BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.07.2023

Pronounced on : 24.07.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)No.542 of 2016
and
C.M.P.(MD)No.6559 of 2016

M/s.Oriental Insurance Company represented
by its Divisional Manager,
PL.A Building, 1st Floor,
Door No.12 A,
Kovai Road, Karur,
Karur District. ... Appellant/ 2nd Respondent

Vs.

1. Subburaj ... 1st Respondent/ 1st Claimant

2. Ponnazhagu ... 2nd Respondent/ 2nd Claimant

3. Arjunan ... 3rd Respondent/ 1st Respondent

(R3 given up)

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow the appeal and modify the award passed in

M.C.O.P.No.464 of 2012 dated 15.11.2012 on the file of the Motor Accident Claims Tribunal cum 4th Additional District Judge, Tirunelveli, Tirunelveli District.

For Appellant	: Mr.C.Jawahar Raveendran
For R1 & R2	: Mr.A.Sivasubramanian
For R3	: Given up

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.464 of 2012 dated 15.11.2012 on the file of the Motor Accident Claims Tribunal/4th Additional District Court, Tirunelveli.

2. The appellant/insurer, who was directed to pay compensation of Rs.4,20,000/- (Rupees Four Lakhs and Twenty Thousand only) with interest at 8% per annum and costs to the respondents 1 and 2/claimants for the death of one minor boy aged 16 years, consequent to an accident occurred on 24.02.2012, challenged the quantum of compensation awarded at, by the Tribunal.

3. The main contention of the appellant/insurer is that the deceased being a non-earning member, the Tribunal ought to have taken the income of the deceased as per Schedule II of Motor Vehicles Act, that the Tribunal ought to have fixed the income of the deceased at Rs.15,000/- (Rupees Fifteen Thousand only) per annum and thereafter, deduct 1/3 of the income for his personal expenditure, that the Tribunal has committed an error in fixing the monthly income of the deceased at Rs.3,000/- (Rupees Three Thousand only) and that awarding of Rs.3,90,000/- (Rupees Three Lakhs and Ninety Thousand only) for loss of dependency by the Tribunal is absolutely without any basis and is not in accordance with law.

4. The learned counsel appearing for the appellant/insurer would submit that the deceased was aged 16 years and was studying 11th standard at the time of alleged occurrence, that the respondents 1 and 2/claimants have not taken any stand that the deceased was doing some other work during non-school hours and that therefore, the very fixation of monthly income of the deceased boy at Rs.3,000/- (Rupees Three Thousand only) is very much excessive and is not in accordance with law.

5. Admittedly, the appellant/insurer has not challenged the liability mulcted on it, but on the other hand, has specifically challenged the quantum of compensation awarded by the Tribunal.

6. The only point that arise for consideration is that whether the quantum of compensation arrived at by the Tribunal is just and proper and is in accordance with law?

7. The Tribunal, upon considering the evidence available on record, has given a finding that the deceased was aged 16 years and was studying 11^{th} standard at the time of alleged occurrence. The appellant/Insurer has not challenged the said finding.

8. It is specific case of the respondents 1 and 2/claimants that their deceased son was very active in sports activities and he own several prizes and that their son had already completed Karathe course. No doubt, the respondents 1 and 2/claimants have also produced the certificates under Ex.P.4 series and certificates with regard to Karathe under Ex.P.5 series. The appellant/insurer has not chosen to challenge the same before the

Tribunal as well as before this Court. Considering the above, it is clearly evident that the deceased boy was a bright student, by participating actively in sports and by completing Karathe courses.

9. As already pointed out, the Tribunal has fixed the notional income of the deceased at Rs.3,000/- (Rupees Three Thousand only) per month. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Kishan Gopal and another Vs. Lala and others*** reported in ***2014 (1) SCC 244,*** wherein, the Hon'ble Apex Court has fixed the annual income for the deceased boy aged 10 years at Rs.30,000/- (Rupees Thirty Thousand only) and applied multiplier 15 and the relevant passages are extracted hereunder:-

> "*18. ...... 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 & Ors. v. State of Bihar & Ors. 2, 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 irrecoupable 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 Corporation3, 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 Thomas4, 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."*

10. In ***Rajendra Singh and others Vs. National Insurance Company Ltd*** reported in ***2020 (7) SCC 256,*** the Hon'ble Supreme Court has confirmed the award of the Tribunal fixing annual income at Rs.36,000/- (Rupees Thirty Six Thousand only) deducting 50% and applying multiplier 15 for the deceased girl aged 12 years. Considering the above, the fixation of monthly income for 16 years old boy student at Rs.36,000/- (Rupees Thirty Three Thousand only) per annum cannot said to be excessive or unreasonable.

11. The Tribunal has rightly deducted 1/3 of the income towards the personal expenses of the deceased. In the case on hand also, the mother of the deceased was aged 37 years. As per the dictum laid down in ***Smt.Sarla Varma and others Vs. Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104*****,** the appropriate multiplier would be 15 and if the same is applied, the loss of dependency would come to Rs.24,000/- x 15 = Rs.3,60,000/- (Rupees Three Lakhs and Sixty Thousand only).

12. The Tribunal has awarded Rs.10,000/- (Rupees Ten Thousand only) for funeral expenses and Rs.20,000/- (Rupees Twenty Thousand only) for loss of love and affection. Our Hon'ble Supreme Court in ***National Insurance Company Ltd., vs. Pranay Sethi and others*** reported in ***2017 ACJ 2700*** has permitted to award Rs.40,000/- towards spousal consortium. But, subsequently, the Hon'ble Supreme Court in ***Magma General Insurance Company Ltd, Vs. Nanu Ram alias Chuhru Ram and others*** reported in ***(2018) 18 SCC 130***, has held that the right to consortium would include the company, care, help, comfort, love and affection, guidance, solace, etc., which is a loss to his family. The Hon'ble Supreme Court interpreted consortium to be a compendious term, which

encompasses (i) spousal consortium, to be awarded to the surviving spouse, (ii) parental consortium to be awarded to the children upon the premature death of their parents and (iii) filial consortium to be awarded to the parents for the loss of their children. Recently, the Hon'ble Apex Court in ***The New India Assurance Company Ltd. Vs. Smt.Somwati and others,*** has reiterated the above position and further held that the amount to be awarded for loss of consortium will be as per the amount fixed in ***Pranay Sethi'****s* case. But, at the same time, they have specifically observed that no amount should be awarded under the separate head of loss of love and affection.

13. The respondents 1 and 2/claimants being the parents of the deceased are certainly entitled to get Rs.40,000/- (Rupees Forty Thousand only) each towards loss of parental consortium. The respondents 1 and 2/ claimants are also entitled to get Rs.15,000/- (Rupees Fifteen Thousand only) for funeral expenses and Rs.15,000/- (Rupees Fifteen Thousand only) for loss of estate under the conventional heads.

14. No doubt, the respondents 1 and 2/claimants have not challenged the quantum of compensation. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Surekha and others vs. Santosh and others (C.A.No.476 of 2020 dated 21.01.2020)*** wherein, the Hon'ble Apex Court has held as follows:-

> *"2. This appeal takes exception to the judgment and order dated 04.01.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No.2564 of 2016, whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs.49,85,376/- (Forty-Nine Lakh Eighty-Five Thousand Three Hundred Seventy-Six Only), however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.*
>
> *3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants."*

15. Considering the above, the respondents 1 and 2/claimants are entitled to get total compensation of Rs.4,70,000/- (Rupees Four Lakhs and Seventy Thousand only). Though the Tribunal has awarded 8% interest per annum, this Court decides that the respondents 1 and 2/ claimants are entitled to get 7.5% per annum. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S. No.	**Description**	**Amount awarded by Tribunal (Rs.)**	**Amount awarded by this Court (Rs.)**	**Award confirmed or enhanced or granted or reduced**
1.	Loss of dependency	3,90,000	3,60,000	Reduced
2.	Funeral expenses	10,000	15,000	Enhanced
3.	Loss of love and affection	20,000	Nil	Nil
4.	Loss of estate	Nil	15,000	Granted
5.	Parental consortium (respondents 1 & 2)	Nil	80,000 (Rs.40,000/- x 2)	Granted
	Total	**4,20,000**	**4,70,000**	**Enhanced by Rs.50,000/-**

16. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.4,20,000/- (Rupees Four Lakhs and Twenty Thousand only) is hereby enhanced to **Rs.4,70,000/-**

(Rupees Four Lakhs and Seventy Thousand only) together with interest at 7.5% per annum and costs and out of the said compensation amount, the first respondent/first claimant is entitled to get **Rs.1,70,000/- (Rupees One Lakh and Seventy Thousand only)** and the second respondent/second claimant is entitled to get **Rs.3,00,000/- (Rupees Three Lakhs only).** The appellant/Insurance Company is directed to deposit the modified award amount with accrued interests and costs to the credit of M.C.O.P.No.464 of 2012 on the file of Motor Accident Claims Tribunal/4th Additional District Court, Tirunelveli, 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 respondents 1 and 2/ claimants are entitled to get their shares as per the apportionment fixed by this Court. The respondents 1 and 2/claimants are permitted to withdraw their shares together with interest. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

24.07.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

K.MURALI SHANKAR,J.

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To:

1. The Motor Accident Claims Tribunal / 4th Additional District Court, Tirunelveli.

Pre-Delivery Order made in
C.M.A.(MD)No.542 of 2016
and
C.M.P.(MD)No.6559 of 2016

Dated : 24.07.2023