

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-03-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A. No.2898 of 2015

And

M.P.No.1 of 2015

IFFCO-TOKIO General Insurance Co. Ltd.,
Represented by its Manager,
K.S.C.M.F. Buildings,
3rd Floor, 3rd Block,
No.8, Cunnigham Road,
Bangalore-52. ... Appellant/Respondent No.2

Vs.

1.Mageswari ... Respondent-1/Petitioner-1
2.Minor Sasikala ... Respondent-2/Petitioner-2
3.Minor Iswariya ... Respondent-3/Petitioner-3
(R-2 & R-3 represented by their
next friend and Guardian mother
R-1 Mageswari) -
4.Saroja ... Respondent-4/Petitioner-4
5.P.Paramasivam ... Respondent-5/Respondent-1

The Civil Miscellaneous Appeal is preferred under
Section 173 of the Motor Vehicles Act, 1988, against the Award
and decree dated 15.09.2014 passed in M.C.O.P.No.40 of 2014 on
the file of the learned Special District Judge, Special District
Court-cum-Motor Accidents Claims Tribunal, Dharmapuri.

For Appellant : Mr.C.R.Krishnamoorthy

For Respondents-1 to 4 : Mr.M.Selvam

For Respondent-5 : No Appearance

J U D G M E N T

The present Civil Miscellaneous Appeal
is directed against the judgment and decree dated 15.09.2014
passed by the learned Special District Judge, Special District
Court-cum-Motor Accidents Claims Tribunal, Dharmapuri in MCOP
No.40 of 2014.

2. The appellant/Insurance Company preferred the present Civil Miscellaneous Appeal mainly on the ground of quantum of compensation awarded by the Tribunal as well as the liability and in view of the fact that the driver of the vehicle, which met with an accident was not in possession of a valid driving license and under those circumstances, the Tribunal ordered for pay and recovery.

3. The learned counsel appearing on behalf of the appellant has stated that the claimant was a minor aged about 10 years old and therefore, the calculation of compensation by the Tribunal is in violation of the judgment of the Hon'ble Supreme Court of India in the case of Kishan Gopal and Others vs. Lala and Others [2013 (2) TN MAC 358 (SC)].

4. The accident occurred on 24.01.2011 at about 17.00 Hours in front of Tea Shop at Arasakanahalli Village. Perumbalai Police Station registered a case in Crime No.25 of 2011 under Sections 279 and 304 (A) of IPC. The minor boy died on the way to Salem Government Hospital, who was aged about 10 years at the time of accident and a compensation of Rs.28,55,000/- was claimed.

5. The Tribunal adjudicated the issues and the factum regarding the accident was established before the Tribunal and accordingly the Tribunal arrived a conclusion that the first respondent-Driver in the claim petition was responsible for the accident and he who committed negligence and accordingly, the accident happened and the minor boy died.

6. The evidence was let in by the appellant/Insurance Company regarding the driving license of the driver and it was found that the driver was not in possession of a valid driving license at the time of accident. In the absence of establishing the fact that the driver was not in possession of a valid license, then the Tribunal ought to have ordered for pay and recovery, enabling the appellant/Insurance Company to recover the compensation amount from the owner of the vehicle.

7. As far as the pay and recovery order is concerned, this Court is of the considered opinion that the driver, who was driven the vehicle, which met with an accident, was not in possession of valid driving license and therefore, the appellant/Insurance Company has to recover the compensation from the owner of the vehicle, after paying the same to the victim. As far as the quantum of compensation is concerned, the Tribunal awarded a sum of Rs.8,10,000/-. The future prospects was calculated and a sum of Rs. 2,70,000/- was awarded, loss of income was calculated and a sum of Rs.5,40,000/- was awarded.

The monthly income of Rs.3,000/- was fixed for the minor boy aged about 10 years and 15 multiplier was applied.

8. It is relevant to consider the judgment of the Hon'ble Supreme Court of India in the case of Kishan Gopal and Others vs. Lala and Others (cited supra). As far as the 10 years old boy is concerned, the Apex Court considered various aspects and fixed the compensation at Rs.5 lakhs. Paragraph-18 of the judgment, cited supra, is relevant with reference to the fixation of compensation, more specifically, for a 10 years old boy, who died in the accident and the same is extracted as under:-

"18. Point Nos.2 and 3 are answered together in favour of the appellants for the following reasons.

The Tribunal having answered the contentious Issue 1, against the appellants in its judgment the same is concurred with by the High Court by assigning erroneous reasons and it has affirmed dismissal of the claim petition of the appellants holding that the accident did not take place on account of the rash and negligent driving of the offending vehicle by the first respondent and therefore the contentious Issues 1 and 2 are answered in the negative against the appellants and it has not awarded compensation in favour of the appellants.

Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious Issues 1 and 2 by recording our reasons in the preceding paragraphs of this judgment and we have answered the point in favour of the appellants and also examined the claim of the appellants to award just and reasonable compensation in favour of the appellants as they have lost their affectionate 10-year-old son. For this purpose, it would be necessary for us to refer to the Second Schedule under Section 163-A of the MV Act, at Clause 6 which refers to notional income for compensation to those persons who had no income prior to the accident. The relevant portion of Clause 6 states as under:

"6. Notional income for compensation to those who had no income prior to accident-

(a) Non-earning persons- Rs 15,000 p.a.”

The aforesaid clause of the Second Schedule to Section 163-A of the MV Act, is considered by this Court in Lata Wadhwa v. State of Bihar [Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197] while examining the tortious liability of the tortfeasor has examined the criteria for awarding compensation for death of children in accidents between the age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs 12,000 p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs 25,000 was awarded. Thus, a total sum of Rs 1,57,000 was awarded in that case. After noting the submission made on behalf of Tisco in Lata Wadhwa case [Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197] 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 irrecompable 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 case would be Rs 2 lakhs. 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. 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. 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. The said amount will carry interest @ 9% p.a. by applying the law laid down in MCD v. Uphaar Tragedy Victims Assn. [(2011) 14 SCC 481 : (2013) 1 SCC (Civ) 897 : (2013) 2 SCC (Cri) 555 : (2013) 1 SCC (L&S) 305] , for the reason that the

Insurance Company has been contesting the claim of the appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the appellants is legally justified."

9. In the present case, the Tribunal has granted a sum of Rs.8,10,000/-, which is excess than that of the calculation made by the Supreme Court in the case cited supra.

10. Though the learned counsel for the appellant cited a judgment of the Hon'ble supreme Court of India and said that Rs.5 lakhs would be the appropriate compensation, this Court is of the considered opinion that the accident occurred in respect of the abovesaid judgment of the Hon'ble Supreme Court of India, was of the year 1992 and in respect of the present case, the accident occurred on 24.01.2011, after a lapse of about 19 years. Therefore, the notional income as well as the total compensation arrived in the abovesaid judgment of the Supreme Court, cannot have any bearing in respect of the accident occurred long after and the cost of living and the price index everything is to be considered with reference to the date of accident.

11. The Supreme Court judgment with reference to the accident was of the year 1992 and the compensation fixed may not be a just compensation with reference to the accident occurred after the lapse of 19 years, wherein the cost of living and the price index are entirely different and the escalation in all these aspects are also to be considered by the Courts for the purpose of fixing a just compensation.

12. It is made clear that by citing one Supreme Court judgment, with reference to the accident of the year 1992, the appellant/Insurance Company cannot request the Court to follow the same compensation for an unspecified period with reference to all further accidents. Such a reliance may not have much relevance and the Courts are bound to assess compensation with reference to the context and the current escalation in prices and other aspects.

13. It is not as if the compensation fixed with reference to the accident occurred long back is to be followed in all future cases unless certain principles are laid down in the matter of fixation of compensation. No doubt, the previous method of compensation to be arrived as well as the procedures to be followed is to be executed in all respects. However, the Courts are bound to ascertain the over all compensation to be granted and the fairness in assessing the compensation also to be considered.

14. In view of the fact that, in the present case, the accident occurred in the year 2011 and the deceased boy was aged about 10 years and the notional income of Rs.3,000/- was fixed by the Tribunal, this Court do not find any infirmity or perversity as such.

15. Accordingly, the judgment and decree dated 15.09.2014 passed by the learned Special District Judge, Special District Court-cum-Motor Accidents Claims Tribunal, Dharmapuri in MCOP No.40 of 2014 is confirmed and consequently, C.M.A.No.2898 of 2015 stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

16. The appellant/Insurance Company is directed to deposit the entire Award amount with accrued interest, if not already deposited, within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the respondent/claimants are permitted to withdraw the entire Award amount by filing an appropriate application before the Tribunal and the payments are to be made only through RTGS.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Svn
To

The Special District Judge,
Special District Court-cum-
Motor Accidents Claims Tribunal,
Dharmapuri.

+1 CC to Mr.C.R.Krishnamoorthy, Advocate sr 22582
+1 CC to Mr.M.Selvam, Advocate sr 22641.

CMA No.2898 of 2015

PPA (CO)
SP(23/11/2020)