

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.1249 of 2016,
Cross. Obj No.41 of 2016
and C.M.P.No.11796 of 2016
C.M.A.No.1249 of 2016

United India Insurance Co., Ltd.,
Motor 3rd Party Hub,
No.134, Silingi Buildings,
Greens Road, Chennai - 6. Appellant/2nd Respondent

Vs.

1. Yasoda Respondents/Petitioners
2. Rajendran
3. T.Anandhan 3rd Respondent/1st
Respondents

Prayer in C.M.A.No.1249 of 2016 : Civil Miscellaneous
Appeal filed under Section 173 of Motor Vehicles Act, against
the Award and Decree, dated 17.08.2015 made in M.C.O.P.No.724 of
2012 on the file of the Motor Accidents Claims Tribunal (VI
Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.K.Suriyanarayanan
for R1 and R2
R3 Given up

Cross Obj No.41 of 2016

1. Yasoda .. Cross Objectors/
2. Rajendran 1 and 2 Respondents in
CMA.1249/2016

Vs.

1. United India Insurance Co., Ltd.,
Motor 3rd Party Hub,
No.134, Silingi Buildings,
Greens Road, Chennai - 6.

2. T.Anandhan

... Respondents /Appellant and
3rd Respondent in OSA

Prayer in Cross Obj. No.41 of 2016 : Cross Objection filed under Order 41, Rule 22 of the CPC, against the Award and Decree, dated 17.08.2015 made in M.C.O.P.No.724 of 2012 on the file of the Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai.

For Cross Objectors : Mr.K.Suriyanarayanan
For Respondents : Mr.D.Bhaskaran for R1
R2 Given up

COMMON JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

This Civil Miscellaneous Appeal and Cross Objection are directed against the Award, dated 17.08.2015 passed by the Motor Accidents Claims Tribunal, Chennai in M.C.O.P.No.724 of 2012. Insurance company filed the appeal challenging the quantum and Cross Objection has been filed by the claimants for enhancement of the Award.

2. The parents of the deceased are claimants. R.Govarthanam, while riding the two wheeler at 7 p.m on 28.09.2006 on the National Highways near Rajakulam, lorry bearing Registration No.TN 09 E 1211 belonging to the third respondent and insured with the appellant was driven by its driver rashly and negligently and hit against the victim and he succumbed to the injuries in the hospital. The deceased was aged 26 years and working as Personal Assistant to MLA and his earning was Rs.15,000/- p.m. He is unmarried and the respondents 1 and 2, being parents are his dependants.

3. The Tribunal, after analysing the evidence of both sides, awarded compensation (i) towards loss of dependency - Rs.14,85,000/-; (ii) towards loss of love and affection, mental agony, loss of estate and loss of expectancy of life - Rs.1,00,000/-; (iii) towards funeral expenses - Rs.25,000/-, totally Rs.16,10,000/-. Aggrieved against the Award, the Insurance Company has come forward with the Civil Miscellaneous Appeal and the parents of the dependant has come forward with the Cross Objection.

4. The learned counsel appearing for the appellant contends that the Tribunal is not correct in fixing the income of the deceased as Rs.15,000/- p.m and also it is not correct in fixing future prospects at 50%.

5. The learned counsel appearing for the respondents 1 and 2 / claimants per contra contends that the Motor Accidents Tribunal ought to have taken 100% towards future dependency considering the earning capacity of the deceased and however, it has rightly fixed the income of the deceased, considering the fact that the victim was working as Personal Assistant to MLA. It is also further contended that the Tribunal has fixed the multiplier taking into account only the age of the dependant and not the deceased.

6. There is no dispute with respect to the liability of the compensation. The question that arose in this appeal is whether the Tribunal is correct in fixing future prospects at 50% when the deceased had no permanent employment and whether the multiplier as fixed by the Tribunal is correct.

7. The copy of the postmortem certificate, Transfer Certificate, copy of driving license of the deceased were marked as Exs.P.3, P.5 and P.8. As per these documents, the age of the deceased was 26 at the time of his death. Ex.P.4 and Ex.P.5 disclose that the deceased discontinued his Diploma course and he completed vocational training and got certificate, namely National Trade Certificate. He was also holding driving license to drive Light Motor Vehicle and Motor Cycle with Gear.

8. The employer of the deceased was examined as P.W.3 and the Salary Certificate, Ex.P.9 was marked through him. From the evidence of P.W.3, the claimants established that the deceased was employed as P.A., to P.W.3 and he was earning Rs. 15,000/- p.m. Considering the age, qualification and the avocation at the time of the death of the deceased, monthly earnings taken on the basis of the above evidence by the Tribunal is just and reasonable.

9. The contention of the appellant that income tax returns or assessment order of the employer was not produced is not sustainable for the simple reason that the poor claimants cannot be made to suffer for the fault of the employer, who might have even evaded the tax.

10. As far as future prospects in case of self-employer or fixed wages, to be added to the compensation towards the dependency, there is difference of opinion among the cases in Sarla Verma v. DTC (2009) 6 SCC 121, Reshma Kumari v. Madan Mohan (2013) 9 SCC 65 and Rajesh and Ors. v. Rajbir Singh & Ors., (2013) 2 TN MAC 55 (SC). One view is that there can't be any addition towards future prospects for the deceased working in a non-organised sector. Another view is that 50% is to be added as future prospects in those cases. The matter is before the Larger Bench of the Hon'ble Supreme Court. Therefore, let us

not advert to the future prospects in this case and take the monthly income as his earnings without adding future prospects.

11. In *Sarla Verma v. DTC*, reported in (2009) 6 SCC 121, the Hon'ble Supreme Court held that the multiplier should be chosen with respect to the age of the deceased. In *Santhosh Devi v. National Insurance Co., Ltd.*, reported in (2012) 6 SCC 421, it was held that the age of the dependants is to be considered in fixing the multiplier and this Judgment was holding the field.

12. The Hon'ble Supreme Court in *Reshma Kumari v. Madan Mohan*, reported in (2013) 9 SCC 65, gives an quietus to the issue holding that the age of the deceased should be the basis for fixing the multiplier.

13. The Hon'ble Supreme Court in *Munna Lal and Ors. v. Vipin Kumar Sharma and Ors.*, reported in (2015) 6 SCC 347, by referring to all the above three judgments, has held thus :

"Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased."

14. It is thus clear that the age of the deceased has to be considered for selecting the multiplier. The age of the deceased in this case is 26 years. As per *Sarla Verma's* case, the multiplier for the age of 26 years would be 17. For calculation of loss of dependency, the deceased being bachelor, 50% of his income is deducted for his personal expenses and therefore, $15,000 \times 12 = \text{Rs.}1,80,000/-$; less 50% of personal expenses, comes to $\text{Rs.}90,000/-$ and hence, the total compensation for loss of dependency would come to $\text{Rs.}90,000 \times 17 = \text{Rs.}15,30,000/-$; towards loss of love and affection, mental agony, loss of estate and loss of expectancy of life - $\text{Rs.}1,00,000/-$ and for funeral expenses - $\text{Rs.}25,000/-$. Hence, the total compensation comes to $\text{Rs.}16,55,000/-$ ($\text{Rs.}15,30,000 + \text{Rs.}1,00,000 + \text{Rs.}25,000$). After deducting $\text{Rs.}16,10,000/-$ awarded by the Motor Accident Claims Tribunal, the enhancement would be $\text{Rs.}45,000/-$.

15. In fine, the Civil Miscellaneous Appeal and Cross Objection are partly allowed and the impugned award of the Tribunal is modified to the extent as stated supra. The

claimants will be entitled to the said sum of Rs.45,000/- in addition to what is already awarded, with interest at 7.5% per annum from the date of petition till the date of realisation. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

tsvn

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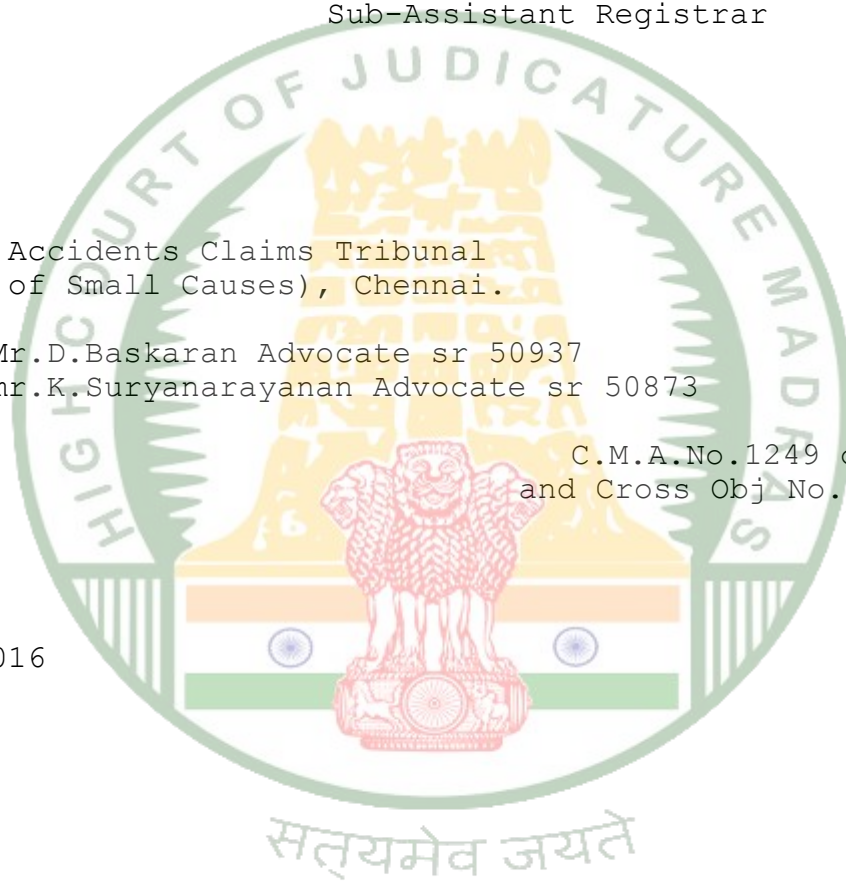
The Motor Accidents Claims Tribunal
(VI Court of Small Causes), Chennai.

+1 cc to Mr.D.Baskaran Advocate sr 50937

+1 cc to mr.K.Suryanarayanan Advocate sr 50873

C.M.A.No.1249 of 2016
and Cross Obj No.41 of 2016

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