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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 01.03.2021

JUDGMENT DELIVERED ON : 27.04.2021

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.2127 OF 2012

1. S.Murugesan
S/o. Singaram
 2. M.Malliga
W/o. Murugesan
- Vs.
1. H.Ilayaraja
S/o. Hari
 2. Bajaj Allianz General Ins. Co. Ltd.,
No. 25/26, College Road, IV Floor,
Nungambakkam, Chennai - 600 034.
- ...Appellants/Petitioners
...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.887 of 2008 dated 30.06.2011 on the file of the Motor Accidents Claims Tribunal, IV Fast Track Court, Chennai.

For Appellant : Mr.G.Balachandran

For Respondents : R1- Exparte
Ms.R.Rathna Thara for R2

JUDGMENT

(This case has been heard through video conference)

This Civil Miscellaneous Appeal has been filed seeking the enhancement of the award dated 30.06.2011 passed in MCOP.No.887 of 2008 by the Motor Accidents Claims Tribunal, IV Fast Track Court, Chennai.

2. The case in brief is as follows:

On 01.01.2008 at 9 hours, while the boy/Chandran was crossing the Kandigai Road, Melakottaiyur opposite to Polywash Company along with his aunty, a motor cycle bearing Registration



No. TN-22-AZ-5670 driven by its rider in a rash and negligent manner hit the boy, causing him grievous injuries, resulting in his death. The first respondent is the owner/rider of the two wheeler. The second respondent is the insurer of the two wheeler. Both are jointly liable to pay compensation to the claimant. The first respondent remained exparte before the Tribunal.

3. The second respondent/Insurance Company declined the claim stating that the rider of the vehicle did not have proper licence and did not possess valid insurance policy. As there is violation of policy condition, the second respondent/Insurance Company is not liable to pay compensation.

4. The first respondent is the owner of the vehicle and had filed counter. In the counter, he had denied his liability and stated that the boy suddenly crossed the path of two wheeler and invited the accident. After due enquiry, the Tribunal had awarded the compensation of Rs.1,27,000/-.

5. Aggrieved by the same, the award passed by the Tribunal was on the lower side, the claimant has preferred this appeal seeking enhancement of the compensation.

6. Mr.G.Balachandran, learned counsel for the appellants has submitted his arguments. As per his submissions, the deceased was aged 11 years, studying VI Standard at the time of his death. The accident had occurred in the year 2008 and the parents of the deceased alone are the claimants. The Tribunal had failed to fix the notional income of the child and did not calculate the future prospects also. Therefore, the claimants had preferred this appeal seeking enhancement. In support of his contentions for seeking enhancement, he relied on the following Rulings.

(i) Kishan Gopal & another Vs. Lala & Others reported in 2013 (2) TNMAC 358 (SC)

(ii) G.Sumathy and another Vs. K.Anbazhagan reported in 2018 (2) TNMAC 238

(iii) R.K.Malik and Another Vs. Kiran Pal and others reported in 2009 (1) TNMAC 593 (SC)

Motor Accident Claim

Compensation - Determination

School Children proceeding to School in School Bus - Bus driven in rash and negligent manner, fell in river causing death of 29 children - Claim u/s. 163 - A.

Deceased non-working and non-earning members :
Notional income of Rs.15,0000 p.a fixed as per Second Schedule.

Multiplier : 15 for children below 15 years and



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16 for children between 16 - 18 years.

Pecuniary Loss - 1,50,000 for children in age group of 10-15 years & Rs.1,60,000 for children in age group 15 - 18 years - Funeral Expenses : Rs.5,000 each - Rs.1,000 each awarded by High Court towards Loss of Books etc.

Non-pecuniary Loss : Rs.75,000 each awarded in Appeal by High Court.

Loss of Future Prospects : Not awarded by Tribunal & High Court: Rs.75,000 awarded by Supreme Court in Appeal.

Interest : 6% awarded by Tribunal for 4 years : 7.5% awarded by High Court from date of Claim Petition till payment - Held, proper.

"Pecuniary Loss", Non-Pecuniary Loss", Loss of Future Prospects"- Assessments - Principles governing.

(iv) National Insurance Co. Ltd., Vs. K.Sugumar reported in 2017 (2) TNMAC 805.

Motor Accident Claim - Compensation - Quantum - Determination - Deceased aged 8 yrs., a 3rd Standard Student - claimants: Father & mother of deceased - claim : Rs.10,00,000 - Award of Compensation by Tribunal at Rs.14,40,000, if, excessive - Notional Income: Tribunal, taking income at Rs.5,000 p.m. and adding 50% towards Future Prospects, fixed Notional Income at Rs.7,500 p.m : Not proper: High Court following ratio laid down by Apex court fixed Notional Income at Rs.60,000 p.a - Addition towards Future Prospects to remain offset by deduction towards Personal Expenses - Applying Multiplier of 13, considering age of parents (as against 18 applied by Tribunal), High Court awarded Rs.7,80,000 (Rs.60,000x13) towards Pecuniary Loss - Loss of love and affection: Rs.2,00,000 as awarded by Tribunal, confirmed - Funeral Expenses: Rs.25,000 awarded as against Rs.50,000 awarded by Tribunal - Total Compensation: Reduced from Rs.14,40,000 to Rs.10,05,000.

7. Ms.R.Rathna Thara, learned counsel for the second respondent/Insurance Company submitted her submissions. As per her submissions, the Tribunal had already granted reasonable compensation and the same does not need interference by this Court. She had cited the rulings of the Hon'ble Supreme Court in Rajendra Singh and others Vs. National Insurance Company Ltd., and others (C.A.Nos.2624 & 2625 of 2020) regarding the notional income of the child who died in the accident. Therefore, the learned counsel for the respondent/Insurance Company opposed the enhancement and this appeal lacks merits and it has to be



dismissed.

8. Point for Consideration:

Whether the appeal preferred by the claimant seeking enhancement is to be allowed and enhanced compensation to be granted?

9. Perused the claim petition filed by the appellant/claimant before the Motor Accident Claims Tribunal/IV Fast Track Court, Chennai, in MCOP No.887/2008, the counter filed by the second respondent/Insurance Company, the order passed by the Motor Accident Claims Tribunal and the deposition of evidence of P.W.1 and P.W.2.

10. On perusal of the award passed by the Tribunal, it is found that on the date of accident, the notional income was fixed based on the decision of the Hon'ble Supreme Court reported in 2009 (1) TNMAC 593 (SC) (R.K.Malik and Another Vs. Kiran Pal and others), wherein the notional income is fixed at Rs.15,000/- per month and Rs.75,000/- for conventional damages. Seeking guidance from the Schedule II in the Motor Vehicle Act for calculating the compensation for a child under the Motor Accidents Claim Cases will not be helpful, as the Schedule II in the Motor Vehicle Act had not been updated to grant just compensation. Therefore, in the present circumstances, the income of the unskilled labour i.e., Rs.5,000/- per month is taken as notional salary.

11. Considering the circumstances and the cost of living prevailing at the time of accident (i.e.,) in the year 2008, a sum of Rs.5000/- is a reasonable salary/income during that period. On the date of death, the deceased was aged 11 years. Therefore, towards future prospects 40% of the income could be added. Loss of Income is arrived at as follows:

Monthly Income	= Rs.5000/-
Future Prospects (40%)	= Rs.2000/-
Monthly Income	= 2000+5000=7000/-
½ deduction towards personal expenses	= Rs.7000x1/2=3500
Annual income for computation	= 3500x12 = 42000

Taking the multiplier as 18 for the age group upto 25 years

Pecuniary Loss	:: Rs.42000 x18
	:: Rs.7,56,000/-

12. Considering the cost of living on the date of accident, the sum of Rs.2,000/- towards Funeral Expenses and Rs.5000/- towards "loss of Estate" awarded by the Tribunal are too low and



hence the same are enhanced to 5,000/- and 15,000/- respectively.

13. Since no amount was awarded by the Tribunal under the heads "Transportation and "Damages to Clothes. Therefore, this Court awards a sum of Rs.5,000/- and 5,00/- towards "Transportation" and "Damages to Clothes" respectively.

14. The claimants 1 and 2 are the mother/Malliga and father/Murugesan of the deceased, they had lost their moral support in the evening of their life. Therefore, they are entitled to a reasonable compensation towards "loss of love and affection". Hence this Court awards a sum of Rs.50,000/- towards "Loss of Love and Affection".

15. The break-up details of the amounts awarded under various heads are as follows:

S1. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of dependency	1,20,000	7,56,000
2	Funeral Expenses	2,000	5,000
3	Loss of Estate	5000	15,000
4	Transportation	-	5,000
5	Damages to Clothing	-	500
6	Loss of Love and Affection	-	50,000
	Total	1,27,000	8,31,500

16. The point for consideration is answered in favour of the appellants/claimants and against the respondent/Insurance Company.

Accordingly, this Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.887 of 2008 on the file of the Motor Accidents Claims Tribunal, IV Fast Track Court, Chennai, with accrued interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant shall be entitled to withdraw a sum of Rs.4,00,000/- with accrued interest. The second claimant shall



be entitled to withdraw a sum of Rs.4,31,500/-. The appellants are directed to pay appropriate Court fees within a period of two months, failing which, they are not entitled to claim interest on the award amount. No costs.

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Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal /
IV Fast Track Court, Chennai.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.T.G.Balachandran, Advocate, S.R.No.25910

C.M.A.No.2127 of 2012

PP(CO)
RGA(01/11/2021)