IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.02.2022	Delivered on: 17.02.2022

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.2188 of 2018

Backiya ... Appellant/Claimant

Vs.

1. K.Sivalingam
(Notice to R1 may be dispensed
with for the time being and separate applcation
filed for the same)

2. BHARTI AXA General Insurance Company Ltd.,
Rep. by its Manager Divya Trade Center,
1st floor, No.11, Brindavan Road,
Fair Land, Salem - 636 016. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.08.2015 made in M.C.O.P.No.629 of 2012 on the file of the Motor Accident Claims Tribunal cum IV Additional District Court, Bhavani, Erode District.

For Appellant : Mr.C.Kulanthaivel

For 2nd Respondent : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 31.08.2015 made in M.C.O.P.No.629 of 2012 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani, Erode District.

2.The appellant who is the mother of the deceased, is the claimant in M.C.O.P.No.629 of 2012 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Bhavani, Erode District. She filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the death of her son viz., Udhayakumar, who died in the accident that took place on 21.08.2012.

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 lorry bearing registration NO.TN36 S 8737 belonging to the 1st respondent and directed the 1st and 2nd respondent-Insurance Company to pay a sum of Rs.3,47,000/- as compensation jointly or severaly to the appellant/claimant.

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

5.The learned counsel appearing for the appellant contended that at the time of accident, the deceased was aged 4 years and he was hale and helathy, studied well and was heping his mother to do other house hold works. The deceased minor boy had better future prospects. The learned counsel further contended that the appellant has no chance of getting birth of another child since her uterus has been removed and except the deceased, the appellant has no legal heirs. The Tribunal ought to have adopted proper and correct multiplier method to award compensation. The amounts awarded by the Tribunal under conventional heads are meagre and the Tribunal has not awarded any amount towards future prospects 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 minor boy aged 4 years, a non-earning member at the time of accident. The Tribunal considering the same, has awarded a sum of Rs.2,25,000/- as compensation for pecuniary loss and the same is not meagre. The amounts awarded by the Tribunal towards funeral expenses and loss of love and affection are excessive. In view of the same, the appellant is not entitled to any enhancement and prayed for dismissal of the appeal.

7.Heard the learned counsel for the appellant 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 appellant in the claim petition that her son viz., Udhayakumar was a minor boy aged 4 years and and was a non-earning member at the time of accident. The said Udhayakumar died due to the injuries sustained by him in the accident that took place on 21.08.2012. Hence, the appellant being a parent of the said Udhayakumar has filed the claim petition claiming compensation. As per Ex.P5/Postmortem Report, the deceased was aged 4 years at the time of accident. The Tribunal has fixed a sum of Rs.15,000/- per annum as notional income of the deceased as per Section 163 A Schedule II of the Motor Vehicles Act, 1988 and awarded a sum of Rs.1,50,000/- as compensation towards pecuniary loss. The accident is of the year 2012 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, 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% 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%.
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> 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 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 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."
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> 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."

9. 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 4 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 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.1,00,000/- awarded by hte Tribunal for love and affection is on higher side and hence the same is modified into Rs.40,000/-. A sum of Rs.10,000/- awarded under the heads Transportation and Funeral expenses each are on megre side and hence the same has been enhanced into Rs.15,000/- respectively. The Tribunal has not awarded any amount towards loss of estate. Considering the nature of the case, the appellant is entitled to a sum of Rs.15,000/- towards loss of estate. A sum of Rs.2,000/- awarded under the head loss of clothing is confirmed as it is just and reasonable. 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	2,25,000/-	2,70,000/-	Enhanced
2.	Loss of love and affection	1,00,000/-	40,000/-	Reduced
3.	Transportation Charges	10,000/-	15,000/-	Enhanced
4	Funeral expenses	10,000/-	15,000/-	Enhanced
	Loss of Clothing	2,000/-	2,000/-	confirmed
5.	Loss of Estate	-	15,000/-	Granted
	Total	Rs.3,47,000/-	Rs.3,57,000/-	Enhanced by Rs.10,000/-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,47,000/- is hereby enhanced to Rs.3,57,000/- (Rupees three lakhs fifty seven thousand only) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st and 2nd respondent-Insurance Company are directed to deposit the award amount now determined by this Court either jointly and severally, 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.629 of 2012 on the file of the Motor Accident Claims Tribunal, IV Additional District Court, Erode District, Bhavani. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, 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

vum
To

1.The Motor Accident Claims Tribunal,
IV Additional District Judge,
Erode District, Bhavani.

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

+1cc to Mr.C.Kulanthaivel, Advocate Sr.10554
+1cc to Mr.S.Arunkumar, Advocate Sr.10671

C.M.A.No.2188 of 2018

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srg 03/03/2022