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C.M.A.No.1036 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No1036 of 2014

1.Thimmarayappan
2.Rajammal

... Appellants/Petitioners

Vs.

1.P.Thangavelu
[R1 remained ex-parte before Tribunal.
Hence, notice to R1 dispensed with]
2.The Branch Manager,
United India Insurance Company Limited,
Branch Office, No.5,-B/11,
SBI upstairs, Salem Road,
Rasipuram.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.10.2008 made in M.C.O.P.No.318 of 2005, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Krishnagiri.

For Appellants	: Mr.M.Sriram
For R1	: Ex-parte before Tribunal
For R2	: Ms.I.Malar



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J U D G M E N T

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This Civil Miscellaneous Appeal has been filed by the parents of the child who was died in the road accident, seeking enhancement of compensation against the award passed in M.C.O.P.No.318 of 2005, dated 21.10.2008, passed by the Motor Accidents Claims Tribunal, Principal District Judge, Krishnagiri, whereby, the Tribunal has awarded a sum of Rs.2,00,000/- as compensation along with interest at the rate of 9% per annum from the date of Claim Petition till the date of realisation.

2. The parties are referred to hereunder according to status and ranking before the Trial Court.

3. The case of the petitioners in brief is that the petitioners son namely Sandhipkumar, was standing on the left side of the road, on Krishnagiri – Hosur National Highways Road, near Kamandhoddi Bus stop, at that time, the driver of the lorry bearing registration No.KA 01 B 7747, belongs to the first respondent came in a rash and negligent manner, hit on the child, caused fatal injuries and he died in the Hospital. A criminal case in Crime No.5/2004 under Sections 279 and 304(A) IPC was registered against



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the driver of the lorry on th file of the Soolagiri Police Station. The deceased was aged about six years studying II standard at P.U.P.School at Kamandhoddi and hence, having lost the child, parents have approached the Tribual seeking compensation for total sum of Rs.3,00,000/-.

4. The first respondent remained ex-parte before Tribunal. The second respondent-Insurance Company has contested the claim on the ground that there is no fault on the part of the driver of the lorry and the claim made by the parents is excessive and they have not alleged any violation of policy conditions.

5. Before the Tribunal, on the side of the petitioners P.W.1 was examined and Exs.P1 to P4 were marked. On the side of the second respondent-Insurance Company no oral or documentary evidence produced.

6.The Tribunal after considering the evidence placed on record has held that the driver of the lorry is a tort-feasor and for the loss of the child, the first respondent is directed to pay the compensation to the claimants and the second respondent, being the insurer is liable to indemnify the first



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respondent and a sum of Rs.2,00,000/- was awarded as compensation along with interest at the rate of 9% per annum and costs.

7. Aggrieved over the quantum of compensation, the appeal has been filed by the claimants who are the parents of the deceased child.

8. The learned counsel for the appellants/claimants has contended that the accident was taken place in the year 2004 and recently, the Judgment of the Hon'ble Supreme Court in ***Kishan Gopal and Another vs Lala and Others*** reported in ***2014 1 SCC 244***, has fixed the notional income of the child, who was aged about 10 years as Rs.30,000/- per year and by adopting multiplier of '15' and awarded compensation of Rs.4,50,000/- as compensation and also granted a sum of Rs.50,000/- as conventional heads and prays to grant the same to the claimants herein.

9. Per Contra, the learned counsel for the Insurance Company has vehemently contended that as per the Judgment of the Hon'ble Apex Court in ***Lata Wadhwa vs. State of Bihar (2001) 8 SCC 197***, the Tribunal has rightly fix the quantum of the deceased herein, who was aged about 6 years



and granted a sum of Rs.2,00,000/- as compensation and the same is on the higher side and prays to confirm the same.

10. I have heard the learned counsel on both sides and perused the entire materials placed on record.

11. The Judgment of the Hon'ble Apex Court in ***Kishan Gopal and Another vs Lala and Others*** reported in ***2014 1 SCC 244*** cited supra has considered the previous judgment of the Apex Court in ***Lata Wadhwa vs. State of Bihar*** reported in ***(2001) 8 SCC 197*** case and granted a sum of Rs.30,000/- as notional income of the deceased who has aged about 10 years by citing on the following reasons:

“In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circ of the cse 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. 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



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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 reported in (2009) 6 SCC 121, the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas reported in (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 reported in (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."

12. Recently, the Hon'ble Apex Court in ***“Meena Devi vs. Nanu Chand Mehta [2023 (1) SCC 204]”***, has once again considered the case of awarding compensation for the death of the child, aged about 12 years in the



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year 2003 and by following the earlier judgments of the Hon'ble Apex Court, including ***Kishan Gopal*** case and ***Lata Wadhwa vs. State of Bihar*** cited above, has held that, fixing notional income of Rs.30,000/- per year is reasonable and awarded a sum of Rs.4,50,000/- under the head loss of income and granted Rs.50,000/- under conventional head.

13. In this case, the deceased is aged about 6 years and was studying II Standard, the father and mother of the deceased also aged about 35 and 30 years respectively and they have lost their school going children who was studying in P.U.P. School at Kamandhoddi. As observed by the Hon'ble Apex Court in ***Meena Devi vs. Nanu Chand Mehta [2023 (1) SCC 204]***, the value of the appeal has been diminishing in the date of accident and till now, the claimants have not received any compensation. In the said circumstances, considering the value of money, this Court is of the view that the amount as awarded by the Hon'ble Apex Court, the claimants herein are entitled for Rs.4,50,000/- under the head loss of income and Rs.50,000/- under the conventional head. Thus, the total compensation is fixed as Rs.5,00,000/-.



14. The learned counsel for the Insurance Company has submitted that this appeal has been filed after condoning the delay of 1582 days hence, the Insurance Company shall not be liable for payment of interest for the delayed period and prays to dispense with the interest portion alone for enhanced amount.

15. However, considering the fact that the appeal has been numbered by imposing the costs and the same is also paid, instead of refusing to grant interest, directing the respondent to pay the interest at the rate of 6% per annum to the enhanced sum would be fair compensation.

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,00,000/- is hereby enhanced to Rs.5,00,000/-. The Insurance Company shall pay 6% interest per annum from the date of filing of this appeal i.e., from 14.08.2013 till the date of deposit of enhanced amount. The interest of 7.5% per annum fixed by the Tribunal for the award amount of Rs.2,00,000/- is confirmed. The second respondent-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the



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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.318 of 2005 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Krishnagiri. On such deposit, the appellants are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant without any formal application. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No



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To

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- 1.The Principal District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.
- 2.The Section Officer,
VR Section,
High Court,
Madras.



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K.RAJASEKAR,J.,

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