

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/9/2016

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice N.Authinathan

Civil Miscellaneous Appeal No.2090 of 2016

The Branch Manager
M/s. Chola Mandalam MS General Ins Co. Ltd
The Branch Office
Dharmapuri. Appellant

Vs

1. V. Chinnammal
2. Vinitha
3. Karthikeyan (minor)
rep. By Mother and NF 1st respondent
4. C. Narayanasamy Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 25/4/2013, passed by the Motor Accident Claims Tribunal, District & Special Court, Krishnagiri, (Special District Court), Krishnagiri.

For appellant : Mr.M.B.Gopalan

J U D G M E N T
(Judgment of the Court was made by S.Manikumar, J)

On this day, when the matter came up for hearing, Mr.M.B.Gopalan, learned counsel for Chola Mandalam Insurance Company/appellant herein, submitted that the quantum of compensation is the only challenge. His submission is placed on record.

2. According to the claimants, at the time of accident, the deceased was aged about 47 years. He was an Agriculturalist and paddy harvester machine owner-cum-operator, and earned Rs.10,000/- p.m. The deceased was the only bread winner of the family.

3. Short facts leading to the appeal are that on 25/4/2012, at about 15.00 hours, in Morappur to Kambainallur road, near Kallavi junction road, in front of Ganesh bakery, the deceased and others were standing and taking tea. At that time, a lorry bearing Registration No.KA01-AA-4044, belonging to the fourth respondent and insured with the appellant herein, was driven by its driver in a rash and negligent manner, without observing the rules, at an uncontrollable speed from Kambainallur side, suddenly hit the deceased and others, who were standing on the mud portion, in front of the bakery. Due to the impact, the deceased and others sustained fatal injuries. Immediately, the injured was taken to the Government Hospital, Morappur and after first aid treatment, he was taken to Om Sakthi Hospital, Dharmapuri and thereafter, was taken to Manipal Hospital, Bangalore. Due to the severe head injuries, he died on 25/5/2012, at Manipal Hospital, Bangalore. A case has been registered in Crime No.179 of 2012 under Sections 279, 337 and 304 (A) of the Indian Penal Code against the lorry driver.

4. At the time of accident, the second respondent was studying in B.Sc second year at Vivekananda College, Thiruchengode and the third respondent was studying +2 at Senthil Matriculation School, Dharmapuri. Ex.P.8 series of medical bills from Manipal Hospital have been marked, to prove that the respondents 1 to 3/claimants incurred a sum of Rs.4,60,000/- towards treatment charges and despite the same, bread winner died.

5. Though there was no supporting document, to prove that the deceased owned a harvester machine and earned not less than Rs.10,000/- p.m., taking note of the educational expenses of the children, documents filed to prove hospitalisation and Ex.P.8 series of medical bills from Manipal Hospital, Rs.4,60,000/-, the Tribunal held that the deceased had sufficient sources, to maintain the quality of life and thus, Rs.10,000/-p.m., claimed is not an exaggerated figure. However, fixed the monthly income at Rs.9,000/- p.m. Following Santhosh Devi Vs. National Insurance Company Ltd {2012 (4) Scale 559}, the Tribunal has added 30% of the income towards future prospectus. At the time of his death, the deceased was aged 48 years and as per Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and Another {(2009) 6 Supreme Court Cases 121}, Tribunal fixed the multiplier as 13, for the age 45 - 50 and after deducting the amount awarded under the head personal and living expenses of the deceased, computed the loss of contribution to the family as

Rs.13,57,200/- (Rs.1,04,000 x 13).

6. On the basis of Ex.P.8 series of medical bills, Tribunal has awarded Rs.4,60,000/- for medical expenses. In addition to the above, the Tribunal has awarded Rs.50,000/- under the loss of consortium, Rs.1 lakh under the head loss of love and affection to the second and third petitioners, Rs.20,000/- towards funeral expenses and Rs.20,000/- for transportation. Altogether, the Tribunal has awarded Rs.19,07,200/- with interest at the rate of 7.5% interest from the date of filing of the claim petition till the date of deposit.

7. Though Mr.M.B.Mohan, learned counsel for the appellant/transport Corporation submitted that the Tribunal has erred in considering the income of the deceased at Rs.10,000/-, without any basis and thus computed the loss of contribution to the family and further contended that the Tribunal has erred in adding 30% towards future prospectus, this Court is not inclined to accept the said contentions.

8. On the aspect of adding certain sum under the head 'future prospects', recently, in C.M.A.No.3273 of 2014, dated 13.10.2015 [Royal Sundaram Alliance Insurance Co. Ltd., v. Tmt.Vennila], this Court observed as follows :

"56. As tabulated in the foregoing paragraphs, it should be noted that Consumer Price Index, Gross Domestic Product and Per Capita Income, have increased. One cannot disown the fact that the percentage of those in unorganized sectors is more than the organised sectors. While that be so, would it be appropriate for the Insurance Companies and Transport Corporations, to contend that there is absolutely no chance of any upward revision in wages or salary of those, employed in unorganised sectors or for that matter in the earnings of self-employed. If the contentions of the Insurance Companies and Transport Corporations have to be accepted, whether the self-employed or those engaged in unorganised sectors, can never have any expectation of an event in future, ie., increase in earnings or wages? With the basic study of the statistics, we are of the considered view that the answer should be a clear 'No'. When the Consumer Price Index is applicable uniformly to rich or raff, it cannot be contended that those who are engaged in unorganized sectors or self-employed, would continue to earn the same income, for years together.

57. For the abovesaid reasons, we are of the considered view that the word, "prospects" should not

be read and understood, only in plural sense, meaning thereby, its prospects or an apparent probability of advancement in employment, in organised sectors alone. Narrowing down the meaning of the words, "future prospects" only to the employment prospects and consequently, more possibility of earning income, only in the case of organised sector and not in unorganised sector or self-employed, would affect the majority and therefore, the meaning of the word, "prospect" used in singular, meaning thereby, expectation, possibility or probability, chances of earning more income in future, depending upon the factors, stated supra, should also be considered.

58. Thus, from the above particulars, extracted supra, it is evident that both the Central and State Governments have periodically revised the minimum wages across the country. It has been raised taking into consideration the Consumer Price Index. In respect of scheduled employments, for skilled, semi-skilled, unskilled, construction workers, labourers, etc., wages, are fixed in various scheduled employments, right from Agarbathi Industry to Woolen Carpet and Shawl wearing machinery.

59. While that be the position in organised sectors, it cannot be contended that insofar as unorganised sectors or self-employed, is concerned, there would not be any revision in the wages or salary or earning. When the minimum wages of an employee in the organised sector, is revised periodically, taking into consideration the Consumer Price Index and Variable Dearness Allowance, the living conditions, then the others, in a unorganised sector may expect more or less the same wage, and if there are more number of persons, there may be chances of lesser wage, on account of surplus human resources and in such cases, the bargaining power of certain class of employees, depending upon the field, for revision of wages or earning, may be less.

60. If a non-salaried domestic worker sells a piece of any article, which he or she manufactures and if the customer bargains the rate, he or she would immediately reply, as to how much amount, he/she has to spend for buying the basic materials, other materials used, compare the erstwhile travel expenses and the cost of labour. Can anyone in this Country can say that the electricity charges, water charges, rent, fee received by the Government, cost of education, price of commodities, etc., have remained the same,

without any change. Cost of tea sold in a ordinary tea stall is the same for any person, whether engaged in organised or unorganised. Contenting inter alia that there would not be any increase in wages or earning for those engaged in unorganised sectors, for years to come, can it be said that he would never take a cup of tea, outside?

61. At this juncture, it should be borne in mind that Consumer Price Index is fixed, taking into consideration that the majority consumers are from unorganised sectors. Thus, with reference to Gross Domestic Product, Per Capita Income, Consumer Price Index and such other economic factors, determined on the basis of participation and contribution of both organised and unorganised sectors, the classification that those engaged in unorganised sectors, should be totally denied of any addition of income under the head, future prospects, would in our humble view, would affect Article 14 of the Constitution of India. When the majority of persons, in unorganised sectors, also decide the economic factors, stated supra, it would be unjust and unreasonable to contend that there would not any prospect or addition in the earning of those engaged in unorganised sector, forever. If there is addition of Variable Dearness Allowance to the basic wages, in the case of organised sector, depending upon the Consumer Price Index, applicable for a particular period, one would reasonably expect the same factor of variable Dearness Allowance, to be a relevant factor, for determining the variation in the wage in case of unorganised sector also, as Consumer Price Index is common to all, whether engaged in organised or unorganised sector.

62. At this juncture, we deem it fit to consider, what "Dearness Allowance" means? "Dearness Allowance" is a cost of living adjustment allowance paid to Government employees, Public sector employees (PSU) and pensioners. Dearness Allowance is calculated as a percentage of an Indian's basic salary to mitigate the impact of inflation. Variable Dearness Allowance is always linked to Consumer Price Index. The notifications of Minimum wages by the Central and State Government reflects how much is the Variable Dearness in each field.

63. In the light of what we have tabulated above, judicial notice can also be taken that the cost of labour, whether it is in agricultural field or manufacturing or services, has increased. Thus, focusing on the increase in wages or earning, in

almost all the fields of operation, right from agricultural or industrial or manual labourers, tea shop or road side vendor, the Consumer Price Index, being the same to rich or raff and therefore, correspondingly to meet out the living conditions, atleast for providing the basic amenities, like food, shelter and clothing, and not to add up the expenditure towards health, education, certainly, there would be revision of wages or earning, even in unorganised sectors also. Future is the period of time that will come after the present or things that will happen. Having regard to the consistent and periodical revision of wages by the Governments, it cannot be contended by the Insurers or Transport Corporations that a person in unorganised sector, has no future at all, in the matter of revision of wages or earning.

64. In R.K.Malik's case (cited supra), the Hon'ble Supreme Court considered the quantum of compensation, payable to the legal representatives of the deceased children, aged between 10 and 18 years. Referring to the inflation, price rise, etc., the Hon'ble Supreme Court, by observing that there would be a future prospects, for the children also, granted a sum of Rs.75,000/- under the head, future prospects, though as on the date of accident, they were children, studying in a school. In V.Mekala's case (cited supra), the injured was a student studying in 11th Standard. While determining the monthly income of the injured as Rs.10,000/-, the Hon'ble Supreme Court added 50% of the income, under the head, future prospects. In the recent decision in Munna Lal Jain's case (cited supra), the Hon'ble Supreme Court added 50% under the head, future prospects.

65. Thus, from the line of judgments, it could be noticed that the Hon'ble Supreme Court has considered the addition of a quantified sum, under the head, future prospects, in effect, indicating that there is a prospect or chance or possibility of earning more income, after a passage of time, though not periodically, as done in the case of Government or Public Sector Undertakings or Boards or Corporations, Companies owned and controlled by the Government or Limited Companies.

66. We have already extracted the orders of the Chief Labour Commissioner, Ministry of Labour and Employment, Government of India, New Delhi and taken into consideration a sample case, City of Chennai. Wage revision may vary in rural or urban areas or

metropolitan cities. At the risk of repetition, as observed earlier, the number of persons, engaged in unorganized sectors, agriculture or industrial, or home based or self-employment, etc., are more in number, than those employed in organised sectors.

67. Income from the organised sector alone, is not the deciding factor, for determining Gross Domestic Product, Consumer Price Index or Per Capita Income. Thus, from a basic study of the factors, taken into consideration by the Governments for revision of wages, to the enumerated categories of employees, one cannot lose sight of the fact that the said factors, would also have an indelible effect on those, engaged in unorganized sectors also. In the light of our discussion and the details considered, we are of the considered view that addition of certain percentage of income under the head, future prospects, has to be done in the case of those engaged in unorganized sector or self-employed also, otherwise, they would be deprived of just compensation. Addition of income under the head, future prospects, should not be restricted to only salaried persons, with stable jobs.

68. Though it is the case of the Insurance Companies and Transport Corporation that in the case of persons engaged in unorganised sector or salaried or persons, who do not have any permanent job, addition of certain percentage of income, under the head, "future prospects", to the income drawn, at the time of death, should not be made, for computation loss of dependency compensation, we are not inclined to accept the same, for the reason that the expression "future prospects" should not be confined only to the prospects of the deceased in the career, progress or upgradation of position, in which, he was engaged, prior to death, but the expression "future prospects" should also be extended to the likelihood of increase in wages/salary, earned by either a skilled or semi-skilled person, clerical and others, considering the upward increase in the cost price, inflation and such other factors."

9. In the light of the above decision and discussion, this Court is of the opinion that the quantum of compensation is just and reasonable.

10. In the result, this Civil Miscellaneous Appeal is dismissed. Cholamandalam MS General Insurance Company Ltd., is directed to deposit the entire award amount, with proportionate

interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.146 of 2013, on the file of the Motor Accidents Claims Tribunal, District & Special Court, Krishnagiri, within a period of four weeks from today. Since the third respondent has attained majority, the respondents 1 to 3/claimants are permitted to seek for withdrawal of the amounts, after making necessary applications. No costs. Consequently, the connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

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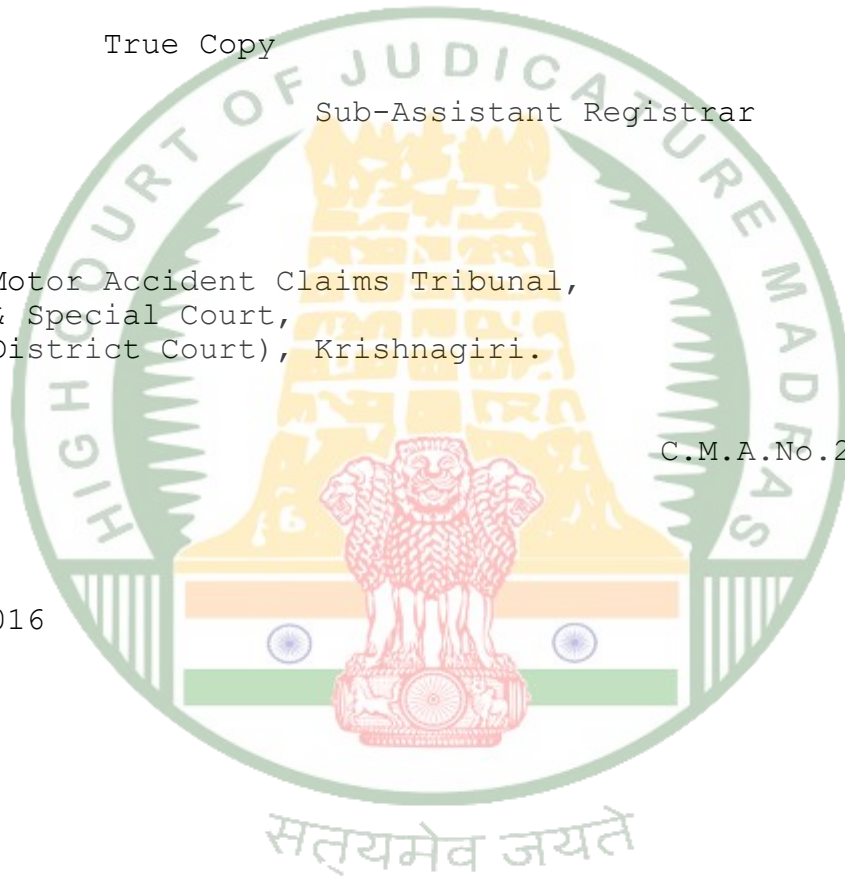
Sub-Assistant Registrar

mvs
To

1. The Motor Accident Claims Tribunal,
District & Special Court,
(Special District Court), Krishnagiri.

C.M.A.No.2090 of 2016

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