IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

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

C.M.A.No.676 of 2017
C.M.P.No.3801 of 2017

The Branch Manager,
Royal Sundaram Alliance
Insurance Company Ltd.,
Erode 638 001. .. Appellant /2nd respondent

versus

1. R.Gowthami (Minor)
2. R.Sarankumar (Minor)
3. Narayanamma RR 1 to 4/Petitioners
4. Munirathinam
(Respondents 1 and 2 are represented by their grand mother, 3rd respondent)
5. S.Radhakrishnan ..5th Respondents/R1

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.175 of 2014, dated 15.02.2016, on the file of the learned Motor Accident Claims Tribunal (Special District Court), Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan

JUDGMENT

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

Challenge in this appeal is to the judgment and decree in M.C.O.P.No.175 of 2014, dated 15.02.2016, by which, the learned Motor Accident Claims Tribunal (Special District Court), Krishnagiri, has awarded compensation of Rs.15,25,000/- with interest, at the rate of 7.5% per annum and costs, to the respondents/claimants. Monthly income of the deceased fixed as Rs.7,084/- and addition of 30% of future prospects, are questioned.

2. Mr.N.Vijayaraghavan, learned counsel appearing for the appellant-Insurance Company made submissions.

3. As the challenge to the award, is restricted only to the quantum of compensation, there is no need to advert to the aspects of negligence and liability. At this juncture, it is also pertinent to note that a connected case in C.M.A.No.2831 of 2016 has already been dismissed by this Court on 04.01.2017.

4. Perusal of the award shows that in the accident, which occurred on 20.05.2014, mother of the respondents 1 and 2, aged 34 years, sustained grievous injuries and died on the spot. It is the case of the legal representatives that at the time of accident, the deceased was a House Keeper in Senthamarai Marble and Granites, Hosur and earned Rs.7,084/- per month. To prove avocation, respondents/claimants have marked Ex.P16 - Salary Certificate. Considering the same, the Tribunal has fixed the monthly income of the deceased as Rs.7,084/-.

5. By observing that the deceased was employed in a private company and her salary would be increased, every year, the Tribunal added 30% towards future prospects and determined Rs.9,200/-, as the monthly income, for the purpose of computing the loss of contribution to the family. As the number of dependents are four in numbers, the Tribunal deducted 1/4th towards her personal and living expenses, which works out to Rs.6,900/-. Based on the entry in Ex.P10 - Post-mortem Certificate, the Tribunal has fixed her age as 34 years. Thereafter, by applying '16' multiplier, computed the loss of contribution to the family as Rs.13,44,000/- (Rs.6,900 x 12 x 16). In addition to the above, the Tribunal has awarded Rs.1,00,000/- each, to the children and Rs.50,000/- each to the parents, towards loss of love and affection, Rs.25,000/- for funeral expenses, Rs.5,000/- for transportation and Rs.1,000/- for damages to clothes and articles and altogether, awarded a sum of Rs.15,25,000/-, with interest, at the rate of 7.5% from the date of claim, till realization and costs.

6. Though the appellant-Insurance Company has contended that the Tribunal has erred in fixing the monthly income of the deceased as Rs.7,084/- for the purpose of computing the loss of contribution to the family of the deceased and consequently, awarded a higher compensation, warranting reduction, this Court is not inclined to accept the said contention for the reason that to prove the avocation and income, the respondents/claimants have examined one Mr.Jagadesh, from M/s.Senthamarai Marble and Granites, Hosur and marked Ex.P12 - Salary slip for the month of March' 2014, Ex.P15 - Confirmation of Appointment given by M/s.Senthamarai Marble and Granites, Hosur and Ex.P16 - Salary slip for the months of February, March, April and May' 2014, Ex.P17 - Attendance Register and Ex.P18 - Muster Roll Attendance. Avocation and income have been

proved and hence, it cannot be said that the Tribunal has committed a manifest illegality, in fixing the monthly income as Rs.7,084/-.

7. Addition of 30% of the income, towards future prospects, is in terms of the principles laid down by the Hon'ble Apex Court in Sanjay Verma v. Haryana Roadways reported in 2014 (1) TNMAC 279 (SC). On the aspect of adding certain sum under the head ''future prospects'', 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 uniformally 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 manufacturers 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 Prince 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 indeligible 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."

7. 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 the loss of love and affection. However, in the case on hand, the Claims Tribunal has awarded only Rs.50,000/- for towards loss of love and affection to the parents, which is less. Overall quantum of compensation awarded to the parents cannot be said to be on the higher side warranting interference.

8. In the light of the above discussion, Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company, is directed to deposit the award amount, with proportionate accrued interest and costs, less the statutory deposit, to the credit of M.C.O.P.No.175 of 2014, on the file of the learned Motor Accident Claims Tribunal (Special District Court), Krishnagiri, within a period of four weeks from the date of receipt of a copy of this order. The share of the minors shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors

shall be paid to the guardian once in three months, till they attain majority. On such deposit being made, except the minors, the respondents/claimants are permitted to withdraw the same, by making necessary application before the Tribunal.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

skm

To
The Special District Judge,
The Motor Accidents Claims Tribunal,
(Special District Court), Krishnagiri.

C.M.A.No.676 of 2017

SK(CO)
VR(13/04/2017)