IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.2486 of 2023
and C.M.P.No.23124 of 2023

M/s.IFFCO-TOKIO General
Insurance Company Limited,
'IFFCO BHAVAN', IV Floor,
No.128, Habibulla Road,
T- Nagar, Chennai – 600 017. .. Appellant

Vs.

1.Balakrishnan

2.Rekha

3.Raliya Banu

4.Mukundan .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the decree and judgment dated 24.09.2019 passed in M.C.O.P.No.192 of 2016 on the file of the Motor Accident Claims Tribunal, Special District Court, Villupuram.

For Appellant	:	Mr.J.Michael Visuvasam
For RR 1 & 2	:	Mr.S.Chendur Eashwaran for Mr.E.C.Ramesh

JUDGMENT

The Insurance Company has filed the present appeal against the award passed by the Motor Accident Claims Tribunal, Special District Court, Villupuram, in M.C.O.P.No.192 of 2016 dated 24.09.2019.

2.The claimants who are the parents filed the claim petition in M.C.O.P.No.192 of 2016 on the ground that on 31.01.2016 the deceased Yuvashree, aged about 5 years was traveling in a two wheeler along with her aunt as a pillion rider at Trichy – Chennai National Highways and at about 12.50 hours, the vehicle was halted and at that point of time, the offending vehicle which was coming from Chennai and going towards Villupuram was driven in a rash and negligent manner and as a result of which, it dashed on the two wheeler and the minor Yuvashree was thrown out and she sustained grievous injuries and she succumbed to the injuries. It is under these circumstances, the claim petition came to be filed before the Tribunal.

3.The Tribunal found that the accident had taken place only due to the rash and negligent driving on the part of the offending vehicle. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.9,70,000/- under various heads as follows:

1.Loss of dependency	-	Rs.9,00,000/-
2.Filial Consortium	-	Rs.40,000/-
3.Loss of Estate	-	Rs.15,000/-
4.Funeral Expenses	-	Rs.15,000/-
Total		Rs.9,70,000/-

4.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5.The Insurance Company aggrieved by the quantum of compensation fixed by the Tribunal, has filed the present appeal before this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the respondents 1 & 2.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.This Court has also carefully gone through the award passed by the Tribunal.

9.The main ground that was urged by the learned counsel for the appellant was pertaining to the annual income that was fixed by the Tribunal at Rs.60,000/-. The learned counsel by relying upon the judgment of this Court in the case of ***P.Murugesan and another Vs. Ravikumar and another*** in ***C.M.A.No.1114 of 2024*** dated ***11.06.2024*** submitted that the Tribunal ought to have fixed a sum of Rs.45,000/- as annual income. In the instant case, the father was aged about 35 years and the mother was aged about 26 years. It is clear from Ex.P22 that there was another son named Mukesh Raj apart from the deceased Yuvashree, who was the younger child.

10.This Court while dealing with the compensation to be fixed while dealing with the cases involving the death of a minor, held as follows in ***P.Murugesan*** case, referred to *supra*:

> *"10.In the instant case, the accident had taken place in the year 2017. In all the judgments that were relied upon by the learned counsel for*

the Insurance Company, it is seen that the accident had taken place during 1990s and in one case during the year 2003. Therefore, whatever amount was fixed in these judgments cannot remains static and the Court has to necessarily take into account the price index and the cost of living and accordingly increase the notional annual income at a future point of time.

11.I had an occasion to deal with this issue in CMA No.1814 of 2022, dated 12.04.2024, which was relied upon by the learned counsel for the appellants. The relevant portions in the order are extracted hereunder:

> 9.The main issue that was urged by learned counsel for appellant insurance company is that the Tribunal has fixed the notional income of the deceased child at Rs.60,000/- p.a. which is on the higher side. Learned counsel, by relying upon various judgments, submitted that the notional income for the minor child cannot exceed Rs.30,000/- p.a. Insofar as the multiplier that was adopted, learned counsel fairly submitted that the Tribunal ought to have adopted multiplier '15' instead of '13'. Insofar as the other heads under which the compensation was fixed, no serious objections were raised.
>
> 10.While fixing compensation for a child, it is important for the Court to take note of the age of the parents. If the age of the parents is low and they are capable of having another child, that becomes a criteria

for fixing the notional income. In such cases, the notional income can be at a lower side. The notional income can be fixed in those cases at Rs.30,000/- as suggested by the Apex Court in Meena Devi v. Nunu Chand Mahto alias Nemchand Mahto and others [(2023) 1 SCC 204].

11.This Court has consistently taken a view that insofar as minor children are concerned, the notional income can be fixed between Rs.30,000/- and Rs.60,000/-. Useful reference can be made to the judgment passed in C.M.A.No.2326 of 2023, dated 29.09.2023. 12. In the instant case, the age of the father was 39 years and the age of the mother was 34 years at the time of filing the claim petition. At that age, it is quite unlikely to go for an another child. Therefore, this Court is inclined to fix the notional income at Rs.50,000/- p.a. Considering the age of the child, multiplier '15' is adopted. Hence, the loss of dependency can be fixed at Rs.7,50,000/- [50,000 * 15].

12.It is clear from the above that this Court has consistently taken a view that insofar as minor children are concerned, the notional annual income can be fixed in the range of Rs.30,000/- to Rs.60,000/-. Due consideration must also be given to the age of the parents and it must be seen if they are likely to have another child.

13.In the case in hand, the father was aged about 35 years and the mother was aged *about 25 years and therefore, there is a clear likelihood of having an another child. That apart, there is also no indication in the order that the deceased child was the only child of the claimants.*

*14.In the light of the above discussion, this Court is inclined to fix the notional annual income at Rs.45,000/-. Thus the compensation under the head of 'loss of dependency' works out to Rs.6,75,000/- [45000 * 15 multiplier].”*

11.The above judgment will be squarely applicable to the facts of the present case. The accident in this case had taken place in the year 2016. There is a likelihood of the parents of the deceased having another child. That apart, there was also a male child to the claimants named as Mukesh Raj. Hence, it will be more appropriate to fix the annual income at Rs.45,000/-.

12.In the light of the above discussion, the compensation under the head of loss of dependency is calculated as follows:

Rs.45,000/- X 15 = Rs.6,75,000/-

13.The Tribunal has only granted a sum of Rs.40,000/- under the head of loss of consortium. Considering the fact that both the parents had lost their young child, a sum of Rs.44,000/- each can be fixed for both the parents and accordingly, the compensation under the head of loss of consortium can be fixed at Rs.88,000/-.

14.The compensation that has been fixed under the other heads are reasonable and it does not need the interference of this Court.

15.In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

1.Loss of dependency	-	Rs.6,75,000/-
2.Loss of Consortium	-	Rs.88,000/-
3. Funeral Expenses	-	Rs.15,000/-
4.Loss of Estate	-	Rs.15,000/-
Total		Rs.7,93,000/-

16.Accordingly, the award passed by the Tribunal is modified and the total compensation fixed by the Tribunal at Rs.9,70,000/- is reduced to Rs.7,93,000/-. The learned counsel for the appellant submitted that the entire compensation amount has been deposited with interest. In view of the same, the claimants will be entitled to withdraw the compensation amount of Rs.7,93,000/- with interest at the rate of 7.5% per annum till the date of deposit. The balance amount remaining can be permitted to be withdrawn by the appellant – Insurance Company. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

17.In the result, the Civil Miscellaneous Appeal is partly allowed in the above terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

09.07.2024

krk
Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Special District Judge,
Motor Accident Claims Tribunal,
Special District Court,
Villupuram.

2.The Section Officer,
VR Section,
Madras High Court, Chennai.

N.ANAND VENKATESH, J.

krk

C.M.A.No.2486 of 2023

09.07.2024