IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2017

CORAM

THE HON'BLE MR. JUSTICE **S.MANIKUMAR**
and
THE HON'BLE MR. JUSTICE **M.GOVINDARAJ**

C.M.A. No.1586 of 2016

The New India Assurance Company Ltd
Motor Third Party Cell
45, Moore Street, 5th Floor, Chennai - 1 .. Appellant

vs

1.Yonus

2.Saif Alikhan (Minor)

3.Sameetha (Minor)

Respondents 2 and 3 are
represented by their father
and next friend Yonus

4.M/s.Sai Rath Service
No.3/75, Old Mahabalipuram Road
Chemmancherry, Sholinganallur
Chennai - 600 119 .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 12.02.2016 made in M.C.O.P. No.877/2013, on the file of Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant .. Mr.G.Udayasankar

For Respondents .. Mr.K.Varadha Kamaraj
for R1 to R3

JUDGMENT

(Made by **S.MANIKUMAR, J.**)

Quantum of compensation of Rs.24,11,000/- with interest, at the rate of 7.5% per annum, awarded in M.C.O.P. No.877 of 2013 dated 12.02.2016 on the file of Motor Accident Claims Tribunal (II Court of Small Causes, Chennai), to the husband and minor children, aged about 5 years and 3 years respectively, at the time of accident, is challenged on the grounds inter alia that, in the absence of any documentary evidence such as identity card, pay slip or any letter, and examination of the employer or any representative from M/s.A to Z, Purasawalkam, Chennai, the Tribunal, has erred in accepting the contentions of the legal representatives of the deceased/claimants that, as Manager of the above said company, the deceased earned income.

2. Mr.G.Udayasankar, learned counsel for the appellant/insurance company, submitted that the Tribunal, ought not to have fixed the monthly income as Rs.9,000/- for the purpose of computing the loss of contribution to the family. When a sum of Rs.1,00,000/- has already been awarded under the head loss of consortium, to the husband, addition of further compensation of Rs.1,00,000/- to him, under the head loss of love and affection, superfluous and excess. Compensation of Rs.1,00,000/- awarded under the head loss of expectation of life to the legal representatives of the deceased is erroneous.

3. We have heard Mr.K.Varadha Kamaraj, learned counsel for the respondents 1 to 3/legal representatives, who submitted that the quantum of compensation awarded under various heads is just and reasonable, and the same does not require any reduction.

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

4. As rightly pointed out by Mr.G.Udayasankar, learned counsel for the appellant, in the absence of any document or oral evidence from M/s.A to Z company, Purasawalkam, Chennai, the Tribunal ought not to have held that, as Manager, the deceased earned income. However, the services of homemaker, has to be taken note of and the same cannot be brushed aside, while fixing the monthly income.

5. Insofar as determination of monthly income of a homemaker, this court deems it fit to consider a decision of the Hon'ble Apex Court in ***Arun Kumar Agrawal & Anr. vs. National Insurance Co. Ltd. & Ors.,*** reported in ***2010 (9) SCC 218***, wherein, after considering the services, which the husband and family stand to lose, due to death of a house wife, as per ***Kemp on Negligence***, at paragraph Nos.23 to 27, the Hon'ble Apex Court, held as follows:

> *"23. In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides*

invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean 2 etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

24. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term `services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.

*25. In **Lata Wadhwa v. State of Bihar (supra)**, this Court considered the various issues raised in the writ petitions filed by the petitioners including the one relating to payment of compensation to the victims of fire accident which occurred on 3.3.1989 resulting in the death of 60 persons and injuries to 113. By an interim order dated 15.12.1993, this Court requested former 2 Chief Justice of India, Shri Justice Y.V. Chandrachud to look into various issues including the amount of compensation payable to the victims. Although, the petitioners filed objection to the report submitted by Shri Justice Y.V. Chandrachud, the Court overruled the same and accepted the report. On the issue of payment of compensation to housewife, the Court observed: So far as the deceased housewives are concerned, in the absence of any data and as* *the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000 per annum in cases of some and Rs.10,000 for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3000 per month and Rs.36,000 per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore, should be recalculated, taking the value of services rendered per annum to be Rs.36,000 and thereafter, applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs.50,000 instead of Rs.25,000 given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs.10,000 per annum and the multiplier applied is eight. Though, the multiplier applied is correct, but the values of services rendered at Rs.10,000 per annum, cannot be held to be just and, we, therefore, enhance the 2 same to Rs.20,000 per annum. In their case, therefore, the total amount of compensation should be redetermined, taking the value of services rendered at Rs.20,000 per annum and then after applying the multiplier, as already applied and thereafter, adding Rs.50,000 towards the conventional figure. (emphasis supplied)*

26. The judgment of Lata Wadhwa's case was referred *to with approval in **M.S. Grewal and another v. Deep Chand Sood and others (2001) 8 SCC 151** for confirming the award of compensation of Rs.5 lacs in a case involving death of school children by drowning due to negligence of teachers of the school. In **Municipal Corporation of Greater Bombay v. Laxman Iyer and another (2003) 8 SCC 731,** a two-Judge Bench while deciding the issue of award of compensation under Sections 110-A and 110- B of the Motor Vehicles Act, 1939, referred to the judgments in Lata Wadhwa's case and M.S. Grewal's case.*

*27. In **A.Rajam v. M.Manikya Reddy, 1989 ACJ 542** (Andhra Pradesh HC), M. Jagannadha Rao, J. (as he then was) advocated giving of a wider meaning to the word `services' in cases relating to award of compensation to the dependants of a deceased wife/mother. Some of the observations made in that judgment are extracted below: The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of 'services' to the family, if there was reasonable prospect of such services being rendered freely in 2 the future, but for the death. It must be remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the family would have otherwise been spending for the deceased housewife. While estimating the `services' of the housewife, a narrow meaning should not be given to the meaning of the word `services' but it should be construed broadly and one has to take into account the loss of `personal care and attention' by the deceased to her children, as a mother and to her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary services."*

At paragraph No.32, the Apex Court further held that, *"the gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the 2 housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs.15,000/- per annum and in case of a spouse, 1/3rd income of the earning/surviving spouse for the purpose of computing the compensation. Though, Section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments of this Court in* ***General Manager Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and others, U.P. S.R.T.C. v. Trilok Chandra, Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another*** *and also take guidance from the judgment in Lata Wadhwa's case."*

6. In ***Arun Kumar Agrawal's*** case, though legal representatives therein claimed that she earned Rs.50,000/- per month by painting and handicrafts, the Tribunal therein fixed the monthly income as Rs.5,000/- for computing the loss of contribution to the family and awarded Rs.6,00,000/- as compensation. But, on appeal, the High Court reduced the same. When the correctness of the decision of the High Court was tested, the Hon'ble Supreme Court, after considering the various principles, the Convention on the Elimination of All

Forms of Discrimination Against Women (CEDAW), gratuitous services rendered by wife/mother and also by observing that gender equality has to be maintained in assessing compensation for housewives, victims of road accident, restored the original compensation awarded by the Tribunal.

7. In the case on hand, the accident has occurred on 20.09.2012. Considering the consumer price index, inflation and such other economic factors, this court deems it fit to fix the monthly income of the deceased as Rs.8,000/-. At the time of accident, age of the deceased was 26 years. Hence, we deem it fit to add 50% to the said income, under the head future prospects. Net income, for the purpose of computing the loss of contribution is Rs.12,000/-. Age of the deceased, as per Ex.P4-Postmortem certificate is 26 years. In the absence of any birth extract or documentary evidence to substantiate age, age mentioned in the Postmortem certificate can always be taken. Reliance can be made to the decision in ***Fakeerappa v. Karnataka Cement Pipe Factory*** reported in ***2004 (4) LW 20*** and ***The Managing Director, Tamil Nadu State Transport Corporation, Madurai v. Mary*** reported in ***2005 (5) CTC 515.***

8. Determining the age as 26 years, and in the light of the decision of the Hon'ble Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***2009 (2) TN MAC 1 (SC)***, multiplier '17' can be applied. As the number of legal representatives are 3 in number, 1/3rd deduction has to be made. Accordingly, we compute the loss of contribution to the family as Rs.16,32,000/- (Rs.12,000/- x 17 x 2/3).

9. ''Consortium', as per **Best v. Samuel Fox** reported in **(1952) AC 716,** means, "Duty owned by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc.,". Consortium is not a pecuniary loss. In **Rajesh and others v. Rajbir Singh and others** reported in **2013(3) CTC 883,** the Hon'ble Apex Court, while observing that, at least a sum of Rs.1 Lakh has to be awarded to the widow, for loss of consortium, and held as follows:

> *"In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head.*

10. As rightly pointed out by Mr.G.Udayasankar, learned counsel for the appellants, love and affection is one of the components in loss of consortium, which is explained by the Hon'ble Supreme Court in ***Rajesh and others v.***

Rajbir Singh and others reported in ***2013 (3) CTC 883***. Following the said decision, Rs.1,00,000/- awarded under the head loss of love and affection is superfluous and accordingly, the same is deducted.

11. A sum of Rs.1,00,000/- awarded under the head 'loss of expectancy of life' has to be deducted on the ground that merely because the wife died, there would not be any loss of expectation of life to the husband or to the other legal representatives, as the case may be. Compensation of Rs.1,00,000/- awarded under the said head is deducted.

12. Compensation of a sum of Rs.50,000/- under the head loss of estate, and a further sum of Rs.25,000/- under the head funeral expenses, is just and reasonable, and hence we do not want to disturb the same. Perusal of the award further shows that no compensation has been awarded for transportation and conventional damages. Therefore, a sum of Rs.10,000/- and Rs.2,000/- for transportation and damages to clothes, respectively, would be reasonable and accordingly awarded. After re-working, compensation due and payable to the legal representatives of the deceased/respondents, works out to Rs.20,19,000/- as here under:

Loss of contribution to the family	: Rs.16,32,000/-
Loss of consortium	: Rs. 1,00,000/-
Loss of love and affection	: Rs. 2,00,000/-
Loss of Estate	: Rs. 50,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 10,000/-
Damages to clothes	: Rs. 2,000/-
Total	: Rs.20,19,000/-

Compensation awarded by the Tribunal is Rs.24,11,000/-. On appeal, compensation now determined by this court is Rs.20,19,000/-. Hence there will be a reduction of compensation by Rs.3,92,000/-.

13. Mr.G.Udayasankar, learned counsel for the appellants submitted that, pursuant to an interim order dated 01.08.2016 made in C.M.P. No.11951 of 2016 in C.M.A. No.1586 of 2016, a sum of Rs.15,10,659/- representing 50% of the award amount (inclusive of proportionate interest and cost), has been deposited to the credit of M.C.O.P. No.877 of 2013 on the file of Motor Accident Claims Tribunal (II Court of Small Causes), Chennai and that the same has been permitted to be withdrawn vide order dated 20.10.2016 made in C.M.P. No.15217 of 2016 in C.M.A. No.1586 of 2016.

14. Now, in the light of reduction in the quantum of compensation, New India Assurance Company Ltd/appellant is directed to deposit the balance amount with proportionate interest and costs, within a period of four weeks from the date of receipt of a copy of this judgment.

The civil miscellaneous appeal is allowed in part on the above terms. However, there shall be no order as to cost in appeal.

(S.M.K., J.) (M.G.R., J.)
09.06.2017

Index: Yes/No
Internet: Yes/No

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To

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

S. MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

asr

C.M.A.No.1586 of 2016

09.06.2017