IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2016

CORAM:
THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

CIVIL MISCELLANEOUS APPEAL No.1127 of 2015
and
Cross Objection No.77 of 2015

M/s.United India Insurance Co. Ltd.,
No.19, Andiappa Gramani Road,
Royapuram,
Chennai 600 013. ... Appellant in C.M.A.No.1127/2015
& 1st respondent in Cross Obj. No.77/2015

vs.

1. Delbi
2. Divya D.Raj
3. Deepa D.Raj
4. Deeja D. Raj (Minor)
5. S.Gnanabharanam
6. Kamalabai ... Respondents 1 to 6 in C.M.A.No.1127/2015
& Cross Objectors in Cross Obj.No.77/2015

(4th Respondent Minor rep.
by Mother and next friend
1st Respondent)

7. K.P.Devanath ... 7th respondent in C.M.A.No.1127/2015
& 2nd respondent in Cross. Obj.No.77/2015

Civil Miscellaneous Appeal No.1127 of 2015 filed under Section 173 of the Motor Vehicles Act, 1988 and Cross Objection No.77 of 2015 filed under Order 41 Rule 22 C.P.C. against the judgment and decree dated 14.08.2014 in M.C.O.P.No.3174 of 2011 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes Court, Chennai.

For Appellant
in C.M.A.No.1127/2015
& 1st respondent
in Cross Obj. No.77/2015 : Mr.N.Vijayaraghavan

For Respondents 1 to 6
in C.M.A.No.1127/2015
& Cross Objectors
in Cross Obj.No.77/2015 : Mr.V.Velu

For 7th respondent
in C.M.A.No.1127/2015
& 2nd respondent
in Cross Obj. No.77/2015 : Mr.C.D.Sugumar

C O M M O N J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Since the issue and facts involved in both the appeal and the Cross Objection, are one and the same, they are taken up for disposal by a common judgment.

2. Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, (IV Court of Small Causes), Chennai, by its award dated 14.08.2014 in M.C.O.P.No.3174 of 2011, that it is on the higher side, the Insurance Company has filed C.M.A.No.1127 of 2015. Objecting the same, the claimant has come up with Cross Objection No.77 of 2015, seeking enhancement of compensation.

3. For the sake of convenience, the parties are hereinafter referred to as the 'claimants' and the 'Insurance Company'.

4. Brief facts leading to the filing of the claim petition, would run thus:
On 08.02.2011, about 16.30 hours, while the deceased was walking along the road at Puthansathai, near Bathirakkaliamman Temple, Kanyakumari District, a Yamaha motorcycle bearing Registration No.TN 04 6106, driven by its rider in a rash and negligent manner dashed against the deceased, thereby resulting in fatal injuries. Alleging that the accident occurred due to the rash and negligent driving of the rider of the two wheeler and contending that the owner and insurer of the vehicle are jointly and severally liable to pay compensation, the dependants of the deceased filed a claim petition seeking a sum of Rs.30,00,000/- as compensation.

5. The said claim petition was resisted by the Insurance Company denying the manner of accident and contending that the compensation claimed by the claimants is exorbitant.

6. On the side of the claimants, the 1st claimant, Mrs.Delbi was examined as P.W.1; one Mr.M.S.Jijoe was examined as P.W.2; one Mr.C.Francis was examined as P.W.3 and Exs.P1 to P13 were marked.

Ex.P-1	Copy of FIR
Ex.P-2	Copy of Postmortem Certificate
Ex.P-3	Copy of legal heir certificate
Ex.P-4	Copy of Sketch
Ex.P-5	Copy of Driving Licence of 1st respondent's driver
Ex.P-6	Copy of MV report of 1st respondent's vehicle
Ex.P-7	B.Sc. Degree Statement of marks of deceased
Ex.P-8	Copy of Voter Identity Card of P.W.2
Ex.P-9	Copy of Identity Card of P.W.3
Ex.P-10	Authorisation letter of P.W.3
Ex.P-11	Salary Certificate
Ex.P-12	Copies of cash vouchers
Ex.P-13	Copy of driving licence of P.W.3

On the side of the Insurance Company, no witness was examined and no document was marked.

7. The Tribunal, taking note of the oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving of the rider of the Yamaha Motocycle, bearing Registration No.TN 04 6106 and fixed the liability to compensate the claimants, on the Insurance Company. Taking into account the avocation and income of the deceased, the Tribunal arrived at a sum of Rs.26,76,000/- (Rupees Twenty Six Lakhs Seventy Six Thousand only) as compensation payable to the claimants with interest at 7.5% per annum. The details of the award passed by the Tribunal under different heads, are tabulated below:

Loss of income	Rs. 20,16,000.00
Loss of consortium	Rs. 50,000.00
Loss of Love and Affection	Rs. 2,00,000.00
Mental shock	Rs. 4,00,000.00
Funeral expenses	Rs. 10,000.00
Total compensation	Rs.26,76,000.00

8. Though the liability of the accident is disputed, learned counsel appearing for the Insurance Company would mainly contend that the quantum of compensation awarded by the Tribunal is too high.

9. On the other hand, learned counsel appearing for the claimants would contend that the Tribunal ought to have awarded more compensation taking note of the age of the deceased.

10. We have heard the rival submissions of the learned counsel on either side and perused the material documents available on record.

11. A perusal of the records would reveal that the deceased was aged 44 years at the time of accident. P.W.1, wife of the deceased has deposed that the deceased was working as a Binding Supervisor in a Private concern, earning a sum of Rs.15,000/- per month. In support of his avocation and salary, the Salary Certificate of the deceased was marked as Ex.P11 and copies of Cash Vouchers were marked as Ex.P12. The Tribunal, after deducting 1/5th towards personal expenses of the deceased, took Rs.12,000/- as his monthly contribution and applying the multiplier of '14', arrived at a sum of Rs.20,16,000/- as compensation towards "loss of income".

12. In Syed Sadiq vs. Divisional Manager, United India Insurance Company Limited, (2014) 2 SCC 735, the Apex Court fixed the monthly income of a vegetable vendor at Rs.6,500/- per month, taking note of the escalating prices. Relevant portion of the said judgment would run thus:

> "8. The appellant/claimant in his appeal further claimed that he had been earning Rs.10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs.3500/- p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in the case of Ramchandrappa v. Manager, Royal Sundaram Alliance Company Limited, has held as under:
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> > "13. In the instant case, it is not in dispute that the Appellant was aged about 35 years and was working as a Coolie and was earning Rs.4500/- per

month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of 3000/- p.m. Secondly, the Appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, Appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to Rs.150/- per day or Rs.4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the Appellant from

Rs.4500/- to Rs.3000/- per month. We, therefore, accept his statement that his monthly earning was Rs.4500/-."

9. There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month.

13. It is also worth referring to the judgment in Santosh Devi v. National Insurance Company Limited, (2012) 6 SCC 421, wherein, the Apex Court has clearly framed guidelines as regards addition to income through future prospects. Relevant portion of the said decision would read thus:

"13. In Sarla Verma's case (supra), another two Judge Bench considered various factors relevant for determining the compensation payable in cases involving motor accidents, noticed apparent divergence in the views expressed by this Court in different cases, referred to large number of precedents including the judgments in U.P. SRTC v. Trilok Chandra (1996) 4 SCC 362, Nance v. British Columbia Electric Railway Co. Ltd. 1951 AC 601, Davies v. Powell Duffryn Associated Collieries Ltd. 1942 AC 601 and made an attempt to limit the exercise of discretion by the Tribunals and the High Courts in the matter of award of compensation by laying down straight jacket formula under different headings, some of which are enumerated below:

(i) Addition to income for future prospects: In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

(ii) Deduction for personal and living expenses: Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

(iii) Selection of multiplier: We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

14. Syed Sadiq case referred to supra pertains to an injured vegetable vendor, who suffered amputation of right leg and his disability was assessed at 65%. Taking into account the escalating prices, the Apex Court fixed his monthly income at Rs.6,500/-. But, the case on hand is fatal in nature and the claimants herein are the wife, children and aged parents of the deceased. Though, the wife of the deceased has produced proof to substantiate the income of the deceased, the Tribunal has fixed his income at Rs.12,000/. When compared to a vegetable vendor, a Binder working in a private Printing Press, who naturally possesses specialised skills is expected to earn more.

15. Although, the 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, 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. Hence, considering the age of the deceased and in view of the ruling of the Apex Court in Syed Sadiq case, this Court fixes the fairwages of the deceased at Rs.9,500/- per month for the purpose of Motor Accidents Claim. Also applying the guidelines framed by the Apex Court in Santosh Devi's case, adding 30% of the income of the deceased towards future prospects, the revised compensation towards “loss of income” is arrived at a sum of Rs.16,59,840/-, in the following manner.

Monthly income of the deceased	:	Rs. 9,500/-
30% of the monthly income towards future prospects	:	Rs. 2,850/-
Annual income (Rs.9,500/- + Rs.2,850/- = Rs.12,350/-)	:	Rs. 1,48,200/-
Deduction of 1/5th towards personal expenses	:	Rs. 29,640/-
Annual contribution to the family	:	Rs. 1,18,560/-
Application of '14' multiplier (Rs.1,18,560/- x '14')	:	Rs. 16,59,840/-

16. As far as compensation towards “loss of love and affection” is concerned, this Court is inclined to enhance the

same. Accordingly, the claimants 2, 3, 5 and 6 are each entitled to a sum of Rs.50,000/- as compensation and the 4th claimant, being a minor is entitled to a sum of Rs.1,00,000/- as compensation towards "loss of love and affection".

17. Also, we feel it appropriate to enhance the compensation towards "loss of consortium" and "funeral expenses". Accordingly, the compensation towards "loss of consortium" is enhanced from Rs.50,000/- to Rs.1,00,000/- and a sum of Rs.10,000/- granted towards "funeral expenses" is enhanced to Rs.25,000/-. As regards compensation towards "mental shock", when enough amount is awarded towards "loss of income", we feel that compensation under this head is unnecessary and hence, the same is struck down. Break-up details of the revised award are as under:

Heads	Award of the Tribunal	Revised Compensation of this Court
Loss of income	Rs. 20,16,000.00	Rs. 16,59,840.00
Loss of consortium	Rs. 50,000.00	Rs. 1,00,000.00
Loss of Love and Affection	Rs. 2,00,000.00	Rs. 3,00,000.00
Mental shock	Rs. 4,00,000.00	-
Funeral expenses	Rs. 10,000.00	Rs. 25,000.00
Total compensation	Rs.26,76,000.00	Rs.20,84,840.00 r/off to Rs.20,85,000.00

18. Thus, Cross-Objection No.77 of 2015 filed by the claimant is dismissed and the Civil Miscellaneous Appeal No.1127 of 2015 filed by the Insurance Company is partly allowed, in the following terms:

(i) The award of Rs.26,76,000/- passed by the Tribunal is modified and the claimants are entitled to a sum of Rs.20,85,000/- (Rupees Twenty Lakhs Eighty Five Thousand only) as per the ratio fixed by the Tribunal.

(ii) The interest awarded by the Tribunal at the rate of 7.5% per annum from the date of filing the claim petition till the date of realization, is confirmed.

(iii) It is needless to mention that if no amount is deposited by the Insurance Company, it shall deposit the entire award amount as ordered by this Court within a period of six (6) weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are entitled to withdraw the award amount along with accrued interest.

(iv) The proportionate share of the minor claimant shall be deposited in any one of the Nationalised Banks initially under reinvestment scheme for a period of three years, renewable thereafter periodically and the interest accrued thereon shall be withdrawn by her natural guardian, once in three months, till the minor attain majority.

(v) It is also made clear that the proportionate share of the award amount shall be paid to the major claimants by the Tribunal in the form of a crossed Account Payee Cheque, favouring only the claimants and it should not be issued in favour of any other person/Company and the same procedure has to be followed in the case of the minor claimant, once she attains majority.

(vi) There shall be no order as to costs. Consequently, connected M.P.No.1 of 2015 is closed.

aeb

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To :

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

+ 1 cc to M/s.V.Velu, Advocate, SR 15516

+ 1 cc to M/s.M.B.Gopalan, Advocate, SR 15408

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