

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 4/4/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and

The Honourable Mr.JUSTICE M. GOVINDARAJ

Civil Miscellaneous Appeal No.586 of 2015

M/s. New India Assurance Co. Ltd.,
Shevapet Branch, Door No.17,
II Floor, Fort Main Road,
Shevapet, Salem -2 ... Appellant

Vs.

1. Lakshmi, W/o.Late Kannan,
- 2.Vinodraj, S/o. Late Kannan,
- 3.Vigneswaran, S/o.Late Kannan,
1 to 3 residing at 53-A, Arisipalayam Main Road,
Salem 639 009.
4. G.Karthikeyan, S/o.Govindan,
Door No.108, Kumaragiri Nagar,
Anbu Illam,
II Cross, Sanyasi Gundu Salem
5. R.Murugesan ... Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree passed by the Motor Accident Claims Tribunal (II Additional District Judge), Salem, dated 15/7/2013, in M.C.O.P.No.347 of 2011.

For appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.V.Sekar

for respondents 1 to 3

J U D G M E N T

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

Quantum of compensation of Rs.35,53,540/-, with interest at the rate of 7.5% p.a., from the date of claim till deposit and costs, awarded to the legal representatives of the deceased, in M.C.O.P.No.347/2011, dated 15/7/2013, on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Salem, is challenged on the grounds of interalia that the claims Tribunal has erred in applying 13 multiplier, for

computing the loss of contribution to the family of the breadwinner, who was aged 51 years, at the time of death.

2. Contention has also been made that had he been alive, remaining service would be only seven years and that a retiree would have been paid half of the income earned by him and therefore, the Tribunal, ought to have applied split multiplier, for the purpose of computing loss of contribution to the family.

3. Mr.M.Krishnamoorthy, learned Counsel for the New India Assurance company Ltd., Salem/appellant herein contended that the Tribunal erred in applying excessive multiplier of 30. Learned counsel would further submit that Tribunal erred in adding 30% of the income, under the head future prospects. He also pointed out that the Tribunal erred in not deducting income tax.

4. Per contra, placing reliance on the decision of the Hon'ble Supreme Court in Puttamma and Others Vs K.L.Narayana Reddy and another reported in 2014 ACJ 526, Mr.V.Sekar, learned counsel for the respondents 1 to 3/legal representatives submitted that this Court need not apply split multiplier.

5. According to the learned counsel, on the date of accident, the deceased was aged 50 years and nine months and therefore, the Tribunal, ought to have determined the age as 50 years and consequently, added 50% of the income drawn, under the head future prospects, for computing the loss of contribution to the family. He submitted that the Tribunal has committed an error in adding up only 30%, under the head future prospects. He further submitted that the compensation awarded under the head Love and Affection is less. For the reasons, stated supra, he prayed to sustain the award.

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

7. As the challenge is restricted only to the quantum of compensation, method adopted by the Tribunal, for computing the loss of contribution to the family, we proceed to analyse the evidence on record.

8. Indisputably, the deceased was worked as Road Inspector, in the Highways Department, Salem District. As per the entries made in court exhibit - C3 service register of the deceased, Date of Birth of the deceased was 10/2/1960. Taking note of the date of accident, i.e., 8/11/2010, the Tribunal, determined the age of the deceased, as 50 years and nine months, but for the purpose of calculation, taken the same as 50 years. Perusal of the claim petition, in M.C.O.P.No.347/2011, on the

file of the Motor Accidents Claims Tribunal (II Additional District Judge), Salem, shows that the legal representatives, themselves have declared the age of the deceased as 51 years.

9. The next contention to be considered is whether the Tribunal was right in adding 30%, under the head future prospects or the Tribunal should have applied 50% under the above said head, as contended by the learned counsel for the respondents/claimants or the Tribunal, ought to have added lesser percentage of income, say 15% under the head future prospects, for the purpose of computing the loss of contribution to the family.

10. In *Sarla Verma & Ors. vs Delhi Transport Corp. & Anr.*, reported in 2009 (2) TN MAC 1 (SC), the Hon'ble Apex Court held that in the case of those above 50 years, there shall be no addition under the head future prospects. In *Rajesh and others Vs. Rajbir Singh and Others* reported in 2013 (2) TN MAC 55 (SC), the Hon'ble Apex Court observed that "having regard to the fact that in the case of those self employed or on fixed wages, where there is normally no age of superannuation, the Hon'ble Apex Court was of the view that it would only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years, so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

11. Rajesh's Case has been deduced as applicable to those, who are self-employed or on fixed wages. In the instant case, the deceased was a Road Inspector, Highways Department, Sangagiri Division, Salem, an organized sector. Though Rajesh's Case was held applicable only to those who are self employed or fixed wages, judicial notice can be taken that even in State or Central Government or public sector or companies owned and controlled by the Government, there would be some opportunity to go higher up, in the ladder, after 50 years. With due respect, we are of the considered view that the decision of the Hon'ble Supreme Court in Rajesh's case, there cannot be any hard and fast rule that after 50 years, there would not be any addition in income, under the head future prospects. We are of the view that one may not have future prospects, in service, to get a higher promotional opportunity, after a particular age, depending upon the service rules, yet the future prospect and even likelihood of increase in salary cannot be ruled out. In a Co-ordinate Bench 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), held 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 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 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. Though the learned counsel for the respondent submitted that the age of the deceased be taken as 50 years, for the purpose of addition of 30% income, under the, head future prospects, this Court is not inclined to accept the same, for the reason that as per the judgment in Sarla Verma's case (cited supra), for those between 40 and 50 years alone, 30% should be added, which means, not above 50 years of age.

13. In the light of the discussion and considering the fact that the deceased was aged 50 years and nine months, and had 7 years and 3 months of service, at the time of accident, we are of the view that it would be just, equitable, fair and reasonable, to add 15% of the last drawn income, under the head future prospects, for the purpose of computing the loss of contribution to the family (Rs.25,356/- (+) Rs.3,803/- (15% of the addition for future prospects) = Rs.29,159/-. The deceased is survived by wife and two sons. Therefore, if 1/3rd is deducted towards personal and living expenses, loss of monthly contribution to the family would be Rs.19,440/- [Rs.29,159 - Rs.9719].

Monthly income of the deceased	...	Rs.	25,356.00
15% addition for future prospects	...	Rs.	3,803.00

		Rs.	29,159.00
Personal expenses 1/3		Rs.	9,719.00

Monthly contribution		Rs.	19,440.00
Loss of pecuniary benefits during service period for 6 yrs 3 months (87 months) 19440 x 87			Rs.16,91,280.00
Loss of pecuniary benefits post superannuation 50% of Rs.19,440/- i.e., Rs.9,720/- for 5 yrs 9 months (69 months) = Rs.9,720 x 69			Rs. 6,70,680.00

Total loss of pecuniary benefits		Rs.	23,61,960.00
Loss of consortium to wife		Rs.	1,00,000.00
Loss of love and affection to two major sons		Rs.	01,00,000.00
Funeral expenses		Rs.	25,000.00
Transport charges		Rs.	20,000.00
Medical expenses		Rs.	75,440.00
Loss of estate		Rs.	10,000.00
Conventional damages		Rs.	2,000.00

		Rs.	26,94,400.00

Compensation awarded by the Tribunal is		Rs.	35,53,540.00
Compensation now determined is		Rs.	26,95,000.00

		Rs.	8,58,540.00

14. Mr.M.Krishnamoorthy, learned counsel for the appellant/New India Assurance Co. Ltd., Salem, submitted that as per the order made in M.P.No.1 of 2015 in C.M.A.No.586 of 2015, dated 27/3/2015, Rs.44,69,103/- has been deposited to the credit of M.C.O.P.No.347 of 2011, on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Salem. Mr.V.Sekar, learned counsel for the respondents submitted that out of the deposited amount, 50% has already been withdrawn.

15. New India Assurance Company Ltd., Salem is directed to deposit the balance amount, if any, consequent to the reduction, as stated supra. The New India Assurance Company can seek for refund, in case of excess deposit.

16. In the result, this Civil Miscellaneous Petition is partly allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-vii)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The ii Additional District Judge, Motor Accident Claims Tribunal (II Additional District Judge), Salem.

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

+1cc to Mr.M.KRISHNAMOORTHY, Advocate, S.R.No. 20026

+1cc to Mr.V.SEKAR, Advocate, S.R.No. 19939

C.M.A.No.586 of 2015

SKV(CO)
TR(01/02/2018)

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