

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **23.08.2016**

CORAM:

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

**C.M.A.No.3129 of 2013
and M.P.No.1 of 2015**

1. A.Mani

2. M.Baby

.... Appellants

Vs.

1. V.Elango

2. S.Ravichandran

3. M/s. ICICI Lombard General
Insurance Company Ltd.,
Zenith House, keshavrao Marg,
Khadve Marg,
Mahalaxmi,
Mumbai - 400 034.

.... Respondents

(Cause Title amended vide order
of Court, dated 28.08.2015
made in M.P.No.1 of 14 in
C.M.A.No.3129 of 2013)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 r/w Rule 23 (1) of Tamil Nadu Motor Vehicles Accidents Claims Tribunal Rules, 1989, against the Order and decretal order, dated 21.01.2013 made in M.C.O.P.No.3349 of 2009 on the file of the Motor Accident Claim Tribunal, Chennai / XV Additional District Judge, Chennai.

For Appellants : Mr.S.Raghavan

For Respondent : Notice Dispensed with
for R1 and R2
No Appearance for R3

JUDGMENT

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

This Civil Miscellaneous Appeal has been filed by the claimants against the order, dated 21.01.2013 passed in M.C.O.P.No.3349 of 2009 by the Motor Accident Claim Tribunal, Chennai.

2. The claimants are parents of the deceased Omprakash, who died in the work spot at 5.45 pm on 13.05.2008, as the tipper lorry, bearing Regn.No.TN-10-T-9903 belonging to the second respondent herein and insured with the third respondent herein was driven rashly and negligently by the driver by suddenly taking a reverse and hit the deceased. The claimants claimed Rs.35,00,000/- from the respondents as compensation.

3. The claimants pleaded before the Tribunal that the deceased was a Diploma holder and was working as a Project Manager and earned Rs.40,000/- p.m. The age of the deceased was averred as 32 years.

4. The Tribunal after considering the oral as well as the documentary evidence let in by both sides, awarded Rs.9,60,000/- with 7.5% interest from the date of the petition and held that the respondents 2 and 3 are jointly and severally liable to pay the compensation. Aggrieved by the quantum fixed by the Tribunal, the claimants have preferred this Civil Miscellaneous Appeal.

5. There is no dispute as to the liability of the compensation. Before the Tribunal, the third respondent filed petition under Section 170 of the Motor Vehicles Act and contested.

6. The learned counsel appearing for the appellants contends that the Tribunal is not correct in taking the age of the claimants instead of taking the age of the deceased for fixing the multiplier. It is further contended that the trial Court is also not correct in fixing the monthly income of the deceased as Rs.20,000/- instead of Rs.40,000/-.

7. The Tribunal took the multiplier based on the age of the claimants. The claimants at the time of death of their son were 61 and 53 years respectively and the age of the deceased was 32, as evinced from the postmortem certificate and the transfer certificate, Ex.P.4 and Ex.P.11.

8. whether the multiplier should depend on the age of the dependants or that of the deceased has been under confusion for some time.

9. In **Sarla Verma (Smt) and Ors., v. Delhi Transport Corporation and Anr.**, reported in **(2009) 6 SCC 121**, the Hon'ble Apex Court held that the multiplier should be chosen with reference to the age of the deceased. **Santosh Devi v. National Insurance Co., Ltd.**, reported in **(2012) 6 SCC 421** was holding the field stipulating that the age of the dependants is to be considered in fixing the multiplier. That has been given a quietus by another Three Judge Bench decision in **Reshma Kumari v. Madan Mohan**, reported in **(2013) 9 SCC 65**, by holding that the age of the deceased should be the basis for fixing the multiplier.

10. The learned counsel appearing for the appellants cited the latest Supreme Court Judgment in **Munna Lal Jain and Ors., v. Vipin Kumar Sharma and Ors.**, reported in **(2015) 6 SCC 347**, in support of his argument that the age of the deceased is to be taken for fixing the multiplier. In this Judgment, the Three Judge Bench of the Hon'ble Supreme Court, by referring the above said Sarla Verma's case, Santhosh Devi's case and Reshma Kumari's

case held as follows :

"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."

11. Therefore, on the basis of the decision of the Hon'ble Supreme Court in Sarla Verma's case, the multiplier is to be taken on the basis of the age of the deceased. Therefore, on the basis of the age of the deceased, i.e., 32 years, the multiplier would be 16 instead of 7 taken by the Tribunal on the basis of the average age of the claimants.

12. With respect to the salary, the Tribunal rejected the ledger account copy and statement of account, Ex.P.20 and Ex.P.21. These documents were marked through P.W.3, who himself deposed in his cross-examination that those documents do not depict the salary of the deceased specifically. Further, these documents are

stated to be of the employer. No proof has been filed to show that the deceased received Rs.40,000/- p.m. Within few months from the date of employment, he passed away.

13. Therefore, considering the available evidence, the Tribunal has rightly fixed Rs.20,000/- as monthly income of the deceased. Therefore, applying the multiplier 16, the amount would come to $\text{Rs.}20,000 \times 12 \times 16 = \text{Rs.}38,40,000/-$. As per Sarla Verma's case, 50% has to be deducted for the personal expenses of the deceased, who was bachelor at the time of the accident. If it is so deducted, the compensation payable towards future dependency comes to Rs.19,20,000/-. With respect to other heads, there is no dispute and does not require any change. Thus in total, the appellants are entitled to Rs.20,40,000/- (Towards future dependency = Rs.19,20,000/-; towards loss of love and affection = Rs.1,00,000/-; towards funeral expenses = Rs.10,000/-; towards transportation expenses = Rs.10,000/-) as compensation towards the death of deceased Omprakash.

14. In fine, this Civil Miscellaneous Appeal is allowed in part and the impugned order passed by the Tribunal is modified and accordingly, the respondents 2 and 3 are jointly and severally

ordered to pay a sum of Rs.20,40,000/- (Rupees Twenty Lakhs Forty Thousand only) with interest at 7.5% p.a from the date of the petition till the date of realisation with proportionate cost. The amount, which has already been received by the appellants / claimants shall be adjusted and the rest of the amount to be paid by the respondents 2 and 3. Time for payment is two months. Consequently, connected miscellaneous petition is closed.

(A.S., J.) (P.K., J.)
23.08.2016

Index : Yes

tsvn

To

The Motor Accident Claim Tribunal, Chennai /
XV Additional District Judge, Chennai.

A.SELVAM, J.
AND
P.KALAIYARASAN, J.
tsvn

Judgment in
C.M.A.No.3129 of 2013

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