IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.1285 of 2015
and
MP No.1 of 2015

Bajaj Allianz General Insurance Company Limited,
No.25/26, Prince Tower,
4th Floor,
College Road,
Nungambakkam,
Chennai – 34. ... Appellant/2nd Respondent

Versus

1. D. Priya
2. M.Dillibabu ...Respondents 1 & 2/Petitioners 1 & 2
3. M/s.AAKR LG Super Shopee,
No.12, Pilliyar Koil Street,
Veppampattu,
Thiruvallur District. ... 3rd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 23.12.2014 in MCOP No.2134 of 2012 on the file of the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai

For Appellant : Mr.T.K.Premkumar

For Respondents : Mr. R. Kalaiarasan for R1 & R2
Not ready in notice reg. R3

JUDGMENT
(Heard Video Conference)

This appeal has been filed by the Insurance Company challenging the quantum of compensation awarded to the claimants under the impugned award dated 23.12.2014 passed by the Motor Accident Claims Tribunal (V Court of Small Causes), Chennai in MCOP No.2134 of 2012.

2. The details of the compensation awarded by the Tribunal under the impugned award are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Compensation for loss of dependency	4,50,000
Compensation for loss of love and affection	2,00,000
Compensation for loss of expectation of life	1,00,000
Funeral expenses	50000
Total	8,00,000

3. The claimants have preferred a claim before the Motor Accident Claims Tribunal against the appellant for the death of a Minor girl by name D. Madhumitha, aged 8 years who died as a result of an accident on 21.04.2012 caused by a vehicle owned by the third respondent and insured with the appellant.

4. The appellant / Insurance Company has not questioned its liability to pay the compensation but they have questioned only the quantum of compensation awarded by the Tribunal. According to them, the Tribunal has erred in assuming the notional monthly income of the deceased for a minor girl, aged only 8 years at a high and excessive sum as Rs.30,000/-. It is their further case that the determination of the pecuniary loss by the Tribunal is disproportionately huge and excessive sum of 4,50,000/- which is opposed to the principles firmly laid down by the Hon'ble Supreme Court in the cases of Puttamma Vs. K.L. Narayana Reddy reported in 2014 (1) TNMAC 481 (SC) and Reshma Kumari and others Vs. MadanMohan and another, 2013 (1) TNMAC 481.

5. The appellant / Insurance Company has also raised in the grounds of appeal that the quantum of compensation awarded by the Tribunal towards loss of love and affection, love of expectation of life and funeral expenses is excessive.

6. Heard Mr.T.K.Premkumar, learned counsel for the appellant / Insurance Company and Mr.R. Kalaiarasan, learned counsel for the respondents 1 and 2.

7. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

8. The learned counsel for the appellant / Insurance Company drew the attention of this Court to the following judgments of the Hon'ble Supreme Court in the cases of

a) Kishan Gopal and another versus Lala and others reported in 2014 (1) SCC 244.

b) Rajendra Singh and others versus National Insurance Co. Ltd. and others reported in (2020) 7 SCC 256

9. After relying upon the aforesaid decisions, the learned counsel for the appellant / Insurance Company would submit that the compensation awarded by the Tribunal is excessive.

10. Per contra, the learned counsel for the respondents / claimants drew the attention of this Court to the following judgments passed by this Court :

a) judgment dated 23.12.2020 passed in CMA No.839 of 2018 in the case of Jaya and another versus The New India Assurance Co. Ltd and another.

b) judgment dated 24.06.2021 passed by this Court in CMA No.2793 of 2016 in the case of V.Clara and another versus New India Assurance Co. Ltd. and another.

11. The learned counsel for the respondents / claimants would submit that in the aforementioned judgments loss of future prospects in respect of a death of a Minor was granted to the claimants. But whereas in the case on hand under the impugned award, the Tribunal has not granted any loss of future prospects and hence, the overall compensation of Rs.8,00,000/- awarded to the claimants for the death of their Minor daughter aged 8 years is a just compensation.

12. It is settled law that the Motor Accident Claims Tribunal will have to award compensation on the just compensation principle. The facts and circumstances of each case varies. In the cases relied upon by the learned counsel for the appellant / Insurance Company viz., Kishan Gopal and Rajendra Singh cases, referred to supra, the assistance rendered by the Minor (deceased) to his/her parents were discussed and only thereafter the compensation payable to the claimants were determined. In the decision of the Hon'ble Supreme Court in the case of Rajendra Singh wherein paragraph No.12 of the judgment, it has been observed as follows :

> 12. The second deceased was a school going child aged about 12 years. She had a whole future to look forward in life with all normal human aspirations. She died prematurely due to the accident at a very tender age for no fault of hers even before she could start to understand the beauty and joys of life with all its ups and downs. The loss of a human life untimely at childhood can never be measured in terms of loss of earning or monetary loss alone. The emotional attachments involved to the loss of the child can have a devastating effect on the family which needs to be visualized and understood. Grant of non-pecuniary damages for the wrong done by awarding

compensation for loss of expectation in life is therefore called for. Undoubtedly the injury inflicted by deprivation of the life of the child is very difficult to quantify. The future also abounds with uncertainties. Therefore, the courts have used the expression "just compensation" to get over the difficulties in quantifying the figure to ensure consistency and uniformity in awarding compensation. This determination shall not depend upon financial position of the victim or the claimant but rather on the capacity and ability of the deceased to provide happiness in life to the claimants had she remained alive. The compensation is for loss of prospective happiness which the claimant would have enjoyed had the child not died at the tender age. Since the child was studying in a school and opportunities in life would undoubtedly abound for her as the years would have rolled by, compensation must also be granted with regard to the future prospects. It can safely be presumed that education would have only led to her better growth and maturity with better prospects and a bright future for which compensation needs to be granted under non-pecuniary damages (See R.K. Malik Vs. Kiran Pal, (2009) 14 SCC 1)

13. In fact in the abovesaid paragraph, the observation of the Hon'ble Supreme Court was based on the principles laid down by the Hon'ble Supreme Court in the case of R.K. Malik Vs. Kiran Pal reported in (2009) 14 SCC 1.

14. As seen from the aforementioned judgment, there is no bar for the claims Tribunal to award future prospects to the claimants for the loss of Minor. It all depends on the facts and circumstances of each case. In the case on hand, the deceased Minor had only one younger sister who is suffering from an heart ailment and has also undergone an Open Heart surgery at the tender age of 4 years, which is proved through the discharge summary which has been marked as Ex.P6 before the Tribunal. The same has also not been disputed by the appellant / Insurance Company before the Tribunal. It is also not in dispute that the parents of the deceased have undergone family planning and they will not be in a position to beget any further children. Before the Tribunal, the same has also not been disputed by the appellant /Insurance Company.

15. The learned counsel for the appellant /Insurance Company has laid emphasis on the judgment of the Hon'ble Supreme Court in the case of Kishan Gopal and another Versus Lala and others, referred to supra and would submit that if the same yardstick is applied, the compensation can be fixed to the respondents / claimants only on lumpsum basis, which depends upon the age of the deceased minor. He would submit that the Tribunal has erroneously not followed Kishan Gopal's case by fixing the compensation on lumpsum basis. As according

to him, in Kishan Gopal's case, the age of the minor was 10 years and further, he was helping his parents in agricultural works and despite the same, the Hon'ble Supreme Court fixed the compensation fixed at Rs.4,50,000/- and Rs.50,000/- as compensation under the conventional heads. Therefore, according to him, the compensation of Rs.8,00,000/- awarded to the respondents / claimants by the Tribunal is excessive.

16. As observed by the Hon'ble Supreme Court in all the judgments whether it is in Rajendra Singh and others versus National Insurance Co. Ltd. or Kishan Gopal and another versus Lala and others, the fixation of compensation has to be done on a just compensation principle. The adjudication of each and every claim by the Tribunal depends upon the facts and circumstances of each case. In the case on hand, the circumstances for claiming higher compensation than what was prescribed in Kishan Gopal's case are peculiar in view of the fact that the deceased had only one minor sister and she had undergone an Open Heart surgery at the tender age of 4 years which has also been disputed by the appellant /Insurance Company before the Tribunal. It is also to be noted that the parents of the deceased Minor had even prior to the date of the accident had underwent family planning and they do not have a chance of begetting any children in the future. There is no doubt that they would have certainly lost their prospective happiness in view of the aforementioned reasons.

17. The unfortunate death of a Minor child aged 8 years due to the the accident and in view of the agony suffered by her parents on account of her death and in view of the fact that their only other Minor daughter is also suffering from an heart ailment and has also underwent an Open Heart surgery, this Court after giving due consideration to the aforementioned factors and in view of the fact that loss of future prospects has also not been granted to the claimants is of the considered view that the total compensation awarded by the Tribunal at Rs.8,00,000/-, though the compensation awarded under certain heads may not be a correct one cannot be considered to be excessive, as alleged by the appellant / Insurance Company.

18. For the foregoing reasons, this Court does not find any merit in this appeal and accordingly, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19. It is also brought to the notice of this Court by the learned counsel for the respondents/ claimants that the entire award amount has already been deposited by the appellant / Insurance Company before the Tribunal.

20. Since, it is represented by the learned counsel for the respondents /claimants that the entire award amount has

already been deposited by the appellant / Insurance Company to the credit of MCOP No.2134 of 2012 on the file of the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai, the Tribunal is directed to transfer the award amount directly to the bank account of the respondents / claimants, as per the ratio of apportionment fixed by the Tribunal, within a period of four weeks from the date of receipt of a copy of this Judgment. It is made clear that the respondents / claimants are entitled for interest at 7.5% p.a. from the date of claim petition till the date of realization.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vsi2

To

The V Judge,
V Court of Small Causes,
Motor Accidents Claims Tribunal
Chennai.

+1cc to Mr.T.K.Premkumar, Advocate SR.No.33194

+1cc to Mr.R. Kalaiarasan, Advocate SR.No.32752

CMA No.1285 of 2015

GPL(CO)
GMY(08/11/2021)