



C.M.A. No. 1724 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1724 of 2021
and C.M.P. No.1724 of 2021

The New India Assurance Co. Ltd.,
Bombay Mutual Building, 6th Floor,
No.232, N.S.C. Bose Road,
Chennai 600 001.

... Appellant / 2nd Respondent

Vs.

1. Rekha
 2. P. Elumalai
 3. S. Tamilarasi
- ... Respondents / Petitioners
- ... Respondents / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 20.09.2020 passed in M.C.O.P. No. 550 of 2019 on the file of the III Judge (F.A.C), Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : M/s. K. Vinod

For RR 1 & 2 : Mr. L.K. Manjunath
(M/s. Sri Manjunath Law Associates)



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For R3 : No Appearance
JUDGMENT

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This Civil Miscellaneous appeal has been filed by the insurance company seeking reduction of compensation awarded in M.C.O.P. No. 550 of 2019, dated 20.11.2020 on the file of the III Judge (F.A.C), Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 25.09.2018, at about 17:30 hours, the deceased Manikandan, who was aged about 6 years at the time of occurrence, was walking at left side of the Polur - Chetpet Road, near Devikapuram Muthalamman Nagar, Tiruvannamalai District, at that time, a lorry bearing Registration No.TN-11-AD-9571 driven by its driver in a rash and negligent manner, hit on the deceased causing grievous injuries. The deceased was admitted in various hospitals for treatment and succumbed to injuries at Rajiv Gandhi Government General Hospital, Chennai on 22.11.2018. A criminal case was registered against the driver of the lorry in



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Cr.No.359/2018 under section 279, 337 of IPC on the file of Inspector of Police, Chetpet Police Station, Tiruvannamalai District. For the loss of deceased Manikandan, the claimants, who are the parents of the deceased has filed claim petition seeking compensation for a sum of Rs.30,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

4. The first respondent is the owner of the offending lorry has not contested the claim and remained ex-parte. The second respondent - insurance company, who is the insurer of the offending lorry has filed a counter and contended that the driver of the first respondent's lorry has no valid driving licence at the time of accident. The insurance company has further contended that the accident was taken place only due to the negligence on the part of the deceased and the compensation claimed under various heads are on the higher side.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.12 were marked. On the side of the respondent, no witnesses were examined and no exhibits were marked.



6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the driver of the first respondent's lorry is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.17,80,607/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and fixed the liability on the part of the insurance company to indemnify the first respondent and to pay compensation to the claimants.

7. Aggrieved over the quantum of compensation awarded, the insurance company has filed this appeal seeking reduction of compensation.

8. The learned counsel appearing for the insurance company submits that the Tribunal without any basis fixed the notional income of Rs.10,000/- per month and also awarded 50% future prospectus, while awarding compensation adopted multiplier as '18', which is against the settled principle laid down in Hon'ble Apex Court judgements in ***Meena Devi vs. Nunu Chand Mahto @ Nemchand Mahto and others [2022 LiveLaw (SC) 841]***, hence prays to modify the award.



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9. The learned counsel appearing for the claimants submits that the deceased was aged about 6 years, at the time of accident and also he is an intelligent child of the claimants and based on the evidences placed on record, the Tribunal has rightly fixed the notional income and awarded a just compensation, hence there is no need for any interference in the award of the Tribunal.

10. I have heard the submissions made on both sides and perused the materials available on record.

11. Recently, the Apex Court judgment in ***Meena Devi vs. Nunu Chand Mahto @ Nemchand Mahto and others*** cited supra based on the judgement of ***Kishan Gopal and another vs. Lala and others [2014 1 SCC 244]***, has fixed notional income of Rs.30,000/- per annum, awarded Rs.5,00,000/- including Rs.50,000/- under other conventional heads. In this case, the Tribunal has not followed the previous judgements of the Apex Court, which prescribes fixing of notional income and II schedule of the Motor Vehicles Act for adopting multiplier, but the Tribunal has deviated



from the same and fixed the notional income of Rs.10,000/- per month on the deceased minor child and granted 40% future prospectus, which is not in accordance with the principle laid down in the Apex Court judgements cited supra.

12. The learned counsel for the claimant relied on this Court judgment in *K. Kalaiselvi and another vs. The Managing Director, TNSSTC* in *C.M.A. No.2845 of 2015, dated 08.12.2016*, wherein the judgement of Apex Court in *Kishan Gopal and another vs. Lala and others* cited supra, has not been considered and for the loss of 12 years boy therein, this Court has fixed the notional income of the deceased at Rs.60,000/- per annum and adopted the multiplier as per the age of the deceased mother and quantified Rs.9,60,000/- (Rs.60,000/- X 16) as compensation and also followed the Hon'ble Apex Court judgment in *Kanhsing and another vs. Tukaram and others [Civil Appeal No.347 of 2015 arising out of SLP (C) No.976 of 2014]*, awarded Rs.1,00,000/- towards loss of love and affection.

13. This Court in *Stalin and another vs. S. Baskaran and another*



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in **C.M.A. No.4422 of 2019, dated 17.03.2021**, wherein for the loss of 14 years boy, this Court has fixed the notional income of Rs.45,000/- per annum and as per II Schedule of the Motor Vehicles Act, fixed the multiplier as "15" and awarded compensation towards pecuniary loss.

14. In **Divya vs. The National Insurance Co. Ltd. and Another [2022 LiveLaw (SC) 892]**, the Apex Court has fixed the multiplier of "15" for the victim upto the age group of 15 years as per the previous Three Judges Bench judgment in **Reshma Kumari and Others Vs. Madan Mohan and Another [(2013) 9 SCC 65]**.

15. This Court in **Iffco Tokio Gen. Ins. Co. Ltd. Vs. B. Anithadevi and Others [2022 (2) TNMAC 731]**, for the deceased minor aged about 7 years, fixed a sum of Rs.3,000/- per month and deducted one-third of his income towards his personal and living expenses and by adopting multiplier of "15" and awarded a compensation for a sum of Rs.3,60,000/- under the head loss of dependency.

16. Based on all the above previous observations of Apex Court



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and considering the date of accident, this Court is of the view that fixing Rs.40,000/- per annum as the notional income of the minor deceased herein would be proper and by adopting the multiplier as "15", this Court is inclined to award Rs.6,00,000/- (Rs.40,000/- X 15) under the head pecuniary loss and Rs.50,000/- under the conventional head. Based on Ex.P.3- medical bills, this Court is also inclined to award Rs.1,48,607/- under the head medical expenses to the claimant. Accordingly, total compensation of **Rs.7,98,607/-** (Rs.6,00,000/- + Rs.50,000/- + Rs.1,48,607/-) is awarded to the claimants.

17. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.17,80,607/- is hereby reduced to **Rs.7,98,607/- [Rupees Seven Lakh Ninety Eight Thousand Six Hundred and Seven only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent -Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the



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credit of M.C.O.P.No.550 of 2019 on the file of the III Judge, Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai. On such deposit, the claimants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

03.01.2024

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The III Judge,
Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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