

IN THE HIGH COURT OF JUDICATURE AT MADRAS

27.04.2017

CORAM

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

C.M.A.No.1482 of 2017
and CMP No.7919 of 2017
[CMA Sr.No.76893 of 2016]

Reliance General Insurance Company Ltd.,
570, Naigam Cross Road,
Next Royal Industries Estate,
Wadala (West), Mumbai.

... Appellant

Vs.

1. Subbulakshmi
2. Thayammal
3. Minor Subrith Narayanan
Minor represented by his mother Subbulakshmi
4. Basheer
5. M/s.Aghin Roadways,
No.MMc 4/2155/2 Mundakadu,
Mahe, Pondicherry.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 10.07.2015 made in M.C.O.P.No.435 of 2011 on the file of the Motor Accident Claims Tribunal, [Chief Judicial Magistrate Court], Tiruppur.

For Appellant : Mr.S.Arun Kumar

J U D G M E N T

(Order of the Court was made by **S.MANIKUMAR.,J.**)

In the accident, which occurred on 22.09.2010, involving a car bearing Regn.No.TN37A7587 and a lorry bearing Regn. No.PY-03-7388, insured with M/s.Reliance General Insurance Company Limited, the car

driver sustained grievous injuries and on the way to hospital, he died. Legal representatives have filed MCOP.No.435 of 2011 on the file of the MACT [Chief Judicial Magistrate Court], Tiruppur, claiming compensation of Rs.50,00,000/-, under various heads. According to them, the deceased aged 39 years, was running a Banian Company and he was also a partner, in another company. From and out of business, he earned Rs.30,000/- per month.

2. To prove the manner of accident, PW1, wife of the deceased has adduced evidence. PW2, is stated to be the eye witness. On the side of claimants, Ex.P1, First Information Report, Ex.P2, Inquest Report, Ex.P3 Postmortem Report, Ex.P4, Certificate issued by PSG Hospital, Ex.P5, bills for medical expenses incurred, Ex.P6, Death Certificate, Ex.P7, Legal heir Certificate, Ex.P8, Partnership Deed, Exs.P9, P10 and P11, Income Tax Returns, have been marked. On the side of M/s.Reliance General Insurance Company Limited, no oral or documentary evidence has been adduced.

3. On evaluation of pleadings and evidence, the Claims Tribunal came to the conclusion that the driver of the lorry bearing Regn. No.PY-03-7388 and insured with M/s.Reliance General Insurance Company Limited, alone was negligent in causing the accident. Accordingly, fastened liability on M/s.Reliance General Insurance Company Limited, to pay compensation.

4. On the quantum of compensation, PW1-wife has adduced evidence that her husband/deceased was a partner in a company and marked Ex.P8, partnership Deed. Contending that the deceased was an Income Tax assessee, she has marked Exs.P9, P10 and P11, Income Tax returns for the assessment years 2009-10, 2010-11 & 2011-12 respectively.

5. Going through the above documents, the claims tribunal has observed that for the assessment year 2009-10, the deceased had shown his annual income as Rs.1,54,960/-. Accident has occurred in the year 2010. Therefore, tribunal had taken the proximate income for the purpose of assessment of pecuniary loss. Accordingly fixed annual income as Rs.1,54,960/-. After deducting 1/3rd towards personal and living expenses, the tribunal has taken Rs.1,03,000/-, as loss of annual income. Deceased was aged 39 years. Following ***Sarla Verma and others Vs. Delhi Transport Corporation and another***, reported in 2009 (2) TNMAC 1 (SC), applied '15' multiplier and computed the loss of contribution to the family as Rs.15,45,000/-. Thereafter, tribunal awarded Rs.5,00,000/- under the head future prospects. Following the decision of ***Sasikala and others Vs Kanagalakshmanan and others, reported in 2015 (1) TNMAC 785 (SC)***, the tribunal awarded Rs.1,00,000/- under the head loss of consortium, Rs.1,00,000/- under the head loss of love and affection to the minor son aged about 2 years, impleaded as one of the parties to the claim petition

vide order in IA. No.740 of 2013 and Rs.25,000/- to the mother, aged about 65 years, at the time of filing claim petition, under the same head. In addition to the above, the claims tribunal has awarded Rs.25,000/- under the head loss of estate, Rs.25,000/- for funeral expenses, Rs.5,000/- for transportation and Rs.18,600/- towards medical expenses, incurred vide Ex.P5 (series) Medical Bills. Altogether, the tribunal has awarded Rs.23,43,600/- with interest, at the rate of 7.5% per annum from the date of claim, till deposit and costs.

6. Representing M/s.Reliance General Insurance Company Limited, appellant herein, Mr.S.Arun Kumar, learned counsel submitted that finding of negligence fixed on the driver of the lorry bearing Regn.No.PY-03-7388, is erroneous and that the tribunal ought not to have relied on PW2.

7. Preponderance of probability, is the test in Motor Vehicle Accident cases. In **N.K.V.Brother's Private Limited v. Kurmai** reported in **AIR 1980 SC 1354**, while dealing with the scope of the enquiry in the Claims Tribunal, the Hon'ble Apex Court has held that,

"Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and

mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

(i) In a decision in **Union of India v. Saraswathi Debnath** reported in **1995 ACJ 980**, the High Court of Gauhati at Paragraph 6 held as follows:

"The law is well settled that in a claim under the *Motor Vehicles Act*, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

(ii) In **Bimla Devi & Ors. Vs. Himachal RTC** reported in **2009 (13) SCC 530**, the Hon'bl Supreme Court held as follows:

"It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of

proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

8. Testing the finding fixing negligence on the driver of the lorry, on the abovesaid principles, we are of the view the oral testimony of PW1-wife is supported by PW2-eyewitness and duly corroborated by Ex.P1, First Information Report. On the contra, there is no evidence to indicate that M/s.Reliance General Insurance Company Limited, appellant herein has made any attempt to examine the driver of the lorry, nor adduced any rebuttal evidence. In the absence of examining the driver, adverse inference can also be drawn.

(i) In **New India Assurance Co. Ltd., v. Debajani Sahu** reported in I (2002) ACC 103 (Ori.), the Orissa High Court held that,

“8. In the present case, the Claims Tribunal found about the negligence of the bus driver on the basis of the evidence of the P.Ws. It is contended that P.W. 2 himself being the driver employed by the deceased was a highly interested witness and his evidence cannot be accepted as reliable. There is no dispute in the fact that the accident was caused involving the scooter and the bus. Even assuming that the evidence of P.W. 2 is not accepted, still then the doctrine of *res ipsa loquitur* is applicable. In such a situation, the owner of the bus should have examined the driver of the bus to explain the circumstances under which the accident occurred, as the

other person involved in the accident having died cannot speak from the grave to explain the circumstances under which the accident had taken place. Of course, the bus owner has remained ex-parte, but no attempt was made by the Insurance Company which was contesting the case even on merit (whether justifiably or not is immaterial), has not chosen to adduce any evidence to rebut the evidence of P.W. 2, not has bothered to summon the bus driver to explain the circumstances under which the accident took place. In such a case, an adverse inference can be drawn against the owner/Insurance Company for not examining the bus driver who would have been the best witness to explain the circumstance under which the accident occurred. In such view of the matter, the finding of the Tribunal on the question of negligence cannot be assailed and the contention in this regard raised by the Counsel for the appellant cannot be accepted."

(ii). In **Sitabai v. Ishak Hussain** reported in I (2001) ACC 761 (DB), the Madhya Pradesh High Court, at Paragraph 5, held as follows:

"5. In this case, the claimants could not examine any eyewitness of the accident. It was difficult for the claimants to search an eyewitness as the claimants were not present on the spot at the time of accident. This difficulty is avoided by applying the maxim *res ipsa loquitur*. Their Lordships of the Supreme Court in case of **Puspabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.**, reported in 1977 ACJ 343 (SC), observed:

"The normal rule is that it is for the

plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident 'speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care."

In this case, the respondent No. 1 was driving the vehicle which left the road and dashed against a tree. In view of this maxim, the burden shifts on the respondent No. 1 to prove that he was not negligent. It was in the special knowledge of respondent No. 1 as to how the vehicle left the road and came down and struck against a tree. The respondent No. 1 did not examine himself. Under such circumstances, adverse inference that he drove the vehicle in a rash and negligent manner as a result of which this accident occurred, shall be drawn against him. The learned Tribunal committed error in not applying this maxim. We hold that the accident occurred due to rash and negligent driving of the vehicle by respondent No. 1."

(iii). In **Beni Bai & others v. A. Salim & another** reported in **II (1999)**

ACC 408 (DB) (M.P.), the Madhya Pradesh High Court, held as follows:

In the circumstances, for non-examination of the material witnesses particularly the driver and the conductor, who had the first hand knowledge of the manner in which the accident occurred, necessarily an adverse inference has to be drawn against the respondents. For want of evidence on behalf of the respondents, the plea raised in defence cannot be said to be established. On the other hand, the appellants have examined Atmaram, A.W.1. who was at the spot, who stated that at the bus stop when the passengers were getting down from the bus, the driver without seeing that the passengers have got down or not, started the bus and there one boy came under the wheel of the bus. From the circumstances, it cannot be inferred that the deceased might have jumped from the running bus. Hence it was

the duty of the driver and conductor to have taken care to see whether passengers have got down from the bus or not, then only the driver could have started the bus. As the driver and conductor have failed in their duties to take care, we hold that the accident occurred due to negligence of the driver of the city bus. This Court in similar circumstances where the same type of defence was taken, has observed that it is the driver of the passenger bus who has to take care that the passengers who wish to get down from the bus have got down and then to start the bus. But that care was not taken. Therefore, it was held that the accident was caused because of the negligence of the driver and conductor.

9. In the light of the above discussion and decisions, we are of the view that there is no perversity in the finding fixing negligence on the driver of the lorry, warranting interference.

10. On the quantum of compensation, legal representatives of the deceased have substantiated the avocation of deceased viz., partner in a business firm, by marking Ex.P8, Partnership deed and Exs.P9 to P11, Income Tax returns for the years 2009-10, 2010-11 and 2011-12. Upon perusal of Exs.P9, P10 and P11, income tax returns for the assessment years 2009-10, 2010-11, 2011-12, respectively, the tribunal had taken the annual income shown in Ex.P9, income tax returns filed prior to death. Income fixed on the Income Tax returns cannot be said to be erroneous, in

the light of the judgment of the Hon'ble Supreme Court in ***Kalpanaraj & Others Vs. Tamil Nadu Transport Corporation, reported in 2014 (5) SCALE 479.***

11. Deceased was aged about 39 years. Though in Sarla Varma's case, future prospect was decided, in respect of organised sector only, the tribunal ought to have considered addition of certain income under the head future prospects or prospect, as decided by a Coordinate 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 (Hon'ble Mr.Justice S.Manikumar). Relevant paragraphs are extracted hereunder.

"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 an 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 raff 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 the 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. Tribunal has taken only 30% under the head future prospects and awarded Rs.5,00,000/-. There is no manifest illegality in awarding

compensation under the head future prospects. Compensation awarded under other heads is just and reasonable. M/s.Reliance General Insurance Company Limited, appellant herein has not made out a strong case for interference either on the finding of negligence or quantum of compensation. Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

13. Consequent to the dismissal of the appeal, the appellant-Insurance Company, is directed to deposit the entire award amount with interest at the rate of 7.5% per annum, from the date of claim till deposit and costs, to the credit of MCOP.No.435 of 2011 on the file of the MACT [Chief Judicial Magistrate Court], Tiruppur, within a period of four weeks from the date of receipt of a copy of this order.

14. On such deposit, except the minor 3rd respondent/claimant, other respondents/claimants are permitted to withdraw their share, as apportioned by the tribunal, with proportionate interest, by making necessary applications. Share apportioned to the minor 3rd respondent/claimant, shall be in the bank deposit till he attains majority. The interest accruing on the share of the minor shall be paid to the mother of the minor viz., Subbulakshmi, 1st respondent/claimant, once in three months, till he attains majority. On attainment of majority, he shall file

necessary application for withdrawal.

15. Registry is directed to send a copy of this order to the Motor Accident Claims Tribunal, [Chief Judicial Magistrate Court], Tiruppur, and display in the notice Board that C.M.A.No.1482 of 2017 filed by the Reliance General Insurance Company Limited, Mumbai, against the judgment in MCOP No.435 of 2011, has been dismissed, with a direction, to the Insurance Company, to deposit the entire award amount, to the credit of MCOP.No.435 of 2011 on the file of the MACT [Chief Judicial Magistrate Court], Tiruppur, within a period of four weeks from the date of receipt of a copy of this order. Motor Accidents Claims Tribunal is further directed to mention the M.C.O.P number in the said notice. The Tribunal is directed, to disburse the amount only on proper identification and proof.

(S.M.K.,J) (M.G.R.,J)
27.04.2017

Index :Yes/No
Internet:Yes/No
ars/dsa

To
The Motor Accidents Claims Tribunal,
[Chief Judicial Magistrate Court], Tiruppur - is directed to
affix the details of the order made in this appeal.

S.MANIKUMAR,J.
And
M.GOVINDARAJ,J.

ars/dsa

C.M.A.No.1482 of 2017
and CMP No.7919 of 2017

27.04.2017