IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.02.2024	Pronounced on 28.03.2024

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.1875 & 2765 of 2021

C.M.A.No.1875 of 2021

1.T.Sasikala
W/o.Thirumoorthy

2.Thirumoorthy
S/o.Saminathan
Both appellants are residing at
No.27, Kalimanpuram, Mount Road
Anna Salai, Chennai 600 002 ... Appellants

Vs.

1.M.Ramesh Kumar
Thatha Rettaimalai Street
Thiruvallur District 631 207

2.United India Insurance Co. Ltd.,
Motor Third Party Hub
Silingi Building, 4th Floor,
No.134, Greams Road
Chennai 600 006 ... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 23.01.2021 in MCOP.No.3170 of 2018 on the file of the Motor Accident Claims Tribunal (Chief Jude, Court of Small Causes), Chennai.

For Appellants : Mr.R.Nalliyappan

For Respondents : Ms.C.Harini (for R2)
for Mr.M.B.Gopalan Associates

C.M.A.No.2765 of 2021

United India Insurance Co. Ltd.,
Motor Third Party Hub
Silingi Building, 4th Floor,
No.134, Greams Road
Chennai 600 006 ... Appellant

Vs.

1.T.Sasikala
W/o.Thirumoorthy

2.Thirumoorthy
S/o.Saminathan
Both appellants are residing at
No.27, Kalimanpuram, Mount Road
Anna Salai, Chennai 600 002

3.M.Ramesh Kumar
Thatha Rettaimalai Street
Thiruvallur District 631 207 ... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in MCOP.No.3170 of 2018 dated 23.01.2021 on the file of the Motor Accident Claims Tribunal (Chief Jude, Court of Small Causes), Chennai.

For Appellant : Ms.C.Harini
for Mr.M.B.Gopalan Associates

For Respondents : Mr.R.Nalliyappan (for R1 & R2)

JUDGMENT

CMA.No.1875 of 2021 has been filed by the claim Petitioners seeking enhancement and CMA.No.2765 of 2021 has been filed by the Insurance Company challenging the quantum of compensation.

2.Both the Appeals have been filed against the Judgment and Decree dated 23.01.2021 in MCOP.No.3170 of 2018 on the file of the Motor Accident Claims Tribunal (Chief Jude, Court of Small Causes), Chennai.

3.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

4.The legal representatives of the deceased Gokulakrishnan (Minor) filed

MCOP.No.3170 of 2018, seeking compensation.

5.The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are not under challenge in this Appeal. Accordingly, the finding rendered by the trial Court that the accident taken place due to the rash and negligent driving of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are hereby confirmed.

6.During trial, on the side of the claim Petitioners, PW1 & PW2 were examined & Ex.P1 to Ex.P11 were marked and on the side of the Respondents, none was examined and no document was marked.

7.Heard the learned counsel appearing on behalf of the claim Petitioners and the learned counsel appearing on behalf of the Insurance Company.

8.It is a case of fatal. As per Ex.P9/birth certificate, the date of birth of the deceased is 14.10.2006. The date of accident is 07.02.2018 and therefore, on the date of the accident, the deceased completed 11 years. The deceased is a student, having no income. Since he is not a earning member, there is no necessity to deduct the personal expenses. In order to award future prospects, the decision of this Court in CMA.No.1625 of 2020 dated 10.11.2020 is referred, wherein it was held as follows:

> *"10. For assessing the notional income of a child, the Hon'ble Supreme Court in Lata Wadhwa Vs. State of Bihar reported in (2001) 8 SCC 197 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. However, the parents are entitled to claim for the prospective loss they suffered and that they had a reasonable expectation of pecuniary benefit had the child lived and the loss of the child to the parents is irrecoupable and no amount of money can compensate them. Considering the facts of that case, the Hon'ble Supreme Court has held that in cases of children between the age group of 10-15 years, the annual contribution can be fixed at Rs.24,000/- and multiplier of 15 be applied."*
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> ...
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> *"13. Recently, the Hon'ble Supreme Court in Rajendra Singh Vs. National Insurance Company Limited reported in CDJ 2020 SC 585 has confirmed the award passed by the Tribunal for a sum of Rs.2,95,000/- for the death of a 12 year old boy. Further, in*

respect of future prospects, the Hon'ble Supreme Court has noted that the judgement in R.K.Malik case (cited supra) does not considered Satender case (cited supra). The relevant paragraph of the said judgement is as follows:

> *"15. The deduction on account of contributory negligence has already been held by us to be unsustainable. The determination of a just and proper compensation to the appellants with regard to the deceased child, in the entirety of the facts and circumstances of the case does not persuade us to enhance the same any further from Rs.2,95,000/- by granting any further compensation under the separate head of "future prospects". It may only be noticed that R.K. Malik (cited supra) does not consider Satender (cited supra) on the grant of future prospects as far as children are concerned.""*

...

"14. Further, a Division Bench of this Court in National Insurance Co. Ltd., Vs. R.Vimala reported in 2015 (2) TN MAC 490 (DB) for the death of a 9 year old boy fixed the notional monthly income as Rs.5,000/- and deducted 1/3 towards personal expenses and awarded a sum of Rs.8,92,000/-."

Further, with regard to deduction towards person expenses in the Judgment of this Court dated 17.03.2023 made in CMA.(MD)No.847 of 2022, it was held as follows:

> *"In respect of deduction for personal expenses for a minor child, this Court in Divisional Manager, Reliance General Insurance Co. Ltd. Vs. Govindaraji reported in 2021 (2) TN MAC 271, in paragraph 18 has held as follows:*
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> > *"18. So far as minors are concerned, they are non earning members and there is no occasion for them to spend money towards the personal expenses and there cannot be any deduction towards their personal expenses. In Lata Wadhwa case (cited supra) and Kishan Gopal case (cited supra). The Hon'ble Supreme Court after fixing the notional monthly income of the minor applied the multiplier and taken the entire amount as the loss of dependency and no deduction was made for their personal expenses. In the above circumstances, this Court is of the view that there cannot be any deduction towards personal expenses from the notional income of deceased minors."*

Accordingly, taking into consideration the age of the deceased viz., 11 years, this Court fixed the notional income at Rs.5,000/- and applied '15' as multiplier. and hence, the the pecuniary loss sustained by the claim Petitioners are re-assessed as follows:

Rs.5,000/- x 12 x 15 = Rs.9,00,000/-

9.The claim Petitioners as a parents are entitled for Rs.75,000/- each towards loss of love and affection. The Tribunal has awarded a sum of Rs.15,000/- towards funeral expenses. The same is confirmed. Apart from a sum of Rs.15,000/- each is awarded towards loss of estate and transportation.

S.No.	*Head*	*Amount (Rs.)*
1	Pecuniary loss	900000
2	Loss of Love and affection	150000
3	Transportation	15000
4	Funeral expenses	15000
5	Loss of Estate	15000
	Total Compensation	1095000

In total, the claim Petitioners are entitled to a sum of Rs.10,95,000/- (Rupees ten lakh and ninety five thousand only) and the interest awarded by the Tribunal at the rate of 7.5% per annum is also confirmed.

10.In fine,

(i) CMA.No.1875 of 2021 stands partly allowed, enhancing the compensation from Rs.9,55,000/- to Rs.10,95,000/- to the extent indicated above, and consequently, CMA.No.2765 of 2021 stands dismissed. No costs.

(ii) the Insurance Company is directed to deposit the enhanced award amount, with 7.5% interest per annum and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, all the claim Petitioners/Appellants are entitled to get their share in the enhanced award amount, as per the ratio of apportionment made by the Tribunal. The claim Petitioners are permitted to withdraw their entire share with proportionate interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal.

(iv) the claim Petitioners are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

28.03.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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RMT.TEEKAA RAMAN.J,

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To

The Chief Judge
Court of Small Causes
Chennai 600 104

Pre-delivery Judgment made in

C.M.A.Nos.1875 & 2765 of 2021

Dated: 28.03.2024