



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 15.11.2017

CORAM

WEB COPY

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

C.M.A(MD)No.649 of 2016
and
C.M.P(MD)No.6902 of 2016
and
Cross Objection(MD)No.26 of 2017

C.M.A(MD)No.649 of 2016:

The United India Insurance Company Ltd.,
through its Divisional Manager,
P.B.No.2743, 21/1, Mission Road,
Jelitta Towners,
Bangalore- 560 027 : Appellant/Respondent No.2

Vs.

1.A.Meerabai Premkumari
2.W.Surendran Paul Mani
3.S.Kiruba Kamalam Jabamalar : Respondents 1 to 3/
Petitioners 1 to 3

4.Saraswathamma : Respondent No.4/1st Respondent
5.R.Gift Jacob Chelraj : Respondent No.5/3rd Respondent

Prayer : Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the Judgment and decree dated 23.10.2013 in MCOP No.1195 of 2008 on the file of the Motor Accidents Claims Tribunal (3rd Additional District and Sessions Judge-PCR), Madurai.

For Appellant : Mr.G.Prabhu Rajadurai
For R1 to R3 : Mr.D.Balasubramanian
for Mr.K.Sekar
For 4th Respondent : Mr.M.Karunanithi

Cross Objection(MD)No.26 of 2017:

<https://hcservices.ecourts.gov.in/hcservices/>

1.A.Meerabai Premkumari



2.W.Surendran Paul Mani
3.S.Kiruba Kamalam Jabamalar

: Cross Appellants/
Respondents 1 to 3

Vs.

WEB COPY

1. The United India Insurance Company Ltd.,
Having its Office at Divisional Office No.1,
Code No.070100, P.B.No.274321/1
Mission Road,
Jelitta Towners,
Bangalore- 560 027,
through its Divisional Manager. : Respondent No.1/Appellant
2. Saraswathamma
3. R.Gift Jacob Chelraj : Respondents 2 and 3/
Respondents 4 and 5

Prayer: Cross Objection filed under Order-XLI, Rule 22 r/w Section 96(1) & (2) of C.P.C, against the award, dated 23.10.2003 passed in MCOP No.1195 of 2008 on the file of the Motor Accident Claims Tribunal (III Additional District & Sessions Judge (PCR), Madurai.

For Cross Objector : Mr.D.Balasubramanian
for Mr.K.Sekar
For 1st Respondent : Mr.G.Prabhu Rajadurai
For 2nd Respondent : Mr.M.Karunanithi

COMMON JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

Feeling aggrieved over the award of the Motor Accident Claims Tribunal (III Additional District & Sessions Court (PCR), Madurai passed in MCOP No.1195 of 2008, dated 23.10.2013, the Insurance Company has filed this appeal, whereas Cross Objection (MD)No.26 of 2017 has been filed by the claimants for enhancement of compensation.

2.The facts of the case are that on 14.09.2005, while the deceased S.Christ Ranjini Nesamalar was proceedings near HDFC Bank at Kammanakalli Main Road, Bangalore, a tractor attached with trailer bearing registration Nos.KA-25-3995 & KA-03-B-5730 came in a high speed and dashed against her. In the accident, she was ran over by tractor and died on the spot. The Frazer Town Traffic Police, Bangalore has registered a case in Crime No.362 of 2005 against the driver of the tractor. The claimants have filed a petition seeking Rs.40,00,000/- as compensation alleging that the

driver of the tractor was negligent.

3.The appellant/Insurance Company opposed the claim, by filing counter affidavit, contending that the accident occurred solely due to the negligence of the deceased. The age, relationship, occupation and monthly income claimed by the claimants were also disputed by the Insurance Company.

4.The Tribunal, based on Ex.P1 First Information Report and the evidence of PW2, who is an eye witness, came to the conclusion that the driver of the tractor was responsible for the accident, when there was no contra evidence adduced by the respondents.

5.According to the claimants, the deceased has successfully completed Master Degree in Computer Education and was selected in Campus interview by TATA Consulting Services and she was drawing a monthly salary of Rs.40,560/- and to establish their case, they marked Exs.P5 and P6 B.Sc., and MCA. Degree Certificates, Exs.P24 to P26 Orders of the TATA Consulting Service. The Tribunal for calculating loss of dependency, taken monthly income as Rs.20,750/- and by applying multiplier '17', after deducting income tax, awarded Rs.35,73,073/-.

6.Mr.G.Prabhu Rajadurai, learned counsel appearing for the appellant/Insurance Company urged that though the deceased was married, but she was living away from her husband. Since the claim petition is filed by the parents and sister of the deceased, she should be treated as '**spinster**'. It is further contended that the age of the mother of the deceased is the relevant factor to determine the multiplier and not the age of the deceased.

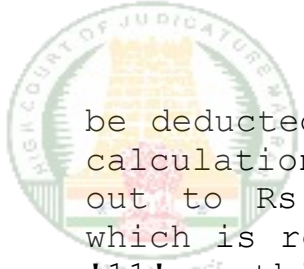
7.Per contra, the learned counsel for the respondents/claimants would submit that as per Ex.P.27, the monthly salary was Rs.40,500/-, but the Tribunal has taken only Rs.20,750/- and if the correct income is taken, the claimants would be entitled for more compensation.

8.In the case on hand, the husband of the deceased was impleaded as 3rd respondent and he did not make any claim for the death of his wife.

9.It is not in dispute that at the time of accident, the deceased was living with her parents and she died at the age of 27 years. Ex.P27, salary certificate would show that the annual salary of the deceased was Rs.2,49,000/- and the other components 'B' and 'C' are allowances and by adding A, B, C and D, the annual income comes to Rs.4,58,000/-. The tribunal, after considering the Pay Slip, has rightly fixed the monthly salary Rs.20,750/-.

<https://hcservices.ecourts.gov.in/hcservices/>

10.As per the decision in **Sarla Verma**, the claimants would be entitled additional 40% towards future prospects and 1/3rd has to



be deducted towards personal and living expenses. As per the above calculation, the monthly loss of contribution to the family works out to Rs.19,368/- [Rs.20,750/- + 40% - Rs.9682/- (viz; 1/3rd), which is rounded off to Rs.19,500/-. By applying proper multiplier '11', this Court awards **Rs.25,74,000/-** [19500 x 12 x 11]. The amount awarded under conventional damages are reasonable and therefore, the same is confirmed.

11.In the result, the appeal is partly allowed and the award amount of Rs.36,16,000/- is reduced to **Rs.26,74,000/-**. The interest awarded by the Tribunal is maintained. The Cross Objection (MD)No.26 of 2017 filed by the claimants is dismissed.

12.It is represented that the appellant/Insurance Company has already deposited the entire award amount with accrued interest and cost. Therefore, the claimants are permitted to withdraw their share as apportioned by the Tribunal, less the amount already withdraw, if any. The excess shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The III Additional District and
Sessions Judge (PCR),
Motor Accidents Claims Tribunal,
Madurai.

Copy To:-

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 87579

SKN

TE/SKN/SAR-2 : 04/10/2018 : 4P/5C

C.M.A(MD)No.649 of 2016 and
C.M.P(MD)No.6902 of 2016 and
Cross Objection(MD)No.26 of 2017
15.11.2017