

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 3/4/2017

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice M.Govindaraj

Civil Miscellaneous Appeal No.2191 of 2016

The Branch Manager
The New India Assurance Co. Ltd
Tiruchengode 637 211. ...Appellant/2nd Respondent

vs

1. Tmt. Suguna Rani
2. Thiru.Saravana Perumal
3. Kanaharasu
4. Santha ...Respondents/Petitioner and
Respondents 1,3&4

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, passed in M.C.O.P.No.540 of 2010, dated 31/10/2014, on the file of the learned Motor Accident Claims Tribunal (Principal District Judge), Perambalur District.

For Appellant Mr.J.Chandran

For Respondents ... Mr.T.Gopinath
for R.1.

Mr.R.P.Murugan Raja
for R.R.3 and 4.

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

Compensation of Rs.32,93,000/-, with interest at the rate of 7.5% p.a., from the date of claim till deposit and costs, awarded in M.C.O.P.No.540 of 2010, dated 31/10/2014, on the file of the Motor Accident Claims Tribunal (Principal District Judge), Perambalur District, is challenged by New India Assurance Co. Ltd., Thiruchengode.

2. Finding fixing negligence on the driver of the lorry bearing Registration No.KA02-AB-1599, insured with New India Assurance Co. Ltd., Thiruchengode/appellant herein and the motorcyclist in the ratio of 60 : 40, income of Rs.32,500/- taken into consideration, for the purpose of computing the loss of contribution to the family and application of 17 multiplier are questioned.

3. Supporting the contentions stated supra, Mr.J.Chandran, learned counsel for the appellant herein submitted that the Tribunal erred in overlooking the evidence of R.W.2, Sub-Inspector of Police, who has deposed that First Information Report was registered only against driver of the lorry. He further contended that P.W.3 stated to be the eyewitness, was not clear in his evidence, as regards the date of accident, number of the abovesaid two vehicles involved and his oral testimony only indicate that only after hearing noise, he saw the accident. According to the learned counsel, the Tribunal ought to have considered the same in proper perspective, and consequently, held that the driver of the lorry was not negligent in causing the accident.

4. According to him, even as per the contents of Ex.R.2, Motor Vehicles Inspector's report, the entire damage was on the front side of the motorcycle, indicating that it was the motorcyclist who was at fault and the contention that the lorry hit the motorcycle from behind, ought to have been rejected.

5. On the quantum of compensation, Mr.J.Chandran, learned counsel for the appellant herein submitted that income of Rs.32,000/-, taken for the purpose of computing the loss of contribution to the family is on the higher side and that the Tribunal has erred in adding of 50%, under the head future prospects, when no supporting document was filed.

6. Heard the learned counsel for the respondents, who prayed to sustain the award.

7. On the aspect of negligence, wife of the deceased examined as P.W.1, has reiterated the manner of accident. Ex.P.1 First Information Report, Ex.P.9 xerox copy of the charge sheet, have been filed on behalf of the claimants/respondents. Upon perusal of Ex.R.1, Claims Tribunal has noticed that a case in Crime No.239 of 2010, under Section 304 A of the Indian Penal Code, on the file of Padhalur Police Station has been registered against the driver of the lorry bearing Registration No.KA02-AB-1599. P.W.3 eye witness has deposed that the lorry came negligently and dashed against the motorcycle and as a result, he sustained grievous injuries and died on the spot. However,

the Tribunal has recorded that he has not lodged any complaint to the Police.

8. Father of the deceased, third respondent, in the claims petition has marked Ex.R.1 rough sketch. New India Assurance Co. Ltd., Thiruchengode/appellant herein has examined R.W.2, Sub-Inspector of Police. Upon perusal of Ex.R.1 rough sketch, marked by the third respondent, the Tribunal has observed that immediately after taking U-turn, and along side the center median, the deceased Arul Kumar, was riding the motorcycle, from North to South on Trichy - Chennai, National Highways - 45. Track on which the deceased was riding the motorcycle is meant for heavy vehicles. After assessing the oral and documentary evidence, Tribunal, by observing that the deceased ought not to have taken his motorcycle, on the track meant for heavy vehicles abetting the center median and that he ought to have driven the motorcycle, on the left extreme side of the road and that the lorry, a four wheeler also ought to have seen that there was a U-turn and could have avoided the accident, but contributed to the same, held that both driver of the lorry and motorcyclist were negligent in causing the accident and accordingly, fixed the same in the ratio as 60 : 40.

9. It is well settled that in claims cases, preponderance of probability is a test to ascertain as to whether finding of negligence is properly arrived at, and not strict evidence, as required in criminal cases.

10. The Hon'ble Supreme Court in Jacob Mathew Vs. State of Punjab reported in {2005 (4) CTC - 540}, at paragraph Nos.13 to 17, explained the difference between tort and crime, as follows:-

"13. The moral culpability of recklessness is not located in a desire to cause harm. It resides in the proximity of the reckless state of mind to the state of mind present when there is an intention to cause harm. There is, in other words, a disregard for the possible consequences. The consequences entailed in the risk may not be wanted, and indeed the actor may hope that they do not occur, but this hope nevertheless fails to inhibit the taking of the risk. Certain types of violation, called optimizing violations, may be motivated by thrill-seeking. These are clearly reckless.

14. In order to hold the existence of criminal rashness or criminal negligence it

shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences. Lord Atkin in his speech in *Andrews V. Director of Public Prosecutions*, [1937] A.C.576, stated,

"Simple lack of care such as will constitute civil liability is not enough; for purposes of the criminal law there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established."

Thus, a clear distinction exists between "simple lack of care" incurring civil liability and "very high degree of negligence" which is required in criminal cases. Lord Porter said in his speech in the same case -

"A higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability. (Charlesworth & Percy, *ibid*, para 1.13)

15. The fore-quoted statement of law in *Andrews* has been noted with approval by this Court in *Syad Akbar V. State of Karnataka* (1980) 1 SCC 30. The Supreme Court has dealt with and pointed out with reasons the distinction between negligence in civil law and in criminal law. Their Lordships have opined that there is a marked difference as to the effect of evidence, viz., the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man, beyond all reasonable doubt. Where negligence is an essential ingredient of the

offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

16. Law laid down by Straight, J in the case Reg V. Idu Beg (1881) 3 All. 776, has been held good in cases and noticed in Bhalchandra Waman Pathe V. State of Maharashtra 1968 Mh.L.J 423, a three Judge Bench decision of this Court. It has been held that while negligence is an omission to do something which is a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

17. In our opinion, the factor of grossness or degree does assume significance while drawing distinction in negligence actionable in tort and negligence punishable as a crime. To be latter, the negligence has to be gross or of a very high degree."

11. In Municipal Corporation of Greater Bombay v. Laxman Iyer reported in 2003 (8) SCC 731, wherein, the HonSupreme Court has explained the terms, "Negligence" "Composite Negligence" and "Contributory Negligence". At Paragraph 6, the Hon'ble Supreme Court explained, as to what act amounts to negligence and the same is extracted hereunder:

"Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree

of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and the duty are strictly correlative. Negligence means either subjectively a careless state of mind or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be said just and down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an action would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person."

12. In *North East Karnataka Road Transport Corporation v. Vijayalaxmi* reported in (2011) 2 TN MAC 840, A Full Bench of Karnataka High Court explained the difference between negligence and contributory negligence, as follows:

"11. Negligence is conduct, not a state of mind - conduct which involves an unreasonably great risk of causing damage. Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. In strict legal analysis, negligence means more than heedless or careless conduct, whether in omission or commission. It properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing. It is a question

of law whether in any particular circumstances a duty of care exists. The question is was the Defendant under any duty of care at all, and, if so, did he observe the standard required in the circumstances of the case? Foresight is the test for duty and remoteness. It is a characteristic of the definition of the tort of negligence that it does not refer to the scope of the protection it affords to the Plaintiff but rather to the qualities of blameworthiness or fault to be attributed to the conduct of the Defendant. There is no liability for negligence unless there is in the particular case a legal duty to take care, and this duty must be one which is owed to the Plaintiff himself and not merely to others. This duty of carefulness is not universal; it does not extend to all occasions and all persons and all modes of activity. The harm to the Plaintiff's interest which has in fact occurred must be of a kind against which it was the duty of the Defendant to take precautions. In the absence of some existing duty the general principle is that there is no liability for a mere omission to act. The fundamental notion appears to be that the imposition of an obligation to take positive steps for the benefit of another requires that other should furnish something by way of consideration. The standard of conduct required by the common law is that of the reasonable man. The reasonable man is presumed to be free both from over-apprehension and from over-confidence. A reasonable man does not mean a paragon of circumspection. But he is also cool and collected and remembers to take precautions for his own safety even in emergency. So, while on the one hand an error of judgment may not amount to negligence, on the other hand the fact that it might happen to him is not necessarily a defence - even the most careful are sometimes careless.

12. The doctrine that, if the Plaintiff's act was the proximate cause of the damage the Plaintiff could not recover damage was a well-established Principle of Medieval law. In the sixteenth and seventeenth centuries the conception of negligence as a ground of liability worked its way into the common law. With the recognition of negligence as a ground of liability a practice grew up of alleging that a Plaintiff could not recover because he was debarred by his own negligence. The Rule of law is that if there is blame causing the accident on both sides,

however small that blame may be on one side, the loss lies where it falls. When any person suffers damage as the result partly of his own fault and partly on the fault of any other person or persons, the claim in respect of that damage shall not be defeated by reason of the fault of the person suffered damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the Claimant's share in the responsibility for the damage.

13. The question of contributory negligence does not depend upon any breach of duty as between the Plaintiff and the Defendant. All that the Defendant is obliged to prove is that the Plaintiff failed to take reasonable precautions for his own safety in respect of the particular danger which in fact occurred, so that he thereby contributed to his own injury. This however is not to say that in all cases the Plaintiff who is guilty of contributory negligence owes to the Defendant no duty to act carefully. The governing principle is that the Defendant must show that the Plaintiff has failed to take reasonable care for his own safety in respect to the particular danger which has in fact occurred. The question whether the principle applies in any particular case is, as always, one of fact. Firstly, the law does not, in general, require any man to be careful of his own safety. What it does say is that a man who has negligently created a danger whereby another person is injured may plead as a way of avoiding liability that the injured person by his negligence contributed to create the danger. Secondly, no question of operative contributory negligence arises in a case where the Defendant proves that the Plaintiff has failed to take precautions against a foreseeable danger which has not occurred and that those precautions, if taken, would have been effective to protect him against the unforeseeable danger which in fact occurred. The statement that the Plaintiff must be shown to have failed to take proper precautions for his own safety against the particular danger which in fact occurred does not mean that the particular form in which the danger manifested itself should actually have occurred to his mind. It is sufficient if it is a danger of a particular class whose occurrence he should anticipate and take reasonable precautions to guard against him. It is necessary to consider not

only the causative potency of a particular act, but also its blameworthiness, though culpability here, as elsewhere in the law of torts, means not so much moral blameworthiness as a departure from the standard of care of the reasonable man.

13-A. The Court must also consider a third factor - namely, what is just and equitable. Hence the precise percentage by which the award is reduced is a question of fact in each case. The Court should find and record the total damages which would have been awarded if the Claimant had not been at fault. It is inappropriate to apply this principle when the responsibility of one of the parties is properly to be assessed at 100 per cent. The Court cannot deal with minute percentage. It is a question of fact in each case whether the conduct of the Plaintiff amounts to contributory negligence. The burden of proving the negligence of the Plaintiff that contributed to the damage in such a way as to exonerate the Defendant wholly or partially lies upon the Defendant. The Defendant must always establish such contributory negligence as well amount to a defence. When the Court has to decide, that the case is one in which it is proper to apportion the loss between the parties, the result is that the Plaintiff's damages are reduced to such extent as the Court thinks just and equitable having regard to the Plaintiff's share in the responsibility for the damage.

14. The contributory negligence has two facets. One in which two or more vehicles and drivers are involved in the accident. In such a case the question is who drove the vehicle in a rash and negligent manner. If all of them drove the vehicle in a negligent manner, who contributed to what extent in causing the accident. It is on the basis of such factual finding apportioning the blameworthiness on the drivers, the contributory negligence has to be assessed. To the extent of the percentage of negligence attributed to each driver, the owner of the vehicle and consequently if the vehicle is insured, the Insurer would be liable to pay the compensation. If the driver himself is claiming compensation as third party, if his negligent act is also the cause of the accident, then the compensation payable to him would get reduced to the extent of the percentage of negligence attributed to him.

15. The second fact where the Claimant is not

involved in the accident in any manner, i.e., in driving the vehicle but arises out of breach of duty, resulting in injury on account of the accident. Failure to take reasonable care or precaution for his own safety while traveling in a motor vehicle, in respect of the particular danger, which in fact occurred, so that he thereby contributed to his own injury. It is this second aspect which is dealt with under Section 123 of the Act.

16. Section 123 of the Acts casts a duty on the driver and conductor of a motor vehicle to prevent any person from traveling on the running board or on the top of the vehicle. There is an obligation cast on them under the statute to see that all persons are within the body of the vehicle. In spite of this statutory provision, if they permit any person to travel on the running board or on the top of the vehicle, it is breach of duty. It is an omission to do some thing which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do. The driver and conductor of a motor vehicle owe a duty to the passengers of a motor vehicle to see that they do not travel on the running board or on top of the vehicle. Similarly no person shall travel on the running board or on the top or on the bonnet of the motor vehicle. If he travels, it is a careless conduct, the commission of which amounts to negligence. A duty of care exists as it is embodied in a statute with foresight for the benefit of such persons traveling in a motor vehicle. Mere breach of law or duty would not create a liability to pay damages. Such a breach should result in injury which is the foundation of a claim for damages. Therefore, the question of contributory negligence does not depend upon any breach of duty as between the Plaintiff and Defendant. Such a breach of duty should result in injury and consequent loses. In other words there should be a nexus between the breach of duty and the injury. If there is a blame causing the accident on both sides, the loses lies where it falls. This omission constitute a careless conduct. Foresight is the rest for duty and remoteness."

13. Though Mr.J.Chandran, learned counsel for the New India Assurance Co. Ltd., Thiruchengode, assailed the correctness of the finding fixing negligence in the above said ratio, on the grounds stated supra, on careful analysis of evidence adduced by

the parties before the Tribunal, for arriving at the conclusion of contributory negligence of both, in the light of the decisions stated supra, we are of the view that by applying the principles of preponderance of probability, the Tribunal has properly arrived at the conclusion, fixing negligence on both the motorcyclist and the driver of the vehicle bearing Registration No.KA02AB-1599, insured with New India Assurance Co. Ltd/appellant herein.

14. The next contention to be considered is whether the Tribunal has erred in determining the monthly income of the deceased as Rs.32,000/-, for the purpose of computing the loss of contribution to the family and further erred in addition of 50% under the head future prospects.

15. Ex.P.5 is the salary certificate for the month of June 10 and Ex.P.11, salary slips for the months of June and July 2010. A perusal of salary slips shows that the theoretical salary of the deceased, Project Engineer (Civil), at Rohan Builders (India) Pvt Ltd., was Rs.40,000/-. But the actual salary paid has been calculated on the basis of number of days attended, by the employee. Entries in the salary slips Exs.P.5 and P.11 shows that in June 2010, as Project Engineer (Civil), the deceased earned a sum of Rs.32,000/- for 24 days of work.

16. P.W.2 S.K.Babu, Human Resource Grade I of M/s. Rohan Builders (India) Pvt Ltd., has adduced supportive evidence. Thus, on the basis of oral and documentary evidence, the Tribunal has fixed the monthly income as 32,000/-. A sum of Rs.16,000/- has been added under the head future prospects.

17. Perusal of the judgment shows that father of the deceased, impleaded as the third respondent in the claim petition, by examining himself as R.W.1 has marked Ex.R.3 Xerox copy of Higher Secondary Mark Statement, Ex.R.4 Attested xerox copy of Civil Engineering Diploma Certificate, Ex.R.5 Series Grade sheets B.Tech Degree, Ex.R.6 Attested copy of series grade sheets B.Tech degree examination, Ex.R.7 attested copy of series of B.Tech Degree provisional certificate and Ex.R.8 attested xerox copy of B.Tech degree certificate.

18. Upon perusal of the same, Claims tribunal has noticed that the deceased had a good academic record, with cumulative point average of 7.1543/10 and a semester grade point average of 8.1429/10 and placed in first class. Considering the oral and documentary evidence, the Tribunal has recorded that the deceased had a good academic career. Income fixed on the basis of oral and documentary evidence cannot be said to be on the higher side.

19. Contention of Mr.J.Chandran, learned counsel for the appellant, that the Tribunal erred in adding up 50%, for future prospects, cannot be accepted, in the light of the decision of this Court in C.M.A.No.3273 of 2014, dated 13/10/2015, [Royal Sundaram Alliance Insurance Co. Ltd., v. Tmt.Vennila], to which one of us is a party (S.Manikumar,J), wherein, it is 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, i.e., 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 manufacturers 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 poor 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 prospect, 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."

20. A person with good academic record, employed in a good Company or Government, as the case may be, would certainly have a good future prospects also. Fact that the deceased was paid Rs.32,000/-, at the time, when he was 30 years old, also support our view that there would be a hike in income, in future.

21. In the light of the above decisions and discussion, we are not inclined to interfere with 50% addition made under the head future prospects. On the basis of the entry in Ex.P.2 Postmortem certificate, the Tribunal has determined the age of the deceased as 30 years, which cannot be found fault with, in the light of the decision of the Hon'ble Supreme Court in Fakeerappa v. Karnataka Cement Pipe Factory reported in 2004 (4) LW 20 and The Managing Director, Tamilnadu State Transport

Corporation, Madurai v. Mary [2005 (5) CTC 515]. As per the decision of the Hon'ble Supreme Court in Sarla Verma Vs. Delhi Transport Corporation reported in 2009 ACJ 1298 (SC), for persons between the age group of 25 - 30, the appropriate multiplier is 17. The Tribunal has applied the same. After deducting 1/3 towards personal and living expenses of the deceased, and applying 17 multiplier, the Tribunal has arrived at Rs.65,28,000/-. Reducing the amount to the extent of negligence fixed on the motorcyclist, the Tribunal has arrived at Rs.39,16,800/-. Deducting 20% towards Income Tax, the Tribunal has computed the loss of contribution to the family as Rs.31,31,440/-. In addition to the above, the Tribunal awarded 1 lakh under the head, loss of consortium, Rs.30,000/- for loss of love and affection, Rs. 10,000/- each, to the wife and parents, Rs.10,000/- for transportation, Rs.10,000/- for funeral expenses, Rs.10,000/- for loss of estate. Altogether, the Tribunal determined the compensation at Rs.32,93,440/- and rounded off to Rs.32,93,000/-, with interest at the rate of 7.5% p.a., from the date of claim, till deposit and costs. Out of the said award, the Tribunal has apportioned a sum of Rs.20 lakhs to the wife and Rs.6,46,500/- each to the parents.

22. In the foregoing paragraphs, we have already concurred with the income fixed by the Tribunal, for the purpose of computing the loss of contribution to the family and also the addition of 50% under the head future prospects. From the entries made in Exs.P.5 and P.11, we could see that there was contribution for P.F. A consolidated deduction of Income Tax to the extent of 20%, cannot be done. Deduction has to be done only as per the standard procedure.

23. Section 166 of the Motor Vehicles Act, 1988 being beneficial in nature, to the accident victims, we intend to compute income tax, by extending exemption under Section 80 C of the said Act. Accident has occurred on 16/7/2010. Taking note of the ceiling limit for payment of Income Tax, for the relevant year 2010 - 2011, we compute the loss of contribution as hereunder:-

Annual Income	...	Rs.3,84,000.00
Less: Deduction under Section		
80 C, 80 CC, etc.	...	Rs.1,00,000.00

		Rs.2,84,000.00

Tax rate for male assesses
(below 65 years of age)

Upto Rs.1,60,000/-	Nil
Rs.1,60,001 to Rs.5,00,000	
(10%)	Rs. 12,400.00
Less 3%	372.00

Tax	12,772.00
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Annual Income	Rs. 3,84,000.00
Less Tax	Rs. 23,772.00

	Rs. 3,71,228.00
Multiplier 17	63,10,876.00 x 40%

	Rs.25,24,350.40

24. If 40% of the amount is deducted to the extent of negligence fixed on the motorcyclist, amount due and payable by the insurer, works out to Rs.38,76,526/- (Rupees Thirty eight lakhs seventy six thousand five hundred and twenty six only), which is more than the compensation awarded by the Tribunal. In view of the above reworking, Civil Miscellaneous Appeal is dismissed.

25. Record of proceeding shows that on 5/10/2016, in C.M.P.No.15696 of 2016 in C.M.A.No.20191 of 2016, while granting stay, this Court has directed the New India Assurance Company Ltd., Thiruchengode/appellant herein, to deposit 50% of the award amount together with interest, less the amount already deposited, if any, to the credit of M.C.O.P.No.540 of 2010, on the file of the Motor Accidents Claims Tribunal/Principal District Judge, Perambalur District, within a period of eight weeks from the date of receipt of a copy of the said order.

26. Mr.J. Chandran, learned counsel representing the Insurance Company submitted that the conditional order has been complied with.

27. On the dismissal of the appeal, New India Assurance Company Ltd, Thiruchengode/appellant herein is directed to deposit the balance amount, with proportionate interest, at the rate of 7.5% p.a., within a period of eight weeks, from the date of receipt of a copy of this order. On such deposit, wife/first respondent and parents of the deceased/third and fourth respondents are permitted to seek for withdrawal of their respective share, with proportionate interest and costs, by making necessary applications.

No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs.

To

The Motor Accident Claims Tribunal
(Principal District Judge),
Perambalur District.

Copy to:

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

+1cc to Mr.T.Gobinath, Advocate, S.R.No.20048
+1cc to Mr.R.P.Murugan Raja, Advocate, S.R.No.20335
+1cc to Mr.J.Chandran, Advocate, S.R.No.19763

C.M.A.No.2191 of 2016

SAI (CO)
RS (09/06/2017)

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