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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.610 of 2021

1.Jayappa

2.Sharada @ Sarada

...Appellants/Claimants

Vs.

1.Ghouse Baig

2.The Branch Manager,

United India Insurance Company Limited,

794/11, Trunk Road, Poonamallee,

Chennai - 600 056.

...Respondents/Respondents

(No relief was sought against 1<sup>st</sup> respondent.

Hence, notice to 1<sup>st</sup> respondent dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.11.2019 made in M.C.O.P.No.1043 of 2018 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.M.Sivakumar  
for Mr.C.Prabakaran

For R2 : Mr.D.Bhaskaran

J U D G M E N T

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 28.11.2019 made in M.C.O.P.No.1043 of 2018 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri.



3.The appellants are the claimants in M.C.O.P.No.1043 of 2018 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri. They filed the above said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the death of their son viz., Punith, who died in the accident that took place on 12.07.2018.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry owned by 1<sup>st</sup> respondent and directed the respondents jointly and severally to pay a sum of Rs.5,00,000/- as compensation to the appellants.

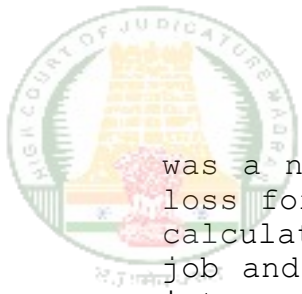
5.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellants contended that the deceased was aged 12 years, studying 6<sup>th</sup> standard at The Noble School, Thummsi at the time of accident. The Tribunal ought to have fixed a sum of Rs.10,000/- per month as notional income of the deceased and awarded more compensation instead of awarding lumpsum amount of Rs.5,00,000/- as compensation. The Tribunal failed to grant any enhancement towards future prospects of the deceased. The Tribunal also has not awarded any amount towards loss of love and affection, funeral expenses and loss of estate and prayed for enhancement of compensation.

7.Per contra, Mr.D.Bhaskaran, learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company contended that the deceased was a student, aged 12 years studying 6<sup>th</sup> standard, a non-earning member at the time of accident. The Tribunal following the judgment of the Hon'ble Apex Court reported in 2013 (2) TNMAC 358 (SC), [Kishan Gopal and another Vs. Lala and others], awarded a sum of Rs.5,00,000/- as compensation to the appellants and the same is not meagre. The appellants are not entitled to compensation towards loss of dependency by fixing a sum of Rs.10,000/- per month as notional income of the deceased since the deceased was a minor non-earning member. The appellants have not made out any case for enhancement and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2<sup>nd</sup> respondent-Insurance Company and perused the entire materials on record.

9.It is the case of the appellants that at the time of accident, their son was aged 12 years, studying 6<sup>th</sup> standard at The Noble School, Thummsi at the time of accident. The deceased



was a non-earning member at the time of accident. The pecuniary loss for the death of minor cannot be quantified by mathematical calculation. The minor on completing his studies may get good job and reasonable income. At the same time, it has to be taken into account that life is full of uncertainties. Considering this fact along with mental agony and loss of happiness to the Mother by death of her minor child, the Courts must grant just compensation. The compensation awarded should not be pittance or wind fall. The compensation for the death of the minor is to be granted as per the structural formula in the II Schedule. As per the structural formula, the annual income of the minor non-earning member upto 15 years is fixed at Rs.15,000/-. The Hon'ble Apex Court taking into consideration the date of insertion of the II Schedule in the Motor Vehicles Act, passage of time and raise in cost of living, has increased annual income of the minor non-earning member.

10. The issue of granting compensation for the death of minor non-earning member was considered by the Hon'ble Apex Court in the following judgments:

(i) In the judgment reported in 2001 (8) SCC 197, [Lata Wadhwa and others vs. State of Bihar and others], the Hon'ble Apex Court has fixed annual contribution of minor aged 10 to 15 years at Rs.24,000/- and applied multiplier '15'. In paragraph-11 of the said judgment, it is held as follows:

"11. So far as the award of compensation in case of children is concerned, Shri Justice Chandrachud has divided them into two groups, the first group between the age group of 5 to 10 years and the second group between the age group of 10 to 15 years. In case of children between the age group of 5 to 10 years, a uniform sum of Rs.50,000/- has been held to be payable by way of compensation, to which the conventional figure of Rs.25,000/- has been added and as such to the heirs of the 14 children, a consolidated sum of Rs.75,000/- each, has been awarded. So far as the children in the age group of 10 to 15 years, there are 10 such children, who died on the fateful day and having found their contribution to the family at Rs.12,000/- per annum, 11 multiplier has been applied, particularly, depending upon the age of the father and then the conventional compensation of Rs.25,000/- has been added to each case and



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consequently, the heirs of each of the deceased above 10 years of age, have been granted compensation to the tune of Rs.1,57,000/- each. 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. This principle was laid down by the House of Lords in the famous case of Taff Vale Ry. Vs. Jenkins [1913] A.C.1, and Lord Atkinson said thus:

".....all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think be drawn from circumstances other than and different from them."

At the same time, it must be held that a mere speculative possibility of benefit is not sufficient. Question whether there exists a reasonable expectation of pecuniary advantage is always a mixed question of fact and law. There are several decided cases on this point, providing the



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guidelines for determination of compensation in such cases but we do not think it necessary for us to advert, as the claimants had not adduced any materials on the reasonable expectation of pecuniary benefits, which the parents expected. In case of a bright and healthy boy, his performances in the school, it would be easier for the authority to arrive at the compensation amount, which may be different from another sickly, unhealthy, rickety child and bad student, but as has been stated earlier, not an iota of material was produced before Shri Justice Chandrachud to enable him to arrive at just compensation in such cases and, therefore, he has determined the same on an approximation. Mr. Nariman, appearing for the TISCO on his own, submitted that the compensation determined for the children of all age groups could be doubled, as in his views also, the determination made is grossly inadequate. Loss of a child to the parents is irrecompable, 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



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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."

(ii) The Hon'ble Apex Court in the judgment reported in 2006 (13) SCC 60, [New India Assurance Co. Ltd. vs. Satendar and others], awarded a lumpsum of Rs.1,80,000/- for the death of a child aged 9 years and in paragraph No.12, it is held as follows:

"12.In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation."

(iii) In the judgment reported in 2014 (1) SCC 244, [Kishan Gopal and another vs. Lala and others], the Hon'ble Apex Court has fixed annual income for the deceased boy aged 10 years at Rs.30,000/- and applied multiplier '15'. In paragraph Nos.34 to 40, it is held as follows:

"34.Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious issue Nos.1 & 2 by recording our reasons in the preceding paragraphs of this judgment and we have answered the point in favour of the appellants and also examined the claim of the appellants to award just and reasonable compensation in favour of the appellants as they have lost their affectionate 10 year old son. For this purpose, it would be necessary for us to refer to Second Schedule under Section 163-A of the M.V. Act, at clause No.6 which refers



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to notional income for compensation to those persons who had no income prior to accident.

35.The relevant portion of clause No.6 states as under:

"6. Notional income for compensation to those who had no income prior to accident:

.....

(a) Non-earning persons - Rs.15,000/- p.a."

The aforesaid clause of the Second Schedule to Section 163-A of the M.V. Act, is considered by this Court in the case of Lata Wadhwa & Ors, v. State of Bihar (2001) 8 SCC 197 while examining the tortious liability of the tort-feasor has examined the criteria for awarding compensation for death of children in accident between age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs.12,000/- p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs.25,000/- was awarded. Thus, a total sum of Rs.1,57,000/- was awarded in that case.

36.After noting the submission made on behalf of TISCO in Lata Wadhwa case that the compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecompable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed 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 under the conventional heads a sum of Rs.50,000/- should be added and thus total amount in each case would be Rs.2 lakhs.



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37. Further, in Lata Wadhwa case it was observed that in so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs.12,000/- p.a. appears to be on the lower side and held that the contribution of such children should be Rs.24,000/- p.a.

38. 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.

39. 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 v. Delhi Transport Corporation (2009) 6 SCC 121, 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 as held in Kerala SRTC v. Susamma Thomas (1994) 2 SCC 176, which is referred to in Lata Wadhwa's case and the said amount under the conventional heads is awarded even



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in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants.

40.The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of Municipal Council of Delhi v. Uphaar Tragedy Victims Association (2011) 14 SCC 481, for the reason that the Insurance Company has been contesting the claim of the appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the appellants is legally justified."

(iv) The Hon'ble Apex Court in the recent judgment reported in 2020 (7) SCC 256, [Rajendra Singh and others vs. National Insurance Company Ltd. and others] set aside 50% contributory negligence fixed on the minor on the facts and circumstances of that case, confirmed award of the Tribunal fixing annual income at Rs.36,000/-, deducting 50% and applying multiplier '15'. In addition to that, a sum of Rs.25,000/- was granted towards funeral expenses. In paragraph Nos.2 to 5 and 16, it is held as follows:

"2.The deceased in the first appeal was a housewife aged about 30 years. The second deceased was her daughter aged about 12 years. The claimants are the husband/father of the deceased and three minor siblings. The two deceased on 25.12.2012 were travelling in a horse cart along with some others to a religious congregation. The horse cart was hit by a bus resulting in their death.

3.The Tribunal assessed the notional income of the first deceased at Rs.36,000/-



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per annum and after  $\frac{1}{4}$  th deduction towards personal expenses, with a multiplier of 17 awarded a compensation of Rs.4,59,000/-. The Tribunal then deducted 50% on ground of contributory negligence as the horse cart was stated to have been in the middle of the road when the accident took place. A sum of Rs.1,00,000/- was then added as loss of consortium and Rs.25,000/- towards funeral expenses leading to an award total of Rs.3,54,500/- with interest at the rate of 7.5%.

4. Insofar as the minor child is concerned, the notional income was assessed at Rs.36,000/- per annum, applying a 50% deduction towards personal expenses with a multiplier of 15, the compensation was awarded at Rs.2,70,000/- out of which 50% was again deducted towards contributory negligence. A sum of Rs.25,000/- was added towards funeral expenses, leading to an award total of Rs.1,60,000/- with interest at the rate of 7.5%.

5. The appeal for enhancement of compensation was dismissed by the High Court and thus the present appeals.

.. ..

.. ..

16. 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 vs. Kiran Pal (2009) 14 SCC 1 does not consider Satender (2006) 13 SCC 60 on the grant of future prospects as far as children are concerned."



11. In the present case, the deceased was a minor boy aged 12 years, studying 6<sup>th</sup> standard and a non-earning member at the time of accident. Considering the facts and circumstances of the case, the notional income of the deceased minor son is fixed at Rs.45,000/- per annum. As per II Schedule and the judgment of the Hon'ble Apex Court, the correct multiplier applicable is only '15'. The minor is a non-earning member and will be depending on the parents for his personal expenses. In view of the same, no deduction can be made for personal expenses. Hence, fixing annual income at Rs.45,000/- and applying multiplier '15', the amounts awarded by the Tribunal towards pecuniary loss is modified to Rs.6,75,000/- [Rs.45,000/- x 15]. The Tribunal has not awarded any amount towards loss of love and affection, funeral expenses and loss of estate. The appellants who are the parents of the deceased minor son are entitled to a sum of Rs.40,000/- each towards loss of love and affection, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. The Tribunal failed to award any amount towards transportation. Hence, a sum of Rs.10,000/- is awarded towards transportation. 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) | Award confirmed or enhanced or granted |
|-------|----------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Pecuniary loss             | 5,00,000/-                      | 6,75,000/-                        | Enhanced                               |
| 2.    | Loss of love and affection | -                               | 80,000/-                          | Granted                                |
| 3.    | Funeral expenses           | -                               | 15,000/-                          | Granted                                |
| 4.    | Loss of estate             | -                               | 15,000/-                          | Granted                                |
| 5.    | Transportation             | -                               | 10,000/-                          | Granted                                |
|       | Total                      | Rs.5,00,000/-                   | Rs.7,95,000/-                     | Enhanced by Rs.2,95,000/-              |

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,00,000/- is hereby enhanced to Rs.7,95,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents are jointly and severally 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.1043 of 2018 on the file of Motor Accident Claims Tribunal, Additional District Court, Krishnagiri. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-  
Deputy Registrar (Accounts)

//True Copy//

Sub Assistant Registrar

krk

To

1.The Additional District Judge,  
Motor Accident Claims Tribunal,  
Krishnagiri.

2.The Section Officer,  
VR Section,  
High Court,  
Madras.

+1cc to M/s.C.Prabakaran, Advocate Sr No.17355

C.M.A.No.610 of 2021

GP (CO)  
PR (20/10/2021)