

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

CORAM:

The Hon'ble Mr.Justice Nooty. Ramamohana Rao  
and  
The Hon'ble Mr.Justice S.M.Subramaniam

C.M.A.No.3396 of 2014

&

Cross Objection No.67 of 2015

+

M.P.No.1 of 2014 in C.M.A.No.3396 of 2014

Reliance General Insurance Company Ltd.,  
Rais Tower, 2<sup>nd</sup> Floor, Flat No.2504,  
Second Avenue, Anna Nagar,  
Chennai - 600 040.

.. Appellant in C.M.A.No.3396/14  
and  
1st Respondent in Cross Obj.  
No.67/2015

versus

1.Parasuraman  
2.Kousalya  
3.Minor Mohana  
(minor rep. by her mother and N.F.Kousalya)

.. R-1 to 3 in C.M.A.No.3396/14 &  
...Cross objectors,  
in Cross Object No.67 pf 2015

4.R.Rajeshkumar

.. R-4 in C.M.A.No.3396/14  
&  
R-2 in Cross Obj.No.67/2015

Prayer in C.M.A. No.3396 of 2014 :-

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to set aside the judgment the decree, dated 20.06.2014, made in M.C.O.P.No.983 of 2013, on the file of the II Judge, Court of Small Causes, Motor Accidents Claims Tribunal, Chennai.

Prayer in Cross Objection No.67 of 2015:-

Cross Objection filed under Order 41 Rule 22 of CPC, to enhance the award amount from Rs.17,33,000/- to Rs.20,00,000/-, with interest and costs.

For appellant in C.M.A.No.3396/14/

R1 in Cross Obj. No.67/2015/ : Mr.S.Arun Kumar

For Respondents 1 to 3/Cross objectors

in CMA 3396/14 & in Cross

Object No.67 of 2015 : Mr.N.M.Elumalai

R4 in C.M.A.No.3396/14/

R-2 in Cross Obj No.67 of 2015 : Not ready in Notice

C O M M O N J U D G M E N T

Judgement of the Court was delivered by Nooty .Ramamohana Rao,J.,

The Insurance Company is the appellant. It is aggrieved by the quantum of compensation awarded by the Motor Accidents Claims Tribunal-cum-II Court of Small Causes, Chennai, (henceforth, referred to as 'the Tribunal') in M.C.O.P.No.983 of 2013, as high and excessive, and hence, they have preferred this Civil Miscellaneous Appeal, whereas, the claimants, finding the same (compensation) as insufficient, have filed the Cross Objections, seeking for enhancement. They are hence, heard together, and they stand decided/disposed of, by this common Judgment.

2. On 16<sup>th</sup> November, 2012, 12.30 after noon, one P.Tamilmani, a young person of 24 years of age, was riding on his Motor Cycle, bearing Registration No.TN-21-M-5319, on Bazaar Road, at Thirukazhukundram. He was proceeding from South to North. It is about the time, when he reached the Saravana Stores, located at the Bazaar Road, an Eicher Van loaded with commercial freight (cement bags) bearing Registration No.TN-31-AB-1936, came in the opposite direction and was driven in such a rash and negligent manner, that it hit the Motor Cycle, and due to the impact, Tamilmani fell down and died on the spot. The offending vehicle could not be brought to a halt immediately by its driver, instead it ran over Tamilmani on the road, killing him on the spot.

2.1) The first respondent, in the Original Petition, was the owner of the aforesaid commercial van, and the second

respondent therein (appellant) was the insurer. The parents and the unmarried younger sister of the deceased Tamilmani instituted the Original Petition, claiming compensation, in a sum of Rs.20,00,000/-. In support of their claim, they examined three witnesses and also got marked Exs.P.1 to P.24. None was examined on behalf of the Insurance Company, and no documents were exhibited either.

2.2) P.W.3, a native of Thirukazhukundram Village, and residing there, is an independent witness, who has witnessed the accident. He worked in the nearby fields, and since it was afternoon time, he came on to the Main Road to take some rest. He was having a cup of Tea, in the Tea Shop, located on the southern side of the road adjoining Saravana Stores. At that time, he happened to witness the accident. He has clearly deposed that the offending Van was carrying a load of cement bags, and he has seen the accident. He has also categorically stated that, immediately, the Police arrived at the scene of accident, and since he was present there, they have obtained a statement from him on the spot. Though this witness has been subjected to cross examination, the Insurance Company could not extract any contradictory version, which can discredit either his presence or witnessing the accident.

2.3) We are satisfied that P.W.3 is a truthful witness, and he has not been planted for supporting the case of the claimants. Above all, coming from a nearby rural area, there was no necessity for him to say something or the other, in favour or against either of the parties.

2.4) We are, therefore, of the opinion that the Tribunal has rightly arrived at the conclusion that the accident had occasioned all due to the rash and negligent driving of the Eicher Van by its driver, and since the said vehicle has been insured with the appellant/Insurance Company, it is squarely liable to make good, to the extent possible, the loss occurred to the claimants by the untimely death of Tamilmani.

2.5) Ex.P.9, the Transfer Certificate issued by the Arulmighu Thirupurasundari Amman Polytechnic College, Thirukazhukundram, disclosed that the deceased Tamilmani pursued the three year Diploma Course in Electrical and Electronics Engineering (EEE) from the said College. His date of birth was noted therein as '04.04.1988' (though the Tribunal, in paragraph No.9 of its judgment, has wrongly recorded the year of the birth as '1998').

2.6) Ex.P.7 is the Diploma Certificate issued by the State Board of Technical Education and Training, awarding him a

Diploma in E.E.E., since the deceased Tamilmani has passed the same in First Class, in the examinations held in April 2010. Ex.P.8, is the consolidated mark sheet issued by the Chairman Board of Examinations, which clearly brings out that the deceased Tamilmani maintained fairly a very high standard of academic performance. He has been consistently securing very high percentage of marks through out the three year Diploma Course. Ex.P.6, is the Secondary School Leaving Certificate (S.S.L.C) of the deceased, which was issued in recognition of his passing the S.S.L.C., Public Examination, securing a total of 399 marks out of 500. He secured 84 % marks out of 100 % in Mathematics, 80% in Science, and 88% in Social Science. His date of birth, in the said Certificate, is also recorded as 04.04.1988. Thus, the deceased Tamilmani was a very bright student.

2.7) Ford India Private Limited, an Auto Mobile Manufacturing Unit at Chengalpattu, on 28<sup>th</sup> July, 2010, had initially offered him one year Apprenticeship Training and during the initial apprenticeship period, he was offered a stipend of Rs.3,200/- and additional stipend of Rs.900/-, put together Rs.4,100/-per month, which was increased to Rs.4,500/-, by letter, dated 18<sup>th</sup> April, 2011. Subsequently, his stipendiary amount was further increased to Rs.4,800/- and additional stipend of Rs.2,400/-, thus, putting together, Rs.7,200/-. By communication dated 16<sup>th</sup> April, 2012, in recognition of his ongoing contribution, the Ford Company increased his stipendiary amount to Rs.8,050/- per month, as evidenced by the bunch of documents marked as Ex.P22. Upon completion of his apprenticeship, he was also awarded a Certificate of Proficiency by the Board of Apprenticeship Training Southern Region, Chennai, on 29.09.2011, as per Ex.P12. The deceased, then, came to be appointed by the Ford Motor Company. The General Manager of the said Company has awarded him "Star of the Month Appreciation" Certificates for March, 2011, March, 2012 and June, 2012, as per Ex.P.13. Thus, Tamilmani appears to have acquired high amount of proficiency and skill, and displayed the same at work place.

2.8. Ex.P14, containing the Pay Slips for the months of July, August, September and October, 2012. For the month of October, 2012, his basic pay in the form of stipendiary allowance was shown as Rs.6,150/- with shift allowance of Rs.495/- and additional allowance of Rs.2,400/-. Thus, put together, his total earnings came to Rs.9,045/-. He was making a contribution of Rs.150/- to the ESI Corporation, and a sum of Rs.738/- towards P.F. Contribution. Towards canteen and transportation, a sum of Rs.50/- each, was deducted by the Company. Thus, a total of Rs.988/- was shown as deduction and his net pay was shown as Rs.8,057/-. Thus, for all practical purposes, the earnings per month of the deceased was Rs.9,000/-,

and since the accident had taken place on 16.11.2012, he was only 24 years of age when so reckoned from his date of birth being 04.04.1988.

3. Thus, keeping in view, the brilliant academic record, followed by star performance of the deceased consistently, and recognised as such, and also keeping in view, the principle enunciated by the Hon'ble Supreme Court, in re (Sarla Verma Vs. Delhi Transport Corp.) reported in (2009) 6 S.C.C. 121 in para No.24 that, 'when young persons are involved in fatal motor accidents, who have permanent job, with fixed salary, towards the component of future prospects, 50% of their current earnings can be added', we are of the opinion that, the Tribunal has taken the monthly income of the deceased as Rs.13,500/-for the purpose of computation of loss of dependency. It has also deducted 50% thereof, towards personal expenses of the deceased, who was a young person, and that too, working in a prestigious Company, viz., Ford Motors, and then, taking into account, his young age, multiplier '18' has been chosen. Accordingly, Rs.14,58,000/- has been assessed, as compensation towards loss of dependency (i.e.,  $\text{Rs.13,500}/2 \times 12 \times 18$ , Rs.14,58,000/-).

4. Mr.S.Arun Kumar, the learned counsel for the appellant/Insurance Company urged that the Tribunal has committed an error in computing the loss of dependency, by applying multiplier '18', taking into account the age of the deceased at the time of the accident. It is the age of the claimants, which is higher than that of the age of the deceased, which should been taken into account. To buttress this contention he has placed reliance upon the judgment rendered by the Hon'ble Supreme Court, in re (New India Assurance Company Ltd., Vs. Shanti Pathak and others) reported in CDJ (2007) S.C.C. 789, wherein, in para No.7, it was observed that, "it would be appropriate to take the multiplier of '5' considering the fact that the mother of the deceased is aged about 65 years at the time of the accident, and the age of the father is more than 65 years."

5. Learned counsel for the appellant, therefore, would urge that, going by the age of the father of the deceased as 57, multiplier '9', should have been chosen by the Tribunal while computing the compensation towards loss of dependency.

6. Per contra, Mr.N.M.Elumalai, the learned counsel for the claimants contended that, it is the age of the deceased, which has to be taken into account and consideration for the purpose of picking up the multiplier, while computing the component towards loss of dependency. In support of that contention, he has placed reliance on the following judgments

rendered by the Hon'ble Supreme Court:-

i) (Amrit Bhanu Shali and others Vs. National Insurance Co. Ltd.,) reported in (2012) ACJ 2002

and

ii) (Munna Lal Jain and another Vs. Vipin Kumar Sharma and others) reported in (2015) 1 TNMAC 814 SC.

7. Before we proceed further, we remind ourselves of a case, wherein, we had occasion to deal with the very same question, that is, in C.M.A.No.833 of 2014, and we feel that, it would not be out of place for us to mention here, based on the ratio dedecendi, laid down by the Hon'ble Supreme Court, in the following judgments in i) (Vijay Shankar Shinde and others Vs. State of Maharashtra) reported in (2008) 2 S.C.C. 670, ii) (Shakti Devi Vs. New India Insurance Co. Ltd., and another) reported in (2010) 2 TN MAC 612 SC and iii) (National Insurance Co. Ltd., Vs. Shyam Singh and others) reported in (2011) 2 TN MAC 317 (SC), we opined that, 'between the age of the deceased of a road accident, and the age of the claimant, whichever is higher of the two, was liable to be taken into account and consideration' for picking up the appropriate multiplier. Unfortunately, we have not noticed the later Three-Judge Bench judgment rendered by the Hon'ble Supreme Court, in Munna Lal Jain's case (cited supra). Consequently, we have subscribed to the notion that, if the age of the claimant is higher than that of the deceased, it is the age of the claimant, which will have direct bearing for picking up the correct multiplier, as was detailed in the celebrated judgment rendered by the Hon'ble Supreme Court, in Sarla Verma's case (supra). Since the question as to whether the age of the claimant should be taken into reckoning, or the age of the deceased, for the purpose of picking up the right multiplier was undoubtedly the subject matter of consideration before the Hon'ble Supreme Court in Munna Lal Jain's case (cited supra) wherein, the Hon'ble Supreme Court, has taken the view specifically that, to set at rest, all possible controversies, in that regard, the Hon'ble Supreme Court in para 12, has considered the earlier Two-Judge Bench decisions rendered in re i) (Santosh Devi Vs. National Insurance Co. Ltd., and others) reported in (2012) 6 S.C.C. 421 and ii) (Reshma Kumari Vs. Madan Mohan (2013) 1 TNMAC 481 (SC) : 2013 (9) S.C.C. 65, and then, concluded the issue holding that, having regard to the age of the deceased and the period of active career, appropriate multiplier should be selected. It is pertinent to notice that Hon'ble Justice, Anil R.Dave was also a member to the Bench of the Supreme Court, which also comprised of Hon'ble Justice Madan B.Lokur and Hon'ble Justice Kurian

Joseph. Therefore, the Two-Judge Bench judgments rendered in Shakti Devi's case, comprising of Hon'ble Justice Aftab Alam & R.M.Lodha and Shyam Singh's comprising of Hon'ble Justice Dr.Mukundakam Sharma and Hon'ble Justice Anil R.Deva, cannot be relied upon any further, due to the later Three-Judge Bench judgement in Munna Lal Jain's case (cited supra).

8. We are, therefore, of the view that the judgment of the Hon'ble Supreme Court, by a Larger Bench in Munna Lal Jain's case (supra) should be taken as settling the controversy on this issue. Hence, we have no hesitation to reject the contention, canvassed by the learned counsel for the appellant/Insurance Company, and, we confirm the Tribunal's view that, it is the age of the deceased, which must be chosen for the purpose of determining appropriate multiplier', and hence, we do not find any error committed by the Tribunal in awarding compensation, which it has done to the claimants.

9. Learned counsel for the claimants has contended that, going by academic record and also fact that the deceased was expecting higher degree of scale, perks, and other prospects, and also in view of the fact that the family belongs to Most Backward Class (MBC) and going by clean habits of the deceased, making deduction to the extent of 50% from his salary income towards his personal expenses and maintenance, is unjust.

10. We are not impressed by the contention of the claimants. Surely, we could consider, in particular, that the deceased had a very bright future ahead. He was shaping up really well, and if only he had continued in the Ford Motor Company, prospects are certainly bright for him to march ahead, and progress in his career, but, simultaneously, we also need to take note of the fact that he would have got married in the nearest future, and consequently, his contribution to his own home would have obviously exceeded 50% of his income. This apart, when one is employed in a prestigious Company, like that of the Ford Motors, by the very nature of the employment, one is required to maintain the dignity very well and present himself on day to day basis very pleasantly and splendidly. Therefore, the formula adopted for deduction towards personal expenses evolved in Sarla Verma's case (supra) is not liable to be departed, and hence, we have no hesitation to reject the cross-objection filed by the claimants, seeking enhancement of compensation.

11. For the aforementioned reasons, we dismiss this Civil Miscellaneous Appeal as well as the Cross-objection, but, however, without costs. The appellant shall deposit the balance amount within a maximum period of six weeks from the date of receipt of this judgement and upon such deposit, the

claimants are permitted to withdraw the same, in the same portion, as was determined by the Tribunal.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa/sd

To  
1.The II Judge, Court of Small Causes  
Motor Accidents Claims Tribunal,  
Chennai.

+1cc to Mr.Arun kumar, Advocate, S.R.No.22398  
+1cc to Mr.Elumalai, Advocate, S.R.No.22382

C.M.A.No.3396 of 2014 &  
Cross Objection No.67 of 2015

RB (CO)  
RS (24/04/2017)



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