BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A(MD)No.291 of 2016
and
C.M.P(MD)Nos.4032, &
9712 of 2016

National Insurance Company Limited,
Through its Divisional Manager,
Manojiappa Street,
Thanjavur. ... Appellant/2nd Respondent

Vs.

1.Malarkodi
2.Selvaraj
3.Gnanasekaran
4.Manoharan ... Respondents1 to 4/Petitioners 1 to 4

5.Rajkumar ... 5th Respondent/1st Respondent

(R - 5 exparte in Tribunal and notice dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.1215 of 2013, dated 22.04.2015 on the file of the Motor Accident Claims Tribunal, Principal District Court, Thanjavur.

For Appellant : Mr.J.S.Murali

For RR 1 to 4 : Mr.S.Raja Prabhu

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant-Insurance Company against the award of Rs.10,26,000/- (Rupees Ten Lakhs and Twenty Six Thousand only) to the respondents 1 and 2/claimants 1 and 2 as compensation for the death of one Vasudevan, aged about 21 years, allegedly earning about Rs.7,500/- as a Cleaner in a lorry and the accident occurred on 10.06.2013. When he was riding Hero Honda Motor Cycle from his Village to Tanjore, the Motor Cycle was knocked by a lorry driven in a rash and negligent manner on the opposite direction from

Tanjore to Kumbakonam leading to the death of the said Vasudevan. Therefore, the claim petition.

2.On contest, the Tribunal found that the lorry was driven by its driver in a rash and negligent manner and fixed the liability on the appellant-Insurance Company and awarded a sum of Rs.10,26,000/- (Rupees Ten Lakhs and Twenty Six Thousand only). Challenging the same, the present appeal.

3.Mr.J.S.Murali, learned counsel appearing for the appellant-Insurance Company would submit that since the deceased was a bachelor, 50% of income should have been deducted towards personal expenses, whereas, one-third alone was deducted for personal expenses and therefore, he seeks 50% deduction. Further, he would submit that future prospects has been added at 50% and it is illegal as per the judgments of the Honourable Supreme Court in Reshma Kumari v. Madan Mohan reported in **2013 (1) TN MAC 481 (SC)** and **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**, which declared that the future prospects could be added only for those who are Government employees, whereas, the deceased was a cleaner of the lorry. Hence, 50% could not be added towards as future prospects.

4.On the other hand, Mr.S.Rajaprabu, learned counsel appearing for the respondents 1 to 4/claimants 1 to 4 would support the award passed by the Tribunal.

5.Heard both sides and perused the records.

6.A perusal of the records would show that the deceased was aged about 21 years and he was employed as a cleaner in a lorry. Though it was claimed Rs.7,500/- as monthly income, the Tribunal determined the monthly income at Rs.6,000/- only. Rs.6,000/- determined by the Tribunal is on the lower side, especially when the accident occurred on 10.06.2013. For a vegetable vendor, who suffered injuries in the accident occurred on 14.02.2008, the Honourable Supreme Court, even in the absence of any proof, determined the monthly income of Rs.6,000/- in **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.** reported in **2014 (1) TNMAC 459 (SC)**. Therefore, this Court instead of Rs.6,000/- determines the monthly income, at Rs.7,500/- even in the absence of any proof regarding income.

7.Though Mr.J.S.Murali, learned counsel appearing for the appellant-Insurance Company would argue that 50% future prospects is only available for the Government employees, only relying upon the judgments of the Honourable Supreme Court in **Reshma Kumari v. Madan Mohan** reported in **2013 (1) TN MAC 481 (SC)** and **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**, a three Judge Bench of the Honourable Supreme Court in **Rajesh and**

others v. Rajbir Singh and others reported in **(2013) 9 Supreme Court Cases 54**, held that even for self-employed and private employed persons, are entitled for future prospects. If future prospects is available only for Government employees, then 90% of the Indian population will not have any future prospects. Therefore, this Court approves 50% added by the Tribunal toward future prospects. As this Court already determined the monthly income of Rs.7,500/-, 50% is added towards future prospects and the income would be Rs.11,250/-.

8.The argument of Mr.J.S.Murali, learned counsel for the appellant-Insurance Company that 50% has to be deducted towards personal expenses on a bachelor, relying upon the three Judge Bench of the Honourable Supreme Court in **Reshma Kumari v. Madan Mohan reported in 2013 (1) TN MAC 481 (SC)** and **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC),** has got force and therefore, 50% is deducted by setting aside one-third deduction made by the Tribunal. After deduction of 50%, the loss of income would be (Rs.7,500 + 50% - 50%) Rs.5,625/-.

9.Though the multiplier is not raised as a ground, it is seen that the Tribunal adopted wrong multiplier '13' as per the age of the mother contrary to the Supreme Court Judgments. When this Court intended to change the multiplier, Mr.J.S.Murali, learned counsel for the appellant-Insurance Company would submit that the Tribunal rightly followed the age of the mother in view of the three Judge Bench of the Honourable Supreme Court in **New India Assurance Company Limited vs. Shanti Pathak and others reported in AIR 2007 SC 2649** and the Judgment of the Honourable Supreme Court in **Y.P.Shakuntala and another Vs. Manager, Reliance General Insurance Company Limited** reported in **III (2016) ACC 1 (SC),** whereas the learned counsel for the respondents 1 to 4/claimants would rely upon the three Judge Bench of the Honourable Supreme Court in **Reshma Kumari v. Madan Mohan** reported in **2013 (1) TN MAC 481 (SC),** to support that the multiplier should be adopted according to the age of the deceased.

10.A perusal of the Judgment of the Honourable Supreme Court in **New India Assurance Company Limited vs. Shanti Pathak and others** reported in **AIR 2007 SC 2649,** merely observed that it would be appropriate to take multiplier '5', considering the age of the mother of the deceased as 65 and paragraph 8 is extracted as follows:-

> "8.In the instant case the age of the deceased was 52 years as per the post mortem report and the multiplier thus has to be 8 instead of 13 as adopted by the Tribunal and upheld by the High Court. The rate of interest awarded does not need any interference. The monthly income has to be taken as Rs.11,684/- and

one-third has to be deducted therefrom for personal expenses. Thus, the annual loss of income comes to Rs.93,939/-. The same is rounded to Rs.93,000/-. The entitlement for loss of income comes to Rs.7,44,000/-. The other amounts awarded by the Tribunal totalling Rs.29,500/- remain unaltered. Thus the claimant is entitled to Rs.7,73,500/- along with interest at the rate fixed by the Tribunal. The payment already made shall be adjusted."

Similarly in the Judgment of the Honourable Supreme Court in **Y.P.Shakuntala and another Vs. Manager, Reliance General Insurance Company Limited** reported in **III (2016) ACC 1 (SC)**, merely approved the multiplier adopted by the High Court and paragraph 4 is extracted as follows:-

"4.Insofar as the deduction to the extent of 50% and the multiplier (15) is concerned, we do not find any infirmity inasmuch as the deceased was a bachelor and the age of the mother was taken into consideration for determination of the multiplier. However, insofar as the income of the deceased is concerned, though Ex.P.9-salary certificate had indicated that the deceased was drawing a salary of Rs.11,000/- per month, the Tribunal confirmed the same at Rs.6,800/- per month. Though learned counsel for the respondents contend that the Tribunal/High Court was fully justified in doing so, we are of the view that in the facts of the present case, the salary of the deceased ought to have been taken at Rs.11,000/- per month. On the basis of the multiplier, as determined by the Courts below, we find that the claim of the compensation comes to Rs.9,90,000/- (Rupees Nine lakhs ninety thousand only). We accordingly, allow this appeal by enhancing the compensation to the said amount ie., Rs.9,90,000/- the enhanced amount will also carry interest at the rate of 10% from the date of filing of the claim. The amount due along with interest will be paid within a period of three months from today."

The aforesaid Judgments merely approved the multiplier adopted by the Courts below. As rightly pointed out by the learned counsel for the respondents 1 to 4/claimants, choosing of multiplier has been in thread-bare discussed in **Reshma Kumari v. Madan Mohan** reported in **2013 (1) TN MAC 481 (SC)**. The Supreme Court while rendering judgment analysis the judgment in **General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas** reported in **(1994) 2 SCC 176**, **Uttar Pradesh State Road Transport Corporation vs. Trilok Chandru** reported in **(1996) 4 SCC 362 and New India Assurance Company Limited vs. Charlie** reported in **(2005)**

10 SCC 720 and finally given the dictum in paragraph No.33 of the Judgment. The three Judge Bench of the Honourable Supreme Court in **Reshma Kumari v. Madan Mohan** reported in **2013 (1) TN MAC 481 (SC),** has held that the multiplier might be chosen having regard to the age of the deceased. Paragraph Nos.33 and 34 are useful and extracted as follows:-

> "33.This Court in **C.K.Subramania Iyer Vs. T.Kunhikuttan Nair** reported in **(1969) 3 SCC 64,** reiterated the legal philosophy highlighted in **Taff Vale Railway Company Vs. V.Jenkins** reported in **1913 AC 1 : (1911-13) A11 ER Rep 160 (HL)** for award of compensation in claim cases and said that there is no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations. Obviously, award of damages in each case would depend on the particular facts and circumstances of the case but the element of fairness in the amount of compensation so determined is the ultimate guiding factor.
>
> 34.In **Kerala SRTC Vs. Susamma Thomas** reported in **(1994) 2 SCC 176 : 1994 SCC (Cri) 335,** this Court, though with reference to Section 110-B of the Motor Vehicles Act, 1939, stated that the multiplier method was the accepted norm of ensuring the just compensation which will make for uniformity and certainty of the awards. We are of the opinion that this statement in **Kerala SRTC Vs. Susamma Thomas** reported in **(1994) 2 SCC 176 : 1994 SCC (Cri) 335** is equally applicable to the fatal accident claims made under Section 166 of the 1988 Act. In our view, the determination of compensation based on multiplier method is the best available means and the most satisfactory method and must be followed invariably by the Tribunals and Courts."

Therefore, the ratio decidendi has been declared by the three Judge Bench of the Honourable Supreme Court in **Reshma Kumari v. Madan Mohan** reported in **2013 (1) TN MAC 481 (SC),** approving the Judgment in **Sarla Verma v. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC).** Therefore, this Court has to necessarily follow the age of the deceased for choosing the multiplier.

11.In view of that, the multiplier '13' adopted by the Tribunal, according to the age of the mother of the deceased, is set aside. The age of the deceased was 21 years as proved by Ex.P.8-Post Mortem Certificate. Therefore, the appropriate multiplier would be '18'. The loss of income would be equal to (Rs.7,500/- + 50% - 50% X 12 X 18) Rs.12,15,000/-.

12.The Tribunal awarded a sum of Rs.50,000/- under the head of loss of love and affection. Considering the loss of their child at the age of 21 years, this Court enhances amount for loss of love and affection to the respondents 1 & 2 in toto a sum of Rs.1,00,000/-. Rs.25,000/- awarded towards funeral expenses and Rs.15,000/- awarded towards Transportation are all reasonable and the same are confirmed. A sum of Rs.13,55,000/- as total compensation to the claimants 1 and 2 is awarded.

13.Accordingly, the respondents 1 and 2/claimants 1 and 2 entitled to get the following compensation:

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount reduced/ enhanced by this Court (Rs.)	Total (Rs.)
1.	Loss of income	9,36,000.00	(+) 2,79,000.00	12,15,000.00
2.	Loss of love and affection to the claimants 1 and 2	50,000.00	(+) 50,000.00	1,00,000.00
3.	Funeral expenses	25,000.00	Nil	25,000.00
4.	Transportation Charges	15,000.00	Nil	15,000.00
			Grand Total	13,55,000.00

14.When this Court enhanced the compensation as above, even in the absence of appeal/cross appeal by the claimants, Mr.J.S.Murali, learned counsel appearing for the appellant/Insurance Company would submit that in the absence of any appeal by the claimants, there could not be any enhancement. He relied upon two Judges Bench Judgment of the Honourable Supreme Court in **Ranjana Prakash and others vs. Divisional Manager and another** reported in **III (2011) ACC 592 (SC)**, to state that if the appeal is filed by the owner/Insurer, the appeal has to be dismissed if the Court is not inclined to reduce the amount and it cannot enhance the compensation. Paragraph Nos.7 and 8 of the Judgment are relevant and the same are extracted hereunder:-

> "7.This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate Court to pass any order which ought to have been passed by the trial Court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate Court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or

the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate Court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.

8.**Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation.** If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation".

In Paragraph No.8 of the abovesaid Judgment, the Honourable Supreme Court observed that when an appeal is filed challenging the quantum of compensation irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. This Court has only followed the aforesaid principle enunciated by the Honourable Supreme Court. The other observations in paragraph No.8 are only explanatory in nature.

15.Moreover under Order 41 Rule 33 C.P.C enables the Appellate Court to pass any order which ought to have been passed by the trial Court. Order 41 Rule 33 C.P.C reads as follows:-

"Power of Court of Appeal.- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the

> Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:
>
> Provided that the Appellate Court shall not make any order under Section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order".

A close scrutiny of Order 41 Rule 33 of the Code of Civil Procedure reveal that notwithstanding that appeal is as to part only of the decree and Court can exercise its power in favour of any of the respondents or parties although such respondent parties may not have filed any appeal or objection. When such a vast power has been clothed on the Appellate Court, this Court has got power and jurisdiction to enhance the compensation, if this Court finds that the compensation has to be enhanced as the Tribunal had failed to give just and fair compensation or erroneously followed the principles. The power of jurisdiction of this Court had already been upheld by the Honourable Supreme Court in **Nagappa v. Gurudayal Singh and others** reported in **2004 (2) TNMAC 398 (SC) : 2003 (2) SCC 274.** Therefore, the appealing arguments advanced by Mr.J.S.Murali, learned counsel appearing for the appellant/Insurance Company relying upon the Supreme Court Judgment is liable to be rejected.

16.What is to be given is only just compensation, it cannot be a boom or a restrictive amount. The provisions of the Motor Vehicles Act are beneficial in nature to console, comfort and compensate the victims of road traffic accident. India has got the notoriety of No.1 in the road traffic accident in the World, even though India has got lesser number of vehicles compared to United States of America where the accident is less. When many lives are lost and a number of people are injured every day, it is the duty of the Court to see that the victims are compensated properly. Therefore, in the absence of any appeal/cross appeal, applying the appropriate principles, this Court enhances the compensation of Rs.10,26,000/- to Rs.13,55,000/- in the appeal filed by the Insurance Company. While dismissing the appeal, this Court enhances the compensation as stated above.

17.In the result,

(i) This Civil Miscellaneous Appeal fails and the same is dismissed and award is enhanced from Rs.10,26,000/- to Rs.13,55,000/-.

(ii) The respondents 1 & 2/claimants 1 and 2 are equally entitled to the award amount.

(iii) Since 50% of the award amount has already been deposited in Indian Bank, High Court Branch, Madurai Bench of Madras High Court, Madurai, the appellant/Insurance Company is directed to transfer the balance amount along with proportionate interest and costs and also the enhanced amount to the personal Savings Bank Account of the respondents/claimants through RTGS/NEFT system after getting the Account Details from the respondents/claimants by the officials of the appellant-Insurance Company, within a period of six weeks from the date of receipt of a copy of this order.

(iv) The respondents 1 and 2/claimants 1 and 2 are permitted to withdraw their respective shares in the amount already deposited by the appellant-National Insurance Company before the Tribunal along with accrued interest and proportionate costs.
No costs. Consequently, the connected Civil Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS II)

/True copy/

Sub Assistant Registrar

To
1.The Motor Accident Claims Tribunal,
Principal District Court,
Thanjavur.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to MR.J.S.Murali, Advocate SR.NO.83201

ps
sm:MR-VB:02/02/2017:9P/4C

C.M.A(MD)No.291 of 2016
22.12.2016
1/2