

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3756 of 2013

1. Selvi
2. P.Murugesan
3.Minor Santhiya Appellants/ Petitioners
Rep.by Next Friend
and father Murugesan 2nd Appellant
Vs

1. Saravanan
2. The Correspondent,
J.K.K.Rangammal Metric Higher Sec. School,
Komarapalayam - 638 183
(Notice for R1 and R2 may be dispensed with
since they were set exparte before the Tribunal)
3. The Oriental Insurance Co., Ltd.,
148, West Car Street, Kumar Complex,
First floor,
Tiruchengode - 637 211 ... Respondents/ Respondents

Prayer:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the order made in M.C.O.P.No.363 of 2008 on the file of Motor Accidents Claims Tribunal cum Subordinate Court, Bhavani dated 29.10.2009.

For Appellants : Mr. Kulanthaivel

For Respondents : Mr.N.Krishnamoorthy for R3
R1 and R2-Exparte

J U D G M E N T

The appellants herein, who are the claimants has preferred this Civil Miscellaneous Appeal against the Judgment and Decree made in M.C.O.P.No.363 of 2008 on the file of Motor Accidents Claims Tribunal cum Subordinate Court, Bhavani, Erode District dated 29.10.2009.

2. The 1st appellant is the mother, 2nd appellant is the father and the 3rd appellant is the sister of the deceased, viz., Mahesh. On 07.07.2008, the 1st appellant was standing near Chinna Palam, Sadayampalayam on Komarapalayam - Katheri Road with her daughter Minor Sandhiya, the 3rd appellant herein, who was studying at J.K.K.Rangammal Matric Hr.Sec.School, Komarapalayam with her minor son, namely, Mahesh, three years young, hale and healthy active body, who later died. In order to send the 3rd appellant to school, they were awaiting for the school van. The 1st appellant was standing on the north-south katheri to Komarapalayam Road at the western side mud road along with her children. At about 8.20 a.m., the 1st respondent, who drove the vehicle of the J.K.K.Rangammal School bearing Regn.No.TN 346676 in a rash and negligent manner from north to south on the Katheri - Komarapalayam road at the extreme right side of the road and hit against the minor son Mahesh. The minor boy was dragged into a certain extent and right front wheel of the vehicle was ran over him. Immediately, he was taken to the Komarapalayam Government Hospital by the 1st appellant alongwith neighbours for emergency treatment. The Doctors on duty at the hospital found him dead even before coming to the hospital. The duty doctors performed post-mortem at the hospital itself. The fatal accident was happened before the eyes of the 1st appellant. Only due to the rash and negligent driving of the 1st respondent alone, the accident had taken place. The appellants being mother, father and minor sister of the deceased were put in dark on the fateful demise, therefore, they had claimed a sum of Rs.4,00,000/- against the driver, owner and insurer / 1 to 3 respondents with 18% interest from the date of petition.

3. In contrary, the 3rd respondent / Insurance Company has filed a detailed counter affidavit denying all the averments / pleadings of the appellants and stated that the accident had occurred only due to the negligence of the 1st appellant, who while sending her daughter to the school, had not taken care of the small child, thereby the child had gone under the school bus and invited the accident. Further, the Insurance company submitted that there is no negligence on the part of the driver of the bus and the amount claimed by the appellants are very exorbitant, therefore, prayed to dismiss the petition with costs.

4. The Tribunal considering the pleadings, counter pleadings and the materials available on record had awarded a sum of Rs.2,57,000/- as compensation, to the appellants with interest at the rate of 7.5% from the date of claim petition till the date of realisation. Being not satisfied with the award amount, the appellants / claimants have preferred the present appeal before this Court.

5. The learned counsel for the appellants contended that the Tribunal ought to have considered and decided the proper notional income of the deceased child by considering the date of accident and age of deceased child. Also the Tribunal failed to consider the various Judgments of the Hon'ble Apex Court in deciding the notional income of the children and the Tribunal should have also considered the case of Lata Wadhwa and Others V. State of Bihar and others reported in 2001 ACJ 1735 wherein the Hon'ble Apex Court have considered and fixed the notional income as Rs.24,000/- per annum. Therefore, the Claims Tribunal by considering the date of accident in the present case, which is on 07.07.2008, ought to have fixed the notional income of the deceased child atleast Rs.30,000/- per annum. Moreover, the Tribunal has not properly considered and awarded reasonable compensation towards loss of love and affection of the parents and sister of the deceased child, who died at the age of two and a half years.

6. Apart from that, the learned counsel for the appellants submitted that the compensation awarded by the Tribunal is not a reasonable amount and pleaded to enhance the same. In support of his contention, he has relied on the Judgment of this Court reported in 2017 (2) TN MAC 702 [J.Kanagaraj and another V. Metropolitan Transport Corporation Ltd.,.

7. The learned counsel for the appellants has also relied on the Judgment of Hon'ble Supreme Court reported in [2013 (2) TNMAC 358 (SC)] Kishan Gopal and Another V. Lala & Others wherein it is held as follows:

'That the proof of the deceased as per claim while travelling in Trolley of tractor died due to rash and negligent driving of tractor driver. The first information report, charge sheet as also site map, post mortem report, mechanical inspection, insurance cover note etc., produced and marked to substantiate claim. The father of the deceased and eye witness spoken about manner of accident to the effect that trolley in which deceased travelled, turned down due to high speed, rash and negligent driving causing death of deceased. Tribunal, however holding that death of deceased due to rash and negligent driving not proved. The finding of Tribunal confirmed by High Court in Appeal, driver and owner of vehicle / Tractor-Trolley remained ex-parte before Tribunal and no rebuttal evidence adduced by insurer before Tribunal. In such circumstances, Tribunal ought to have appreciated oral and documentary evidence in proper perspective. When FIR and charge-sheet are not in dispute, Tribunal should have accepted evidence in favour of claimants. The tribunal ignored relevant facts and evidence on record and the High

Court also failed to re-appreciate the pleadings and evidence on record. The High court also failed to re-appreciate pleadings and evidence on record and mechanically confirmed finding of Tribunal in absence of rebuttal evidence. Concurrent finding of fact being erroneous and invalid, set aside.'

8. Though notice was ordered to the 1st and 2nd respondents / driver and owner of the school bus respectively, there is no representation for them either-in-person or through learned counsel and they were set exparte before the court below.

9. The learned counsel for the 3rd respondent / Insurance Company submitted that the amount awarded by the Tribunal is on the higher side, the same does not warrant any interference in the hands of this Court and pleaded to dismiss the appeal.

10. From the order of the Tribunal, it is seen that to prove the rash and negligence driving of the driver of the bus, the 1st appellant, who is the mother of the deceased and eye witness to the accident was examined as P.W.1 and marked Exs.P.1 to P.8. A case has been registered against the driver of the bus bearing Regn. No.TN 34-6676, which is evident from Ex.P.1, FIR. Since there is no contra evidence produced on the side of the respondents to disprove the case of the appellants, the Tribunal rightly held that the accident had occurred only due to the rash and negligence driving of the driver of the 1st respondent and stated that the respondents 1 to 3, being driver, owner and insurer of the school bus respectively are jointly or severally liable to compensate the appellants.

11. Further, the perusal of the order passed by the court below would show that the deceased was a non earning member, aged two and a half years and for the non-earning member, the notional annual income is fixed at Rs.15,000/-, as per the provisions of the Motor Vehicles Act and the Multiplicand 15 is adopted and thereby a sum of Rs.2,25,000/- is fixed towards annual loss of Income. In addition to the same, a sum of Rs.25,000/- is awarded towards loss of love and affection, Rs.5,000/- is awarded towards transportation charges and Rs.2,000/- is awarded towards funeral expenses. In total, a sum of Rs.2,57,000/- is awarded to the appellants and directed the respondents 1 to 3 to pay the said compensation either jointly or severally and the same are tabulated as follows:-

Sl.	Name of the Heads	Amount
01	Loss of annual income [Rs.15,000 X15]	Rs.2,25,000/-
02	Love and Affection	Rs.25,000/-
03	Transportation Charges	Rs.2,000

Sl.	Name of the Heads	Amount
04	Funeral Expenses	Rs.5,000/-
TOTAL		Rs.2,57,000/-

12. This Court finds some force in the submission of the learned counsel for the appellants and is of the view that the Judgment of the Hon'ble Supreme Court reported in 2013 (2) TNMAC 358 (SC) [Kishan Gopal and Another V. Lala & Others] cited supra relied on by the learned counsel for the appellants, is squarely applicable to the case on hand because of the reason, firstly, the deceased boy was two and a half years old at the time of accident and that the rupee value has come down drastically from the year 1994. Further, if the deceased boy was alive, he would have certainly contributed substantially to the family of the appellants by working hard. In view of the same and being bound by the Judgment of the Hon'ble Supreme Court reported in [2013 (2) TNMAC 358 (SC)] Kishan Gopal and Another V. Lala & Others cited supra, it is just and reasonable to take his notional income at Rs.30,000/- and further taking into account the young age of the parents, who were 25 and 27 years old respectively and by applying the legal principles laid down in the case of Sarla Verma V. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC), the multiplier of 15 can be applied. Thus, $30,000 \times 15 = \text{Rs.}4,50,000/-$ and Rs.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, which is referred to in Lata Wadhwa's case 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, a sum of Rs.50,000/- is awarded under conventional heads.

13. In total, a sum of Rs.2,57,000/- awarded by the Tribunal is enhanced to Rs.5,00,000/- payable to the appellants with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation. However, the appellants are not entitled to the interest for the delay period, viz., 1096 days [vide order dated 06.12.2013 made in M.P.No.1 of 2013 in C.M.A.S.R.No.26707 of 2013]. The respondents [driver, owner and insurer of the school bus respectively], are directed to deposit the enhanced amount jointly or severally to the Credit of M.C.O.P.No.363 of 2008 on the file of Motor Accidents Claims Tribunal cum Subordinate Court, Bhavani, along with interest and costs, as determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants 1 and 2 are entitled to a sum of Rs.2,00,000/- each and 3rd appellant, being minor, her share of Rs.1,00,000/- shall be deposited in any one of the nationalised bank in a fixed deposit and she is entitled to withdraw the said amount along with accrued interest, as soon as she attain majority by

filing appropriate application before the court concerned. The appellants 1 and 2 are directed to withdraw the amount, as per their apportionment, less the amount if any, already withdrawn, by filing an appropriate application before the Court concerned. The appellants are also directed to pay the necessary court fees for the enhanced amount.

With the above said observations and directions, the present Civil Miscellaneous Appeal is allowed and the amount is enhanced to Rs.5,00,000/- from Rs.2,57,000/- as awarded by the Tribunal. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Sub Judge,
Motor Accidents Claims Tribunal cum
Subordinate Court, Bhavani

Copy to:
The Section Officer, VR Section, High Court, Madras.

C.M.A.No.3756 of 2013

A.SK(30.03.2021)

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