



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2023

CORAM:

The HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2503 of 2014

1. S.Ramya Devi

2. M.Sivakumar

... Appellants

Vs.

1.Ramachandran

2.United India Insurance Co Limited,
No.134, Greams Road, 4th Floor,
Chennai-6.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 28.03.2014 made in M.C.O.P.No.2622 of 2013 on the file of the Motor Vehicle Accident Claims Tribunal, (Chief Small Causes Court), Chennai.

For Appellants : M/s.K.Varadhakamaraj

For Respondents : M/s.M.Krishnamoorthy for R2

**JUDGMENT**

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This Civil Miscellaneous Appeal has been filed by the parents of the deceased for enhancement of compensation awarded in MCOP No.2622 of 2013 dated 28.03.2014 on the file of the Motor Accident Claims Tribunal, (Chief Small Causes Court), Chennai.

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

3. On 14.03.2013 at about 16.30 hours, the deceased namely Raghul was riding his cycle at Muthumudali Street, Vysarpadi, Chennai, from West to East, at that time a lorry belonging to the first respondent bearing a Registration No. TCI 6469 driven by its Driver in a rash and negligent manner from the opposite direction and hit the deceased, which caused deceased grievous injuries and death on the spot. Criminal case was registered against the lorry Driver in Crime No.94/2013 on the file of the Traffic Investigation G3 Police Station under Sections 279, 302(A) of IPC. Parents of the deceased have claimed compensation for a sum of Rs.10,00,000/-.



4. The owner of the vehicle has not contested the claim petition and remained exparte. The Insurance Company has filed the counter and contented that the accident was not occurred as stated by the claimants and the Driver of the first respondent is not a tortfeasor. Learned counsel also contented that compensation claimed is also on higher side and prays to dismiss the claim petition.

5. Before the Tribunal, on the side of claimants, P.W.1 was examined and Exs.P.1 to P.8 were marked in support of their claim petition. On the side of the respondents neither any witness examined nor any document was filed.

6. Learned counsel for the claimants submitted that Tribunal has not considered the judgement of Hon'ble Apex Court in **Kishan Gopal and another vs. Lala**, reported in 2013 ACJ 2594, and the "Just compensation" was not awarded by the claims Tribunal, hence this appeal for enhancement of compensation.

7. Learned counsel for the Insurance Company would submit that at the time of passing the award, Tribunal has taken into consideration all aspects including the judgment of Hon'ble Apex Court in **Kishan**



Gopal and another vs. Lala, 2013 ACJ 2594 and prays to

confirm the award of the Tribunal.

8. I have considered the submissions of the both sides and perused the entire material available on record.

9. In The Tribunal in Point No.1 has considered the negligent aspect and held that the Driver of the first respondent is a tort feisor and the second respondent is liable to pay the compensation. In Point No.2, the Tribunal has quantified the compensation and awarded as sum of Rs.3,05,000/- as compensation to the claimants. Aggrieved over the award of compensation, the claimants have filed this Civil Miscellaneous Appeal for enhancement of compensation.

10. In **Kishan Gopal's** case cited supra, Apex Court has held that, since value of rupees has come down drastically since 1994 when the Notional Income of Rs, 15,000/- was fixed in II schedule of the Motor Vehicle Act, fixing the Notional Income of Rs.30,000/- shall be in place of Rs.15,000/- and accordingly fixed the Notional Income and awarded compensation.



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11. Recently, Apex Court, in ***Meena Devi vs. Nunu Chand Mahto***, (2023) 1 SCC 204, has considered the case of child aged about 12 years and has awarded a sum of Rs.5,00,000/- as compensation with interest at the rate of 7% per annum. The Hon'ble Apex Court before passing the above judgement has once again considered the various judgement of Hon'ble Apex Court, including ***Kishan Gopal and another vs. Lala***, has observed as follows:

"16. Thus applying the ratio of the said judgments, looking to the age of the child in the present case i.e., 12 years, the principles laid down in Kishan Gopal are aptly applicable to the facts of the present case. As per the ocular statement of the mother of the deceased, it is clear that the deceased was a brilliant student and studying in a private school. Therefore, accepting the notional earning Rs. 30,000 including future prospect and applying the multiplier of 15 in view of the decision of this Court in Sarla Verma, the loss of dependency comes to Rs. 4,50,000 and if we add Rs. 50,000 in conventional heads, then the total sum of compensation comes to Rs.5,00,000/-....."

12. In the case on hand, the deceased was aged about 8 years,

studying in second standard at Donbosco High School, Vysarpadi,



Chennai, and accident that took place on 14.03.2013. Since the deceased was died in the year 2013, this Court is of the view that by following Meena Devi vs. Nunu Chand Mahto, cited supra, notional income shall be fixed.

13. Accordingly, the notional income of the deceased is fixed as Rs.30,000/- per year, including future prospectus. Applying the multiplier of 15 in view of the decision of the Hon'ble Apex Court in Sarla Verma v. Delhi Transport Corporation, 2010 (2) KLT 802 (SC) the loss of dependency would be Rs.4,50,000/- and in the other conventional heads, Rs.50,000/- is awarded, accordingly, Rs.5,00,000/- is awarded as compensation.

14. In the result:

(i) The Civil Miscellaneous Appeal is partly allowed by enhancing the compensation awarded by the Tribunal to Rs.5,00,000/- from Rs.3,05,000/-.

(ii) The respondents shall jointly and severally directed to deposit the above said compensation amount together with interest at the



rate of 7.5% from the date of petition to the date of realization within a period of four weeks from the date of receipt of copy of this order, less the amount, if any, deposited. On such deposit being made, the claimants shall be entitled to withdraw the same by making appropriate application before the Tribunal.

(iii) The apportionment of the compensation shall be as per the order of the Tribunal.

(iv) There shall be no order as to costs.

28.08.2023

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Index : Yes/No

Speaking Order:yes/No

Neutral Citation : Yes/No

To:

1.The Motor Accident Claims Tribunal,
Chief Small Causes, Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

K.RAJASEKAR, J.



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