IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.551 of 2007

G.Nagalakshmi ... Appellant/ Petitioner

Vs

1.A.Mohana

2.United India Insurance Co.Ltd.,
Motor Third Party Claims Office,
No.38, Annasalai, Chennai-2 ... Respondents/Respondents

3.R.Nallathambi ... 3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.02.2006 in M.C.O.P.No.2729 of 2001 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-III, Madras.

For Appellant ... Mr.G.Govindram Prasad

For Respondents ... [R1] – Notice sent (Service Awaited)
... [R2] -Ms.I.Malar

JUDGEMENT

Challenging the impugned award dated 16.02.2006 passed by the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court-III, Madras.in M.C.O.P.No.2729 of 2001, the claimant has filed the present appeal questioning the quantum of compensation awarded by the Tribunal.

2. The Appellant herein is the mother of the deceased. On 09.05.2001, when the deceased namely G.Yogaraj was riding his cycle, the lorry bearing Reg.No.TDS 6593 belonging to the 1st Respondent driven by its driver in a rash and negligent manner dashed against the cycle of the deceased thereby the deceased sustained fatal injuries and died on the spot. Aggrieved by the loss incurred in view of the said accident, the claimants have filed a claim petition claiming compensation towards the death of their son under various heads.

3. Before the Tribunal, the 1st claimant examined herself as P.W.1 and

examined the P.W.2 & P.W.3 and marked Ex.P-1 to Ex.P-8. No witnesses were examined on the side of the respondents nor any documents were marked. After adjudication, the Tribunal, awarded the compensation of Rs.1,65,000/- and directed the respondents herein to jointly and severally pay the compensation amount to the claimants. Aggrieved by the quantum of compensation awarded, the Appellant/claimant has filed the present appeal seeking enhancement of compensation.

4. Learned counsel appearing for the Appellant/claimant relying upon the decision of the Hon'ble Apex Court in case of ***Kishan Gopal & Ors. Vs. Lala & Ors.*** reported in ***MANU/SC/0864/2013,*** submitted that the compensation amount of Rs.1,65,000/- awarded by the Tribunal is grossly inadequate which requires enhancement. At the time of accident, the deceased was aged about 16 and was earning a sum of Rs.750/- per month. However, the Tribunal has erred in fixing the annual notional income at Rs.15,000/- and has awarded a sum of Rs.1,50,000/- towards loss of earning which is erroneous.

5. Per contra, learned counsel appearing for the 2nd Respondent-Insurance Company submitted that since the deceased was minor at the time of accident, the question of earning capacity does not arise. However, considering the age of the appellant/the mother of the deceased, the Tribunal has awarded a sum of Rs.1,50,000/- towards loss of earning capacity by applying multiplier method which is just and reasonable. Further the compensation awarded under other heads such as funeral expenses and loss of love and affection is also just and reasonable which does not require any interference. Accordingly, he prayed for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

7. The factum of the accident is not in dispute and so also the liability. Therefore, this Court is not entering into the said aspect. The only issue is with

regard to the quantum of compensation. It is the claim of the appellant that the deceased was minor at the time of accident and that he was doing part time job and was earning a sum of Rs.750/- per month. However, no proof of income has been placed before the Tribunal in order to substantiate the claim with regard to the income of the deceased. However, the Tribunal fixing the notional income at Rs.15,000/- and deducting the personal expenses, has arrived at the loss of income at Rs.1,50,000/-. Further, the Tribunal has awarded a sum of Rs.5,000/- towards Funeral expenses and a sum of Rs.10,000/- towards loss of love and affection.

8. It is to be pointed out that insofar as fixation of notional income is concerned relating to the deceased being a minor at the time of death, in the absence of any material to show that the deceased is a student, the issue squarely stands covered by the decision of the Apex Court in the case of ***Kishan Gopal & Ors. Vs. Lala & Ors.*** reported in ***MANU/SC/0864/2013*** wherein, the Apex Court has held as under:-

> *"18 . Point Nos. 2 and 3 are answered together in favour of the Appellants for the following reasons:*

The Tribunal having answered the contentious issue No. 1, against the Appellants in its judgment the same is concurred with by the High Court by assigning erroneous reasons and it has affirmed dismissal of the claim petition of the Appellants holding that the accident did not take place on account of the rash and negligent driving of the offending vehicle by the first Respondent and therefore the contentious issue Nos. 1 and 2 are answered in the negative against the Appellants and it has not awarded compensation in favour of the Appellants.

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 to notional income for compensation to those persons who had no income prior to accident. 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 and Ors. v. State of Bihar and Ors.*** *MANU/SC/0456/2001 : (2001) 8 SCC 197, while examining the tortuous 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. After noting the submission made on behalf of TISCO in the said 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 unrecoupable 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. Further, in the case referred to supra it has 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. 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. 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*** *MANU/SC/0606/2009: (2009) 6 SCC 121, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 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*** *MANU/SC/0389/1994 : (1994) 2 SCC 176, which is referred to in* ***Lata Wadhwa****'s case and the said amount under the conventional heads is awarded even 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. 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. Association of Victims of Uphaar Tragedy*** *MANU/SC/1255/2011 : (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.*

19. Accordingly, we pass the following order:

I) The appeal is allowed and the impugned judgments and awards of both the Tribunal and High Court are set aside.

II) The awarded amount of Rs. 5,00,000/- with interest at the rate of 9% per annum should be paid to the Appellants from the date of filing of the application till the date of payment.

III) We direct the Insurance Company to issue the demand draft drawn on any Nationalized Bank by apportioning the compensation amount equally with proportionate interest and send it to the Appellants within six weeks from the date of receipt of a copy of this judgment.

The aforesaid decision squarely stands attracted to the case on hand and in such a scenario, the claimant would be entitled to a lumpsum compensation by following the ratio laid down by the Apex Court in the aforesaid decision and the claimant would be entitled to a compensation of Rs.5,00,000/-.

9. Accordingly, the Civil Miscellaneous Appeal is allowed and the

impugned award of the Tribunal is modified, enhancing the compensation from **Rs.1,65,000/-** to **Rs.5,00,000/-**. The second respondent/insurance company is directed to deposit the said amount to the credit of M.C.O.P.No.2729 of 2001 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter. The appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation amount. The Tribunal below shall disburse the compensation enhanced by this Court upon proof of payment of Court fee is by the appellant/claimant. There shall be no order as to costs in the present appeal.

02.11.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
NHS

To

1.The Motor Accident Claims Tribunal,
Additional District Judge,
Fast Track Court-III,
Madras.

2.The Section Officer,
V.R. Section,
High Court, Madras.

M.DHANDAPANI, J

NHS

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