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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.1356 OF 2013

- 1.Revathi
- 2.Rajendran
- 3.Vishnu Priya

... Appellants/Claimants

..Vs..

1. Seenivasan
2. The Managing Director,
Tamil Nadu Transport Corporation Ltd.,
12, Ramakrishna Road,
Salem - 7.

... Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount awarded in the judgment and decree dated 06.01.2012 made in M.C.O.P.No.39 of 2011 on the file of the Principal District Court, Erode.

For Appellants : Mr.M.Guruprasad

For Respondents : R1 - Notice Unserved
R2 - Mr.Ramanathan
for Mr.D.Venkatachalam

JUDGMENT

This appeal has been filed for enhancement of the compensation granted by the Tribunal in award dated 06.01.2012, made in M.C.O.P. No.39 of 2011, on the file of the Motor Accident Claims Tribunal, Principal District Court, Erode.



2. The appellants herein are the claimants, who filed a petition in M.C.O.P. No.39 of 2011, on the file of the Motor Accident Claims Tribunal, Principal District Court, Erode, claiming a sum of Rs.20,00,000/- as compensation for the death of their daughter namely Renugadevi in the accident that took place on 25.08.2010 at about 7.30 p.m.

3. According to the appellants/claimants, on 25.08.2010 at about 7.30 p.m the deceased Renugadevi, who was studying 10th standard in Vellalar Matriculation School, Thindal, was crossing the Erode-Perundura Road near Sakthi Nagar Pririvu after watching either side and after giving signal. At that time, the first respondent drove the bus bearing Reg.No.TN-29-N-1962, which was owned by the second respondent, in a rash and negligent manner and hit the deceased Renugadevi causing injuries and she succumbed to the injuries. The accident had taken place only because of the rash and negligent act of the driver. Hence, the claimants filed a petition, claiming a compensation for a sum of Rs.20,00,000/-.

4. In order to prove the claim on the side of the claimants, PW1, first appellant/mother of the deceased was examined and Exs.P1 to P18 were marked. On the side of the respondents, the first respondent was examined as RW1, but no document was marked.

5. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the first respondent/driver of the bus bearing Reg.No.TN-29-N-1962, which belongs to the second respondent/ Transport Corporation. Accordingly, the Tribunal directed the second respondent/Transport Corporation to pay a sum of Rs.2,50,000/- along with interest @ 7.5% per annum as compensation to the appellants/ claimants.

6. Not being satisfied with the amounts awarded by the Tribunal in the award dated 06.01.2012, made in M.C.O.P. No.39 of 2011, the claimants have come out with the present appeal.

7. The learned counsel appearing for the appellants contended that the deceased was studying in 10th Standard and she is a brilliant student and she also participated in various



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sports and extracurricular activities. Due to sudden death of the deceased, the claimants have got severe mental agony and pain, loss of love and affection and loss of her service to them. Without considering all these factual aspects, the Tribunal has awarded a sum of Rs.2,50,000/- as compensation, against the claim of Rs.20,00,000/-. The Tribunal has erred in not awarding any amount to the claimants towards future prospects. Further, the Tribunal has not awarded any amount under other heads also, and hence, the compensation awarded requires proper enhancement.

8. On the other hand, the learned counsel appearing for the second respondent/Transport Corporation denied the mode of accident as narrated by the appellants/claimants and also denied the negligence on the part of the driver of the insured vehicle. Therefore, he sought to dismiss the appeal.

9. Heard the learned counsel appearing for the appellants as well as the second respondent-Insurance Company and perused the materials available on record.

10. On perusal of documents, it is not in dispute that the deceased was a student studying 10th standard, aged about 15 years and died due to the accident. Further there is no dispute with regard to the existence of coverage of the insurance policy with the second respondent/Transport Corporation at the time of the accident. Though the learned counsel appearing for the Transport Corporation strongly denied the negligence on the part of the driver of the insured vehicle, no contra evidence has been placed by the second respondent/Transport Corporation. Ex.4/Motor Inspector's Report confirms the said information. Therefore, this Court confirms the award passed by the Tribunal in respect of negligence on the part of the driver of the bus. Hence, the second respondent-Corporation is liable to pay compensation.

11. While granting compensation, the Tribunal relied upon the decision of the High Court of Rajasthan in Nati v. Babu Lal reported in 2009 ACJ 560, wherein a sum of Rs.1,80,000/- was awarded as compensation for the death of the deceased, who was aged about 14 years and studying 7th standard at the time of the accident. The High Court of Rajasthan came to the above



conclusion following the guidelines of the Hon'ble Apex Court in the case of Manjudevi v. Musafir Pawan reported in 2005 ACT 99 SC and New India Assurance Company Limited v. Satender reported in 2007 ACT 160 (SC). In the present case, the deceased girl aged about 15 years and studying in 10th Standard at the time of the accident. The Tribunal by relying upon the judgment of Nati v. Babu Lal and also the price index at the time of the accident awarded a sum of Rs.2,50,000/- as compensation for the death of the deceased. This Court is not satisfied with the said compensation and the same is required to be enhanced in view of the recent judgment of the Hon'ble Supreme Court in the case of Kishan Gopal and Another and Lala & Others in Civil Appeal No.7137 f 2013. The relevant portion of the said judgment reads as follows;

"18. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case 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 the case of Sarla Verma Vs. Delhi Transport Corporation, 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 arrived at Rs. 1,50,000/- towards of loss of income of the deceased."

12. In the case on hand, had the deceased girl been alive, she would have certainly contributed substantially to the



family of the appellants by working hard and reach great heights. Hence, by applying the principles laid down by the Hon'ble Supreme Court in the case of Kishan Gopal, this Court is inclined to enhance the compensation amount to the claimants. Considering the age of the deceased being 15 years at the time of the accident and studying in 10th standard, it would be reasonable to fix a notional income of Rs.15,000/- per annum and thereafter, by adding Rs.15,000/- towards future prospects, the total amount comes to Rs.30,000/-. Further, as the age of the mother was about 45 years old and the age of the father was 48 years at the time of the accident, by applying the legal principles laid down in the case of Sarala Verma Vs.Delhi Transport Corporation, the correct multiplier to be applied is "13". Thus, Rs.3,90,000/- is granted under the head 'Loss of Income' [30,000 x 13].

13. Further, the Tribunal has not awarded any amount under the heads Funeral Expenses, Loss of Love and Affection and Loss of Estate. Hence, a sum of Rs.15,000/- is awarded under the head "Funeral Expenses", Rs.15,000/- under the head Loss of Estate. Further, a sum of Rs.50,000/- is awarded to the claimants under the head "Loss of Love and Affection", by awarding a sum of Rs.20,000/- to each of the parents of the deceased/respondents 1 and 2 and Rs.10,000/- to the sister of the deceased/3rd respondent.

14. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income	2,50,000/-	30,000 x 13 = 3,90,000/-
2.	Funeral Expenses		15,000/-



3.	Loss of Love and Affection to the parents (Rs.20,000/- each)	...	40,000/-
4.	Loss of love and affection to the sister	...	10,000/-
5.	Loss of Estate	...	15,000/-
	Total	2,50,000/-	4,70,000/-

15. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,50,000/- is enhanced to Rs.4,70,000/- (Rupees four lakhs and seventy thousand only) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Transport Corporation is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, less the amount already deposited, within a period of 12 weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.39 of 2011. On such deposit, the appellants/claimants are permitted to withdraw the enhanced award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellants are directed to pay the necessary court fee, if any, for the enhanced amount. The apportionment shall be as fixed by the Tribunal. No costs.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

dna

To

The Motor Accident Claims Tribunal,
Principal District Court, Erode.



Copy To

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.8164

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.8314

CMA.No.1356 of 2013

NMI(CO)
RLP(08/10/2021)