

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.08.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM, J.,

C.M.A. No.455 of 2014
and Cross Obj.No.80 of 2014
and

M.P.No.1 of 2014 and 1 of 2015 in CMA No.455 of 2014

CMA No.455 of 2014

M/s.Reliance General Insurance Co. Ltd.,
Heavitree, Unit No.1,
3rd Floor, No.23, Spur Tank Road,
Chetpet, Chennai - 600 031. .. Appellant/2nd Respondent

Vs.

1. P.Sounderi .. Respondents 1 & 2/Claimants
2. Dr.V.Palaniappun .. 3rd Respondent/1st Respondent
3. S.Dhanasekaran .. 3rd Respondent/1st Respondent
(3rd Respondent exparte in lower Court)

Prayer in CMA No.455 of 2014: Appeal under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (Additional District & Sessions Court, Fast Track Court No.4), Chennai, in MCOP No.85 of 2009 dated 28.02.2012.

For Appellant : Mrs.Harini
for Mr.M.B.Gopalan
For Respondents : Mr.U.M.Ravichandran (for R1&R2)

Cross Obj.No.80 of 2014

1. P.Sounderi
 2. Dr.V.Palaniappun .. Cross Objectors/claimants
- Vs.

1. M/s.Reliance General Insurance Co. Ltd.,
Heavitree, Unit No.1,
3rd Floor, No.23, Spur Tank Road,
Chetpet, Chennai - 600 031. .. 1st Respondent/2nd Respondent
2. S.Dhanasekaran .. 2nd Respondent/1st Respondent.
(2nd Respondent set exparte in lower Court)

Prayer in Cross Obj.No.80 of 2014: Cross Objection filed under Order 41 Rule 22 of CPC, against the Decree and Judgment passed by the Motor Accidents Claims Tribunal (Additional District & Sessions Court, Fast Track Court No.4), Chennai, in MCOP No.85 of 2009 dated 28.02.2012.

For Cross Objectors : Mr.U.M.Ravichandran

For Respondents : Mrs.Harini
for Mr.M.B.Gopalan (for R1)

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Being aggrieved by the quantum of compensation of Rs.25,35,000/- awarded to the legal representatives of the deceased with interest at the rate of 7.5% per annum from the date of claim till the date of realisation, Reliance General Insurance Company / appellant herein has questioned the correctness of the judgment and decree in MCOP No.85 of 2009 dated 28.02.2012 on the file of the MACT [Additional District Sessions Judge, Fast Track Court No.4], Chennai.

2. Quantum of compensation awarded by the claims tribunal is assailed by the appellant herein on two grounds viz., (1) that the tribunal has erred in fixing an higher monthly income of Rs.2,60,000/- per annum for the purpose of assessing the loss of dependency. As per the decision in Sarla Verma Vs. Delhi Transport Corporation, reported in 2009 (2) TN MAC 1 (SC), the claims tribunal ought to have applied '16' as the multiplier for computing the loss of contribution to the family.

3. Not satisfied with the method adopted in computing the loss of contribution to the family and contending that the claims tribunal has failed to consider that at the time of accident, the deceased, was undergoing his post graduate viz., MDS [Oral & Maxillofacial Surgery] in Ramachandra Medical College and Hospital, Chennai and was already earning a sum of Rs.2,64,000/- and above, from the medical profession as Dentist, and considering the periodical increase in the income, as exhibited in income tax returns Exs.P11 to P13, the claims tribunal ought to have added up 50% of the income under the head future prospects for computing the loss of dependency to the family, Cross Objections has been filed.

4. Learned counsel for the cross objectors/respondents, further submitted that a sum of Rs.5,000/- awarded under the head funeral expenses is less. He also contended that a sum of Rs.1,00,000/- awarded under the head loss of love and affection to the respondents/parents, who have lost a growing medical practitioner at an young age of 32 years, ought to be considerably increased.

5. As both the appeal filed by the Reliance General Insurance Company, appellant herein and the cross objections, revolve on the only issue as to whether the quantum of compensation awarded by the claims tribunal is just and reasonable, on the principles of law laid down in Sarla Verma Vs. Delhi Transport Corporation, reported in 2009 (2) TN MAC 1 (SC), Santosh Devi Vs. National Insurance Co. Limited, reported in 2012 (2) TN MAC 1 (SC) and Rajesh & Others Vs. Rajbir Singh & Others, reported in 2013 (2) TN MAC 55 (SC), this Court deems it fit to dispose of the same, by a common judgment.

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

7. Fact that the deceased was a medical practitioner (Dentist) and was pursuing his Post Graduate Degree viz., MDS [Oral & Maxillofacial Surgery], in Ramachandra Medical College and Hospital are supported by Ex.P8, BDS Registration Certificate and Ex.P9, Bonafide certificate issued by the said College.

8. The tribunal has awarded Rs.25,35,000/- under the following heads.

Loss of dependency	: Rs.22,10,000/-
Funeral Expenses	: Rs. 5,000/-
Medical Expenses	: Rs. 2,20,000/-
Loss of love and affection	: Rs. 1,00,000/-

9. Age of the deceased has been fixed as 32 on the basis of the entries in Ex.P15, Driving Licence and it is not disputed. Coming to the determination of monthly income of the deceased, for the purpose of computing the loss of contribution to the family, it is the oral testimony of PW1, father, that at the time of accident, the deceased was a student of 2nd year PG MDS [Oral & Maxillofacial Surgery] Course and as per the entries in the Income tax returns Exs.P11 to P13, the income from the profession for the period between 2007-08, is as follows:

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Income Period	Assessment Year	Amount
01.04.2005 to 31.03.2006	2006-07	Rs.4,80,035/-
01.04.2006 to 31.03.2007	2007-08	Rs.6,91,281/-
01.04.2007 to 31.03.2008	2008-09	Rs.6,17,502/-

10. Ex.P10, is the passbook of the deceased, showing the credit and debit. Upon perusal of the entries in Ex.P10, Passbook and Exs.P11 to P13, Income returns, the claims tribunal came to the conclusion that it would be just and reasonable to determine the annual income of the deceased as Rs.2,60,000/-, taking into account that the deceased was a Doctor (Dentist by profession). As the deceased was a bachelor, applying the ratio decidendi in Sarla Varma's case, the tribunal deducted 50% of the income towards the personal and living expenses and by applying '17' multiplier, computed the loss of dependency as Rs.22,10,000/-.

11. As stated supra, the deceased was aged 32 years. As rightly pointed out by Ms.Harinin, learned counsel for the appellant, insurance company, that as per the decision of the Apex Court in Sarla Varma's case, the proper multiplier that should be applied for computing the loss of contribution to the family/ loss of dependency is '16'. Accordingly, the said multiplier ought to have been applied for arriving at the loss of dependency.

12. Though, the learned counsel for the appellant Insurance company submitted that the claims tribunal has erred in fixing the annual income of the deceased as Rs.2,60,000/- for computing the loss of contribution to the family, going through the contents of Exs.P11 to P13, Income Tax Returns, produced before us, by the learned counsel for the insurance company and having regard to the upward increase in the income of the deceased, we are not inclined to accept the contentions of the learned counsel for the Insurance Company, that the tribunal has committed a manifest illegality in fixing the annual income of the deceased as Rs.2,60,000/-, for the purpose of assessing the loss of dependency to his legal representatives/ parents.

13. The deceased was not salaried, but self employed. Though, placing reliance on Vimal Kanwar and others Vs. Kishore Dan and Others, reported in 2013 ACJ 1441, learned counsel for the respondents/legal representatives submitted that the claims tribunal ought to have added an additional sum of Rs.2,60,000/- (100%) towards future prospects, for the purpose of computing the loss of contribution to the family, we are not inclined to accept the said contentions for the reason that Vimal Kunwar's case, cannot be applied ipso facto to the facts on hand.

14. In Vimal Kunwar's case, the deceased was an Assistant Engineer in PWD. Considering the increase in income by 100% on the basis of the revision of pay commission report and having regard to

the age of the deceased therein, 28 ½ years, and taking into consideration the future prospects that had he been alive, he would have reached the level of Chief Engineer, the Hon'ble Supreme Court added up 100%, towards the future prospects for computing loss of contribution to the family. Facts on hand are different. Therefore, we are not inclined to add up 100% under the head, future prospects for computing the loss of dependency.

15. However, as rightly pointed out by the learned counsel for the respondents/claimants, as per the entries in Exs.P11 to P13, Income Tax returns, Ex.P10, Passbook coupled with the oral testimony of PW1, Dr.V.Palaniappun, father of the deceased, who is also a professional, there is periodical increase in the income of the deceased.

16. In the light of the above discussion and following the decisions of the Hon'ble Supreme Court in Santosh Devi Vs. National Insurance Co. Limited, reported in 2012 (2) TN MAC 1 (SC), Rajesh & Others Vs. Rajbir Singh & Others, reported in 2013 (2) TN MAC 55 (SC) and Munna Lal Jain & Another Vs. Vipin Kumar Sharma & Others, reported in (2015) 6 SCC 347, we are inclined to accept the contention of the respondents/legal representatives of the deceased that the claims tribunal ought to have added up, 50% of the income under the head, future prospects, for computing the loss of dependency. Now after applying the correct multiplier of '16', as per Sarla Varma's case and adding up 50% to the income, the loss of dependency works out to Rs.31,20,000/-. Accordingly, the said amount is awarded.

17. As rightly submitted by the learned counsel for the respondents/claimants, sum of Rs.5,000/- awarded under the head funeral expenses, is less. At this juncture, we take on record, what the Hon'ble Supreme Court has said in Rajesh's case, as regards funeral expenses, at paragraph No.21, which is reproduced hereunder.

"We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

18. In the reported case, the accident occurred on 05.10.2007, whereas in the case on hand, the accident has occurred on 04.03.2008. Considering the escalation in cost, we award a sum of Rs.25,000/- under the head funeral expenses.

19. Sum of Rs.1,00,000/- has been awarded to the parents, under the head loss of love and affection. Parents were stated to be 64 years and 59 years respectively. Father/1st respondent is also a Doctor by profession. Sum of Rs.1,00,000/- awarded under the head, loss of love and affection, in our considered opinion, appears to be less. Hence, a further sum of Rs.1,00,000/- is awarded under the said head. Rs.15,000/- is awarded towards transportation. There is no award under the head damages to clothes and articles. Hence, a sum of Rs.2,000/- is awarded under that head. Sum of Rs.2,20,000/- awarded under the head, Medical Expenses, is sustained.

20. In the light of the above discussion and the decisions stated supra, the compensation payable to the legal representatives of the deceased/cross objectors is now determined as Rs.35,82,000/- with interest, at the rate of 7.5% per annum, from the date of claim till the date of realisation and the same is apportioned hereunder.

Loss of dependency	: Rs.31,20,000/-
loss of love and affection	: Rs. 2,00,000/-
Medical Expenses	: Rs. 2,20,000/-
Funeral expenses	: Rs. 25,000/-
Transportation	: Rs. 15,000/-
Damages to cloths and articles:	Rs. 2,000/-

21. CMA No.455 of 2014 filed by Reliance General Insurance company is dismissed. Cross objection No.80 of 2014, filed by the legal representatives of the deceased is allowed, as indicated above. No costs.

22. It is represented that the award amount of Rs.25,35,000/- with interest at the rate of 7.5% per annum from the date of claim i.e., 22.12.2008, till the date of decree i.e. 28.02.2012, totalling a sum of Rs.31,41,010/-, has already been deposited to the credit of MCOP No.85 of 2009 on the file of MACT [Additional District & Sessions Court, FTC No.4], Chennai. What remains is the balance amount to be deposited.

23. Accordingly, the appellant Insurance company is directed to deposit the balance amount of Rs.10,47,000/- with proportionate interest at the rate of 7.5% per annum from the date of claim, till the date of deposit and costs within a period of four weeks to the

credit of MCOP No.85 of 2009 on the file of the MACT [Additional District Sessions Judge, Fast Track Court No.4], Chennai. It is open to the respondents/claimants to seek for disbursement of the award amount, by making necessary applications.

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s/d-
Assistant Registrar(CO)

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Sub-Assistant Registrar

To

1. The Additional District & Sessions Judge,
FTC No.4 (Motor Accidents Claims Tribunal),
Chennai

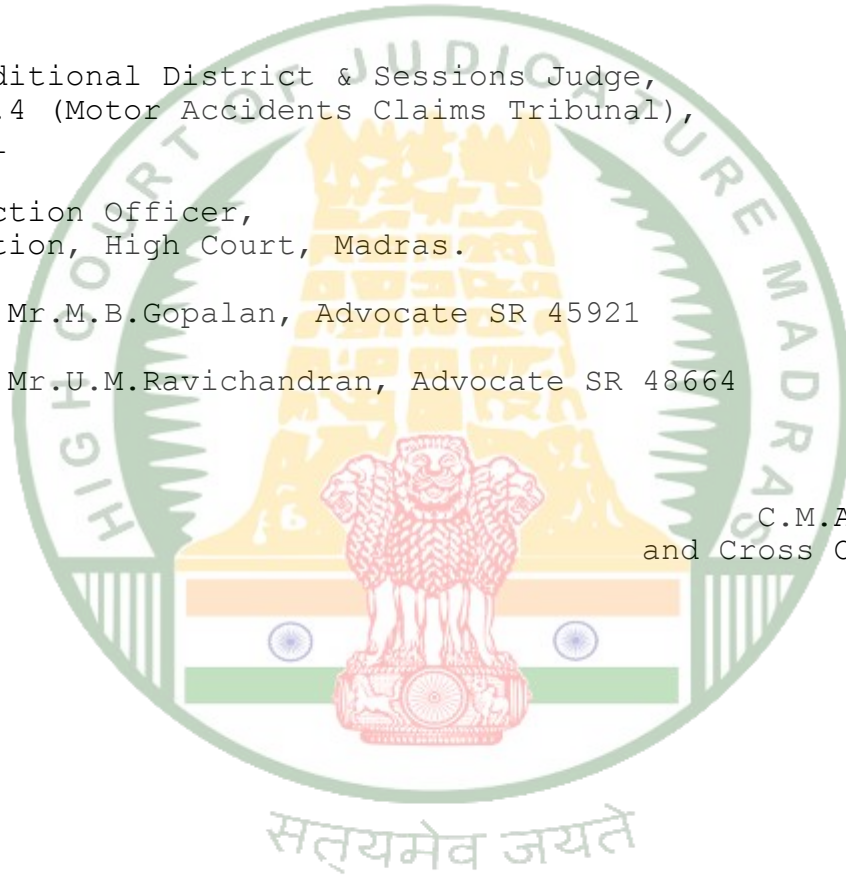
2. The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr.M.B.Gopalan, Advocate SR 45921

+ 1 cc to Mr.U.M.Ravichandran, Advocate SR 48664

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