IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.1676 and 1677 of 2019

Dhanapal (died)
1. Dhanabakkiam
2. Minor Tharanitharan
S/o.Dhanabal
3. Ramasamy
4.Kannammal
(Cause title accepted vide order dated 31.03.2015 made in MP.No.1 of 2015 by this Court in CMP. No.1 of 2018 in CMA.SR.No.87343 of 2014)
.. Appellants in CMA.No.1676 of 2019

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(Cause title accepted vide order dated 31.03.2015 made in MP.No.1 of 2015 by this Court in CMP. No.1 of 2018 in CMA.SR.No.87344 of 2014)
.. Appellants in CMA.No.1677 of 2019

Vs.

1. R.Vasantha
2. United India Insurance Co. Ltd.,
Divisional Office-II, First Floor,
104-A, Peramanur Main Road,
Salem-636 007. .. Respondents in both the appeals

Common prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment, dated 13.02.2013 in MCOP. No.750 and 751 of 2011 on the file of the Motor Accident Claims Tribunal cum II Additional District Judge, Salem.

For Appellant : Mr.Jagadeesan for both the cases

For Respondents : Ms.I.Malar R2 for both the cases
R1 – Died

COMMON JUDGMENT

The Civil Miscellaneous Appeals have been filed seeking to quash the decree and judgment, dated 13.02.2013 in MCOP. Nos.750 and 751 of 2011 on the file of the Motor Accident Claims Tribunal cum II Additional District Judge, Salem.

2. It is the case of the appellants that the first appellant is the wife and the second respondent is the son and the respondents 3 and 4 are the parents of the deceased Dhanapal . On 26.12.2019 at about 1.15 P.M. The said Dhanapal along with his daughter Sumithra, aged about 6 years, were going in a Hero Honda Splendar Motor Cycle bearing Registration No.TN 30 AD 1390 in Salem to Omalur NH Road from Salem town to his house at Thathiyampatti Village, at the time, the lorry bearing Registration No.TN 27 H 4014 was going in front of the motorcycle and the same has driven by the driver, owned by the first respondent and insured with the second respondent. Suddenly, the driver of the lorry,without any signal, turned left and stopped the lorry, the said Dhanapal hit behind the lorry. Due to which, the said Dhanapal sustained grievous injuries all over his body and his daughter Sumithra died on the spot.

Immediately, they have taken to the Gokulam Hospital, Salem and the said Dhanapal shifted to Kovai Medical Centre Hospital for treatment. The accident had happened only due to the rash and negligent driving of the driver of the lorry. Hence, the said Dhanapal herein, has filed Claim Petitions before the Motor Accident Claims Tribunal, Salem against the owner and insurer of the lorry, claiming compensation for a sum of Rs.25,00,000/- for the injuries sustained by him and also claiming compensation for a sum of Rs.10,00,000/- for the death of his daughter under various heads. The Tribunal, after considering the pleadings, oral and documentary evidence, awarded a sum of Rs.18,21,000/-for the injuries sustained by one Dhanapal and awarded a sum of Rs.2,54,700/- for the death of one Sumithra as compensation.

3. For enhancement of compensation, the appellants-claimants have filed the appeal challenging the order dated 13.02.2013 in M.C.O.P.Nos.750 and 751 of 2011.

4.The learned counsel appearing for the appellants contended that the method adopted by the Tribunal for fixing the compensation for the death of 6 years old girl is not correct and the Tribunal ought to have awarded atleast

Rs.6,00,000/- as compensation for the death of the minor girl. The compensation amount awarded by the learned Tribunal is very meager, in view of the judgment passed by the Apex Court in the case of ***Kishan Gopal*** *& Anr. vs.* ***Lala*** *& Ors., reported in 2014 (1) SCC 244.*

5. The learned counsel for the appellants further submitted that the Tribunal has awarded very low compensation for the serious injuries sustained by one Dhanapal, subsequently he died on 06.06.2014 after the award passed. The Tribunal has erred in fixing the income of the deceased only at Rs.3,000/- whereas the income of the deceased is more than 10,000/- As per the decision rendered by the Hon'ble Supreme Court in the case of *Syed shadiq,* a sum of Rs.6,500/- has been fixed as notional income for the vegetable vendor. However, in the present case, the deceased person is working as Carpenter and he was earning a sum of Rs.10,000/- per month, for which, the appellant has marked Exhibit P.22/identity card to prove his employment. Without considering the same, the Tribunal has fixed the income, which is very meager. Further, future prospects has not been awarded to the claimants. The learned counsel further submitted that the quantum of compensation fixed by the Tribunal is very low and prayed for allowing these

appeals.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that due to rash and negligent driving of the driver of the lorry and the rider of the two wheeler, the accident had occurred and therefore, the quantum of compensation should be reduced in terms of the contributory negligence on the appellants/claimants. Further, the learned counsel submitted that the entire allegation of the appellants is not true. To get a large amount of compensation, they have filed the appeals. The learned counsel further submitted that though the appellant has marked Ex.P22 Identity Card issued by the Construction Labour Welfare Board and the same is not sufficient to prove the income. However, the Tribunal has awarded higher compensation to the appellants, which is unsustainable one. Hence, he prayed for dismissing the appeal.

7. Heard the learned counsel for the appellant as well as the second respondent and also perused the materials available on record.

8. The facts of the case are not in dispute. The appellants are the

claimants and the second respondent is the Insurance Company. The case of the appellants is that on 26.12.2010 at about 01.15 P.M., the first appellant's husband was riding his two wheeler along with his minor daughter and the same was dashed against the lorry from the backside. Admittedly, Ex.P1/FIR has been registered as against the driver of the lorry owned by the first respondent and insured with the second respondent.

9. The appeals have been filed by the claimants for enhancement of compensation and therefore, this Court is not inclined to discuss the negligence aspect in the present appeals.

10. Though the learned counsel for the appellants relied upon the decision of the Hon'ble Apex court in the case of *Kishan Gopal* as stated supra, wherein it was held that a sum of Rs.5,00,000/- has to be paid as compensation for the death of minor children. The relevant paragraph is extracted hereunder:

> "**16.** *In view of the aforesaid facts, the Tribunal should have considered both oral and documentary evidence referred to supra and appreciated the same in the proper perspective and recorded the finding on the contentious issue No. 1 & 2 in the affirmative.*

But it has recorded the finding in the negative on the above issues by adverting to certain statements of evidence of AW-1 and referring to certain alleged discrepancies in the FIR without appreciating entire evidence of AW-1 and AW-2 on record properly and also not assigned valid reasons in not accepting their testimony.The Tribunal should have taken into consideration the pleadings of the parties and legal evidence on record in its entirety and held that the accident took place on 19.07.1992, due to which Tikaram sustained grievous injuries and succumbed to the same and the case was registered by the Uniara Police Station Under Sections 279 and 304-A, Indian Penal Code read with Sections 133 and 181 of the M.V. Act against the first and second Respondents. The registration of FIR and filing of the charge-sheet against Respondent Nos. 1 & 2 are not in dispute, therefore, the Tribunal should have no option but to accept the entire evidence on record and recorded the finding on the contentious issue Nos. 1 and 2 in favour of the Appellants. Further, it should have held that the deceased son died in the tractor accident, driven by first Respondent rashly and negligently, but it has answered the above contentious issue Nos. 1 & 2 in the negative and therefore, we have to set aside the said erroneous findings as the Tribunal has failed to appreciate the entire evidence both oral and documentary properly to answer the issue Nos. 1 & 2 in the affirmative. From the perusal of the evidence elicited in the cross-examination of AW-1 - the father and AW-2 who reached the spot *immediately after the accident, he had seen the accident and narrated that the deceased boy had sustained grievous injuries in the accident and succumbed to the same. The evidence on record proved that the deceased sustained grievous injuries in the accident on account of which he died. The Insurance Company by cross-examining the witness No. AW-2 has categorically admitted the accident, as its counsel had put the suggestion to him the relevant portion of which is extracted above, which portion of evidence clearly go to show that in the accident the deceased died, but the Tribunal has failed to appreciate the evidence of AW-2 and also the documentary evidence referred to supra, while recording the finding of fact on the contentious issue No. 1. The counter affidavit of Respondent No. 1 filed in these proceedings cannot be relied upon by this Court at this stage as he did not choose to appear before the Tribunal, though he had filed statement of counter and neither he nor the Insurance Company adduced rebuttal evidence by obtaining permission from theTribunal Under Section 170 of M.V. Act to avail the defence of the insured Respondent No. 2, as the Insurance Company has limited defence as provided Under Section 149(2) of the M.V. Act. But on the other hand, by reading the averments from the paragraphs extracted from the affidavit of Respondent No. 1, the driver would support the case of the Appellants.*

17. *In our considered view, the Tribunal has ignored certain relevant facts and evidence on record while considering the case of the Appellants. The High Court though it has got power to re-appreciate the pleadings and evidence on record, has declined to do so and mechanically endorsed the findings of fact on contentious issue Nos. 1 & 2 after referring to certain stray sentences from the evidence of AW-1 and the FIR and it has erroneously held that there is a contradiction between the FIR, the claim petition and the evidence of the Appellants. It has concurred with the finding of fact recorded on the contentious issues and accepted dismissal of the petition. The concurrent findings of fact are erroneous and invalid and therefore, the same call for our interference in this appeal. The approach of the High Court to the claim of the Appellants is very casual as it did not advert to the oral and documentary evidence placed on record on behalf of the Appellants, particularly, in the absence of rebuttal evidence adduced by the Insurance Company, hence the same is liable to set aside and accordingly we set aside the same.*

18 . *Point Nos. 2 and 3 are answered together in favour of the Appellants for the following reasons:*

The Tribunal having answered the contentious issue No. 1, against the Appellants in its judgment the same is concurred with by the High Court by assigning erroneous reasons and it has affirmed dismissal of the claim petition of the Appellants holding that the accident did not take place on account of the rash and *negligent driving of the offending vehicle by the first Respondent and therefore the contentious issue Nos. 1 and 2 are answered in the negative against the Appellants and it has not awarded compensation in favour of the Appellants. Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious issue Nos. 1 & 2 by recording our reasons in the preceding paragraphs of this judgment and we have answered the point in favour of the Appellants and also examined the claim of the Appellants to award just and reasonable compensation in favour of the Appellants as they have lost their affectionate 10 year old son. For this purpose, it would be necessary for us to refer to Second Schedule Under Section 163-A of the M.V. Act, at clause No. 6 which refers to notional income for compensation to those persons who had no income prior to accident. The relevant portion of clause No. 6 states as under:*

***6.** Notional income for compensation to those who had no income prior to accident:*

...

*(a) Non-earning persons - Rs. 15,000/- p.a. The aforesaid clause of the Second Schedule to Section 163-A of the M.V. Act, is considered by this Court in the case of **Lata Wadhwa and Ors. v. State of Bihar and Ors.** MANU/SC/0456/2001 : (2001) 8 SCC 197, while examining the tortuous liability of the tort-feasor has*

examined the criteria for awarding compensation for death of children in accident between age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs. 12,000/- p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs. 25,000/- was awarded. Thus, a total sum of Rs. 1,57,000/- was awarded in that case. After noting the submission made on behalf of TISCO in the said case that the compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is unrecoupable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs. 1.5 lakhs to which under the conventional heads a sum of Rs. 50,000/- should be added and thus total amount in each case would be Rs. 2 lakhs. Further, in the case referred to supra it has observed that in so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the *fact the contribution of the deceased child was taken Rs. 12,000/- p.a. appears to be on the lower side and held that the contribution of such children should be Rs. 24,000/- p.a. In our considered view, the aforesaid legal principle laid down in* ***Lata Wadhwa'****s case with all fours is applicable to the facts and circumstances of the case 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. We have also considered the fact that the rupee value has come down drastically from the year 1994, 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 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*** *MANU/SC/0606/2009 : (2009) 6 SCC 121, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 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*** *MANU/SC/0389/1994 : (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*** *MANU/SC/1255/2011 : (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. Therefore, awarding 9% interest on the compensation awarded in favour of the Appellants is legally justified.*

19. *Accordingly, we pass the following order:*

I) The appeal is allowed and the impugned judgments and awards of both the Tribunal and High Court are set aside.

II) The awarded amount of Rs. 5,00,000/- with interest at the rate of 9% per annum should be paid to the Appellants from the *date of filing of the application till the date of payment.*

III) We direct the Insurance Company to issue the demand draft drawn on any Nationalized Bank by apportioning the compensation amount equally with proportionate interest and send it to the Appellants within six weeks from the date of receipt of a copy of this judgment."

11. The aforesaid decision rendered by the Hon'ble Apex Court, this Court is inclined to fix a compensation of Rs.5,00,000/- (Rupees Five Lakhs only) to the appellants payable by the second respondent for the death of the minor girl Sumithra, with 7.5% interest, which has to be paid within a period of four weeks from the date of receipt of a copy of this order.

12. In respect of CMA.No.1677/2009 is concerned, the first respondent's husband was taken to the hospital immediately after the accident for treatment. The Doctor has assessed that the first respondent's husband suffered 100% disability due to the accident, as he is not able to move. Subsequently, after passing the award, the first Respondent's husband passed away. Further, the question arises for consideration in this appeal is that

whether a sum of Rs.3,000/- fixed by the Tribunal as monthly income is correct or not.

13. The accident has occurred in the year 2010. In the year 2008 itself, as per *Syed Shadik* decision, the Apex Court has fixed a sum of Rs.6,500/- as minimum income for the vegetable vendor. In the present case, it is alleged that the deceased was working as Carpenter and he earned a sum of Rs.10,000/- per month, however, the claimants have not produced any documents to prove the income of the deceased. Hence, this Court fixes a sum of Rs.8,000/- as monthly income of the deceased. In which, 1/3rd has to be deducted for his own expenses as the number of dependents is three and 40% has to be added towards future prospects. The same is calculated as follows:

8000 – (1/3 of 8000)	= 5333.33
	Rounded off to Rs.5340/-
5340 + (40% of 5340)	= 7476

The age of the deceased is about 34 years at the time of accident and therefore, "16" multiplier has to be applied as per the decision rendered by the Hon'ble Apex Court in the case of *Sarla verma*. The other heads awarded by the Tribunal needs to be interfered with by this Court. Accordingly, the award is modified as follows:

Heads	**Amount awarded by the Tribunal (Rs.)**	**Modified Award Amount (Rs.)**
Loss of income	72,000/-	72,000/-
Transportation	10,000/-	10,000/-
Nutrition	25,000/-	25,000/-
Damages to cloth	1000/-	1000/-
Loss of disability	5,76,000/-	14,35,392/- (Rs.7,476/-X 12 X 16)
Medical expenses	10,36,764.43/-	10,36,764.43/-
Pain and sufferings	1,00,000/-	1,00,000/-
Attender charges	10,000/-	10,000
Loss of matrimonial life to the first appellant	-	50000
	18,20,764.43/- (rounded off to Rs.18,21,000/-)	**27,40,156/- (rounder off to Rs.27,40,200/-)**

14. In view of the above discussion, the appeals are allowed and the awards passed by the Tribunal are set aside and this court passed the following order:

(i) insofar as CMA.No. 1676 of 2019 is concerned, this Court fixes the compensation for a sum of ***Rs.5,00,000/-*** *(Rupees Five Lakhs only) for the death of the minor girl with interest at 7.5% per annum within a*

period of six weeks from the date of receipt of a copy of this judgment;

*(ii) insofar as CMA.No. 1677 of 2019 is concerned, this Court modify the compensation from Rs. 18,20,764.43/- to Rs.**27,40,200**/- (Rupees Twenty Seven Lakhs Forty thousand and two hundred only) with interest at 7.5% per annum within a period of six weeks from the date of receipt of a copy of this judgment;*

(iii) The second respondent Insurance Company is directed to deposit the enhanced award amount with interest at 7.5%, less the amount if already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any already withdrawn.

9. In the result, the Civil Miscellaneous Appeals are allowed. No costs.

09.11.2023

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Index : Yes
Speaking Order : Yes

M.DHANDAPANI,J.

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To

The Judge, Motor Accident Claims Tribunal cum
Subordinate Judge, Hosur

C.M.A.Nos.1676 and 1677 of 2019

09.11.2023