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C.M.A.No.215 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2025

CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

C.M.A.No.215 of 2025

1. Selvi
 2. S. Ravi
- ...Appellants

Vs.

1. K.Mohan
 2. National Insurance Co. Ltd.,
No.751, Mount Road,
Chennai – 600 002.
- ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 22.04.2013 in MCOP.No.1814 of 2010 on the file of the Motor Accident Claims Tribunal/ VI Judge, Court of Small Causes, Chennai.

For Appellants : Mr.A.N.Viswanatha Rao

For Respondents : Ms.R.Sree Vidhya, for R2



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JUDGMENT

Challenging the award dated 22.04.2013 made in MCOP.No.1814 of 2010 on the file of the Motor Accidents Claims Tribunal/VI Judge, Court of Small Causes, Chennai, the claimants have come up with the present appeal.

2. It is the case of the appellants/claimants that, on 28.03.2010 at about 06.00 hours, when the deceased Agalya was sitting at Megavannan Tea Stall, E.C.R.Road, Illayanthoppu, Kanchi District, at that time, a Omni Van bearing Regn.No.TN-51-T-9966, owned by the 1st respondent insured with the 2nd respondent driven by its driver which was proceeding from Pondicherry towards Chennai came in a rash and negligent manner and dashed against the deceased Agalya, due to which she sustained fatal injuries and died on the spot. Thereby, the appellants/claimants, who are the parent of the deceased Agalya filed a claim petition before the tribunal claiming a compensation of Rs.6,00,000/-. Before the Tribunal, the claimants examined two witnesses viz., P.W.1 and P.W.2 and marked



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exhibits P.1 to P.4 and on the side of the respondents no witnesses were examined and no documents were marked. After trial, the Tribunal, on appreciation of oral and documentary evidence, though came to a conclusion that the accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent, however, awarded a meagre amount of Rs.2,95,000/- towards compensation for the death of the deceased Agalya. Aggrieved by the same, the appellants have come up with this appeal.

3. Learned counsel for the appellants submitted that, the accident is of the year 2010 and at the time of accident, the minor deceased was aged about 5 years. However, the Tribunal had fixed the notional income of the minor deceased at Rs.15,000/- per annum, which is on the lower side and the same requires to be re-considered by this Court. Further, the compensation awarded under the other heads are also on the lower side, which requires to be enhanced. Accordingly, he prays for appropriate enhancement in favour of the appellants.

4. Per contra, learned counsel appearing on behalf of the 2nd



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respondent-insurance company submitted that, by considering all the oral and documentary evidence, the Tribunal has awarded just and reasonable compensation under various heads, which does not require any enhancement. Accordingly, she prays for dismissal of the appeal.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The only grievance of the appellants/claimants is with regard to the quantum of compensation awarded by the Tribunal.

7. The major grievance of the appellants is that, the accident is of the year 2010 and the age of the deceased minor is 5 years, however, the Tribunal, had fixed the notional income of the deceased at Rs.15,000/- per annum.



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8. In this context, this Court relies upon the decision of the Hon'ble Apex court reported in **2014(1) SCC 244** in the case of **Kishan Gopal and Anr. vs. Lala & Ors.**, wherein 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 for the accident. For better appreciation, the relevant paragraph of the said order is extracted as follows:

“ 18. Point Nos. 2 and 3 are answered together in favour of the Appellants for the following reasons:

Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious issue Nos. 1 & 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 Second Schedule Under Section 163-A of the M.V. Act, at clause No. 6 which refers to notional income for compensation to those persons who had no income prior to accident.



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The relevant portion of clause No. 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 M.V. Act, is considered by this Court in the case of Lata Wadhwa and Ors. v. State of Bihar and Ors. MANU/SC/0456/2001 : (2001) 8 SCC 197, while examining the tortuous liability of the tort-feasor has examined the criteria for awarding compensation for death of children in accident between 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. After noting the submission made on behalf of TISCO in the said case 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 unrecoupable 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



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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. Further, in the case referred to supra it has observed that in so far 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. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case 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. 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 the case of Sarla Verma v. Delhi Transport Corporation MANU/SC/0606/2009 : (2009) 6 SCC 121, the multiplier of 15 can be applied to the



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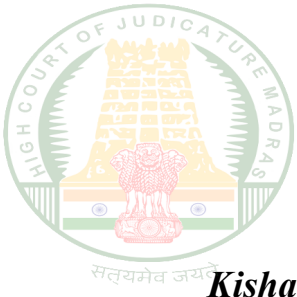


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multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas MANU/SC/0389/1994 : (1994) 2 SCC 176, which is referred to in Lata Wadhwa's case 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. The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of Municipal Council of Delhi v. Association of Victims of Uphaar Tragedy MANU/SC/1255/2011 : (2011) 14 SCC 481, for the reason that the Insurance Company has been contesting the claim of the Appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the Appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the Appellants is legally justified."

(Emphasis supplied)

9. In such circumstances, as the issue involved in the present case on hand is similar to the above said decision of the Apex Court in the case of



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Kishan Gopal (*supra*), this Court is of the view that a lumpsum of Rs.5,00,000/- could be fixed as compensation to the appellants.

10 Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.2,95,000/-** to **Rs.5,00,000/-**. The 2nd respondent-Insurance Company is directed to deposit the said amount to the credit of MCOP.No.1814 of 2010 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. In the above enhanced compensation, the appellants are entitled to a sum of Rs.2,50,000/- each, with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants. It is made clear that the compensation of Rs.2,95,000/- awarded by the tribunal would carry interest



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at the rate of 7.5% per annum from the date of claim petition till the date of deposit and the balance amount of Rs.2,05,000/- enhanced by this Court would carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, however, the appellants are not entitled for interest for the above said amount of Rs.2,05,000/- for the default period of 2182 days. No costs.

31.01.2025

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NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

To:

The VI Judge, Court of Small Causes/
Motor Accidents Claims Tribunal,
Chennai.



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M.DHANDAPANI, J.

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