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C.M.A.No.1353 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1353 of 2019

1. R.Chinnakannan

2. C.Shanthi

... Appellants / Petitioners

Vs.

1. N.Selvaraj

2. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Chennimalai Road,
Erode.

3. P.Rajendran

4. M/s.Royal Sundaram Alliance,
Insurance Company Limited,
46, Whites Road,
Chennai - 600 014.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.06.2007 made in M..C.O.P.No.209 of 2007 on the file of the Motor



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Accidents Claims Tribunal / Additional District Court / Fast Track Court
No.I, Erode.

For Appellant : Ms.M.Adhishree
for Mr.N.Manokaran

For Respondents : No appearance for R1 and R4
Mr.Murali Vinodh
R3 - not ready notice

J U D G M E N T

This appellants not being satisfied with the quantum of compensation awarded by the Tribunal, have filed this appeal against the award passed in M.C.O.P.No.209 of 2007 dated 27.06.2007.

2. The claimants are the parents of the deceased child. The deceased aged about 13 years was travelling in a bus bearing Registration No.TN-33-N-1816 from Erode to Tiruppur. While the bus was proceeding near Vijayamangalam road, the bus hit against the lorry bearing Registration No.KA-04-C-7888 which was coming from the opposite direction and the deceased died on the way to hospital. It is under these consideration, the appellants / claimants filed claim petition before the Tribunal seeking enhancement.



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3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of the evidence, came to the conclusion that the accident had taken place due to the rash and negligent driving on the part of the driver of the bus. Having rendered such finding, the Tribunal proceeded to determine the compensation and awarded total compensation of Rs.1,72,000/-. The said compensation was directed to be paid by the second respondent / Transport Corporation with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit. The claimants, not being satisfied with the compensation awarded by the Tribunal, have approached this Court, seeking for enhancement of compensation.

4. Heard the learned counsel for the appellants and the learned counsel for the second respondent / Transport Corporation.

5. This Court carefully considered the submissions made on either side and the materials available on record and also went through the award passed by the Tribunal.



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6. In the instant appeal, the deceased was a school going girl aged about 13 years at the time of the accident and the accident had taken place in the year 2005. The Tribunal fixed the notional income of Rs.15,000/-, which is on the lower side. The learned counsel for the appellants has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Kishan Gopal and another Vs. Lala and others*** reported in ***(2014) 1 SCC 244***, wherein the Hon'ble Supreme Court had dealt with the similar set of facts wherein ten years old child who was travelling in a tractor died and the parents claimed enhancement of compensation. The Hon'ble Supreme Court has considered various aspects and facts and circumstances of the case held as follows:

"39. 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, 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, 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.

40. 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, 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.

41. Accordingly, we pass the following



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order:

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

41.2. 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.

41.3. 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. "

7. Following the said dictum laid down by the Hon'ble Supreme Court, this Court is of the view that in the instant appeal, the deceased was aged about 13 years and was also school going student. The determination made by the Tribunal was grossly inadequate and that the loss of children is irrecoverable and no amount of money could compensate the parents. Further, the deceased girl if had been alive, would have certainly contributed substantially to the family by working



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hard. Considering the fact that the rupee value has come up drastically from the year 1994, the notional income of non-earning member prior to the date of accident fixed at Rs.15,000/- is not just and reasonable. It would be just and reasonable to take her notional income at Rs.30,000/-. Taking the young age of the parents at the time of accident and by applying the principles laid in ***Sarla Verma & Others. Vs. Delhi Transport Corporation & Others (2009 (6) SCC 121)***, the multiplier of 16 can be applied and therefore, the notional income would come to Rs.4,80,000/- and a sum of Rs.20,000/- fixed under conventional head. Therefore, the award amount is enhanced to a sum of Rs.5,00,000/-.

8. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.1,72,000/- is hereby enhanced to Rs.5,00,000/- together with interest at the rate of 7.5% per annum from the date of filing of petition till the date of payment, to be paid by the second respondent / Transport Corporation less the amount, if any, already deposited to the credit of M.C.O.P.No.209 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court No.I, Erode, within a period of two weeks from the date



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of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court, along with interest and costs as per the apportionment fixed by the Tribunal. It is made clear that the appellants / claimants are not entitled for any interest from the date of award, i.e., 27.06.2007 till the date of filing of condone delay petition. No costs.

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NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji



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To

1. The Motor Accidents Claims Tribunal,
Additional District Court / Fast Track Court No.I,
Erode.
2. The Section Officer,
V.R. Section,
High Court,
Chennai.



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M.DHANDAPANI, J.

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