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C.M.A.No.1579 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.1579 of 2013

1.Moorthy

2.Pachaiammal

.... Appellants

vs.

1. Senthamarai

(Respondent 1 remained ex-parte
before the Tribunal)

2. The United India Insurance
Company Limited,

No.95, Big Street,
Thiruvannamalai.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 30.03.2005 made in M.A.C.T.O.P. No.617 of 2004 on the file of the Motor Accident Claims Tribunal / District Judge, Thiruvannamalai.

For Appellants : Mrs.M.Malar

For R1 : Ex-parte

For R2 : Mr.S.Arunkumar



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JUDGMENT

Not being satisfied by the Judgment and Decree passed in MCOP.No.617 of 2004 dated 30.03.2005 on the file of Motor Accident Claims Tribunal / District Court, Thiruvannamalai, this Civil Miscellaneous Appeal is preferred by the Claimants herein for enhancement of compensation.

2. Claim petition was filed under Section 166 of Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/- for the death of claimant's daughter Sivaranjani in a road traffic accident that occurred on 02.05.2004.

3. The Tribunal after hearing both sides and upon consideration of oral and documentary evidence has granted compensation of Rs.1,56,000/- with interest at the rate of 9% per annum from the date of petition till the date of deposit.

4. The learned counsel appearing for the Appellants would



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strenuously argue that the deceased was a 13 year old girl. The Tribunal fixed the notional income as Rs.3,000/- is incorrect. As the child died at the age of 13 years, absolutely there is no chance of getting further child for the parents. The notional income fixed is very low. The amount awarded for loss of love and affection is on the lower side and under various heads, the amount awarded are in-sufficient and requested to enhance the compensation. To buttress, the following judgments were referred too.

(i) In Kishan Gopal & another Vs. Lala & others, reported in 2013(2) TN MAC 358(SC), wherein it has been held that, 10 year old boy who travelled in the Trolley of tractor because of the rash and negligent driving of the driver, the tractor turned upside down and the minor boy fell down from the trolley and sustained grievous injuries and succumbed to the injuries. In a claim before MACT, the Tribunal held that the claimants have not succeeded in proving that the minor boy died because of the fall from the trolley of the tractor which is driven in a rash and negligent driving by the driver and held that the parents of the minor boy are not entitled for any compensation. Aggrieved of the same, an appeal was preferred by the parents of the minor boy, wherein, the High Court dismissed the appeal



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against which Civil Appeal was preferred before the Hon'ble Supreme Court. The Hon'ble Supreme Court by allowing the appeal granted compensation of Rs.5,00,000/-.

(ii). In Kurvan Ansari Alias Kurvan Ali & Another Versus Shyam Kishore Murmu & Another, reported in CDJ 2021 SC 917, in this case it is held that for the death of seven year old child in a road traffic accident granted compensation of Rs.4,70,000/-.

5. Per contra, the learned counsel appearing for the respondent/Insurance company would vehemently contend that the accident took place in the year 2004. At the relevant point of time for a mason, monthly income was Rs.4,500/-. To strengthen his argument, the judgments rendered in Rajendra Singh and others Vs. National Insurance Company Limited and others, reported in 2020 ACJ 2211, it has been held that for the death of 12-year-old girl, an amount of Rs.2,95,000/- was granted as compensation.

6. Heard the arguments of the learned counsels for both sides and



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perused the materials on record.

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7. At trial, on the claimant's side, father of the deceased Murthy was examined as PW.1. Ex.P.1 to P.3 were marked. Neither any oral evidence was let in nor any documentary evidence was marked by the respondent's side.

8. It is the evidence of PW.1 Moorthy, that on 02.05.2004 at about 10.00 p.m, when the minor girl Sivaranjani was going to school by walk on the left side of the Tiruvannamalai-Vellore road, a van bearing Registration No.TN-25-Y-7956 came from the opposite direction in a rash and negligent manner hit on the minor and due to said impact, the minor girl died on the spot, is not in dispute.

9. The Tribunal fixed the income at Rs.2,000 per month by applying multiplier 6 and granted Rs.1,44,000/- as loss of income. For love and affection Rs.10,000/-, for funeral expenses – Rs.2,000/-, total Rs.1,56,000/- was granted by the Tribunal. Hon'ble Supreme Court in Puttamma and others Vs. K.L.Narayana Reddy and another, reported in (2013) 15 SCC



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45, it was observed that the Central Government was bestowed with the duties to amend schedule II in view of Section 163(A) (3) of the Motor Vehicle Act, 1988, it failed to do so. In view of the same, specific direction were issued to the Central Government to make appropriate amendments to schedule II, keeping in mind, the present cost of living. In the said judgment, till such amendments are made, directions were issued for award of compensation by fixing a sum of Rs.1,00,000/- towards compensation for the non-earning children up to the age of five years old and a sum of Rs.1,50,000/- for the non-earning persons of more than 10 years old.

10. Whereas in R.K.Malik and others Vs. Kiran Pal and Others, reported in (2006) ACC 261, the Apex Court made an observation that the notional income fixed under Section 163(A) of the Motor Vehicles Act, 1988 as Rs.15,000/- per annum should be enhanced and increased the same, continued to exist without any amendment till 14.11.1994.

11. From the evidence of PW.1, it transpires that a girl aged about 13 year old died on account of the accident. The Hon'ble Supreme Court in Kishan Gopal & another cited supra has held that fixing the notional income



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as Rs.30,000/- per annum and by applying the law laid down in Sarla

Verma Vs. DTC (2009) 2 TN MAC 1 SCC, the multiplier 15 was applied.

Because of the accident 10-year-old girl suddenly died. The pre mature death of the girl has resulted in uncontrolled misery to the appellants for ever, till in the life time. Of course, that cannot be measured in terms of money and any amount of compensation would not bring back the life of the child. However, the Tribunal always shall make endeavour to grant just compensation to come over the sorrows. Therefore, based on the aforesaid observation, income of the deceased is fixed at Rs.30,000/- and 15 multiplier is adopted. For assessing loss of income, the following formula emerges,

Notional income fixed - Rs.30,000/- per annum

Multiplier to be adopted - 15

- Rs.30,000 x 15

- Rs.4,50,000/-

12. As per the law laid down by the Hon'ble Supreme Court in New India Assurance Company Vs Pranay Sethi and others **cited supra**, for loss of consortium an amount of Rs.40,000/- each is granted. For loss of



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estate an amount of Rs.15,000 is granted. In all other aspects, the amount awarded by the Tribunal appears to be reasonable and therefore, it needs no need to interference. Therefore, the Compensation awarded by the Tribunal is re-worked and tabulated as follows:

<i>S.No</i>	<i>Heads</i>	<i>Tribunal</i>	<i>High Court</i>	Award confirmed or enhanced or granted
1.	For Loss of dependency	Rs.1,44,000/-	Rs.4,50,000/-	Enhanced
2.	For loss of Love and Affection	Rs.10,000/-	Rs.10,000/-	Confirmed
3.	For Funeral Expenses	Rs.2,000/-	Rs.2,000/-	Enhanced
4.	For loss of Consortium	-	Rs.80,000/-	Granted
5.	For loss of Estate	-	Rs.15,000/-	Granted
	Total	Rs.1,56,000/-	Rs.5,57,000/-	Enhanced by Rs.4,01,000/-

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,56,000/- to Rs.5,57,000/-

(iii) The 2nd Respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.5,57,000/- (less the amount already deposited if any) together with interest at the rate of 7.5% per



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annum from the date of claim petition till the date of deposit to the credit of

M.C.O.P.No..617 of 2004 on the file of MACT/District Court, Thiruvannamalai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellants are at liberty to withdraw the same as per the Orders passed by the Tribunal after following due process of law. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

29.09.2023

Index : Yes/No

Speaking / Non-speaking order

drl

To:

1. The Motor Accident Claims Tribunal,
District Judge, Thiruvannamalai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

drl

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