

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.3283 of 2019

1. A.Sankar,
S/o. Arunachalam

2. S. Mallika,
W/o. Sankar
Both are residing at
E Block, No.17,
Raja Muthaiahpuram,
Chennai-28.

.. Appellants/Petitioners

Vs.

The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan Salai,
Chennai-2.

.. Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 10.02.2017, made in M.C.O.P.No.4005 of 2014, on the file of the Chief Judge / Motor Accident Claims Tribunal Judge, Chennai.

For Appellants : Mr.F.Terry Chella Raja

For Respondent : Dr.S.S.Swaminathan

WEB COPY
J U D G M E N T

The claimants, who are parents of deceased filed this appeal seeking for enhancement of compensation.

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

The deceased by name Ashok Kumar, a 12 years old school going boy. On 28.12.2008, at about 02.00 p.m. while he was getting down from the bus belong to the respondent corporation, without noticing the same, the driver of the bus has moved the bus in a rash and negligent manner, and the

deceased fall down and the bus run over him and caused his death. The claimants viz., parents of deceased seeking compensation of Rs.20 lakhs have filed the claim petition.

3. The respondent corporation contested the claim petition on the ground that the accident was not due to the rash and negligent driving of the driver of respondent's vehicle, and while the bus was about to stop near the Kannagi statue bus stop, the deceased, who was travelling in the bus, has hurriedly get down from the moving bus and fall down and caught in the wheels of the bus. Hence, the accident was taken place due to the negligence of the boy and no negligence could be fixed on the driver of the bus. It is also stated that the compensation claimed by the appellants is highly excessive and speculative.

4. Before the Tribunal, the mother of deceased was examined as P.W.1, an eye-witness was examined as P.W.2 and marked as many as 8 documents as Exs.P1 to P8. On the side of the respondent, the driver of the bus was examined as R.W.1. And no document was marked.

5. The Tribunal after considering the materials available on record came to the conclusion that the accident was taken place due to the rash and negligent driving of the driver of the bus. So far as quantum of compensation is concerned, the Tribunal has awarded a sum of Rs.1,50,000/- towards loss of pecuniary benefits and a sum of Rs.1,00,000/- towards loss of love and affection. A sum of Rs.5000/- was awarded towards transport charges and a sum of Rs.25,000/- was awarded towards funeral expenses. Thus, the Tribunal has totally awarded a compensation of Rs.2,80,000/-. Not being satisfied with the same, the claimants are before this court by way of filing the present appeal.

6. I have considered the submissions made by learned counsel appearing for appellants as well as respondent Transport Corporation and perused the records.

7. The deceased was a 12 years old school going boy and he was earning nothing. As a school going boy he had great prospects of earning in future, but 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 necessarily be compensated. Awarding compensation for the loss of life cannot be weighted in golden scales, 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 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"."

8. 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 irrecompensable, 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."

9. 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.

10. 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.

11. 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."

12. 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/-.

13. In the instant case, the deceased was a 12 year old school going boy and his parents are 46 and 40 years old at the time of the accident. It is also stated that the deceased was a very bright student, had he alive, he would have had a very good future. Without considering those aspects, the Tribunal only awarded a sum of Rs.1,50,000/- towards loss of dependency.

14. 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/- per annum 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 2008 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/-.

15. For fixing appropriate multiplier for the minors, 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."

16. In the said circumstances, the appropriate multiplier in case of a child aged 12 years would be 15, 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/- is granted 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. That apart, a sum of Rs.15,000/- each is granted

towards loss of estate and funeral expenses. A sum of Rs.5000/- towards transport charges awarded by the Tribunal is confirmed.

17. 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 pecuniary benefits	1,50,000	6,30,000	enhanced
2.	Loss of Love and Affection	1,00,000	-	Rejected
3.	Funeral Expenses	25,000	15,000	reduced
4.	Loss of Estate	-	15,000	Granted
5.	Transport charges	5,000	5,000	Confirmed
6.	Filial Consortium	-	80,000	granted
	Total	2,80,000	7,45,000 (Rounded to Rs.7,50,000/-)	Enhanced by Rs.4,70,000/-

Thus, the appellants are entitled to get a sum of Rs.7,50,000/- towards compensation instead of Rs.2,80,000/- awarded by the Tribunal. However, considering the fact that the appeal was filed with the delay of 521 days and this Court while condoning the delay, has held that, the appellants are not entitled for interest for the default period. Hence, the appellants are entitled for interest excluding the days taken for filing the appeal i.e. from the date of expiration of appeal period from 10.02.2017 to till the date of filing of appeal i.e. on 11.02.2019.

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,80,000/- is hereby enhanced to Rs.7,50,000/- together with interest at the rate of 7.5% from the date of petition till the deposit of amount excluding the period as stated above. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The respondent Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest, 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, the appellants are entitled to share the

amount proportionately as ordered by the Tribunal and the appellants are permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpp

To

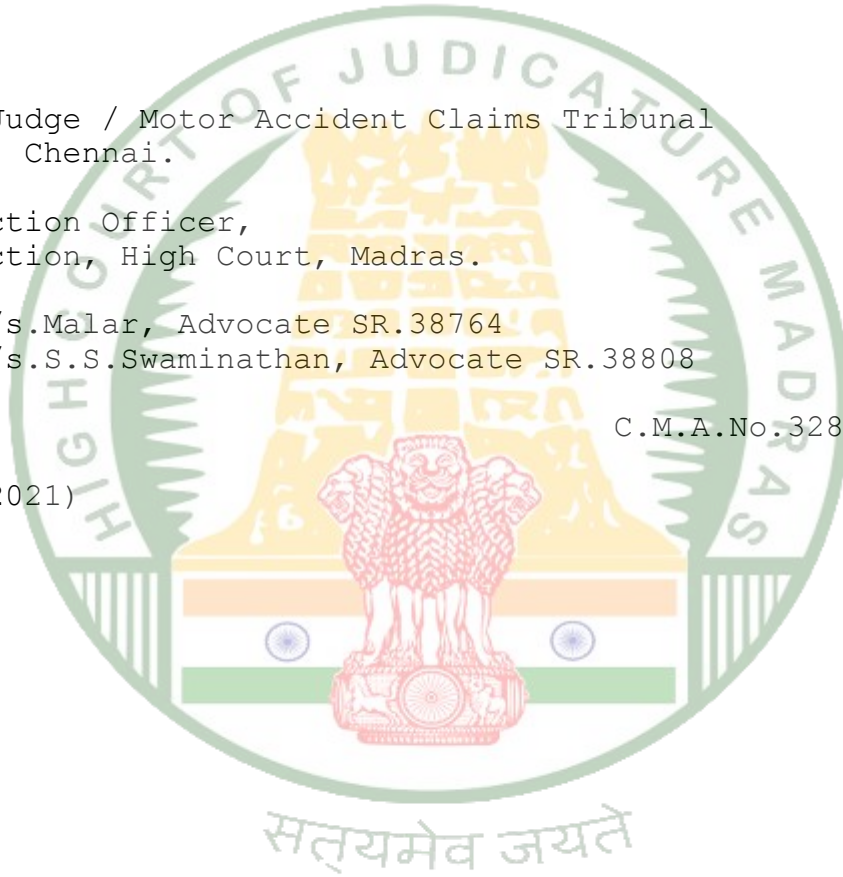
1. Chief Judge / Motor Accident Claims Tribunal
Judge, Chennai.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.Malar, Advocate SR.38764

+1cc to M/s.S.S.Swaminathan, Advocate SR.38808

C.M.A.No.3283 of 2019

SR(CO)
CB(04/03/2021)



WEB COPY