BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.09.2023

Pronounced on : 27.09.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.443 of 2020

1. Chinnakalai
2. Backiyalakshmi
3. Minor Arunkumar
4. Minor Anantha Kumar ... Appellants/ Petitioners

(3rd & 4th appellants are represented by their father and natural guardian Chinnakalai)

Vs.

1. M.Sukumar
2. M/s.Future General India Insurance Co.Ltd.,
   2nd & 3rd Floor, No.15, S.I.Towers,
   Madurai Road,
   Melapudur,
   Trichy – 620 001. ... Respondents/ Respondents

(R1 ex parte vide order dated 16.10.2020)

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow the appeal and modify the judgment and decree dated 12.02.2019 in M.C.O.P.No.505 of 2016 on the file of Motor Accident Claims Tribunal/Special District Judge, Tiruchirappalli and enhance the compensation of Rs.5,20,000/-.

For Appellants	: Mr.N.Sudhagar Nagaraj
For R2	: Mr.D.Sivaraman

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.505 of 2016 dated 12.02.2019 on the file of the Motor Accident Claims Tribunal/Special District Court for MCOP Cases, Tiruchirappalli.

2. The appellants/claimants, who were awarded with compensation of Rs.4,80,000/- (Rupees Four Lakhs and Eighty Thousand only) with interest at 7.5% per annum for the death of Santhoshkumar, consequent to an accident occurred on 19.11.2015, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.

3. The Tribunal has fixed the annual income of the deceased minor at Rs.30,000/- and by applying multiplier 15 has arrived at Rs.4,50,000/- for the loss of dependency of the family and by adding Rs.15,000/- for funeral expenses and Rs.15,000/- for future prospects, has granted total compensation of Rs.4,80,000/-.

4. The learned counsel appearing for the appellants/claimants would submit that the notional annual income fixed by the Tribunal is very low, that the Tribunal has not granted any amount towards loss of consortium and that the amounts awarded under the conventional heads are also very low.

5. The only point that arises for consideration is as to whether the quantum of compensation awarded by the Tribunal is just and proper and is in accordance with law?

6. In the case on hand, the Tribunal, taking note of the postmortem certificate, has fixed the age of the deceased as 9 years at the time of accident. The second respondent/insurer has not disputed the said factum.

7. It is not in dispute that the deceased boy was studying 4th standard at the time of accident.

8. In a similar case, for the death of deceased boy aged 13 years for the accident occurred in 2013, this Court has fixed the notional monthly income at Rs.4,000/- after referring to the decisions of the Hon'ble Supreme Court and this Court and the relevant passage is extracted hereunder:-

> *"12. In **Lata Wadhwa Vs. State of Bihar** reported in **(2001) 8 SCC 197,** the Hon'ble Apex Court has held that in case of death of a child, there is no actual pecuniary benefit derived by its parents during the life time of the child, but however, the parents are entitled to claim for the prospective loss they suffered, that they had a reasonable expectation of pecuniary benefit had the child lived and that the loss of the child to the parents is irrecoupable, and no amount of money could compensate them. The Hon'ble Supreme Court has further held that in cases of children between the age of group of 10-15 years, the annual contribution can be fixed at Rs.24,000/- and multiplier of 15 be applied. The Hon'ble Supreme Court in **Kishan Gopal and another Vs. Lala and others** reported in **2014 (1) SCC 244,** for the death of a 10*

year old boy, has fixed the notional income at Rs.30,000/- per annum and applied multiplier 15. In ***Meena Devi Vs. Nunu Chand Mahto alias Nemchand Mahto and others*** *reported in* ***(2023) 1 SCC 2014,*** *the Hon'ble Supreme Court, for a 12 year old child, has taken the notional income at Rs. 30,000/- per annum and adopted multiplier 15. In the case of* ***The Manager, Cholamandalam MS General Insurance Co. Ltd., Dharmapuri Vs. Muniyappan and others (C.M.A.No.1647 of 2020 dated 07.12.2020),*** *a learned Judge of this Court, taking note of the facts that the accident was occurred in the year 2017 and the deceased was aged 3 years at the time of accident, has fixed the notional monthly income at Rs.3,500/-. In* ***P.Muthu Selvi and another Vs. The Managing Director, State Express Transport Corporation Ltd., Chennai (C.M.A.(MD)No.748 of 2019 dated 29.08.2023),*** *this Court, considering the fact that the accident was occurred on 16.05.2012 and taking note of the age of the deceased at 2 years, fixed the notional monthly income at Rs.3,000/- and by applying the decision of the Hon'ble Supreme Court in* ***Reshma Kumari Vs. Madan Mohan*** *reported in* ***(2013) 9 SCC 65,*** *multiplier of 15 was adopted. In the case on hand, the Tribunal has fixed the notional annual income of the deceased at Rs.30,000/-. Considering the above decisions and taking note of the fact that the impugned accident was occurred on 07.05.2013 and the age of the deceased Muthu Kamatchi at 13 years, this*

Court fixes the notional monthly income at Rs.4,000/- and the appropriate multiplier would be 15. Hence, the loss of dependency would be Rs.7,20,000/- (Rs.4,000/- x 12 x 15).”

9. As already pointed out, in the case on hand, the deceased was aged 9 years and the accident was occurred on 19.11.2015 and hence, this Court fixes the notional monthly income at Rs.3,500/- and the appropriate multiplier would be 15. Hence, the loss of dependency would be Rs.6,30,000/- (Rs.3,500/- x 12 x 15).

10. The appellants/claimants are also entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads.

11. As rightly pointed out by the learned counsel appearing for the appellants/claimants, the Tribunal has not awarded any amount towards loss of consortium. The appellants 1 and 2/claimants 1 and 2 being the parents of the deceased boy and the appellants 3 and 4/claimants 3 and 4 being the brothers of the deceased boy are entitled to get Rs.40,000/- each towards loss of consortium. Hence, this Court concludes that the appellants/claimants are entitled to get total compensation of Rs.8,20,000/-

12. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

13. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,80,000/- (Rupees Four Lakhs and Eighty Thousand only) is hereby enhanced to **Rs.8,20,000/- (Rupees Eight Lakhs and Twenty Thousand only)** together with interest at 7.5% per annum and costs. The second respondent/insurer is directed to deposit the modified enhanced amount with interest and costs to the credit of M.C.O.P.No.505 of 2016 on the file of the Motor Accident Claims Tribunal/Special District Court for MCOP Cases, Tiruchirappalli, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first appellant is entitled to get **Rs.2,20,000/- (Rupees Two Lakhs and Twenty Thousand only)**, the second appellant is entitled to get **Rs.4,00,000/- (Rupees Four Lakhs only)** and the appellants 3 and 4 are entitled to get **Rs.1,00,000/- (Rupees One Lakh only)** each. Accordingly, the appellants 1 and 2 are permitted to

withdraw their shares along with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal and the share of the minor appellants 3 and 4 shall be deposited in any one of the Nationalised Banks till they attain majority. The first appellant, who is the father of the minor appellants 3 and 4, is permitted to withdraw the interest of minors once in three months directly from the Bank. Parties are directed to bear their own costs. The appellants are **directed to pay the court fee** for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

27.09.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accident Claims Tribunal/
   Special District Court for MCOP Cases,
   Tiruchirappalli.

2. The Record Keeper,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.443 of 2020

Dated : 27.09.2023