

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM:

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

C.M.A.No.833 of 2014

1.R.Vijayalakshmi
2.V.Ramanujam

...Appellants

Vs.

1.M.Muthu Viswanath
2.The New India Assurance Co. Ltd.,
No.92, East Coast Chambers, I Floor
G.N.Chetty Road, T.Nagar
Chennai 600 017.

...Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree, dated 04.11.2013, passed by the learned Special Sub Judge I (Motor Accident Claims Tribunal), Chennai, in M.C.O.P.No.3978 of 2009.

For Appellants : Mr.N.M.Muthurajan
For Respondent-1 : No appearance
For Respondent-2 : Mr.M.Krishnamoorthy

J U D G M E N T

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

Aggrieved by the quantum of compensation awarded on various heads by the Motor Accidents Claims Tribunal cum Special Sub Judge I Chennai, (henceforth, referred to as 'the Tribunal') in M.C.O.P.No.3978 of 2009, this Civil Miscellaneous Appeal has been preferred by the two parents of the deceased R.Balaji, who was only 28 years of age, at the time of his death, caused due to the injuries sustained in an unfortunate motor accident.

2. On 22nd August, 2009, about 3.00 a.m, the deceased R.Balaji was riding as a pillion on a Motor Cycle, bearing Registration No.TN-22-BC-9700, which vehicle was insured with the second respondent. A friend of the deceased, by name S.Prakash, was riding the motor cycle, proceeding from Maya Jal

Multi Complex Cinema Theatre to Adambakkam area of the City along the East Coast Road, from South to North. When they were proceeding towards the Toll Gate, situate at Uthandi area, the Motor Cyclist encountered with a stray cattle on the road, which got obviously frightened by the beep sound of the motor vehicle, and thus, came in conflict zone with it. In that process, the rider of the motor cycle lost control and the motor cycle fell down. As a result thereof, the pillion rider has suffered a grievous head injury. Immediately, he was rushed to Malar Hospital at Adayar, and admitted for specialised treatment. However, while undergoing treatment at that Hospital, the said Balaji succumbed to the injuries, and died on 25.08.2009.

3. The deceased has obtained B.Sc., (Botany) Degree. He was employed with the TATA Consultancy Services, and his parents instituted the Original Petition, in M.C.O.P.No.3978 of 2009, claiming compensation, in a sum of Rs.22,00,000/-.

4. The first respondent, in the Claim Petition, was the owner of the Motor Cycle. He was set ex parte, and did not contest the Claim Petition. On behalf of the claimants, three witnesses were examined, and 18 documents were got marked as Exs.P1 to P18. None was examined on behalf of the Insurance Company, and no documents were exhibited either.

5. For the present purpose, it is pertinent to take note of the following documents:-

a) Ex.P.1: F.I.R. registered by J8 Neelangarai Police Station on 22.08.2009 at about 06.30 a.m.

b) Ex.P.2: Rough Sketch prepared, indicating the place of occurrence of the accident.

b) Ex.P.3: Post Mortem Report, clearly bringing out the fact that the deceased succumbed to the head injury.
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c) Ex.P.5: Legal Heirship Certificate, whereby, the claimants/appellants, viz., the parents of the deceased are declared as his class -I legal heirs.

6. Thus, on a perusal of the aforementioned documents, we have no hesitation to affirm the finding of fact recorded by the Tribunal that the accident, in question, has been caused only due to the rash and negligent driving, without taking adequate care or precaution while driving the Motor Cycle at that hour, and consequently, the rider of the Motor Cycle is squarely responsible for causing the said accident.

7. P.W.3, Visvanath, works for the Tata Consultancy Services (for short, 'TCS Company') in its Human Relations (HR Division). He has vouched for the employment details of the deceased R.Balaji. The deceased R.Balaji was employed in the Retail Banking Division of the TCS Company. On 27.04.2007, the Head of Human Resources Division and the Head of the Consumer Banking Operations of TCS Company, informed the deceased R.Balaji that, in recognition of his performance, and contribution for the period ended on 31.03.2007, he has been awarded performance bonus of Rs.22,190/-. By another communication of the same date, viz. 27.04.2007, performance of the deceased Balaji was rated at Level '3', and accordingly, during the Annual Compensation Review, the performance package of Balaji, was raised from Rs.54,000/- per annum to Rs.57,480/-, and the supplementary allowance was raised to Rs.61,200/-. Again, by another communication, dated 15.10.2007, signed by the Head of HR Division and Head of Consumer Banking Operations of Tata Consultancy Services, in recognition of the performance contribution of Balaji till 30.09.2007, he was awarded performance bonus of Rs.13,500/-. A similar performance contribution was granted to the deceased Balaji for the period ended on 31st March 2008 also. By a communication dated 25th April, 2008, the basic pay of Balaji has been raised to Rs.65,160/- per annum from Rs.57,480/-, and the supplementary allowance was raised to Rs.71,652/- from Rs.61,200/-. The House Rent Allowance (HRA) was awarded at Rs.32,580/-. Performance based incentives were awarded to the extent of Rs.45,000/-. By letter, dated 15th October, 2008, in recognition of the performance contribution of Balaji for the period ended on 30th September, 2008, he was awarded the performance bonus of Rs.22,377/-, and by another communication, dated 15th April 2009, the deceased Balaji was awarded statutory bonus of Rs.8,400/- for the year ended on 31st March 2009. All those bunch of documents have been marked as Ex.P.18, which reflected, as to how sincerely, the deceased Balaji was rendering good quality services to TCS.

8. Ex.P17, is the Pay Certificate of Annual compensation for the Financial year 2009-2010, showing his annual earnings as Rs.2,23,720/-, which included provident fund amount of Rs.7,819/-; gratuity component of Rs.3,134/-; conveyance allowance of Rs.9,600/- as well as the house rent allowance of Rs.32,580/-. The basic pay was Rs.5,430/- per month, and the supplementary allowance was Rs.5,971/- per month, as reflected in the pay slip of the deceased for the months of January to June 2009. Therefore, leaving aside the HRA of Rs.2,715/-, which was paid towards the house rent allowance, as a compensatory allowance, and Rs.800/- paid towards transport

allowance, one can safely conclude that the monthly earnings of the deceased was Rs.10,401/- as at the time of the accident. If we add the monthly contribution of provident fund at the rate of Rs.652/- thereto, the monthly income of the deceased Balaji comes to around Rs.11,000/-. The total taxable income reflected in the Income Tax Returns (ITRs) for the assessment year 2009-10, filed by the deceased on 21st July 2009 disclose the total income of the deceased Balaji as 'Rs.1,85,420/-', (This return was filed prior to the date of the accident).

9. The Tribunal has taken into account the monthly earnings of the deceased Balaji as Rs.11,000/-, which also included future prospects, and since the deceased Balaji, being a bachelor, 50% of his income has to be deducted towards his personal expenditure, and thus, determined the monthly salary contribution to the family as Rs.5,500/-.

10. Mr.N.M.Muthurajan, the learned counsel appearing for the appellants/claimants has contended that the Tribunal has erroneously, discarded to take into account the ITR filed by the deceased Balaji for the assessment year 2009-10, wherein, the taxable salary component was reflected as 'Rs.1,85,420/-'. This submission merits consideration.

11. The Return filed for the assessment year 2009-10, reflects the income earned by the assessee/deceased for the period between 01st April, 2008 and 31st March, 2009. The Tribunal has not noticed this significance, and it went by the figure 2009-10 occurring therein, and hence, rushed to the conclusion that, it was a past event of the accident, which took place on 22.08.2009. The fact of the matter is on the face of Ex.P.13, the ITR filed by the deceased, the inward seal of the Income Tax Officer, Salary Ward No.2 of Chennai Income Tax Office, clearly provides the date of receipt of the said return as 21st July, 2009, which date is anterior to the date of accident.

12. It is, therefore, patently clear that the deceased has filed the ITR for the assessment year, 2009-10 by disclosing his taxable salary income as Rs.1,85,420/-. This return was filed on 21st July, 2009, while the accident took place on 22.08.2009. Therefore, the Tribunal has clearly erred in discarding the said ITR from being taken into account and consideration. In fact, Exs.P.12 and P.11 were the ITRs filed by the deceased on 26th July, 2007 and 28th July, 2008, for the assessment years 2007-08 and 2008-09 respectively. Therefore, the Tribunal has committed a grave error, in rejecting Ex.P.13 from consideration.

13. When we have confronted the learned Standing Counsel, for the Insurance Company he has fairly admitted that ITR for the assessment year 2009-10 was obviously filed by the assessee prior to the accident occurring, as is clearly evident from the Office seal of the Income Tax Officer of the salary ward, and also Receipt No. stamped on the said return by the Income Tax Department.

14. Therefore, we have no hesitation, whatsoever, to take the salary income of the deceased per annum at the time of the accident occurring as Rs.1,85,420/-. The deceased was working with the prestigious TCS Company, in their Retail Banking Division, as a Senior Associate, as could be realised from the bunch of commendation letters received by the deceased, consistently marked as Ex.P.18. It is clear that the deceased was working very sincerely, and has put in lot of hard work, as noted in the preceding para, which fetched him consistently reward/incentives and also recognition as a good employee. His performance level was rated at Level '3'. Though the scale has not been mentioned, from the tone and the tenor of the commendation letters signed by both the Head of the HR Division, Retail Banking Division and the complimentary expressions used therein, which were averted to by us supra, we assume that the performance level of the deceased was rated as Level '3' on a scale of '5'.

15. It is, therefore, only appropriate that, certain amount should have been provided towards 'future prospects component'. The TCS Company, being a prestigious Organization, and from the commendation letters received by the deceased, marked as Ex.P.18, it is, but fair and reasonable to assume that the deceased would have certainly earned better prospects in future. But, however, Ex.P.7 has reflected that he is only holding a Bachelor Degree from the University of Madras, that too, he has passed the said examination in II Class, during October, 2001. Normally, the annual examinations will be held in April or May for the concerned academic year, and the results would be published in June or July. Those, who either failed, or, who have not cleared the examination by not appearing at the annual end examinations, conducted in April or May, they tend to appear for the supplementary examinations, that would be conducted during September/October.

16. Therefore, on perusal of Ex.P.7, it could be inferred that the deceased/ Balaji was not a brilliant student, but, he has possessed adequate knowledge to clear the examinations and secure a pass in the Degree Examinations in the second Division. Though the Hon'ble Supreme Court, in the judgment rendered in re (Sarla Verma Vs. Delhi Transport Corp.) reported in (2009) 6

S.C.C. 121, in para No.24 laid down as a principle that, in fact, as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where, the deceased had a permanent job and was below 40 years of age, in view of our observations noted supra, we reckon the future prospects of the deceased only to the extent of 25%, though the fact remains that he was only 28 years of age, and hence, to his actual salary income of Rs.1,85,420/-, 25% thereof has to be added towards the component of future prospects because of the employment with the reputed TCS Company and also in view of the commendable nature of services rendered by him to the said Company, as is evident from Ex.P.8.

17. Then, comes the contention of Mr.N.M.Muthurajan, the learned counsel for the appellants/claimants that a meagre sum of Rs.40,000/- has been awarded to the claimants towards loss of love and affection. The learned counsel was thoroughly justified in his criticism that this is too meagre an amount for the aged parents, like that of the claimants herein, as their very light of life, if we may say so, has all most got extinguished by the death of their son. Losing their son, the most catastrophic event could be traumatizing them eternally. It is a wrong age to lose their pillar of strength. It will not be so easy for the aged parents, who are slowly marching towards the evening of life to reconcile and come to terms of life smoothly or in quick time. It calls for enormous balance of mind, and absolute detachment and philosophic bent of mind. The truth of the matter is, it is easier said, than can be achieved. Therefore, both the parents ought to have awarded a sum of Rs.40,000/- each by the Tribunal towards component of loss of love and affection.

18. The learned counsel for the appellants/claimants has strongly objected to the multiplier '8', chosen by the Tribunal for computation of the loss of dependency of the deceased. The learned counsel has urged that, it is the age of the deceased, which must be taken into account and reckoned, as was held by the Hon'ble Division Bench of this Court, in re [Anandha Lakshmi & Ors. vs. Tamilnadu State Transport Corporation (Villupuram Division-I Ltd.) reported in 2017 (1) TN MAC 383 (DB)].

19. Per contra, Mr.M.Krishnamoorthy, learned counsel for the respondent/Insurance Company has pointed out that, consistently, the principle upheld by the Hon'ble Supreme Court, in this regard, is that the age of the claimants or that of the deceased, whichever is higher, has to be taken into account and consideration, for the purpose of determining the quantum of loss of dependency caused in a fatal motor accident. In the

instant case, the first claimant/father was 60 years old, while the second claimant/mother of the deceased was 50 years old. Hence, though the deceased is only 28 years of age, it is the age of the father '60', which is higher, that should be taken for determining appropriate multiplier to be chosen.

20. It is a well recognized principle that the assessment of damages to compensate the dependants of fatal road accidents is beset with many difficulties, arising from varying factors and imponderables, such as life expectancy of the deceased, life expectancy of the dependants/claimants, and quantum of contribution in monetary terms, after defraying the personal expenses for his own maintenance, upkeep and pursuits of pleasure/leisure and the chances of unlikely survival of the deceased upto the expectant years of life etc. Similarly, the unlikelihood of the dependants/claimants surviving for the entire remainder of length of life expectancy and the prospects of increased family commitments of the deceased as well as the increased requirement of compulsory savings, not only to save taxes, but also, with a view to meet the increased commitments towards younger members of the family, who would get added to the family and the spouse of the deceased etc. Therefore, much of the calculations remain in the domain of rough estimate as a scientific or mathematical formulae do not fit into the exact scheme behind any such compensatory jurisprudential principles. Therefore, keeping all these imponderables at one end, and the necessity to maintain a balance to ensure that fatal road accidents do not lead to a windfall of bounty, the multiplier method has been evolved, not only to secure standardization of the methods of computation, but also to secure uniform application of the same by all concerned.

21. Therefore, the Hon'ble Supreme Court, after painstaking exercise in Sarla Verma's case, (cited supra), in para No.40, has standardized the multiplier scale to be adopted. Though there was divergent opinion expressed subsequently, with regard to the standardization of multiplier scale adopted in Sarla Verma's case, but, however, the Supreme Court in subsequent cases, such as i) (Shakti Devi Vs. New India Insurance Co. Ltd., and another) reported in (2010) 2 TN MAC 612 (SC), ii) (National Insurance Co. Ltd., Vs. Shyam Singh and others) reported in (2011) 2 TN MAC 317 (SC) and iii) (Vijay Shankar Shinde and others Vs. State of Maharashtra) reported in (2008) 2 S.C.C. 670, the formulae evolved in Sarla Verma's case has been commended for acceptance.

22. In Sakti Devi's case (referred supra), in para No.12, relevant principle has been spelt out, in the following words:-

"Insofar as the multiplier of is concerned, the Tribunal applied the multiplier

of '8'. Learned Counsel for the Appellant argued that the multiplier of 18 should have been applied keeping in view the age of the deceased. The argument is devoid of any substance. In a case, where, the age of the Claimant is higher than the age of the deceased, the age of Claimant and not the age of the deceased has to be taken into account for the capitalization of the lost dependency. It is so because the choice of multiplier is determined by the age of the deceased or that of the Claimant, whichever is higher."

23. In Shyam Singh's case, (supra), the Hon'ble Supreme Court has reiterated and applied the principle enunciated in Vijay Shankar Shinde's case, which is to the following effect:-

" If a young man is killed in the accident leaving behind aged parents, who may not survive long enough to match with a high multiplier provided by the 2nd Schedule, then the Court has to offset such high multiplier and balance the same with the short life expectancy of the Claimants. That precisely has happened in this case. Age of the parents was held as a relevant factor in case of minor's death in recent decision in Oriental Insurance Co. Ltd. v. Syed Ibrahim and Ors., AIR 2008 SC 103. In our considered opinion, the Courts below rightly struck the said balance."

24. The same principle was once again adopted by the Hon'ble Supreme Court very recently in re (Y.P.Shakuntala and others Vs. Manager, Reliance General Insurance Co.Ltd., and others) reported in (2016) 2 TNMAC 735.

25. We are, therefore, of the opinion that between the age of the deceased of a road accident, and the age of the claimant, whichever is higher of the two, is liable to be taken into account and consideration. Hence, the contention of the learned counsel for the appellants cannot be accepted that, it is the age of the deceased, which must be taken into account, and on the other hand, the contention canvassed by the learned counsel for the respondent/Insurance Company, is liable to be accepted.

26. It is also important to note that, in Sarla Verma's case, in column 4, multiplier scale chosen for those in the age group of '50' to '60' years, was '9'. Therefore, to this extent also, the Tribunal has committed an error in applying the multiplier '8'. Hence, we modify the award by substituting the multiplier '9' for multiplier '8'.

27. Accordingly, this Civil Miscellaneous Appeal stands allowed. The loss of dependency is liable to be calculated, taking into account the annual income of the deceased as on the date of the accident as Rs.1,85,420/-, and 25% thereof, (i.e.,Rs.46,355/-) shall be added towards future prospects, which comes to Rs.2,31,775/- and the same shall be multiplied by '9', which comes to Rs.20,85,975/- (Rs.2,31,775/- x 9 = Rs.20,85,975/-).

28. It is also appropriate to note that the deceased paid the tax of Rs.3,648/- as reflected in Ex.P.13, viz., Income Tax Return, which can be rounded up to Rs.4,000/-. Hence, from the above said amount, a sum of Rs.4,000/-x 9 = Rs. 36,000/- shall be deducted. On the component of loss of love and affection, a further sum of Rs.40,000/- is to be added. In all other aspects, the award of the Tribunal stands confirmed. Thus, the award passed by the Tribunal is modified.

29. In the result, the Civil Miscellaneous Appeal stands allowed, subject to the extent of the modification made by us supra. Three months' time from the date of receipt of this judgment is granted to the respondent/Insurance Company to deposit the aforesaid compensation. No costs.

Sd/-
Assistant Registrar

//True Copy//

rpa/sd

Sub Assistant Registrar

To

1.The learned Special Sub Judge I
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.Krishnamoorthy, Advocate, S.R.No.22026
+2cc to Mr.N.M.Muthurajan, Advocate, S.R.No.22238

C.M.A.No.833 of 2014

GMI (CO)
RS (02/06/2017)