IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.2699 of 2022

1.Rajendiran

2.Chitra ... Appellants/claimants

Vs.

1.Prema

2. The Branch Manager,
Bajaj Allianz General insurance Company Ltd.,
No.497/498, 5th Floor, Isana Kattima Building,
Poonamallee High Road,
Arumbakam, Chennai 600 106 ... Respondents /Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award of the Motor Accident Claim Tribunal (Special Court II) Jayankondam in M.C.O.P No.94 of 2019 (Jayankondam Sub Court MCOP No.137 of 2019 dated 17.03.2022.

For Appellant : Mr.P.Parthikannan

For Respondents : Mr.G.Vasudevamn for R2

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JUDGMENT

The appellants/claimants, not being satisfied with the quantum of compensation awarded by the Tribunal, have filed this appeal against the award passed in M.C.O.P No.94 of 2019 (Jayankondam Sub Court) MCOP No.137 of 2019 dated 17.03.2022 on the file of the Motor Accident Claim Tribunal (Special Court II) Jayankondam, seeking for enhancement of compensation.

2. The claimants are the parents of the deceased Vijayaraj, who was a 14 year old boy, studying in the 7th Standard. The deceased was traveling as a pillion rider driven by the 1st respondent on 17.05.2019 and the vehicle was going from south to north at Silambur to Pukuzhi Main Road and at about 10.00 a.m., the offending vehicle was driven in a rash and negligent manner and it dashed on the two wheeler and the minor boy sustained grievous injuries all over his body and unfortunately, he succumbed to the injuries. An FIR came to be registered in Crime No.112 of 2019. It is under these circumstances, the parents of the deceased filed a claim petition seeking for compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place due to the rash and negligent

driving on the part of the first respondent, who was riding the two wheeler. Having rendered such a finding, the Tribunal proceeded to fix the compensation and the total compensation was fixed at Rs.8,11,000/- in the following manner:

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Loss of income [(45000x 15)]	6,75,000/-
2.	Loss of love and affection	88,000/-
3.	Funeral expenses	16,500/-
4.	Loss of estate	16,500/-
5.	Transportation expenses	10,000/-
6.	**Loss of consortium**	5,000/-
	Total	**8,11,000/-**

The above compensation was directed to be paid with interest at 7.5% p.a. The claimants, not being satisfied with the compensation awarded by the Tribunal, have approached this Court seeking for enhancement of compensation.

4. Heard Mr.P.Parthikannan, learned counsel for

appellants/claimants and Mr.G.Vasudevamn, learned counsel for second respondent insurance company.

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

6. This Court also carefully went through the award passed by the Tribunal.

7. The main ground that was raised by the learned counsel for the appellant is that the Tribunal had fixed the notional income as Rs.45,000/- and applied the 15 multiplier and determined the compensation under the head of loss of income. The learned counsel submitted that the income that was fixed by the Tribunal is on the lower side.

8. In the case on hand, the deceased was a 14 year old boy, who was studying in the 7th standard. While fixing the loss of income insofar as minor children are concerned, it is relevant to take note of the

judgement of the Apex Court in ***[Kishan Gopal and another Vs. Lala and others]*** reported in ***2014 1 SCC 244***. The relevant portions are extracted hereunder :-

> ***34.*** *Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious Issues 1 and 2 by recording our reasons in the preceding paragraphs of this judgment and we have answered the point in favour of the appellants and also examined the claim of the appellants to award just and reasonable compensation in favour of the appellants as they have lost their affectionate 10-year-old son. For this purpose, it would be necessary for us to refer to the Second Schedule under Section 163-A of the MV Act, at Clause 6 which refers to notional income for compensation to those persons who had no income prior to the accident.*
>
> ***35.*** *The relevant portion of Clause 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 MV Act, is considered by this Court in Lata Wadhwa v. State of Bihar [Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197] while examining the tortious liability of the tortfeasor has examined the criteria for awarding compensation for death of children in accidents between the 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.

36. *After noting the submission made on behalf of Tisco in Lata Wadhwa case [Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197] 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.*

37. *Further, in Lata Wadhwa case [Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197] it was observed that insofar 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.*

38. *In our considered view, the aforesaid legal principle laid down in Lata Wadhwa case [Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197] 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.*

39. *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 Sarla Verma v. DTC [(2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 × 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 Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , which is referred to in Lata Wadhwa case [Lata Wadhwa v. State of Bihar,* *(2001) 8 SCC 197] 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.*

9. It is clear from the above that insofar as children are concerned, only a consolidated notional income can be fixed and the income cannot be fixed like how it is fixed to an adult. That apart, there is no question of determining the monthly income and adding future prospects towards the same.

10. As per the above judgement, the Apex Court had directed a sum of Rs. 30,000/- to be fixed as annual income for the children below 10 to 15 years. This amount was fixed by the Apex Court in the year 2013. In view of the same, this Court has to necessarily keep in mind the raise in price index and the cost of living and accordingly, the amount has to be increased. In other words, the basis of fixing income for children must be adopted and the amount that is determined cannot remain static

and it must increase by virtue of lapse of time.

11. In a recent judgement in ***[R.Booma and others Vs.Rengasamy and others]*** in ***Manu TN 191 2023***, the learned single Judge of this Court had fixed the yearly income of the child in that case, who was minor girl aged about five years as Rs.60,000/- The accident in that case had taken place in the year 2015. In the instant case, the accident had taken place in the year 2019. Therefore, some more increase can be made to the annual income and accordingly, the annual income in this case can be fixed at Rs.65,000/-.

12. Considering the above annual income fixed, the loss of income will work out to a sum of Rs.65,000 x 15 = 9,75,000/-

13. In the light of the above discussion, the compensation granted by the Tribunal is modified as follows :-

Sl. No.	*Compensation awarded under the head*	*Amount (in Rs.)*
1.	Loss of income [(65000x 15)]	9,75,000/-
2.	Loss of love and affection	88,000/-
3.	Funeral expenses	16,500/-
4.	Loss of estate	16,500/-
5.	Transportation expenses	10,000/-
6.	**Loss of consortium**	5,000/-
	Total	**11,11,000/-**

14. The compensation awarded by the Tribunal at Rs.8,11,000 /- is enhanced to Rs.11,11,000/-. The second respondent insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

15. The Tribunal has applied the Principle of Pay and recover. In view of the same, the compensation amount that is paid by the 2nd

respondent insurance company can be recovered from the 1st respondent.

16. In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

23.04.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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To

Motor Accident Claim Tribunal (Special Court II) Jayankondam

N.ANAND VENKATESH, J.

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