IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.1274 of 2020

1.S.Venkatapathy
2.Kalaivani ... Appellants

Vs.

1.Maheswari

2.The Divisional Manager,
TATA AIG Insurance,
No.154, First Floor, 100 Feet Road,
Mudaliarpet, Puducherry. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.11.2019 in M.A.C.T.O.P.No.788 of 2017 on the file of the Court of the Motor Accident Claims Tribunal, (Principal District Court) at Puducherry.

For Appellants : Mr.T.Sai Krishnan

For Respondents : Notice given up [R1]
Mr.K.Vinod [R2]

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JUDGEMENT

Assailing the fair and decreetal order passed by the Tribunal in and by which the Tribunal had awarded lower compensation, the present appeal has been filed by the appellants/claimants seeking enhancement of compensation.

2. The appellants are the father and mother of the deceased Gogulpathy. On 10.06.2013, at about 16.30 hours, the deceased was returning home from the tuition centre by bi-cycle at Nellithope towards Villianur Main Road from East to West, when he was nearing Aboorva Medical" at Nellithope, the Tata 709 Mini Lorry bearing Regn.No.TN-31-B-3762, which was owned by the first respondent and insured with the second respondent, driven by its driver in a rash and negligent manner and dashed against the bicycle, due to which, the deceased died on the spot. Therefore, the claimants have filed a claim petition claiming compensation in a sum of Rs.90,00,000/- before the Tribunal.

3. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked 17 documents viz., Ex.P.1 to Ex.P.17. No witnesses were examined nor any document were marked on the side of the respondents. After adjudication, the Tribunal, allowed the petition in part and awarded a sum of Rs.5,00,000/- as compensation to the claimants. Not satisfied with the same, the present appeal has been filed by the claimants seeking enhancement.

4. The learned counsel appearing for the appellants/claimants submitted that, by following ratio laid down by the Supreme Court for the children below the age of 15 years, the Tribunal has fixed the notional income of the deceased at Rs.30,000/- p.a. which is wholly unsustainable, since at the time of death, the deceased was aged about 20 years and he was a bright student and if the accident had not occurred, he would have earned a higher income. In support of his contention, he relied upon the judgment of this Court passed in C.M.A.No.1625 of 2020 dated 10.11.2020. Accordingly, he prays for appropriate enhancement in favour of the claimants.

5. Per contra, the learned counsel appearing for the second respondent/insurance company submitted that, at the time of death, the deceased was aged about 14 years and he is not an earning member of the family and no notional income can be fixed for a minor person. As per the decision of the Apex Court in the cases of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** and ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the deceased person should be aged above the age of 21 years, then only the claimants are entitled to claim compensation by adopting multiplier method in the absence of any income proof. In the present case the deceased is a minor and he has no earnings, thereby the Tribunal awarded the compensation in a sum of Rs.5,00,000/- as per the decision of the Apex Court in the case of ***Kishan Gopal & Ors. Vs. Lala & Ors.*** reported in ***MANU/SC/0864/2013***, which is wholly sustainable and the same does not require any interference. Further, he submitted that if this Court intends to award compensation by adopting multiplier method, the deceased is not

entitled for future prospects, since the deceased is a minor and in this regard, he relied upon the judgment of the Apex Court reported in ***2020 ACJ 2211***.

6. Heard the learned counsel appearing for the appellants/claimants as well as the second respondent/insurance company and also perused the materials available on record.

7. The factum of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the claimants is with regard to the quantum of compensation awarded by the Tribunal by following the decision of the Apex Court in *Kishan Gopal's* case. A perusal of the judgment relied upon by the learned counsel appearing on behalf of the second respondent/insurance company reported in ***2020 ACJ 2211***, in which the accident had happened in the year 2012 and the age of the deceased is 12 years and the Tribunal fixed the notional income at Rs.36,000/- p.a. and applying 50% deduction towards personal expenses with multiplier of 15, the compensation awarded was

Rs.2,70,000/-, out of which 50% was deducted towards contributory negligence and the Apex Court has set aside the negligence on the deceased. The said decision is not applicable to the case on hand, since the accident is of the year 2013 and the deceased was aged about 14 years. At the time of accident, the deceased was a student and after completing his studies, he would have been suitably placed in a job and necessarily would have earned a good income. Therefore, this Court is inclined to fix the notional income at Rs.7,000/-. By fixing a notional income of Rs.7,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680,*** the total income per month is quantified at Rs.9,800/-. Deducting 50% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.4,900/- per month and the deceased being aged about 14 years, as evidenced from the records, adopting the multiplier of 15 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is arrived at Rs.4,900/- * 12 * 15 = Rs.8,82,000/- which is worked out as follows :-

Loss of Income	Amount in Rs.
Notional income (Per month)	7,000
Add: Future Prospects (Rs.7,000 x 40%) (Per month)	2,800
	9,800
Less: Personal expenses (50%) (Rs.18,750/- x 50%) (Per month)	4,900
	4,900
Notional income (per annum) (Rs.4,900/- x 12)	58,500
Multiplier	15
Total	**8,82,000**

8. Further, the Tribunal has not awarded compensation towards loss of love and affection, therefore, this Court awards a sum of Rs.40,000/- to each of the appellant. The Tribunal has awarded a sum of Rs.50,000/- towards consortium and since no compensation can be awarded under the said head, the compensation awarded towards consortium is set aside. Further, no compensation has been awarded under the heads loss of estate and funeral expenses, therefore, this Court awards a sum of Rs.15,000/- under each of the said heads.

9. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

S. No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Loss of income	**4,50,000/-**	**8,82,000/- (enhanced)**
2	Loss of Consortium	**50,000/-**	**-**
3	Loss of love and affection	**-**	**80,000/- (Granted)**
4	Loss of Estate	-	**15,000/- (Granted)**
5	Funeral Expenses	-	**15,000/- (Granted)**
	Total	**5,00,000/-**	**9,92,000/-**

10. Accordingly, the Civil Miscellaneous Appeal is allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.5,00,000/-** to **Rs.9,92,000/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.788 of 2017 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 by the second respondent/Insurance Company, the Tribunal is directed to transfer the award amount directly to the bank of the appellants/claimants through RTGS as per the apportionment of the Tribunal, within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants/claimants. There shall be no order as to costs in the present appeal.

30.11.2023

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No
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To

1.The Special District Judge/Motor Accident Claims Tribunal, Salem.
2.The Section Officer, V.R. Section, High Court, Madras.

M.DHANDAPANI,J.,

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C.M.A.No.1274 of 2020

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