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A.S.No.27 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Date :07.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.27 of 2022

1. M.Annamalai
2. AN.Meenakshi

... Appellants

Versus

Y.M.C.A. College of Physical Education,
Rep. by its Secretary,
Anna Salai, Cehnnai – 600 035.

... Respondent

PRAYER : This Appeal Suit has been filed under section 96 and Order XLI Rule 1 of Code of Civil Procedure to allow this appeal and set aside the judgment and decree passed in O.S.No.976 of 2015 dated 28.02.2020 on the file of the VII Additional City Civil Court, Chennai with costs throughout.

For Appellants : Mr.Kevin Sagaya Lazarus
for PLN Associates

For Respondent : No appearance



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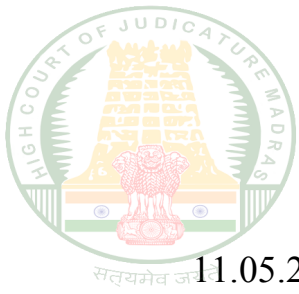
JUDGMENT

Challenging the decree and judgment of the trial Court fixing meagre compensation, the present appeal has been filed for enhancement of compensation.

2. The parties are arrayed as per their own ranking before the trial Court.

3. Brief facts of the case is as follows :

The first defendant gave a wide advertisement in the news papers about their summer campaign for swimming. The plaintiffs joined their son aged about 15 years in the swimming class run by the first defendant. The first defendant has assured safety of children. Other defendants have also assured that the swimming class will be conducted by a reputed and experienced coach with sufficient number of life guards in the pool to ensure full safety of the children. The plaintiff's son joined in the third summer camp held from



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11.05.2004 to 29.5.2004 and fees is sum of Rs.600/- and membership fees has also been paid. The plaintiff's son attended swimming class for two days. On 12.05.2004, on the second day of the swimming class, the son of the plaintiff drowned in the swimming pool due to negligent and careless attitude of the second defendant and other staff of the first defendant. When the first plaintiff rushed to hospital, he was informed that his son was brought dead and thereafter, he came to know that the second defendant and his staff have instructed the beginners to wear inflated tubes before getting into the water. Hence, according to them, the entire drowning has happened due to the negligence on the part of the defendants. Hence, compensation of Rs.50 lakhs is sought.

4. The defendants admitting that they have conducted swimming class, it is their contention that nearly 17 learners joined the course for the evening session between 4.30 to 5.30 p.m. and the Plaintiff's son also joined in the said session. Only reputed, qualified and experienced coaches were engaged for summer swimming campaign. It is also instructed that the parents have to



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accompany their children and it is also informed that as soon as they reach the pool, they should report to the coach allotted to the child and the plaintiff's son was also directed to report to the second defendant. Under the second defendant, there were 8 assistants and two life guards to take care of the swimming learners under their care and for training. The swimming pool was partitioned into two divisions one for learners and other for regular swimmers. The shallow area with a depth of 3ft to 4ft was meant for learners and while the deep pool area was earmarked for regular swimmers. On 12.05.04, the plaintiff's son was not given custody by the plaintiff or guardian at 4.30 p.m. Hence, according to them, there is no negligence on their part at any point of time.

5. Based on the above pleadings the following issues have been framed :

1. Whether the plaintiff is entitled to a decree for Rs.20,000/- [It has been mentioned Rs.20,000/- instead of



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Rs.20,00,000/-] with interest at 12% p.a. as prayed for?

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2. Whether the defendants acted with gross negligence and in difference towards the victim while coaching and rendering medical attendance?

3. Whether the defendants are vicariously liable to pay the compensation?

4. Whether the untoward incident had occurred only due to the contributory negligence of the victim?

6. On the side of the Plaintiff, P.W.1 has been examined and Ex.A.1 to Ex.A.9 have been marked. On the side of the defendants, D.W.1 has been examined and Ex.B.1 alone has been marked on their suit.

7. The suit has been proceeded against the first defendant alone and the suit has been dismissed as against the second defendant as the plaintiff has not



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pressed the suit as against the second defendant. The trial Court finding that the defendant was at gross negligence, fixed Rs.30,000/- as notional income and awarded compensation of Rs.5 lakhs. Not satisfied with the compensation awarded by the trial Court, the present appeal suit has been filed.

8. The learned counsel appearing for the appellant would submit that once negligence has been clearly established, the trial Court ought to have considered the age of the minor. The minor was aged about 15 years at the relevant point of time. Whereas, the trial Court fixed Rs.30,000/- as notional income. According to them it is very meagre. Even the Courts have awarded higher value. The accident took place on 12.05.2004. Hence, seeks to enhance the compensation.

9. Despite service of notice and name printed in the cause list, none appeared for the defendant.

10. Now the points that arise for consideration is



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1. Whether the trial Court is right in fixing the notional income at Rs.30,000/- for child aged about 15 years?
2. Whether the compensation is liable to be enhanced?

11. Points 1 & 2 :

I have perused entire materials available on record. As far as running of the swimming pool for children by the first defendant is not disputed in the pleadings. The only contention of the defendants is that there were experienced coaches and assistants in the swimming pool and the parents are instructed to hand over the custody of their children to the coach. According to them, on 12.05.2004, the child was not handed over to the coach. Therefore, it is their contention that there is no negligence on their part which



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resulted in the accident.

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12. As far as the contention of the defendant is concerned, the same has no legs to stand. When the defendant undertook swimming classes, particularly for young children, they should be more vigilant in watching the children all the time. Now they cannot avoid their responsibility merely contending that the child was not handed over to the coach at the relevant point of time.

13. It is relevant to note that if really experienced coaches were present, they would not have allowed the children to enter into deep pool area of the swimming pool. The evidence of P.W.1 itself indicate that son got into the swimming pool which is deep and despite several people are engaged, according to the defendant, none of them have taken any steps to prevent the child from going to such deep in the swimming pool. Therefore, the trial Court finding that there was negligence on the part of the defendant cannot be

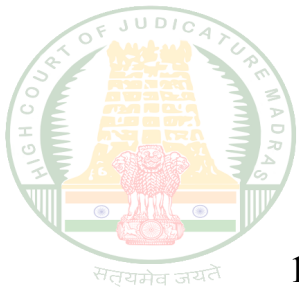


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find fault with.

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14. As far as fixing of compensation is concerned, the trial Court has calculated notional income at the rate of Rs.30000/-. It is relevant to note that the child is aged 15 years at the time of the accident. The Apex Court in **Kishan Gopal and another Vs. Lola in 2013[2] TNMAC 358 SC** has taken notional income at Rs.30,000/- for the accident happened in the year 1992 itself. Therefore, this Court is of the view that the accident in this case, has happened in the year 2004. Hence, the notional income ought to have been fixed more. Hence, to meet the ends of justice, this Court is of the view that notional income ought to have been fixed at Rs.60,000/- in the year 2004. Accordingly, the notional income is fixed at Rs.60,000/- for awarding just compensation. Child is aged about 14 years and the mother of the child was only 43 years old at the relevant point of time. Even applying the age of the mother, 43 years, multiplier as per Second Schedule will apply.



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15. Considering the fact that minor is a student aged 14 years, the notional income is fixed at Rs.60,000/- applying the multiplier 15, the compensation will come to Rs.9,00,000/-. This Court also awards Rs.one lakh to the parents for loss of love and affection and a sum of Rs.25,000/- for cremation expenses. Total amount of compensation will come to Rs.10,25,000/-. The points are answered accordingly.

16. Accordingly, this Appeal Suit is allowed and the judgment and decree of the suit in O.S.No.976 of 2015, dated 28.02.2020 stands modified and the defendant is directed to deposit a sum Rs.10,25,000/- along with interest at the rate of 7% per annum from the date of suit till the date of payment, less already deposited, if any, to the credit of the suit in O.S.No.976 of 2015. On such deposit, the plaintiff is entitled to withdraw the amount on filing necessary application.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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To,
The VII Additional Judge,
City Civil Court, Chennai.



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N. SATHISH KUMAR, J.

vrc

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