IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.11.2024

Pronounced on : 06.12.2024

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.1767 of 2022

1.Sheelarani
2.Sakthivel ... Appellants / Petitioners

Vs

1.Sasirekha

2.National Insurance Company Ltd.,
Divisional Office:
No.110, Jawaharlal Nehru Salai
Pondicherry. ... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, 1988, praying to allow this appeal by enhancing the award passed by the III Additional District Sessions Judge, Cuddalore at Vridhachalam in MCOP.No.671/2017 dated 4.4.2022.

For Appellants : Mr.S.Udhayakumar

For Respondents : Ms.R.Sreevidya for R2
R1 - Dispensed with

JUDGMENT

This is an unfortunate case wherein a blooming life of a nine-year-old boy was brutally plucked in a road accident. On 20.11.2017, at around 4.50 pm, one Sathiyaseelan, a student of Jayapriya school in Vridhachalam, was in the process of alighting from the school van when a lorry bearing number TN 69 E 8766 collided with the school van from the rear, as a result of which the child was thrown out of the van, and suffered serious injuries. He was then removed to the Government Hospital, Vridhachalam, from where he was referred to Government Hospital, Cuddalore, but on the way the little boy bid his farewell to planet earth.

1.2 Seeking compensation, the parents of the boy moved the MACT with their claim petition, and sought Rs.25.0 lakhs as compensation against the owner and the insurance company of the offending lorry.

1.3 The Tribunal, taking note of the fact that the child was merely nine years old and hence incapable of earning his own income, fixed the income of the child notionally at Rs. 30,000/- per annum and applied 15 as the multiplier to arrive at Rs. 4,50,000/- and after awarding compensation on other conventional heads, the MACT passed its award for Rs. 5,55,000/-. The break-up is as below:

Sl.No.	***Heads of compensation***	***Amount Awarded by Tribubal (in Rs.)***
1.	Loss of income	4,50,000.00
2.	Loss of love and affection	40,000.00
3.	Funeral expenses	15,000.00
4.	Future prospectus	50,000.00
Total :		5,55,000.00

2. Aggrieved by the inadequacy of the compensation awarded, the parents of the deceased child, have preferred the present appeal.

3. The learned counsel for the appellants argued:

a) At the time of the accident, the deceased child was only nine years old with a good probability for a bright future. The paltry sum of Rs. 30,000/- p.a. fixed as the notional income of the deceased child reflects the insensitivity of the tribunal to a human life, and its value. Further, the deceased child was the only child to his parents, born after ten years of their marriage.

b) The Tribunal has awarded a paltry sum of Rs. 40,000/- (Rs. 20,000/- for each claimant) for loss of love and affection when the appellants are entitled to at least Rs. 80,000/- per head for the loss of the child at a very tender age.

Reliance was placed on the ratio of Madras High Court in ***Divisional Manager, United India Insurance Co. Ltd. Vs Sakunthala and others***, [C.M.A. Nos. 2030 & 2033 of 2022, dated 19.09.2022]; and ***General Manager, Tamil Nadu State Transport Corporation Nagercoil Ltd. Vs Rajendrakumar and others***, [C.M.A. (MD) No. 13 of 2019 dated 23.08.2022].

4.Resisting the submissions made by the counsel for the appellants, the counsel for the second respondent submitted that the amount awarded by the Tribunal is adequate enough to compensate the loss suffered by the appellants, and therefore the award of the Tribunal requires no further enhancement. In furtherance of the submissions, the learned counsel relied on the judgment of this Court in ***The United India Insurance Co. Ltd. Vs Arumugam and another,*** [C.M.A. No. 408 of 2023, dated 16.03.2023]; the Karnataka High Court in ***Mahantesh Vs Netharavati and others***, [M.F.A.

No. 100096 of 2019 (MV) , dated 25.02.2022]; the Delhi High Court in ***Suraj Verma Vs Delhi Development Authority and others***, [2015 SCC Online Del 10355]; the Supreme Court in ***Rajendra Singh and others Vs National Insurance Co. Ltd. and others***, [(2020) 7 SCC 256]; ***Kurvan Ansari Vs Shyam Kishore Murmu***, [(2022) 1 SCC 317]; ***Meena Devi Vs Nunu Chand Mahto***, [(2023) 1 SCC 204]**;** and ***Kishan Gopal and another Vs Lala and others***, [(2014) 1 SCC 244].

5.1 The rival submissions are carefully weighed. Before determining whether the amount awarded by the Tribunal is adequate enough to compensate the loss and suffering of the claimants, the Court must first address whether the notional income fixed by the Tribunal accurately reflects the income of the nine-year-old. To state it differently, would the figure of Rs. 30,000/- p.a., be adequate to recompense the appellants in this case?

5.2 *Stricto sensu,* none can price a life. Still, a life, whenever is lost in a tortious act, law imposes an obligation on the tortfeasor to compensate the loss with damages, and hence valuing life in monetary terms becomes indispensable. The difficulty is in valuing it fairly. And often the key factor that guides the court is either the actual earning through a lawful avocation, or an ability to earn assessable income on the basis of a victim's proven skills or education qualification. Sadly a child does not fall in either of these categories. Till not long ago, law has very insensitively dealt with a child's life as one without any income and valued a child's life at insulting rate. Law has not realised that Sania and Sachin became what they are because they as children were allowed to blossom. Indeed, every child can achieve greatness that its ability to grow and to utilise the opportunity may grant it. To devalue a child's life for no fault of it, might not be the right approach. But law did it.

5.3 Before this Court is a case where a child of barely nine years has lost his life and failed to reach the sky which he could have, if allowed to live. Stars are not born but made, since they were fortunate not to get caught and perish under the wheels of an automobile. But, when a child withers before it can engage in any profitable activity lawfully, is it its fault? Unfortunately compensation law in road accident cases has become a genre in numbers and arithmetics. Hence it is necessary that the Courts must be conscious, nay, sensitive to the value of life and its prospects to grow and flourish.

6.1 When it comes to determining the compensation for the death of a child, the initial trend was to award a lump sum of money depending on the age of the child. In ***Lata Wadhwa and others Vs State of Bihar and others***, [(2001) 8 SCC 197], the Supreme Court, while dealing with a road accident that took place in 1989, divided children into two categories. The first category comprised children of ages 5 to 10 years and the second category comprised children between ages 10 and 15 years. For children in the first category, the Supreme Court fixed a flat Rs. 1,50,000/- as the compensation payable and added another Rs. 50,000/- under the head of “conventional figure” and arrived at Rs. 2,00,000/- as the total compensation payable. For children in the second category, the Supreme Court fixed Rs. 24,000/- p.a. as the notional income, fixed the multiplier as 15, and without making any deductions, the Court added Rs. 50,000/- under the head of “conventional figure” and arrived at Rs. 4,10,000/- as the total compensation payable.

6.2 Later on, the method of awarding lump sum of money for the death of children below the age of 10 years was discarded and the multiplier method came be to adopted as the single standard method for determining the compensation payable in cases of death of children of any age.

7. Turning to the notional income which is a factor for reckoning the compensation in multiplier method, in ***Kishan Gopal and another Vs Lala and others***, [(2014) 1 SCC 244], the notional income for a deceased ten-year-old child was fixed at Rs. 30,000/- p.a. for road accident of the year 1992. Though the figures determined in ***Kishan Gopal case*** came to be approved and followed in many other cases by the High Courts and the Supreme Court of India (in the instant case, by the Tribunal itself), it must be borne in mind that the figures calculated in ***Kishan Gopal case*** pertain to the year of 1992. Therefore, this Court takes cognizance of the same and refrains from using the same figures as the touchstone in the present case for the same does not accurately reflect the state of 2017. This Court's decision to do so is further strengthened by the observation of the Supreme Court in the case of ***Puttamma and others v. K.L. Narayana Reddy and another,*** [(2013) 15 SCC 45] wherein the Supreme Court persuaded the Courts to take into account the inflation and increasing costs of living while determining the notional income.

8. Whereas this Court in ***The Divisional Manager, United India Insurance Co. Ltd. Vs Sakunthala & others,*** [2022 (2) TN MAC 555 (DB)] and

Lakshmi and another Vs K. Govindaraj and another, [CMA. 2372 of 2022, dated 22.01.2024] has fixed the notional income of a deceased child at Rs. 60,000/- p.a. for the accident years 2017 and 2018 respectively. The learned counsel for the insurance company, on the other hand, placed reliance on the judgments of the Supreme Court in ***Rajendra Singh and others Vs National Insurance Co. Ltd. and others,*** [(2020) 7 SCC 256] and ***Kurvan Ansari Vs Shyam Kishore Murmu,*** [(2022) 1 SCC 317] wherein the Supreme Court had fixed the notional income at Rs. 36,000/- p.a. and Rs. 25,000/- p.a. for the accident years 2012 and 2004 respectively. This Court intends to remind the learned counsel that it may not be appropriate to peg a notional income fixed in one era to stay there for eternity. Indeed, Courts are bound to take into account the cost of inflation vide the ratio in ***Meena Devi Vs Nunu Chand Mahto,*** [(2023) 1 SCC 204] wherein it was held that the compensation payable in cases of death of children may vary from case to case.

9.Turning to the facts of this case, the tragic accident had taken place on 20.11.2017. This Court considers that Rs. 60,000/- p.a., after considering the inflation and cost of living at 2017 as determined by this Court in the

Sakunthala and ***Govindaraj*** cases, is appropriate notional income, and chooses to apply 15 as the multiplier without any deduction.

10.Therefore, the Court adopts Rs. 60,000/- p.a. as the notional income and 15 as the multiplier, and without making any deductions, the Court arrives at a total loss of income at Rs. 9,00,000/-. Therefore, the total loss of income is modified accordingly. And, the compensation awarded for “loss of love and affection” being on the lower end, this Court enhances the compensation under the head “loss of love and affection” to Rs. 50,000/- for each of the claimants. Further, considering the fact that the deceased child was a bright student and it is probable that he would have bettered the prospects of his family in the future, the compensation awarded under the head of “future prospects” is increased to Rs. 1,00,000/-. Since the child suffered fatal injuries immediately before his death, Rs. 50,000/- is awarded under the head of “pain and suffering”. The total compensation is accordingly modified as below:

Sl.No.	***Heads of compensation***	***Enhanced Award Amount (in Rs.)***
1.	Loss of income	9,00,000.00
2.	Loss of love and affection	1,00,000.00
3.	Funeral expenses	15,000.00

Sl.No.	***Heads of compensation***	***Enhanced Award Amount (in Rs.)***
4.	Future prospectus	1,00,000.00
5.	Pain and suffering	50,000.00
Total :		**11,65,000.00**

11. In result, this civil miscellaneous appeal is allowed. The second respondent insurance company is directed to pay Rs. 11,65,000/- to the claimants at the rate of 7.5%, less any sum deposited in the Tribunal pursuant to the order of the Tribunal dated 04.04.2022, within a period of eight weeks from the date of receipt of a copy of this judgment and the appellants are entitled to withdraw the awarded sum in the manner apportioned by the Tribunal. The appellants are required to pay the additional court fee for the enhanced portion of the award amount, if any. No costs.

06.12.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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To:

1.The III Additional District Sessions Judge,
Cuddalore at Vridhachalam.

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