

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. Nos.243 of 2011 & 2142 of 2014

C.M.A. No.243 of 2011

New India Assurance Company Ltd.,
No.80, Arcot Road, Porur, Chennai-116. ...Appellant /
Respondent II

Versus

1.D.Komala
2.B.Deenadayalan ...Respondents / Petitioners
3.S.Anbumani ...Respondents / Respondent I

(the 3rd respondent herein was set
exparte before the Tribunal)

C.M.A. No.2142 of 2014

1.D.Komala
2.B.Deenadayalan ...Appellants / Petitioners

Versus

1.S.Anbumani
2.New India Assurance Company Ltd.,
No.80, Arcot Road, Porur, Chennai-116. ...Respondents /
Respondents

(the 1st respondent herein was set
exparte before the Tribunal)

Prayer in both appeals: Civil Miscellaneous Appeals filed under
Section 173 of the Motor Vehicles Act, 1988 against the judgment
and decree dated 26.06.2009 made in M.C.O.P.No.941/2007 on the
file of the Motor Accidents Claims Tribunal, (Additional
District and Sessions Judge, Fast Track Court No.II),
Poonamallee.

For Appellant in CMA. No.243 of 2011
and 2nd respondent in CMA.No.2142 of 2014: Mr.S.Jayasankar

For Respondents 1 and 2 in
CMA. No.243 of 2011 and
appellants in C.M.A. No.2142 of 2014 : Mr.J.Mahalingam

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

C.M.A. No.243 of 2011 has been filed by the New India Assurance Company Ltd. challenging the quantum of compensation and C.M.A. No.2142 of 2014 has been filed by the claimants seeking enhancement of compensation.

2.As both the appeals are arising out of the common award, they are taken up together for common disposal.

3.According to the claimants, on 15.12.2006 at about 21.30 hrs, while the deceased was riding his motor cycle bearing Registration No.TN-02-T-4438 from North to South direction, a mini lorry bearing Registration No.TN-20-AV-6395, which was driven by its driver, came in a rash and negligent manner and dashed against the motor cycle of the deceased. Due to the same, the deceased sustained fatal injuries and died. According to the claimants, the accident had happened due to the rash and negligent driving of the driver of the lorry.

4.Learned counsel for the claimants would submit that it is a case of death of bread winner of the claimants' family. When the deceased was aged about 23 years at the time of accident, comfortably employed as Team Leader in Guilt Edge Infotech Services Limited and was earning a sum of Rs.11,204/-, even as per Ex.P5/pay slip issued by the said company, the learned Tribunal has fixed only a sum of Rs.5,000/- as notional monthly income of the deceased, disbelieving the monthly salary claimed by the claimants. Arguing further it is contented that the manner of accident could be seen from the First Information Report, marked as Ex.P1, which was registered on the file of the Ambattur Police Station in Crime No.1346 of 2006 against the driver of the bus. Pursuant to the registration of F.I.R., a charge sheet was filed against the driver of the offending vehicle and the same was marked as Ex.P2. The mother of the deceased/P.W.1 and P.W.2, who is an eye witness of the accident also came and deposed in favour of the claimants that the accident has occurred only due to the rash and negligent driving of the driver of the vehicle. Considering all the above said facts and also the fact that the deceased was hit behind the motor cycle by the offending vehicle supported by the F.I.R.

marked as Ex.P.1, the learned Tribunal has rightly come to the conclusion that the accident had happened only due to the rash and negligent driving of the offending vehicle.

4.1.Learned counsel for the claimants would further submit that the learned Tribunal, after accepting the negligence on the part of the offending vehicle and saddled the liability on the part of the Insurance Company to pay the compensation, without accepting further evidence adduced by Mr.Rajasekar, Accountant, who was examined as P.W.3., has fixed only a meagre sum namely Rs.5,000/- as notional monthly income of the deceased. When the salary certificate was marked as Ex.P.5 issued by the above said company Guilt Edge Infotech Services Limited and the same was also corroborated by the said officer, who was examined as P.W.3., the learned Tribunal for the reasons best known, has not accepted the salary certificate. Therefore, the learned Tribunal has made a perverse finding with regard to the fixing of the notional monthly income of the deceased. He would further submit that when the accident took place on 15-12-2006, the learned Tribunal has wrongly adopted the multiplier on the basis of the mother's age of the deceased namely 45 years and adopted '13' as the multiplier, without taking the age of the deceased. Therefore, the present appeal has been filed for seeking enhancement.

5.Learned counsel for the Insurance Company would submit that when the deceased was a bachelor at the time of accident and admittedly the father of the deceased was having his own income as driver, the learned Tribunal has erroneously deducted 1/3rd of the income towards personal expenses of the deceased and has also applied the multiplier '13' for arriving the pecuniary loss to the parents of the deceased. When the deceased was also a cause for the said accident, the learned Tribunal has saddled the liability solely on the part of the Insurance Company and thereby awarded a huge compensation. Therefore, the impugned award passed by the learned Tribunal needs interference.

6.This Court, after summoning the Lower Court Documents, was able to see Ex.P.5/Pay Slip issued for the month of November 2006, which clearly shows that the gross salary of the deceased was Rs.11,204/- and the net salary after deduction comes to Rs.10,712/-. This Court has repeatedly held that to prove the income of the deceased, salary certificate issued by the concerned company, in which the victim was shown working for a monthly income, should be accepted as the income of the deceased. In the present case, when the payslip issued to the deceased for the month of November 2006 has been rightly produced by P.W.1, mother of the deceased and the same was also corroborated by P.W.3., who is an Accountant coming from the

place of employment, in the absence of any contra evidence produced by the Insurance Company to disbelieve the salary slip for the month of November 2006, issued by the said company, it is not known why the learned Tribunal has disbelieved the same. Since such a finding is totally against the evidence available on record and being perverse and the accident took place on 15-12-2006, this Court is inclined to accept the salary slip for the month of November 2006 issued to the deceased. Therefore, this Court, accepting the salary certificate, is inclined to re-determine the monthly salary at Rs.10,712/- and the same is re-determined as such.

6.1. Since the deceased was a bachelor at the time of accident and there were only two claimants namely father and mother of the deceased, the learned Tribunal has erroneously deducted $\frac{1}{3}^{\text{rd}}$ of the income towards personal expenses of the deceased instead of deducting 50% of the income. As per the ratio laid down by the Hon'ble Apex Court in the case of Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another reported in 2009 (6) SCC 121, 50% deduction has to be made towards personal expenses of the deceased and accordingly deduction of 50% is made herein.

6.2. While coming to the adoption of multiplier, it has been contented by the learned counsel for the claimants that when the accident took place on 15-12-2006, the learned Tribunal has adopted the multiplier on the basis of the mother's age of the deceased namely 45 years and adopted '13' as the multiplier. In view of the subsequent development, it is well settled law that the age of the deceased has to be taken for arriving the loss of dependency. Therefore, in the present case, the deceased died at the age of 22, while serving as a Team Leader and hence, the multiplier '18' should be adopted, as per the ratio laid down by the Hon'ble Apex Court in the above said case of Sarla Verma, which reads as under:

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above which starts with an operative multiplier of 18, 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."

6.3. Since the learned Tribunal has not made any addition towards future prospects, this Court is inclined to add 50% of

the actual salary towards future prospects, as per the ratio laid down by the Hon'ble Apex Court in the above said case of Sarla Verma and accordingly the same is added. On this score, the loss of dependency is arrived as follows:
 $10712 \times 12 \times 18 + 50\% - 50/100 = \text{Rs.} 23,13,792/-$

6.4. While the deceased was serving as a Team Leader, earning a sum of Rs.10,712/- as monthly income, the parents of the deceased have lost their only son and therefore, naturally, they would have lost the love and affection of their son. As per the ratio laid down by the Hon'ble Apex Court in the case of Rajesh and others vs. Rajbir Singh and others reported in 2013 (4) TN MAC 44 (SC) wherein it has been held that a minimum sum of Rs.1,00,000/- should be fixed towards loss of love and affection, Rs.1,00,000/- each is to be awarded to the claimants under the above said head, since the learned Tribunal has awarded only a meagre sum of Rs.10,000/- under the above head. Accordingly, Rs.1,00,000/- each is ordered to be paid under the head 'loss of love and affection'.

6.5. Learned Tribunal has awarded only a sum of Rs.15,000/- towards funeral and ambulance expenses. This Court is inclined to fix Rs.25,000/- under the above head and the same is hereby fixed. The modified compensation as per the above discussions are as follows:

Loss of dependency	... Rs.23,13,792/-
Loss of love and affection	... Rs. 2,00,000/-
Funeral and Ambulance expenses	... Rs. 25,000/-

Total	... Rs.25,38,792/-

7. Learned Tribunal has also committed a mistake in awarding the compensation stating that the claimant/mother of the deceased is entitled to get the total compensation. When there are two claimants namely father and mother of the deceased, the learned Tribunal ought to have mentioned about the apportionment. As there is no mention with regard to the income of the father and the apportionment, this Court is of the view that the claimants are entitled to get the total compensation equally i.e. 50% each.

8. The learned Tribunal while passing the impugned award has directed the Insurance Company to pay the award amount within a period of three months, failing which the interest payable would become 10% for the period of delay. The record shows that the impugned award was pronounced on 26.06.2009 and subsequently the appeal was filed on 30.08.2010 with a delay of 5 days. Therefore, the conditional order with regard to the payment of

interest at 10% payable by the Insurance Company, will have to be accepted.

9. Accordingly, the Insurance Company is hereby directed to deposit the above said award amount Rs.25,38,792/- with interest at 10% per annum, as directed by the learned Tribunal, after deducting the amount that has already been deposited by them, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the said amount equally, on making proper application before the learned Tribunal. It is needless to mention that since this Court has enhanced the compensation, the claimants are directed to pay Court fee for the balance amount.

10. For the aforesaid reasons, C.M.A. No.243 of 2011 filed by the Insurance Company is dismissed and C.M.A. No.2142 of 2014 filed by the claimants is allowed. No costs. Consequently, connected M.Ps are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
(Additional District and Sessions Judge,
Fast Track Court No.II), Poonamallee.

2. The Section Officer,
V.R. Section, High Court, Madras.

RK(CO)
RS(22/02/2017)

C.M.A. Nos.243 of 2011 & 2142 of 2014