IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1647 of 2020
and
C.M.P.No.12127 of 2020

The Manager,
Cholamandalam MS General
Insurance Co. Ltd.,
No.131/125A, Ground Floor,
Ahiyaman (Nethaji) Bye-pass Road,
Dharmapuri-636 701.

.. Appellant/2nd Respondent

Vs.

1. Muniyappan
2. M.Kavitha .. Respondents 1 & 2/ Petitioners

3. Loganathan ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 20.09.2019, made in M.C.O.P.No.907 of 2017, on the file of the Motor Accident Claims Tribunal, Special District Judge, Dharmapuri.

For Appellant : Mr.M.B.Raghavan

For Respondents : Mr.V.R.Annagandhi
for R1 & R2
R3 - No appearance

J U D G M E N T

Challenging the quantum of compensation passed by the Motor Accident Claims Tribunal, in M.C.O.P.No.907 of 2017, dated 20.09.2019, 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:

The claimants are the parents of deceased. The deceased was 3 years old at the time of accident. According to the claimants, on 31.05.2017 at about 09.00 a.m. When the deceased Pooja was playing at the backyard of her house, an autorichshaw bearing Regn.No.TN-29 AF-6751 belong to the 1st respondent, which was insured with the 2nd respondent came in a rash and negligent manner and dashed against playing child and run over her in the back wheel, in which, she had sustained fatal injuries. Hence, claiming a sum of Rs.27,00,000/- as compensation for the death of minor girl, the respondents 1 and 2/claimants have filed the claim petition before the Tribunal.

3. The 1st respondent/owner of the offending vehicle remained exparte before the Tribunal. The appellant / insurance company contested the claim petition on the ground that the accident had taken place due to the rash and negligent driving of autorickshaw driver and no liability fixed on the insurance company. That apart, at the time of accident, the driver did not have valid driving license and the quantum of compensation is highly excessive.

4. Before the Tribunal, the respondents 1 and 2/claimants have examined 2 witnesses and as many as 17 documents were exhibited on their behalf. On the side of appellant/1st respondent has examined two witnesses and as many as 4 documents were exhibited.

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 autorickshaw and hence, the respondents therein are liable to pay the compensation. So far as the quantum of compensation is concerned, the Tribunal has held that the deceased is the only child of claimants and mother has already undergone family planning operation and there is no other chance for having another child. They have lost the love and affection of one and only child. Hence, the Tribunal had fixed the annual income of deceased as Rs.50,000/- and applying the multiplier of 15, granted a sum of Rs.7,50,000/- towards pecuniary loss. That apart, a sum of Rs.2,00,000/- was awarded towards loss of love and affection, and a sum of Rs.15,000/- towards funeral expenses was awarded. Thus, totally, a sum of Rs.9,65,000/- has been awarded by the Tribunal as compensation to the respondents. Challenging the quantum of compensation, the insurance company is before this court by filing the present Civil Miscellaneous Appeal.

6. Mr.M.B.Raghavan, learned counsel appearing for appellant insurance company would submit that the quantum of compensation awarded by the Tribunal is highly excessive. He would also submit that the Tribunal ought not to have fixed the annual income as Rs.50,000/- without any evidence.

7. Mr. V.R.Annagandhi, learned counsel appearing for the respondents 1 and 2/claimants would contend that the deceased was only 3 years old at the time of accident. It is also stated that the deceased is the only child of the claimants and further stated that there is no chance for them to get another child. That apart, had the deceased not died in the accident, she would have a great future and she would also have a great future prospects.

8. I have heard and considered the rival submissions made by learned counsel appearing for appellant as well as respondents and perused the records.

9. The deceased was 3 years old and she was earning nothing. However, she had a great prospects of earning in future, but there may not be any actual pecuniary benefit derived by her parents during her 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 weighed in golden scales, the parents are entitled for a just compensation, however, 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.
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> 23. Human life cannot be measured 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. The loss of the child to the parents is irrecoupable 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 irrecoupable, 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 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:

> "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 3 year old girl and her parents are 30 and 23 years old at the time of the accident. It is also stated that the deceased is a very bright student and she is having a very good future. The Tribunal fixed the notional annual income of the deceased at Rs.50,000/-, applied the multiplier of 15, and arrived the loss of dependency at Rs.7,50,000/-.

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 2017 and considering the age of the deceased, 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. 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."

18. In the said circumstances, the appropriate multiplier in case of a child would be 15. Hence, applying the above, the loss of dependency would come to Rs.6,30,000/- (Rs.3500x12x15), and a sum of Rs.80,000/- is granted towards filial consortium. As the filial consortium is granted, there is no need to award another sum of Rs.2,00,000/- towards loss of love and affection to the parents of deceased. That apart, a sum of Rs.15,000/- each is granted towards funeral expenses and loss of estate, and a sum of Rs.5000/- towards transport charges is granted.

19. 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.	Pecuniary loss of dependency	7,50,000	6,30,000	reduced
2.	Funeral expenses	15,000	15,000	confirmed
3.	Loss of love and affection	2,00,000	80,000	reduced
4.	Loss of estate	-	15,000	granted
5.	Transport charges		5,000	granted
	Total	9,65,000	7,45,000 (rounded to Rs.7,50,000/-)	Reduced by Rs.2,20,000/-

20. In the result, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.9,65,000/- is hereby reduced to Rs.7,45,000/- 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.907 of 2017, on the file of the Motor Accident Claims Tribunal, Special District Judge, Dharmapuri. On such deposit, the 1st and 2nd respondents/claimants are permitted to withdraw the award amount as apportioned by the Tribunal, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The 1st and 2nd respondents/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 V)

//True Copy//

Sub Assistant Registrar

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To

1. Motor Accident Claims Tribunal
   Special District Judge,
   Dharmapuri.

+1cc to Mr.V.R.Annagandhi, Advocate, S.R.No.39693

C.M.A.No.1647 of 2020

VGII(CO)
CS/30/09/2021