IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

C.M.A.No.2512 of 2015
& M.P.No.1 of 2015

Shriram General
Insurance Co. Ltd.,
Chennai. .. Appellant/3rd Respondent

.. Vs ..

1. Manjula
2. Geetha(Minor)
3. Arunkumar (Minor)
(Minors are represented by
their Mother, 1st respondent)
4. Krishnaveni
5. Subramani ..Respondents 1 to 5/Petitioner
6. S.Kirubanantha Kumar
7. Manoharan ..Respondents 6 and 7/
1st and 2nd Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, against the judgment and decree passed in M.C.O.P.No.5519 of 2012, dated 21.11.2014, on the file of the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes), Chennai.

For Appellant : Mr.S.Dhakshnamoorthy

JUDGMENT
(Judgment of this Court was made by S.MANIKUMAR, J.)

Being aggrieved by the quantum of compensation of Rs.16,71,000/- with interest, at the rate of 7.5% per annum, awarded to the legal representatives of the deceased, from the date of claim, till deposit, the appellant-Insurance Company, has filed the present appeal, contending inter-alia that the Claims Tribunal has erred in fixing the monthly income of the deceased as Rs.9,000/-, without any basis. That apart, compensation of Rs.2,00,000/- awarded towards love and affection, is also assailed on the ground that it is excessive. As the challenge to the award, is restricted only to the quantum of compensation, there is no need to advert to the aspect of negligence and liability.

Heard the learned counsel for the parties and perused the materials available on record.

2. PW.1, wife of the deceased, has stated that at the time of accident, i.e., 26.05.2012, her husband was aged 33 years. Upon perusal of Ex.P4 - Post-Mortem Certificate, Ex.P5 - Death Certificate and Ex.P9 - Driving Licence of the deceased, the Claims Tribunal has noticed the Date of Birth of the deceased as 18.05.1977 and having regard to the date of accident, fixed the same as 35 years.

3. On the aspect of avocation and income, PW.1, has deposed that at the time of accident, the deceased was working as a Technical Labourer and earning Rs.500/- per day. Upon perusal of Exs.P8 and P10 - Harbour Entry Permits, the Claims Tribunal has noted that the deceased was working as a Labourer in Harbour. However, in the absence of any supportive evidence to prove the monthly income of the deceased, the Claims Tribunal has fixed the same as Rs.9,000/-, for the purpose of computing the loss of dependency. However, the Claims Tribunal has failed to award any amount under the head, future prospects, in terms of the decision of the Apex Court in Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55.

4. For the purpose of applying multiplier and further deduction towards the personal and living expenses, the Claims Tribunal has considered a decision in Sarla Verma v. Delhi Transport Corporation reported in 2009 (5) LW 561 and deducted 1/4th towards the personal and living expenses of the deceased. After applying '16' multiplier for the purpose of computing the loss of dependency, the Claims Tribunal has arrived at the loss of dependency at Rs.12,96,000/- (Rs.9,000/- x 12 x 16 x ¼). In addition to the above, the Claims Tribunal has awarded Rs.1,00,000/- towards loss of consortium, Rs.2,50,000/- towards, loss of love and affection, Rs.25,000/- towards funeral expenses. Altogether, the Claims Tribunal has awarded Rs.16,71,000/- with interest, at the rate of 7.5% per annum, from the date of claim, till deposit.

5. Though Mr.S.Dhakshnamoorthy, learned counsel for the appellant-Insurance Company assailed the quantum of compensation, on the grounds, stated supra, this Court is not inclined to accept the said contentions, for the reason that the respondents/claimants have produced Exs.P8 and P10 - Harbour Entry Permits, in support of their contention that at the time of accident, the deceased was working as Labourer in Harbour and earned Rs.500/- per day.

6. In Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Ltd., reported in 2011 (2) TNMAC 190 SC, a sum of Rs.4,500/- has been claimed as monthly wages for the deceased, stated to be a coolie. The claims tribunal therein has taken Rs.3,000/- for the purpose of computing the loss of contribution to the family. However,

when the matter was taken up on appeal, the Hon'ble Supreme Court having regard to the wages of a labourer, during the relevant period (2004 - between Rs.100 to Rs.150/- per day) found fault with the tribunal for reducing the income from Rs.4,500/- to Rs.3,000/- and determined the same at Rs.4,500/-.

7. In Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459, the Hon'ble Supreme Court, has determined Rs.6,500/- as the monthly income of a vegetable vendor, who sustained injuries in the accident, which occurred in February 2008. Considering the period and the documents produced to support the contention that the deceased was a labourer in Habour, determination of Rs.9,000/- per month, in the year 2012, for computing the loss of income, cannot be said to be without any basis.

8. Though the overall quantum of compensation has been assailed on the ground that it is on the higher side, perusal of the judgment shows that the Claims Tribunal has failed to add up 50% of income, towards future prospects, as per the decision made in Santhosh Devi v. National Insurance Co. Ltd., reported in 2012 (6) SCC 421, wherein, a question has been considered, as to whether future prospects can be taken into consideration, in the case of persons working in unorganised sectors, at Paragraph 14, the Apex Court held as follows:

> "We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma v. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC), that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this Rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments

and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma v. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC), judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

9. That apart in a recent decision in Munna Lal Jain v. Vipin Kumar Sharma reported in 2015 (6) SCC 347, the deceased was a pandit and bachelor. He was aged 30 years. The accident occurred on 12.07.2008. Income at Rs.12,000/- per month, was determined by the High Court. The Apex Court added 50% towards future prospects and thereafter, compensation has been quantified.

10. As regards addition of future prospects for self-employed or persons without fixed wages, this Court in C.M.A.Nos.1065 and 1066 of 2015, dated 08.09.2015, has discussed as follows:

> "29. Though it is the case of Mr.J.Chandran, learned counsel for the appellant-Insurance Company that in case of employees in unorganised sector or non-salaried or persons, without any permanent job, addition of 30% under the head, "future prospects", with the income drawn, at the time of death, should not be made, for computation, this Court is not inclined to accept the said submission that for the reason that the expression "future prospects" should not be confined only to the prospects of the deceased in the career, progress or upgradation of position, in which, he was engaged, prior to death, but we are of the considered view that the expression "future prospects" should also be extended to the likelihood of increase in wages, salary or other emoluments and thereby, increase in income, earned by either a skilled or semi-skilled person, considering the upward increase in cost price, inflation and such other factors.
>
> 30. Judicial notice can also be taken that the cost of essential commodities, labour, etc., have never remained static and it is always on the rise. Periodically electricity and water charges, on the increase. Consequent to the upward revision of fuel, cost of transportation has increased. To meet out the basic amenities, there would be an increase in the income. In relation to employment, education plays an important role. If there are more qualified persons and less number of jobs, then there is a possibility of fixing lesser salary, in the case of unorganised sectors. However, there cannot be a thumb rule, that there would not be any change in income, forever."

11. In the light of the discussion and decisions of the Apex Court, extracted supra and the gradual increase in the earning of an agriculturist or a vegetable vendor or labourer, as the case may be, this Court, is of the view that the Claims Tribunal ought to have added up 50% of the monthly income, under the head, future prospects.

12. Legal representatives of the deceased, particularly, minor children, have lost the love and affection of the deceased. In Rajesh v. Rajbir Singh reported in 2013 (2) TNMAC 55, the Apex Court has awarded Rs.1,00,000/- each to the legal representatives of the deceased, towards loss of love and

affection. In the light of the above decision, this Court is not inclined to reduce the same. Perusal of the award shows that there is no compensation towards transportation and damges to clothes and articles. In the light of the discussions and decisions, the quantum of compensation awarded by the Tribunal, cannot be said to be excessive and does not warrant interference.

13. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount with proportionate accrued interest and costs, if not already deposited, to the credit of M.C.O.P.No.5519 of 2012, dated 21.11.2014, on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this order.

14. Share of the minors shall be deposited in anyone of the Nationalised Banks in a fixed deposit, under the reinvestment scheme initially for a period of three years, proximate to the residence of the 1st respondent herein/claimant. The interest accruing on the share of the minors shall be paid to the first respondent/guardian once in three months, till they attain majority. On such deposit being made, except the minors, the respondents/claimants are permitted to withdraw their respective shares, by making necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

skm

To

The IV Judge, Court of Small Causes,
(Motor Accidents Claims Tribunal), Chennai.

+1cc to Mr.S. Dhakshnamoorthy, Advocate, S.R.No.59678

ALA(CO)
EU(25/01/2016)