IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1114 of 2024

1.P.Murugesan
2.M.Kanaga .. Appellants

.Vs.

1.Ravikumar

2.M/s. National Insurance Company Limited
Divisional Office, Bharathidasan Salai
Cantonment, Trichy-1
Having Branch at Venkatesapuram
Perambalur. .. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount awarded by the Tribunal in M.C.O.P.No.758 of 2018 dated 24.01.2023, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.S.P.Yuvaraj

For Respondents : Mrs.N.B.Sureka [R2]
Set ex-parte [R1]

JUDGMENT

The claimants are the parents of the deceased, not being satisfied with the quantum of compensation fixed by the Tribunal have filed this appeal against the award passed by the Motor Accident Claims Tribunal, Principal District Judge, Perambalur in M.C.O.P.No.758 of 2018, dated 24.01.2023.

2.The case of the claimants is that their daughter Tejashree aged about 5 years was travelling in school Van on 16.12.2017 and was proceeding towards the school and at about 8.00 Am., when the Van came near Velankkanatha, Colony, the driver drove the vehicle in a rash and negligent manner and as a result, the Van capsized and the deceased and other school children sustained multiple grievous injuries. Unfortunately, the deceased succumbed to the injuries. An FIR came to be registered in Crime No.415 of 2017. It is under these circumstances, the claim petition came to be filed by the parents seeking for payment of 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 driver of the school Van had driven the vehicle in a rash and negligent manner which resulted in the accident. The Tribunal also found that there is violation of policy condition and therefore, the 2nd respondent – Insurance Company was directed to pay the compensation and recover the same from the 1st respondent.

4.After having rendered the above finding, the Tribunal proceeded to fix the total compensation at Rs.5,63,820/- under various heads as follows:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of dependency [Rs.30,000/- * 15]	4,50,000/-
2.	Filial Consortium (2 x 40,000)	80,000/-
3.	Funeral Expenses	15,000/-
4.	Loss of Estate	15,000/-
5.	Medical Bills	3,820/-
	Total	**5,63,820/-**

5.The above compensation was directed to be paid with interest at the rate of 7.5.% p.a. The claimants not being satisfied with the quantum of compensation fixed by the Tribunal have filed this appeal seeking for enhancement of compensation.

6.Heard Mr.S.P.Yuvaraj, learned counsel for the appellants, Mrs.N.B.Sureka, learned counsel for the 2nd respondent – Insurance Company.

7.This Court has carefully considered the submissions made on either side and the materials available on record. This Court also carefully went through the award passed by the Tribunal.

8.The learned counsel for the appellants by placing reliance upon the order passed by this Court in CMA No.3561 of 2021, dated 8.2.2022 and CMA No.1814 of 2022, dated 12.4.2024, submitted that the Tribunal ought to have fixed the notional annual income at Rs.50,000/-. Instead, the Tribunal had fixed the notional annual income at Rs.30,000/- which is on the lower side.

9.Per contra, the learned counsel for the 2nd respondent - Insurance Company by placing reliance upon the judgment of the Apex Court in **Lata Wadhwa and Others v. State of Bihar and Others** reported in **AIR 2001 SCC 3218**, **RK Malik case** in Civil Appeal No.3608 of 2009 dated 15.5.2009, **Kishan Gopal case** reported in **2013 2 Tanmac 358**, Rajendra Singh case in Civil Appeal Nos.2624 and 2625 of 2020 dated 18.6.2020 and Meena Devi case in SLP (Civil) No.5345 of 2019, dated 13.10.2022, submitted that the notional annual income fixed by the Tribunal at the rate of Rs.30,000/- is perfectly in order and there is no requirement to interfere with the same.

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.*
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> *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].

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

Sl. No.	Compensation awarded under the head	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	Loss of dependency	4,50,000/-	6,75,000/-
2.	Filial Consortium (2 x 40000)	80,000/-	80,000/-
3.	Funeral Expenses	15,000/-	15,000/-
4.	Loss of Estate	15,000/-	15,000/-
5.	Medical Bills	3,820/-	3,820/-
	Total	**5,63,820/-**	**7,88,820/-**

16. The compensation awarded by the Tribunal at 5,63,820/- is enhanced to 7,88,820/-. The 2nd respondent - Insurance Company is directed to deposit the enhanced compensation, less the amount already deposited, together with

interest @ 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. Insofar as the enhanced compensation of Rs.2,25,000/- is concerned, the appellants/ claimants will not be entitled for interest for the period of delay period of 133 days as was ordered by this Court in C.M.P.No.26954 of 2023, dated 24.04.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants/claimants. It is made clear that the pay and recovery ordered by the Tribunal is confirmed and the compensation that is paid by the 2nd respondent – Insurance Company can be recovered from the 1st respondent. 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 allowed in the above terms. No costs.

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

To

1.M/s. National Insurance Company Limited
Divisional Office, Bharathidasan Salai
Cantonment, Trichy-1
Having Branch at Venkatesapuram
Perambalur.

2.Motor Accident Claims Tribunal
Principal District Judge, Perambalur.

N. ANAND VENKATESH., J

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