

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

C.M.A.No.2707 of 2016
C.M.P.No.19513 of 2016
C.M.P.No.4496 of 2017

The Cholamandalam MS General Insurance Co. Ltd.,
Bus Plaza, Vestry School Oppt, Cantonment,
Trichy.
Head Office at 2nd Floor, Dare House, No-2 N.S.C.
Bose Road, Chennai-1. .. Appellant/2nd Respondent

.. Vs ..

1. Rajalakshmi
2. Meena
3. Iswarya
4. Saroja .. Respondents 1 to 4 /
Petitioners
5. C.Govindarajan .. 5th Respondents /
1st Respondent
(5th respondent set ex-parte)

Prayer: Civil Miscellaneous Appeal filed under Section 173
of the M.V.Act, 1988, against the judgment and decree passed in
M.C.O.P.No.33 of 2014, dated 13.04.2016, on the file of the
Motor Accident Claims Tribunal, Chief Judicial Magistrate Court,
Ariyalur.

For Appellant : Mr.C.Harini
for M/s.M.B.Gopalan Associates

For Respondents 1 to 4 : Mr.A.Mohamed Ismail

JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR, J.)

Being aggrieved by the quantum of compensation of Rs.17,85,400/- with interest, at the rate of 9% per annum and costs, awarded to the legal representatives of the deceased, from the date of claim, till deposit, M/s.Cholamandalam MS General Insurance Co. Ltd., has filed the present appeal, contending inter-alia that the Claims Tribunal has erred in fixing the monthly income of the deceased as Rs.8,000/-, without any basis. Addition of 30% towards future prospects, has been questioned on the grounds that the deceased was not permanently employed in any stable job. That apart, compensation of Rs.2,00,000/- towards love and affection, is assailed on the ground that it is excessive. As the challenge to the award, is restricted only to the quantum of compensation, there is no need to advert into the aspect of negligence and liability.

Heard the learned counsel for the parties and perused the materials available on record.

2. PW.1, Wife of the deceased, has stated that at the time of accident, i.e., 25.10.2012, her husband was aged 45 years. Upon perusal of Ex.P6 - Driving Licence, the Claims Tribunal has noticed the Date of Birth of the deceased as 20.05.1976 and having regard to the date of accident, the Claims Tribunal fixed the age of the deceased as 45 years.

3. On the aspect of avocation and income, PW.1, has deposed that at the time of accident, the deceased was working as a Driver in M/s.Dhanalakshmi Srinivasan Educational Trust, Perambalur and earned Rs.9,150/- per month. Upon perusal of Ex.P6 - Driving Licence and Ex.P8 - Income Certificate and considering the evidence of PW.3, Transport Manager of Dhanalakshmi Srinivasan Educational Trust, Perambalur, the Claims Tribunal has observed that even assuming that the deceased was not working in the abovesaid Trust, he was capable of earning and maintaining his family.

4. Even though PW.3, Transport Manager of Dhanalakshmi Srinivasan Educational Trust, Perambalur, who has given evidence to the effect that the deceased was working as a driver, earned Rs.6,150/- per day and paid Rs.70/- towards daily batta and through him, Ex.X1 - Attendance Register for the month of January to March' 2011 and Trip Sheet for the month of November' 2011, observing that PW.3 did not produce any authorisation letter to give evidence or identity card to prove his

employment, the Claims Tribunal, having found that the deceased was in possession of a valid driving licence, marked as Ex.P6, to drive a non-transport vehicle, fixed the monthly income of the deceased as Rs.8,000/-, for the purpose of the computing the loss of dependency to the family. Determination of the monthly income has been done, based on the decisions made in Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459, P.Marudhachalam & Others v. K.Sridhar & Others reported in 2015 (5) CTC 181, Tavati Srinivas @ Srinu v. N.Padmavathi reported in 2015 (1) TNMAC 451 and Tamil Nadu State Transport Corporation (kumbakonam) Ltd., v. R.Kalavathi reported in 2015 (1) TNMAC 612.

5. Thereafter, placing reliance on a decision of the Apex Court in Santhosh Devi v. National Insurance Co. Ltd., reported in 2012 (6) SCC 421, the Claims Tribunal added 30% of the monthly income, ie. Rs.2,400/- and thus, fixed the monthly income as Rs.10,400/- (Rs.8,000 + Rs.2,400/-), for the purpose of computing the loss of dependency. For the purpose of applying the multiplier, the Claims Tribunal has considered the decision in Sarla Verma v. Delhi Transport Corporation reported in 2009 (5) LW 561 and accordingly, applied '14' multiplier for the purpose of computing the loss of dependency. Considering the number of dependents, the Claims Tribunal, has deducted 1/4th towards personal and living expenses of the deceased. Thus, the Claims Tribunal has arrived at the loss of dependency at Rs.13,10,400/-.

6. In addition to the above, the Claims Tribunal has awarded Rs.25,000/- for Funeral Expenses. That apart, Rs.1,00,000/- for loss of consortium. For the children, aged about 21 and 19 years, the Tribunal has awarded Rs.2,00,000/- under the head, loss of love and affection. For the mother of the deceased, a sum of Rs.50,000/- has been awarded under the head, loss of love and affection. Rs.1,00,000/- is awarded towards loss of estate. Altogether, the Claims Tribunal has awarded Rs.17,85,400/- with interest at the rate of 9% per annum, from the date of claim, till deposit.

7. Though Ms.C.Harini, learned counsel appearing for the appellant-Insurance Company assailed the quantum of compensation, on the grounds, stated supra, this Court is not inclined to accept the said contentions, for the reason that the respondents/claimants have produced Ex.P6 - Driving Licence and Ex.P8 Income Certificate, to support the contention that the deceased was employed. PW.3, Transport Manager of Dhanalakshmi Srinivasan Educational Trust, Perambalur, has deposed that the deceased was working as a driver and earned Rs.6,150/- per day

and paid Rs.70/- towards daily batta and through him, Ex.X1 - Attendance Register for the month of January to March' 2011 and Trip Sheet for the month of November' 2011, have been marked. Merely because, authorisation letter was not marked, his evidence cannot be eschewed in entirety.

8. In Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Ltd., reported in 2011 (2) TNMAC 190 SC, a sum of Rs.4,500/- has been claimed as monthly wages for the deceased, stated to be a coolie. The claims tribunal has taken Rs.3,000/- for the purpose of computing the loss of contribution to the family. However, when the matter was taken up on appeal, the Hon'ble Supreme Court having regard to the wages of a labourer, during the relevant period (2004 - between Rs.100 to Rs.150/- per day) found fault with the tribunal for reducing the income from Rs.4,500/- to Rs.3,000/- and determined the same at Rs.4,500/-.

9. In Syed Sadiq etc. Vs. Division Manager, United India Insurance Company Limited reported in 2014 (1) TN MAC 459, the Hon'ble Supreme Court, has determined Rs.6,500/- as the monthly income of a vegetable vendor, who sustained injuries in the accident, which occurred in February 2008.

10. Apart from Syed Sadiq's case (cited supra), the Claims Tribunal, while determining the monthly income of the deceased, has considered the following decisions,

- (i) P.Marudhachalam & Others v. K.Sridhar & Others reported in 2015 (5) CTC 181;
- (ii) Tavati Srinivas @ Srinu v. N.Padmavathi reported in 2015 (1) TNMAC 451; and
- (iii) Tamil Nadu State Transport Corporation (kumbakonam) Ltd., v. R.Kalavathi reported in 2015 (1) TNMAC 612.

11. 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 Woollen 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 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 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."

12. In the light of the discussion and decisions of the Hon'ble Apex Court and this Court, extracted supra and the gradual increase in the earning of an agriculturist or a vegetable vendor, as the case may be and having regard to the avocation of the deceased, this Court, is of the view that determination of monthly income and addition of 30% of the said income, under the head, future prospects, cannot be said to be manifestly illegal, warranting any interference.

13. Legal representatives of the deceased have lost the love and affection of their son, when they were just 21 and 19 years old. In *Rajesh v. Rajbir Singh* reported in 2013 (2) TNMAC 55, the Hon'ble Apex Court has awarded Rs.1,00,000/- each to the legal representatives of the deceased, towards loss of love and affection. Having regard to their age, determination of quantum towards loss of love and affection, is sustained.

14. Perusal of the award shows that there is no compensation towards transportation and damages to clothes and articles. In the light of the discussions and decisions, quantum of compensation awarded by the Tribunal, cannot be said to be excessive and does not warrant interference.

15. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the entire award amount with proportionate accrued interest and costs, if not already deposited, to the credit of M.C.O.P.No.33 of 2014, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Ariyalur, within a period of four (4) weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents/claimants are permitted to withdraw their respective shares, by making necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To

The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal
Ariyalur.

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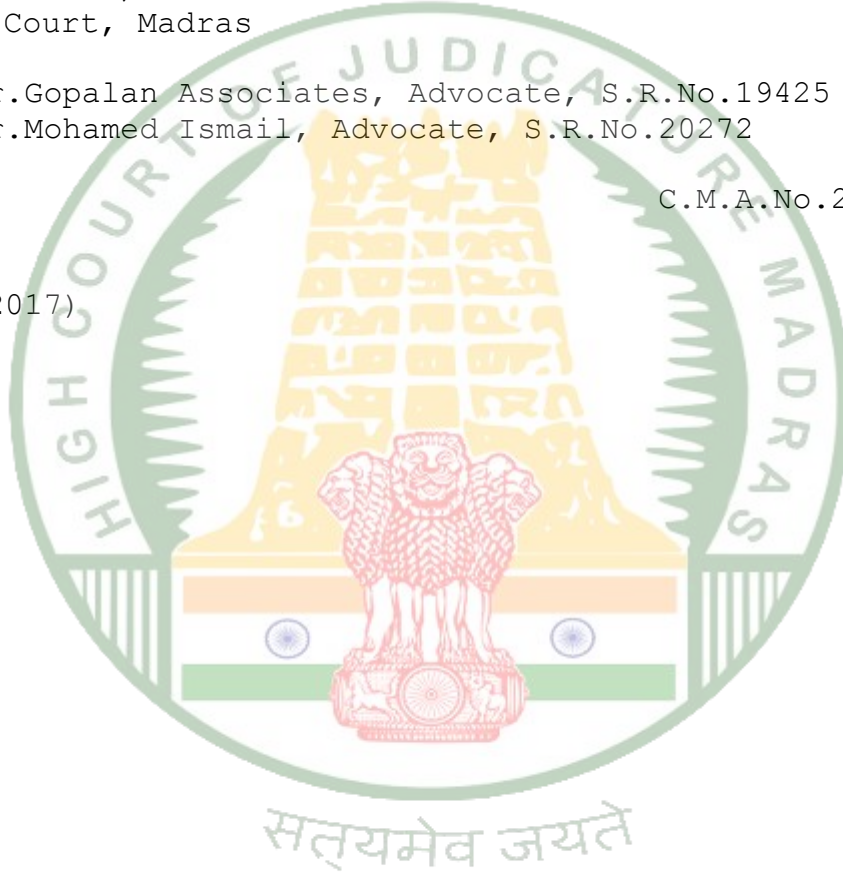
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