IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.06.2023

PRONOUNCED ON: 21.07.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

C.M.A.No.1902 of 2021
and
CMP.No.10260 of 2021

The Divisional Manager,
M/s.The National Insurance Company Ltd.,
Anna Salai,
Vellore, Vellore District.

... Appellant

- Vs -

1. Venkatesan
2. Mageswari
3. The Correspondent,
   Sigaram Matriculation School,
   Sigaram Nagar,
   Chettiyappanur Village and Post,
   Vaniyambadi Taluk, Vellore District.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, praying to set aside the judgment and decree dated 16.12.2019 passed in MCOP.No.124 of 2017 by the Motor Accidents Claims Tribunal (III Additional District Judge), Vellore @ Tirupattur.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.V.Parivallal
for R1 & R2
R3-Notice served

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JUDGMENT

The present Civil Miscellaneous Appeal has been filed against the judgment and decree dated 16.12.2019 passed in MCOP.No.124 of 2017 by the Motor Accidents Claims Tribunal (III Additional District Judge), Vellore @ Tirupattur.

2. For the sake of convenience, the parties are referred to by their litigative status before the Tribunal.

3. Short facts, which are necessary for the disposal of this appeal are that, the petitioners are the parents of deceased minor Dinesh. He was 10 years old at the time of the accident and was studying in the first respondent's school. According to the petitioners, on 24.10.2016 at about 8.30.a.m, when the first respondent's driver driven the school bus bearing Registration No.TN 23 P 8555 in a rash and negligent manner, dashed against the deceased minor Dinesh, while he was waiting to board the school bus. Due to the accident, minor Dinesh succumbed to injuries. According to the petitioners, only due to the rash and negligent driving of the first respondent's driver, the accident had

taken place. Thus, they claimed a sum of Rs.20,00,000/- [Rupees Twenty lakhs only] towards compensation.

4. The first respondent-School authority has filed a counter statement stating that the deceased minor Dinesh suddenly crossed the road in a negligent manner, and invited the accident. It is the submission of the first respondent that for the death of the deceased, they have already paid a sum of Rs.5,75,000/- [Rupees Five lakhs and seventy five thousand only]. It is also the submission of the first respondent that the first petitioner has written a consent letter before the panchayatars evidencing the receipt of compensation of Rs.5,75,000/-. It is also the submission of the first respondent that since they already paid the compensation, the instant claim petition is liable to be dismissed.

5. The second respondent also took a defence that the minor Dinesh was negligent. They also states that the first respondent's bus was not insured with them and that there was no rash and negligent driving on the side of the first respondent's driver. As such they submit that the claim of Rs.20,00,000/- is exorbitant and without any basis.

6. Before the Tribunal, the petitioner has marked 12 documents as Exs.P1 to P12 and examined two witnesses as PW1 & PW2. On behalf of the

respondent, 7 documents were marked as Exs.R1 to R7 and three witnesses were examined.

7. The Tribunal, after considering the pleadings, evidence and documents on record, has ultimately arrived at a conclusion that the respondents are liable to pay a compensation of Rs.7,32,000/- and awarded a sum of Rs.1,57,000/- to the petitioners, over and above the amount of Rs.5,75,000/-, which was already paid to the petitioners. Aggrieved by the order of the learned Tribunal, the second respondent/Insurance Company has come up with this appeal.

8. The learned counsel for the second respondent/Insurance Company would vehemently contend that the way in which the compensation determined to the minor, that too for the student, aged about 10 years, is highly excessive and without any basis. He would also further contend that in respect of the minor, there would only be a lump sum payment, and not on the basis of multiplier method. Hence, prayed to set aside the enhanced award of Rs.1,57,000/-, over and above the amount, which was already received by the petitioner.

9. Per contra, the learned counsel for the claimants would strenuously submit that, the method of determination of compensation adopted by the

Tribunal is inconsonance with the settled principles and that the Tribunal has awarded the just compensation. Therefore, there is no scope for any interference and prayed for the dismissal of the appeal.

10. I have given my anxious consideration to either side submissions.

11. From the submissions of either side, the moot point to be considered is, as to whether the additional award amount of Rs.1,57,000/- ordered, over and above the amount received by the petitioners is the just compensation. It is pertinent to mention here that, since the victim is a minor, it is to be presumed that there cannot be any negligence on his part. Thus the Tribunal has rightly arrived at a conclusion that only due to the rash and negligent driving of the first respondent's driver the accident took place.

12. From the counter statement of the first respondent, this Court could be able to find a panchayat, among the petitioners and the first respondent-school. In pursuance thereof, a sum of Rs.5,75,000/- was paid by the School authorities to the petitioners. In fact, the first respondent-School has not challenged this portion of the amount as it was admittedly paid in pursuance of the panchayat. Therefore, the only point which this Court has to find out is,

whether the petitioners are entitled to any other amount over and above Rs.5,75,000/-.

13. The learned counsel for the second respondent/appellant invited the attention of this Court about ***New India Assurance Co., Ltd., Vs. Satender and others*** reported in ***2007 ACJ 160,*** and ***Rajendra Singh and others Vs. National Insurance Co. Ltd and others*** reported in ***2020 ACJ 2211***, and would contend that in respect of a minor, multiplier method should not be followed. In the case of ***New India Assurance Co., Ltd.,*** (cited supra), the Hon'ble Supreme Court awarded a lump sum of Rs.1,80,000/- for a child aged about 9 years, for the accident that took place during 2002. In ***Rajendra Singh and others*** (cited supra), for a 12 years old school going girl, the Hon'ble Supreme Court has awarded a lump sum of Rs.2,95,000/- for the accident of the year 2012. Similarly in ***Kurvan Ansari and another Vs. Shyam Kishore Murmu and another*** reported in ***2022 ACJ 166***, for 7 years old child, the Hon'ble Supreme Court awarded a sum of Rs.4,70,000/- for the accident of the year 2004.

14. If we closely scan the above judgments, the very argument of the learned counsel for the appellant that the multiplier method should not be adopted for the death of children, cannot be accepted at all. Even in the latest

judgment in ***Meena Devi Vs. Nunu Chand Mahto Allias Nemchand Mahto and others*** reported in ***(2023) 1 SCC 204***, for a 12 years old child, the Hon'ble Supreme Court took notional income of Rs.30,000/- and adopted multiplier of 15 in the back drop of ***Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121,*** and has ultimately awarded a sum of Rs.4,50,000/- towards loss of dependency, and another sum of Rs.50,000/- under the conventional head. The above award is in respect of the accident of the year 2003.

15. The instant petition is in respect of the death of a child aged about 10 years, in the accident of the year 2016. The Trial Court has considered Rs.60,000/- as a notional income and applied multiplier of 16 by taking into consideration the age of the mother. But in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680,*** the position is well settled that, the multiplier should only be determined based upon the age of the deceased. However, upto 15 years, no multiplier has been provided in ***Sarla Verma's*** case (cited supra). But by relying on the decision of ***Meena Devi***'s case (cited supra), this Court is inclined to apply a multiplier of "15".

16. In respect of a multiplicand, this Court would like to compare the notional income derived by the Hon'ble Supreme Court in the above referred cases, which are as follows:-

Year	*Notional Income*
2002	Rs.30,000/- p.a
2003	Rs.30,000/- p.a
2012	Rs.36,000/- p.a

17. As per the above table, for an accident of the year 2012, when a sum of Rs.36,000/- including future prospects was considered as a notional income, considering the inflation, money value and other attending circumstances, for the accident that had taken place during 2016, the determination of Rs.45,000/- per annum including future prospects would be an appropriate amount, and the same appears to be fair and reasonable income. Hence, this Court determine the notional income of the deceased is as Rs.45,000/- per annum [including future prospects].

18. Coming to the deduction towards the personal expenses, in ***Meena Devi***'s case (cited supra) no deduction was effected for minor towards the personal expenses. It is pertinent to mention here that, the Hon'ble Single Judge of this Court, in ***Divisional Manager, Reliance General Insurance Co.***

Ltd., Vs. Govindaraj & others reported in ***2021 (2) TN MAC 271***, has dealt with various judgments in respect of deduction for minor towards personal expenses and has ultimately held as follows:-

> *"**18.** So far as minors are concerned, they are non earning members and there is no occasion for them to spend money towards the personal expenses and there cannot be any deduction towards their personal expenses. In Lata Wadhwa case (cited supra) and Kishan Gopal case (cited supra). The Hon'ble Supreme Court after fixing the notional monthly income of the minor applied the multiplier and taken the entire amount as the loss of dependency and no deduction was made for their personal expenses. In the above circumstances, this Court is of the view that there cannot be any deduction towards personal expenses from the notional income of deceased minors."*

Therefore, there is no requirement for any deduction towards the personal expenses of children.

19. Coming to the multiplier, in ***Sarla Verma***'s case [cited supra] did not give a multiplier for the age upto 15 years. However, in ***Meena Devi***'s case [cited supra], the Hon'ble Supreme Court took a multiplier of 15 for a minor aged about 12 years. Similarly, in ***Govindaraj***'s case [cited supra], the Hon'ble single Judge of this Court, by following ***Reshma Kumari Vs. Madan***

Mohan reported in ***2013 (1) TN MAC 481 (SC),*** has held that the appropriate multiplier for a minor child upto the age group of 15, would be 15. Therefore, the loss of dependency in this case would be at Rs.6,75,000/- [Rs.45,000 x 15]. Further, the Tribunal has awarded just compensation towards the conventional heads viz., Funeral expenses, loss of love and affection and for Transportation. Hence, for these heads, the award of the Tribunal is confirmed.

20. Thus, the total compensation payable to the claimant is re-calculated and tabulated below:-

S. No.	***Heads under which the amount is awarded by the Tribunal***	***Amount awarded by the Tribunal in Rs.***	***Amount awarded by this Court in Rs.***	***Award confirmed or enhanced or increased or reduced***
1.	Loss of income including future prospects	4,80,000	**6,75,000/-** (45000x15)	**Enhanced**
2.	Future prospects	1,92,000	-	Set aside as it was included in Column 1.
3.	Funeral expenses	15,000	15,000	confirmed
4.	Love and affection	40,000	40,000	confirmed
5.	Transportation	5,000	5,000	confirmed
	Total	**7,32,000/-**	**7,35,000/-**	**Enhanced**

21. This Court awarded a sum of Rs.**7,35,000**/- as compensation, without there being any application for enhancement of the award by the claimant. When this Court arrived at a higher amount as just compensation, notwithstanding the fact whether it is claimed or not, is competent enough to award the same.

22. Thus, this Civil Miscellaneous Appeal is disposed of. The impugned award of the Tribunal is modified, enhancing the compensation amount from Rs.7,32,000/- to **Rs.7,35,000**/-. The petitioners/claimants have already received a sum of Rs.5,75,000/- from the first respondent as per Ex.R3. Hence, the petitioners/claimants are entitled to a balance compensation of Rs.1,60,000/-. The second respondent/Insurance Company is directed to deposit the enhanced amount to the credit of MCOP.No.124 of 2017 along with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit and costs 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 petitioners/claimants are each entitled to an equal sum and permitted to withdraw the award amount along with interest and costs, less the amount, if any already withdrawn. The petitioners/claimants are directed to pay the

necessary court fee for the enhanced compensation amount, if required. There shall be no order as to costs in the present appeal. Consequently, connected CMP is also closed.

21.07.2023

kmi

Index : yes/no
Speaking/Non Speaking Order

To

1. The III Additional District Court,
   Motor Accident Claims Tribunal,
   Vellore at Tirupattur.

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

C.KUMARAPPAN, J

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