IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 25.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. Nos.45 & 46 of 2012

1.G.Lakshmi 2.N.Gopal (since died on 19.05.2011)	..	Appellants in CMA. No.45 of 2012
1.G.Indira (since died) 2.G.Dhinesh Kumar (minor) 3.G.Magesh (minor) 4.R.Saraswathi (minors rep. by grand mother and next friend the fourth petitioner)	..	Appellants in CMA. No.46 of 2012

versus

1.M.Alagudurai
(remained exparte before the Trial Court)

2.ICICI Lombard General
Insurance Co. Ltd.,
Chotabhai Centre, 2nd and 3rd Floors,
140, Nungambakkam High Road,
Chennai-600 034. .. Respondents in both CMAs

Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the common judgment and decree dated 29.04.2011 made in M.A.C.T.O.P. Nos.3467 and 3468 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

For appellants : Mr.N.M.Muthurajan

For respondents : Mrs.R.Sreevidhya for R2

COMMON JUDGMENT

These appeals are preferred by the claimants against the common judgment and decree dated 29.04.2011 made in M.A.C.T.O.P. Nos.3467 and 3468 of 2007 on the file of the Chief Judge, Small Causes Court (Motor Accidents Claims Tribunal) Chennai.

2.As both the CMAs arise out of the same accident, the brief facts are stated as under in common:

On 16.09.2007 at about 07.30 p.m., one Sankar @ Tamilselvan, the son of the appellants in CMA. No.45 of 2012, was riding the motor cycle bearing regn. No.TN-07-AM-8069 from Kottivakkam to Thirichoolam along with another person namely R.Govindan, the father of appellants 2 and 3, husband of the 1st appellant and son of the 4th appellant in CMA. No.46 of 2012, as pillion rider. When they were proceeding near ETL Company, the first respondent's lorry bearing regn. No.TDL 6820, driven by its driver in a rash and negligent manner, dashed against the motor cycle, due to which the rider and the pillion rider of the motor cycle sustained fatal injuries.

3.Therefore, for the death of G.Sankar @ Tamil Selvan, the claimants/parents of the deceased filed MACTOP. No.3467 of 2007 before the Tribunal and pending Trial, father of the deceased/2nd appellant in CMA. No.45 of 2012, died on 09.05.2011. Similarly, for the death of R.Govindan, the claimants/wife, children and mother filed M.A.C.T.O.P No.3468 of 2007 and pending Trial, the wife of the deceased/1st appellant in CMA. No.46 of 2012, died. Claimants/Minor children and mother, who are appellants 2, 3 and 4 respectively have filed the appeal in CMA. No.46 of 2012, claiming a compensation of Rs.12,00,000/- and Rs.16,00,000/- respectively.

4.Considering the oral and documentary evidence, the Tribunal after holding that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent's vehicle, awarded a compensation of Rs.3,70,000/- with interest at 7.5% per annum to the claimants in MACTOP. No.3467 of 2007 and awarded a compensation of Rs.5,96,000/- with interest at 7.5% per annum to the claimants in MACTOP. No.3468 of 2007 under the following heads:-

In MACTOP. No.3467 of 2007

Loss of future income	Rs.3,51,000/-
Loss of love and affection	Rs. 10,000/-
Funeral expenses and transportation	Rs. 9,000/-
Total	Rs.3,70,000/-

In MACTOP. No.3468 of 2007

Loss of future income	Rs.5,76,000/-
Loss of love and affection	Rs. 10,000/-
Funeral expenses and transportation	Rs. 10,000/-
Total	Rs.5,96,000/-

Hence the present appeals.

5.1.Learned counsel for the claimants-appellants, questioning only the quantum of compensation awarded by the Tribunal, submitted that the Tribunal ought to have awarded compensation as claimed by the claimants and that the Tribunal has not followed the principles of assessment before passing the award. He further submitted that since the amount awarded towards loss of love and affection and towards funeral expenses and transportation by the Tribunal is very low and meagre, the same should be enhanced.

5.2.In support of his contention, he relied upon a judgment of the Hon'ble Apex Court reported in **2014 ACJ 627 (Syed Sadiq and others vs. Divisional Manager, United India Insurance Co. Ltd.**, wherein in the case of vegetable vendor, the Hon'ble Apex Court has held as follows:

> *"17. ....Since the appellant-claimant in the present appeal is also a vegetable vendor like the appellant-claimant in Civil Appeal M.F.A. No.1131 of 2011, we take his monthly income at Rs.6,500/- on average and for the reasons recorded in that appeal, we determine the functional disability of the appellant-claimant in the present appeal at 35 percent. Considering his age and based on the legal principle laid down by this Court in the cases mentioned supra, we hold his increment on future income at 50 percent and the multiplier at 18. Therefore he is entitled to Rs.7,37,000/- [(Rs.6500 x 35/100 + 50/100 x 35/100 x6500) x 12 x18] under the head of loss of future income."*

5.3.Learned counsel appearing for the claimants-appellants would submit that in respect of CMA. No.45 of 2012, the deceased G.Sankar @ Tamil Selvan was working as Mechanic in Automobile Engineering Department with M/s.Sri Venkateswara College of Engineering, Sriperumbudur and was earning Rs.8,200/- per month. The Tribunal has fixed the income at Rs.54,000/- per annum and by applying multiplier as '13', arrived at the loss of income of the deceased at Rs.3,51,000/-, after deducting 50% of the same towards his personal expenses. He would further submit that the Tribunal ought not to have deducted 50% of the income as his personal expenses, for the reason that the deceased died as a bachelor and the Tribunal ought to have deducted only 1/3rd of the earnings as personal expenses and balance 2/3rd has to be taken as contribution to the family. The Tribunal found that the deceased was aged about 27 years at the time of accident and while fixing the income of the deceased, the future increase in income ought to have been taken into account by the Tribunal. But the same has not been considered in the present case.

5.4.Learned counsel for the claimants/appellants would submit that in respect of CMA. No.46 of 2012, the deceased Govindan was an Auto Rickshaw Driver and was earning Rs.400/- per day at the time of accident. The Tribunal has fixed the income at Rs.36,000/- per annum and by applying multiplier as '16', arrived the loss of income of the deceased at Rs.5,76,000/-, after deducting 1/3rd of the same towards his personal expenses. He would further submit that the deceased was aged about 32 years at the time of accident. The Tribunal ought to have fixed the multiplier at 17 instead of 16 according to the II Schedule of the Motor Vehicles Act. Hence, he prayed for enhancing the compensation, as per the ratio laid down by the Hon'ble Apex Court in the aforementioned case.

6.Learned counsel appearing for the second respondent-Insurance Company submitted that the Tribunal has considered all the relevant materials and evidence on record and came to the right conclusion and awarded a just, fair and reasonable compensation. Hence, the award of the Tribunal is in accordance with law and the same has to be confirmed.

7.Heard Mr.N.M.Muthurajan, learned counsel for the claimants/appellants and Mrs.R.Sreevidhya, learned counsel appearing for R2/Insurance Company.

8.In the case of **SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER** reported in **(2009) 4 MLJ 997,** the Apex Court has considered the relevant factors to be taken into consideration before awarding compensation and held as follows:

> "7. Before considering the questions arising for decision, it would be appropriate to recall the relevant principles relating to assessment of compensation in cases of death. Earlier, there used to be considerable variation and inconsistency in the decisions of Courts Tribunals on account

of some adopting the Nance method enunciated in Nance V. British Columbia Electric Rly. Co. Ltd. (1951) AC 601 and some adopting the Davies method enunciated in Davies V. Powell Duffryn Associated Collieries ltd., (1942) AC 601. The difference between the two methods was considered and explained by this Court in General Manager, Kerala State Road Transport Corporation Vs. Susamma Thomas AIR 1994 SC 1631: (1994) 2 SCC 176. After exhaustive consideration, this Court preferred the Davies method to Nance method. We extract below the principles laid down in General Manager, Kerala State Road Transport Corporation V. Susamma Thomas (supra).

> "In fatal accident action, the measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependent as a result of the death. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have live or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better

employment or income or might have lost his employment or income altogether."

"The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of year's purchase."

"The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."

"It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years — virtually adopting a multiplier of 45 — and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible."

9. Again in the case of **Syed Sadiq and others vs. Divisional Manager, United India Insurance Co. Ltd. reported in 2014 ACJ 627**, it has been held as follows:

" 10. ... Therefore, considering that the appellant-claimant was self employed and was 24 years of age, we hold that he is

entitled to 50 per cent increment in the future prospects of income based upon the principle laid down in Santosh Devi's case.

11. ... Thus, the total amount which is awarded under the head of 'loss of future income' including the 50 percent increment in the future, works out to be Rs.17,90,000 [(Rs.65,000 x 85/100 + 50/100 x 85/100 x Rs.6,500) x 12 x18]"

After considering the principles enunciated in the judgments cited supra, let me consider the facts of the present case.

10.<u>CMA. No.45 of 2012</u>: It is not in dispute that at the time of the accident, the deceased, aged about 27 years, was working as a Mechanic in Automobile Engineering Department in M/s.Venkateswara College of Engineering, Pennalur, Sriperumbudur and was earning a sum of Rs.8,200/- per month. Considering the educational qualification of the deceased through Ex.P7/Diploma Certificate in Automobile Mechanic, this Court finds it reasonable to fix the monthly income of the deceased at Rs.6,500/-, instead of Rs.4,500/-, fixed by the Tribunal, considered to be very low. As per the ratio laid down in the aforementioned cases, the multiplier to be adopted would be '17'. Considering the principles of assessment, after deducting 50% towards personal expenses, this Court finds it reasonable to award Rs.6,63,000/- (i.e.

3250 x 12 x 17) towards loss of future income of the deceased. The Tribunal has fixed Rs.10,000/- towards loss of love and affection and Rs.9,000/- towards funeral expenses, which are considered to be very meagre. As the mother of the deceased, also lost her husband during the pendency of the case, this Court finds it reasonable to award a sum of Rs.70,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. In all the appellants/claimants are entitled for a sum of Rs.7,58,000/- with interest at 7.5% per annum. Since the father of the deceased is also no more, the mother is entitled to withdraw the entire sum with interest.

11.CMA. No.46 of 2012: It is not in dispute that at the time of the accident, the deceased, aged about 32 years, was working as a Driver of an Auto Rickshaw. Considering the fact that the 1st appellant, who is the wife of the deceased also died during the pendency of the case and that appellants 2 to 4, who are the children and mother of the deceased alone are the legal heirs and dependants of the deceased, this Court finds it reasonable to fix the monthly income of the deceased at Rs.6,000/- instead of Rs.4,500/-, fixed by the Tribunal, considered to be very low. As per the ratio laid down in the aforementioned cases, the multiplier to be adopted would be '16'. Considering the principles of assessment, after deducting 1/3rd towards personal expenses, this Court finds it reasonable to award Rs.7,68,000/- (i.e. 4000 x 12 x 16) towards loss of future income of the deceased. The Tribunal has fixed

Rs.10,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses, which are considered to be very meagre. Hence, this Court finds it reasonable to award a sum of Rs.1,00,000/- towards loss of love and affection to appellants 2 and 3, who are the children of the deceased and Rs.25,000/- to the fourth appellant, who is the mother of the deceased and Rs.25,000/- towards funeral expenses. In all the appellants/claimants are entitled for a sum of Rs.9,18,000/- with interest at 7.5% per annum. As it is submitted that the Insurance Company has already deposited the entire award amount with interest as awarded by the Tribunal, the second respondent/Insurance Company is directed to deposit the enhanced compensation of Rs.3,88,000/- and Rs.3,22,000/- respectively with interest at 7.5% per annum from the date of petition within a period of four weeks from the date of receipt of a copy of this order.

12.CMA. No.45 of 2012: On such deposit, 1st appellant in CMA. No.45 of 2012 is permitted to withdraw the entire sum along with accrued interest, by filing appropriate application before the Tribunal.

13.CMA. No.46 of 2012: On such deposit, the fourth appellant is entitled to withdraw her entire share along with interest as apportioned by the Tribunal. As the claimants 2 and 3 are minors, their share shall be deposited in a Fixed Deposit in a Nationalised Bank, until they attain majority. However, the interest accrued on the minor share shall be withdrawn by their guardian grand mother/fourth appellant herein, once in three months.

14. With the above modifications, these Civil Miscellaneous Appeals are partly allowed. No costs.

25.11.2015

Index : Yes/No
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To

1. Chief Judge, Small Causes Court,
(Motor Accidents Claims Tribunal) Chennai.

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

T.RAJA,J.

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C.M.A. Nos.45 and 46 of 2012

25.11.2015