IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1551 of 2017
and
C.M.P. No.8160 of 2017

Branch Manager,
The Oriental Insurance Company Ltd.,
Mettu Street,
Thiruthiraipoondi,
Tiruvarur District. ... Appellant

vs.

1. Latha
2. Pakkirisamy
3. Minor Pavithra
4. Minor Bharathi
(Minors 3 & 4 represented by their mother and guardian 1st respondent herein
5. Ravi .... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree in M.C.O.P. No.90 of 2015, dated 20.04.2016 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Tiruvarur.

For Appellant : Mr.J.Chandran
For Respondents : Mr.Ma.Pa.Thangavel
for Mr.M.Lokesh
R1 to R4
R5 – Exparte

JUDGMENT

This appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Subordinate Court, Tiruvarur in M.C.O.P. No.90 of 2015, dated 20.04.2016. The accident victim is a Minor, who died as a result of an accident caused by a vehicle insured with the appellant.

2. The Tribunal under the impugned award has awarded a total compensation of Rs.11,80,000/- to the respondents / claimants as detailed hereunder:

Heads	*Amount awarded by the Tribunal (Rs.)*
Loss of dependency (Rs.9,000 - (9000x1/3) = 9000-3000 = Rs.6000/- x 12 = Rs.72,000/- Rs.72,000/- per annum x 15)	10,80,000/-
Loss of love and affection to parents each Rs.30,000/-	60,000/-
Loss of love and affection to parents each Rs.10,000/- to brother and children	20,000/-
Funeral expenses	10,000/-
Transportation	10,000/-
Total	**11,80,000/-**

3. The appellant / Insurance Company is aggrieved by the Tribunal's assessment with regard to the fixation of the notional income of the deceased (Minor). The Tribunal has fixed the notional income of the deceased at Rs.72,000/-p.a.

4. The learned counsel for the appellant / Insurance Company would rely upon the following decisions of the Hon'ble Supreme Court, in support of his contention that the fixation of the notional income of the deceased (Minor) at Rs.72,000/-p.a as excessive :-

(a) Kishan Gopal and another Vs. Lala reported in 2013 (2) TNMAC 358 (SC) and

(b) Rajendra Singh and others Vs. National Insurance Company Limited and others reported in 2020 7 SCC 256.

5. However, the learned counsel for the respondents / claimants would submit that the said decisions have no applicability to the facts of the instant case. He would submit that the assessment of the notional monthly income in those decisions pertaining to an accident, which happened very long time back. He would submit that the fixation of the notional monthly income of a Minor will depend upon the year of the

accident. In support of his contention, he drew the attention of this Court to the following Single Bench decisions of this Court :-

a) ***J.Kanagaraj and another Vs. Metropolitan Transport Corporation Ltd. reported in 2017 2 TNMAC 702***, which has also relied upon ***Kishan Gopal's*** case.

b) An unreported decision of the Hon'ble Mr.Justice Sunder Mohan in C.M.A No.19 of 2022 in the case of the ***National Insurance Co. Ltd. Vs. Suganya and 2 others in C.M.A. No.19 of 2022, dated 11.07.2023.***

6. Admittedly in ***Kishan Gopal's*** case rendered by the Hon'ble Supreme Court, the year of the accident is 1992, whereas the year of the accident in the present case is 2014. In ***Kishan Gopal's*** case after giving due consideration to the year of the accident, the fixation of the annual income of the deceased Minor was fixed at Rs.30,000/- per annum. Infact as seen from the latest decision of the Hon'ble Supreme Court relied upon by the learned counsel for the appellant in ***Rajendra Singh's*** case reported in ***2020 7 SCC 256***, it has been observed that there cannot be any precise fixation of the notional income of a deceased Minor.

7. The relevant paragraph in the decision of ***Rajendra Singh's*** case is extracted hereunder :-

> ***14. The income of the minor girl child is incapable of precise fixation. We find no reason to interfere with the assessed notional income of the second deceased. In R.K. Malik v. Kiran Pal, considering grant of future prospects for the deceased child aged about 10 years it was observed as follows : (SCC p. 14, paras 32-33)***
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> ***"32. A forceful submission has been made by the learned counsel appearing for the appellant claimants that both the Tribunal as well as the High Court failed to consider the claims of the appellants with regard to the future prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the courts below.***
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> ***33. On perusal of the evidence on record, we find merit in such submission that the courts below have overlooked that aspect of the matter while granting compensation. It is well-settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. It is incumbent upon the courts to consider the said aspect while awarding compensation."***

8. In the Single Bench decision relied upon by the respondents / claimants referred to supra, the learned Single Judge had considered the decision of ***Kishan Gopal's*** case and only thereafter has upheld the findings of the Tribunal with regard to the fixation of the notional income of the deceased Minor. In those decisions as well the Tribunal had fixed higher annual income for the deceased Minor than what was

fixed in ***Kishan Gopal's*** case. In the case on hand, the accident happened in the year 2014, the Tribunal has fixed the notional monthly income of the deceased Minor at Rs.9,000/-, but however has erroneously deducted 1/3rd though the deceased (Minor) was a bachelor at the time of the accident. The correct deduction ought to have been 50%. Instead of calculating the loss of dependency by adopting the deduction method, this Court by way of just compensation payable to the respondents / claimants fixes the loss of dependency at Rs.9,00,000/- calculated at Rs.60,000/-p.a. and by applying the 15 multiplier, which is applicable for any Minor upto the age of 15 years. Therefore, the loss of dependency awarded by the Tribunal at Rs.10,80,000/- is reduced to Rs.9,00,000/- by this Court.

9. Insofar as the compensation awarded by the Tribunal under various other heads viz., loss of love and affection to parents at Rs.30,000/- each and Loss of love and affection to siblings of the deceased at Rs.10,000/- each, funeral expenses, transportation are concerned the same is confirmed by this Court as no appeal has been filed by the respondents / claimants questioning the quantum of compensation awarded by the Tribunal under those heads.

10. For the foregoing reasons, the amount awarded by the Tribunal is reduced from Rs.11,80,000/- to Rs.10,80,000/- in the following manner:

Heads	*Amount awarded by the tribunal*	*Amount awarded by the Court*
Loss of dependency *Rs.9,000 - (9000x 1/3) = 6000 x 12 = Rs.72,000/- Rs.72,000/- per annum x 15 # Rs.60,000/- x 15	10,80,000/- *	9,00,000/- #
Loss of love and affection to parents each Rs.30,000/-	60,000/-	60,000/-
Loss of love and affection to parents each Rs.10,000/- to brother and children	20,000/-	20,000/-
Funeral expenses	10,000/-	10,000/-
Transportation	10,000/-	10,000/-
Total	**11,80,000/-**	**10,00,000/-**

11. In the result, this Civil Miscellaneous Appeal stands disposed of, by reducing the compensation awarded by the Tribunal under the impugned award from Rs.11,80,000/- to Rs.10,00,000/-. No costs. Consequently, connected miscellaneous petition is closed.

12. The learned counsel for the appellant / Insurance Company would submit that the entire amount awarded by the Tribunal has already

deposited by the Insurance Company before the Tribunal. Since the entire award amount has already been deposited and this Court has reduced the award amount, the appellant / Insurance Company is permitted to withdraw the excess amount deposited by them before the Tribunal by filing an appropriate application. The Tribunal is directed to transfer the award amount directly to the bank account of the respondents /claimants as per the same ratio of apportionment made by the Tribunal through RTGS, within a period of two weeks thereafter.

08.04.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

To
1. The The Sub Judge,
Subordinate Court,
Motor Accidents Claims Tribunal,
Tiruvarur.

2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

ABDUL QUDDHOSE, J.

vsi2

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