has not made any objection. In fact, this appeal has been preferred by the claimants only to enhance the quantum of compensation fixed by the claims tribunal. So it is not necessary to go into the findings of the claims tribunal in respect to the liability fixed.

10. Coming to the point of quantum of compensation, the learned counsel appearing for the appellants would contend that the claims tribunal, when at the time of disposing the claim petition has held that since the deceased is a minor child, the income of a non earning person has to be taken into account and accordingly Rs.10,000/- was fixed as yearly income of the deceased minor child and further held that the appropriate multiplier is 10. According to her, the above findings are not in accordance with law.

11. In support of his contention, the learned counsel appearing for the appellants relied on the judgment of our Hon'ble Apex Court in Kishan Gopal & Another Vs. Lala & Others, reported in (2014) 1 SCC 244, wherein, our Hon'ble Apex Court has fixed Rs.30,000/- in the year 1994, as the notional income for the non earning persons.

12. In this connection, it is necessary and useful to see the judgment of Bombay High Court in First Appeal No.330 of 2019 dated 22.08.2019 between The National Insurance Company Ltd. Through its Regional Manager, Nagpur .vs. Devidas Sakham Bhagat and others, wherein it is held as follows:

"8. there is no dispute about the fact that the age of the deceased child was 5 years at the time of the accident. There is no serious challenge to any

other aspect of the order of the Tribunal, except the manner in which the quantum of compensation was calculated. The learned counsel for the appellant placed much emphasis on the judgment of the Hon'ble Supreme Court in the case of Lata Wadhwa .vs. State of Bihar ((2001) 8 Supreme Court Cases 197), as also subsequent judgments wherein the ratio of the said judgment was followed. It was emphasized that in the present case the age of the deceased child was only 5 years, while in the judgments relied upon by the learned counsel for the appellant as well as the learned counsel for the respondent nos. 1 and 2, the age of the children was found to be well above 5 years and that this was a crucial factor which the Tribunal in the present case failed to consider. It was emphasized that there could be no deviation from the Schedule as appended to the said Act and that upon a proper application of the Schedule and the relevant material, it was evident that the compensation granted by the Tribunal was not sustainable and that it was required to be scaled down appropriately.

9. There can be no dispute about the fact that in the case of Lata Wadhwa .vs. State of Bihar (supra), the Hon'ble Supreme Court did hold that amount of compensation payable at Rs.2,00,000/- would be a reasonable figure and that this included the amount under conventional heads being fixed at Rs.50,000/-. It is also noted that in subsequent judgments wherein reference was made to the aforesaid judgment of the Hon'ble Supreme Court, similar amounts were granted. But, in the case of Kishan Gopal .vs. Lala (supra), upon which the learned counsel for the respondent nos. 1 and 2 has placed heavy reliance, while specifically referring to and applying the ratio of the judgment in the case of Lata Wadhwa .vs. State of Bihar (supra), the Hon'ble Supreme Court has fixed compensation at Rs.5,00,000/-. While doing so, the Hon'ble Supreme Court has taken judicial notice of the fact that value of the rupee has come down drastically from the year 1994, when the notional income of a non-earning member was fixed at Rs.15,000/-. What is crucial is that the Hon'ble Supreme Court in the said judgment has also emphasized on the aspect that the deceased child, had he been alive would have certainly contributed substantially to the family of the claimant by working hard. This applies with full force to the facts of the present case also.

10. The distinction sought to be made by the learned counsel for the appellant that in the case of Kishan Gopal .vs. Lala (supra), the Hon'ble Supreme

Court was considering the case of children whose age was ranging between 10 to 17 years and that they belonged to families that were affluent as compared to the respondent nos. 1 and 2 herein, is a distinction which is artificial in nature and it cannot be sustained in the eyes of law. The potential of the child in the present case who died at the tender age of 5 years in the accident, cannot be held to be any less than that of the child belonging to another family and the principle to be applied, as laid down in the case of Kishan Gopal .vs. Lala (supra), has to be applied uniformly."

13. Now, applying the abovesaid principles with the case in our hand, in this case also, at the time of accident, the age of the deceased is 5 years. It is true, the deceased had he been alive, he will be very helpful to his parents in their elderly life as well as in the occupation, which was performed by the petitioners. Further, he would have certainly contributed substantially to the parents by working hard. Hence, it is appropriate to fix Rs.30,000/- as notional income for this case also.

14. In respect to the multiplier, by following the legal principles laid down by our Hon'ble Apex Court in Sarla Verma v. Delhi Transport Corporation, reported in (2009) 6 SCC 121, this Court is of the view that '15' multiplier can be applied to the multiplicand. Accordingly, the pecuniary loss is calculated as follows:

$$\text{Rs.30,000/-} \times 15 = \text{Rs.4,50,000/-}$$

15. Further, Rs.50,000/- is awarded towards conventional heads viz., loss of love and affection, funeral expenses and last rites, as held in Kerala SRTC Vs. Susamma Thomas, reported in (1994) 2 SCC 176, which is referred to in Lata Wadhwa & Ors. v. State of Bihar & Ors, reported in (2001) 8 SCC 197.

16. Here in this case after the accident the deceased was admitted in the hospital. In the hospital, the petitioners have spent Rs.6,845/-, towards medical expenses. Ex.A3, medical bills, proves the same. Hence the petitioners are entitled to the said amount also. Accordingly, the compensation fixed by Claims Tribunal is enhanced as follows:

Loss of Pecuniary : Rs.4,50,000/-
Conventional Heads : Rs. 50,000/-
Medical Expenses : Rs. 6,845/-
Total : Rs.5,06,845/-

17. Accordingly, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.5,06,845/-. The modified compensation of Rs.5,06,845/- has to be apportioned among the claimants as 60% to mother and 40% to father. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. The 2nd respondent-Insurance Company is directed to deposit the entire award amount along with interest and costs, after deducting the amount 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 is directed to transfer the said amount to the Bank Account of Claimants through RTGS/NEFT within a period of one week. The appellants/claimants are directed to pay the Court fee for the enhanced compensation, if any.

18. In the result, this Civil Miscellaneous appeal is partly allowed. No Costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge,
Motor Accident Claims Tribunal,
Salem.

Copy to

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

+1cc to M/s.K.Kuppusamy, Advocate Sr.21703
+1cc to Mr.L.Rajasekar, Advocate Sr.21392

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srg 18/09/2020