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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.06.2021	Delivered on: 23.07.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.886 of 2014

1.I.Rasia Bhanu

2.S.Idayathullah
..Appellants/Petitioner

Vs.

1.R.Mahadevan

2.M/s.Reliance Insurance Company Limited,
Heavitree, Unit No.I, III Floor,
No.23, Spur Tank Road, Chetpet,
Chennai - 600 031. ..Respondents/Respondents
(R1 remained exparte before Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order and Decree dated 06.09.2013 made in M.C.O.P.No.1273 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellants : Mr.T.G.Balachandran
For R2 : Mr.S.Arunkumar

J U D G M E N T

The matter is heard through “Video Conferencing/Hybrid mode”.

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 06.09.2013 made in M.C.O.P.No.1273 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

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2.The appellants are the claimants in M.C.O.P.No.1273 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. They filed the above said claim petition, claiming a sum of Rs.8,00,000/- as compensation for the death of their son viz., I.Fisul Fasithkhan, who died in the accident that took place on 11.03.2011.

3.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 van belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.3,05,000/- as compensation to the appellants.

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

5.The learned counsel appearing for the appellants contended that at the time of accident, the deceased was aged 6 years, studying 1st Standard in Young India Vidyalaya Nursery and Primary School, 15th West Cross Street, MKB Nagar, Chennai – 600 039. The deceased minor boy had better future prospects and the appellants had every means to educate him to bring up in life. The Tribunal ought to have adopted multiplier method and awarded compensation. The amounts awarded by the Tribunal under conventional heads are meagre and the Tribunal has not awarded any amount towards loss of expectation of life and loss of estate. In support of his contention, he relied on the following judgments and prayed for enhancement of compensation:

(i)A judgment of the Hon'ble Apex Court reported in 2001 ACJ 1735, (Lata Wadhwa and others Vs. State of Bihar and others);

(ii)A judgment of the Hon'ble Apex Court reported in 2009 ACJ 1924, (R.K.Malik and another Vs. Kiran Pal and others);

(iii)A judgment of the Hon'ble Apex Court reported in 2013 (2) TNMAC 358 (SC), (Kishan Gopa and another Vs. Lala and others);

(iv)A judgment of the Hon'ble Apex Court reported in 2020 ACJ 2211, (Rajendra Singh and others Vs. National Insurance Company Limited and others);

(v)A judgment of this Court dated 10.11.2020 made in C.M.A.No.1625 of 2020 and (vi)A judgment of this Court dated 27.04.2021 made in C.M.A.No.2127 of 2012.

6.Per contra, Mr.S.Arunkumar, learned counsel appearing for the 2nd respondent-Insurance Company contended that the deceased was a School student aged 6 years, studying I Standard, a non-earning member at the time of accident. The Tribunal considering the same, has awarded a sum of Rs.1,50,000/- as compensation for pecuniary loss and the same is not meagre. The amounts awarded by the Tribunal towards funeral expenses, loss of love and affection and loss of future prospects are excessive. In view of the same, appellants are not entitled to any enhancement and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8.It is the claim of the appellants in the claim petition that their son viz., I.Fisul Fasithkhan was a minor boy aged 6 years, studying I Standard and was a non-earning member at the time of accident. The said I.Fisul Fasithkhan died due to the injuries sustained by him in the accident that took place on 11.03.2011. Hence, the appellants being the parents of the said I.Fisul Fasithkhan have filed the said claim petition claiming compensation. As per Ex.P8/Birth Certificate, the deceased was aged 7 years at the time of accident. The Tribunal following the judgment of the Hon'ble Apex Court reported in 2009 (1) TNMAC 493 (SC), [R.K.Malik and another Vs. Kiran Pal and others], fixed a sum of Rs.15,000/- as annual income of the deceased and awarded a sum of Rs.1,50,000/- as compensation towards pecuniary loss. The accident is of the year 2011 and the compensation awarded by the Tribunal for pecuniary loss is meagre. The Hon'ble Apex Court in the judgment reported in 2020 ACJ 2211, cited supra, relied on by the learned counsel for the appellants has considered the previous judgment of the Hon'ble Apex Court relied on by the Tribunal reported in 2009 (1) TNMAC 493 (SC) and 2007 ACJ 160 (SC), [New India Assurance Company Limited Vs. Satender] and fixed a sum of Rs.36,000/- as annual income of the minor child. The relevant paragraphs of the said judgment are extracted hereunder:

> "4. In so far 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%

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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%.

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 visualised 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 future prospects. It can safely be presumed that education would have only

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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. The income of the minor girl child is incapable of precise fixation. We find no reason to interfere with the assessed notional income of the second deceased. In R.K. Malik vs. Kiran Pal, (2009) 14 SCC 1, considering grant of future prospects for the deceased child aged about 10 years it was observed as follows:

"32. A forceful submission has been made by the learned counsel appearing for the appellant claimants that both the Tribunal as well as the High Court failed to consider the claims of the appellants with regard to the future prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the courts below.

33. On perusal of the evidence on record, we find merit in such submission that the courts below have overlooked that aspect of the matter while granting compensation. It is well-settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. It is incumbent upon the courts to consider the said aspect while awarding compensation…"

14. In New India Assurance Co. Ltd. vs. Satender, (2006) 13 SCC 60, the deceased victim of the accident was a nine year old school going child. Considering the claim for loss of future prospects in absence of a regular income, it was observed that the compensation so

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determined had to be just and proper by a judicious approach and not fixed arbitrarily or whimsically. The uncertainties of a young life were noticed in the following terms:- “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.”

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 (supra) does not consider Satender (supra) on the grant of future prospects as far as children are concerned.”

In the said judgment of the Hon'ble Apex Court reported in 2020 ACJ 2211, the deceased minor child was aged 12 years at the time of accident. Whereas, in the case on hand, the deceased minor boy was aged 7 years at the time of accident. Therefore, following the judgment of the Hon'ble Apex Court reported in 2020 ACJ 2211, the annual income of the deceased minor child is fixed at Rs.36,000/- per annum. Thus, by deducting 50% towards

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personal expenses of the deceased and applying multiplier '15', the compensation awarded by the Tribunal for pecuniary loss is modified to Rs.2,70,000/- (Rs.36,000/- X 15 X 50%). A sum of Rs.5,000/- awarded by the Tribunal for funeral expenses is meagre and hence, the same is enhanced to Rs.15,000/-. The appellants being the parents of the deceased are not entitled to any amount towards loss of future prospects. Hence, a sum of Rs.75,000/- awarded by the Tribunal for loss of future prospects is liable to be set aside and it is hereby set aside. The Tribunal has not awarded any amount towards loss of estate. The appellants are entitled to a sum of Rs.15,000/- towards loss of estate. The amount awarded by the Tribunal for loss of love and affection is meagre and hence, the same is enhanced to Rs.80,000/-. 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	1,50,000/-	2,70,000/-	Enhanced
2.	Loss of love and affection	75,000/-	80,000/-	Enhanced
3.	Funeral expenses	5,000/-	15,000/-	Enhanced
4.	Loss of future prospects	75,000/-	-	Set aside
5.	Loss of Estate	-	15,000/-	Granted
	Total	Rs.3,05,000/-	Rs.3,80,000/-	Enhanced by Rs.75,000/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,05,000/- is hereby enhanced to Rs.3,80,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2^{nd} respondent-Insurance Company is 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.1273 of 2011 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. On such deposit, the appellants are permitted to withdraw their respective share of

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the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1.The II Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

Copy to
The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to Mr.T.G.Balachandran, Advocate sr 35492.
+1 CC to Mr.S.Arunkumar, Advocate sr 35274.

C.M.A.No.886 of 2014

AJS(CO)
SP(23/11/2021)

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