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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 19.04.2017  
Delivered on: 05.06.2017

CORAM :

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM**  
**AND**  
**THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

C.M.A. (MD) No.1645 of 2013

The Branch Manager,  
United India Insurance Co. Ltd.,  
No.1, Post Office Road,  
Palayamkottai,  
Tirunelveli.

... Appellant/2<sup>nd</sup> Respondent

**Vs.**

1.N.Antony Sami  
2.A.Mallika  
3.A.Geetha  
4.T.Mariappan  
5.S.Mohamed Kasim

... 1 to 3 Respondents/Claimants

... 4<sup>th</sup> and 5<sup>th</sup> Respondents/  
1<sup>st</sup> and 3<sup>rd</sup> Respondent

**Prayer:** Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 21.12.2012 passed in M.A.C.O.P.No.78 of 2011 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Thoothukudi and set aside the same.

For Appellant : Mr.G.Prabu Rajadurai  
For Respondent : Mr.S.Siva Thilakar for RR1-3  
No Appearance for RR4 and 5

#### **JUDGMENT**

**(Judgment of the Court was delivered by P.VELMURUGAN,J.)**

The Civil Miscellaneous Appeal is directed against the judgment and decree dated 21.12.2012 passed in M.A.C.O.P.No.78 of 2011 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Thoothukudi and to set aside the same.

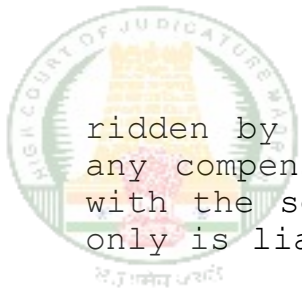
2.The case of the claimants/respondents herein as per the claim petition filed before the Tribunal is that on 21.11.2010 at about 10.30 p.m., the deceased by name Jones @ Antonysamy Jones was riding his motorcycle bearing Registration No.TN 69 X 3075, on the left side of Arumuganeri - Tiruchendur main road from West to East and when he was proceeding near Thirupalli diversion at Rathinapuri, a van belonged to the first respondent bearing Registration No.TN 09 K 5256 driven by his driver in a rash and negligent manner on reverse

and without any signal or intimation and carelessly without observing the traffic rules, hit against the motorcycle ridden by the deceased, as a result of which, the deceased was thrown out of his motorcycle and sustained head injuries and multiple injuries all over his body and immediately he was taken to Sankar Hospital at Athur, where he succumbed to injuries in the early morning on the next day.

3. According to the claimants, the accident occurred due to rash and negligent driving of the driver of the first respondent van bearing Registration No. TN 09 K 5256 and due to the said accident, the deceased Jones @ Antonysamy Jones died. The first respondent's van was insured with the second respondent Insurance Company. Since, it was learnt that the first respondent sold the van to the third respondent prior to the accident, third respondent was also impleaded and the respondents 1 to 3 are jointly and severally liable to pay compensation to the claimants. It is stated in the claim petition that at the time of accident, the deceased was aged about 23 years and he was earning Rs.40,000/- per month by working as AB in Standford Marine L.L.C. Dubai. The first and second claimants are father and mother of the deceased and the third claimant is the sister of the deceased. Due to the said accident, the deceased died and since the deceased is the only son to his parents, the claimants are the dependents of the deceased and they lost the benefits extended by the deceased and hence, they made a claim in the claim petition under the following heads:

| HEAD                             | AMOUNT CLAIMED BY THE CLAIMANT in<br>Rs |
|----------------------------------|-----------------------------------------|
| Loss of income                   | 1,77,60,000/-                           |
| Transportation                   | 10,000/-                                |
| Extra nourishment                | 5,000/-                                 |
| Damages to clothing and articles | 3,000/-                                 |
| Medical Expenses                 | 25,000/-                                |
| Attendant Charges                | 5,000/-                                 |
| Shock and Mental agony           | 6,00,00/-                               |
| Funeral expenses                 | 15,000/-                                |
| Total                            | <b>1,84,23,000/-</b>                    |
| Restricted to                    | <b>75,00,000/-</b>                      |

4. The case of the first respondent as per the counter filed before the Tribunal is that the accident had occurred due to the rash and negligent riding of the deceased. The deceased without noticing the oncoming of the van in reverse, negligently had ridden the motorcycle and invited the accident. The driver of the first respondent was driving the vehicle slowly by observing the traffic rules and therefore, the first respondent is not liable to pay any compensation to the claimants. The petition is bad for non joinder of the owner of the motorcycle bearing Registration No. TN 69 X 3075



ridden by the deceased. If at all the petitioners are entitled to any compensation, since the first respondent's vehicle was insured with the second respondent, the second respondent Insurance Company only is liable to pay compensation.

5. The case of the second respondent as per the counter filed by the second respondent before the Tribunal is that the manner in which the accident had taken place is denied as false. The first respondent's van was sold to the third respondent and hence, the first respondent is not the owner of the vehicle. The Insurance policy has been obtained from the second respondent by suppressing the material facts and hence, the insurance policy in the name of the first respondent is void under law. Failure on the part of the first respondent to inform the ownership to RTO would amount to violation of the provisions of Motor Vehicles Act. The van was not at all having fitness certificate and hence, the second respondent Insurance Company is not liable to pay compensation. The petition is also bad for non joinder of the owner of the motorcycle bearing Registration No. TN 69 X 3075, which was ridden by the deceased. The deceased was not possessing a valid driving license to ride the motorcycle and he was not wearing helmet at the time of accident. The deceased alone came in a high speed and dashed against the first respondent's van and the accident had occurred due to the rash and negligent riding of the deceased and hence, the second respondent Insurance Company is not liable to pay compensation.

6. The case of the third respondent as per the counter filed before the Tribunal is that the third respondent had not actually purchased the van bearing Registration No. TN 09 K 5256 and therefore, the claim made against the third respondent is not maintainable and he was unnecessarily impleaded in the claim petition and hence, the claim petition is liable to be dismissed as against the third respondent.

7. Before the Tribunal, on the side of the claimants, P.Ws.1 and 2 were examined and Exs. P1 to 28 were marked. On the side of the respondents, R.W.1 was examined and Exs. R1 and R2 were marked. On enquiry, considering the oral and documentary evidence and other materials, the Tribunal has held that the accident had occurred due to the rash and negligent driving of the driver of the first respondent van bearing Registration No. TN 09 K 5256 and also held that since the first respondent's van was insured with the second respondent Insurance Company and the same is liable to pay compensation and accordingly passed the following award:

| HEAD                                            | AMOUNT AWRDED BY THE TRIBUNAL (Rs) |
|-------------------------------------------------|------------------------------------|
| Loss of income                                  | 27,98,880/-                        |
| Loss of future prospects and love and affection | 8,39,664/-                         |
| Loss of estate                                  | 5,000/-                            |
| Funeral expenses                                | 5,000/-                            |
| Total                                           | 36,48,544/-                        |



8. Aggrieved over the impugned award passed by the Tribunal, the second respondent Insurance Company has preferred this civil miscellaneous appeal stating that the monthly income fixed by the Tribunal is highly excessive and therefore, the impugned award passed by the Tribunal does not reflect just and reasonable compensation.

9. The learned counsel for the appellant would submit that the Tribunal has fixed monthly salary of the deceased as Rs.33,320/-, which is highly exorbitant and the multiplier adopted by the Tribunal is also very exorbitant and there is no certainty of job and the lesser protection against job security as exists in Dubai, while estimating the income of the deceased. The high rate of taxation and liability as against such charges exists in Dubai and substantial part of income would go to meet the tax liabilities and the rate of income in such developed countries would not be consistent and would depend upon the fluctuation in economic situation in contradiction to the situation as exists in India. There is not permanency of job till the age of retirement and the jobs are offered only on contract basis. Therefore, the award passed by the Tribunal is not just and reasonable compensation. Therefore, the award is liable to be set aside.

10. The learned counsel for the respondents 1 to 3/claimants would submit that at the time of accident, the deceased was aged about only 23 years and he was employed in Dubai and as per Ex.P7, he earned Rs.33,320/- per month and if he is alive, in future, he would get high salary and hence, the income fixed by the Tribunal is very low and the Tribunal has wrongly adopted the multiplier as to the age of the parents and hence, the appeal is liable to be dismissed and the respondents are entitled to a higher compensation.

11. Heard the learned counsel appearing for the appellant Insurance Company and the learned counsel for the respondents 1 to 3 / claimants and perused the materials available on record and the award passed by the Tribunal.

12. The appellant Insurance Company has not disputed the manner of the accident and also the liability. Therefore, we are of the view that the Tribunal has come to the correct conclusion that the accident had occurred due to the rash and negligent driving of the driver of the first respondent's van bearing Registration No.TN 09 K 5256 and since the said vehicle was insured with the second respondent/appellant Insurance Company, both the first and second respondents are liable to pay the compensation to the claimants. Therefore, the point to be decided in this appeal is as to whether the quantum of the award passed by the Tribunal is just and reasonable?

13. The case of the claimants is that at the time of accident, the deceased was 23 years old and he was a bachelor and he was working as AB in Vessel Crew department in Standford Marine, L.L.C.,



Dubai and was earning Rs.40,000/- per month and due to the said accident, the deceased died and since the deceased had extended his full support to his family, the family of the deceased lost their income.

14. The learned counsel for the appellant Insurance Company would submit that the claimants have not proved the employment and income of the deceased and in Dubai, the expenses of the deceased was very high and there is no security for the job and monthly income and hence, if he was a permanent employee, the monthly income of the deceased fixed by the Tribunal is not correct and therefore, the award passed by the Tribunal is highly excessive.

15. In order to prove the accident, P.W.2, eye witness was examined and to prove the income of the deceased, one Mallika, who is the mother of the deceased was examined as P.W.1. Ex.P6 is the advocate notice dated 14.12.2011, sent to the Manager, Standford Marine L.L.C., Dubai, who in turn sent Ex.P7 Pay certificate, which shows that the deceased was earning Rs.33,320/- per month. Except this, no other document has been produced by the deceased for proving the income. The other documents viz., Ex.P.11 and 12 are the passport of the deceased and Ex.P.13 is the bank passbook of the deceased and Ex.P.14 is the copy of bank passbook of the mother of the deceased and Ex.P.15 is the SSLC mark sheet of the deceased and Ex.P.16 to 25 would go to show that he was having qualification to work in Marine i.e. shipping company. Perusal of the records would show that no terms and conditions of appointment order has been furnished to show that how long, he was working in the ship and as to whether his employment was permanent in nature. The period of employment has also not been proved and the particulars as to when he returned to India and when he had to join the job again has not been furnished. The only available documents to prove the income of the deceased are Ex.P7 and 8. The same have not been proved as the manner known to law. Therefore, we cannot fix the monthly income as per Ex.P7 and 8. In this regard, it is worthwhile to refer to the decision of **Division Bench of Kerala High Court**, in the case of, **Vahisa and others Vs. C.I Lincy and others**, reported in **2017 ACJ P.669**. The relevant portion of the judgment is extracted below;-

" 9. In the decision of Valsamma v. Binu Jose, 2014 ACJ 997 (Kerala), this court has held that income of a person in a foreign country which is not a permanent employment cannot be taken into consideration for the purpose of assessing compensation under the head of loss of dependency and the income will have to be assessed in the context of Indian standards which such person if he is employed in India will be getting. Considering the circumstances, the amount of Rs. 6,000/- fixed by the Tribunal as his monthly income can not be said low and it is reasonable as well."

16. Under the above said circumstances, in this case on hand, considering the educational qualification of the deceased, definitely, he would get some employment in the shipping company and



hence, considering the age, nature of the qualification of the deceased, had he worked in India, definitely, he could get Rs.15,000/- per month. Therefore, this Court fixes the notional income at Rs.15,000/- per month.

17. As per Ex.P15, SSLC mark sheet of the deceased, his date of birth is 08.07.1987 and the accident had taken place on 21.10.2010. Therefore, at the time of the accident, the age of the deceased is 23 years and he died as bachelor. The first claimant is the mother and the second claimant is the father and the third claimant is the sister of the deceased.

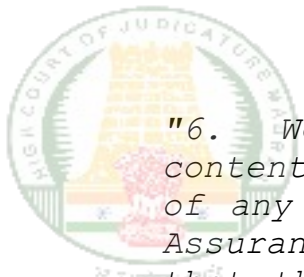
18. However, at the time of the accident, the age of the deceased is 23 years and died as bachelor, the average age of his parents has to be taken into consideration for adopting multiplier for calculating loss of income. In this regard it is pertinent to refer to the decision, in the case of, **Bajaj Alliance General Insurance Com.Ltd Vs. Bipin Laxmichand Mehta and others**, reported in **2017 ACJ 30**, the Bombay High Court has held as follows:

"37. We may note that the Apex court in the case of Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and Another (2015) 2 SCC 180. was required to deal with a similar situation where the deceased was 19 years old. The Hon'ble Court while calculating the compensation applied the multiplier as per the age of the parents of the deceased. The Court held:

"11. ....Therefore, we have no doubt in ascertaining the future income of the deceased at Rs. 25,000/- p.m. i.e. Rs. 3,00,000/- p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per Oriental Insurance Co. Ltd. v. Deo Patodi and applying the appropriate multiplier of 13, keeping in mind the age of the parents of the deceased, as per the guidelines laid down in Sarla Verma case, we arrive at a total loss of dependency at Rs. 26,00,000/- [(Rs. 3,00,000 minus 1/3 X Rs. 3,00,000) X 13]".

38. The Apex Court in the case of National Insurance Company Limited v. Shyam Singh and Others (2011) 7 SCC 65 was required to deal with a similar situation where the aged parents were sole dependents of their young deceased son. After consideration and following the case of Ramesh Singh v. Satbir Singh: (2008) 2 SCC 667 the Apex court held that the multiplier that would apply would be after considering the age of the parents of the deceased. The Court has held in Para 9 and 10:

"9. This Court in the case of Ramesh Singh v. Satbir Singh, (2008) 2 SCC 667, after referring to the earlier judgments of this Court, in detail, dealt with the law with regard to determination of the multiplier in a similar situation as in the present case. The said findings of this Court are as under:

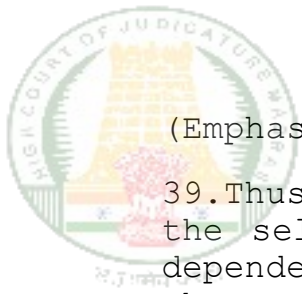


"6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in *New India Assurance Co. Ltd. v. Charlie*: AIR 2005 SC 2157, it is clear that the choice of multiplier is determined by the age of the deceased or claimants whichever is higher. Admittedly, the age of the father was 55 years. The question of mother's age never cropped up because that was not the contention raised even before the trial court or before us. Taking the age to be 55 years, in our opinion, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life.

7. The learned Counsel relying on the Second Schedule of the Act contended that the deceased being about 16 or 17 years of age, a multiplier of 16 or 17 should have been granted. It is undoubtedly true that Section 163-A was brought on the statute book to shorten the period of litigation. The burden to prove the negligence or fault on the part of driver and other allied burdens under Section 140 or Section 166 were really cumbersome and time consuming. Therefore as a part of social justice, a system was introduced via Section 163-A wherein such burden was avoided and thereby a speedy remedy was provided. The relief under Section 163-A has been held not to be additional but alternate. The Schedule provided has been threadbare discussed in various pronouncements including *Deepal Girishbhai Soni v. United India Insurance Co. Ltd.*: AIR 2004 SC 2107. The Second Schedule is to be used not only for referring to age of victim but also other factors relevant therefor. Complicated questions of facts and law arising in accident cases cannot be answered all times by relying on mathematical equations. In fact in *U.P.SRTC v. Trilok Chandra*: (1996) 4 SCC 362, Ahmadi, J. (as the Chief Justice then was) has pointed out the shortcomings in the said Schedule and has held that the Schedule can only be used as a guide. **It was also held that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. 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 Second 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*.: AIR 2008 SC 103. In our considered opinion, the courts below rightly struck the

<https://hcservices.secdns.gov.in/hcservices/> "

10. In our view, the dictum laid down in *Ramesh Singh* case is applicable to the present case on all fours..... "



(Emphasis supplied)

39. Thus, what is evident from the above decisions is that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. In the present case, the age of the deceased at the relevant time was 20 and the father and mother were aged 54 and 51 years at the time of the accident and 60 and 57 years when the evidence was recorded. Keeping in mind the above decisions, we are of the view that the Tribunal erred in applying the multiplier of '17', by considering the age of the deceased. In the facts of the present case, according to us, the multiplier which ought to be applied is '11', considering the average age of the first and second respondent i.e. 54 and 51 i.e. 52 years."

19. In this case on hand also, as per the Claim petition, the age of the father of the deceased is 48 and age of the mother of the deceased is 43 and hence, the average age of the first and second respondents has to be taken as 45 years. Considering the the above said decision and the average age of the parents, multiplier 14 can be adopted. Accordingly, the loss of income of the deceased would come to  $\text{Rs.}15000 \times 14 \times 12 = \text{Rs.}25,20,000/-$ . As per the judgment in the case of, **Rajesh and Others Vs. Rajbir Singh and others** reported in **2013 ACJ 1403 (SC)**, the Hon'ble Supreme Court has held that even in a case where persons are not having any permanent income, future prospects will have to be taken into consideration and in the age group upto 40, future prospects has to be taken as 50% and the age between 40 and 50, future prospects has to be taken as 30%. Accordingly, applying the said decision, future prospects would come to  $\text{Rs.}4500 \times 14 \times 12 = \text{Rs.}7,56,000/-$ .

20. In view of the law laid down by the Hon'ble Apex Court, in **Sarlavarma's case, reported in 2009 ACJ 1298(SC)** and upheld by a larger Bench of the Hon'ble Apex Court, in the case of, **Reshma Kumari, reported in 2013 ACJ 1253 (SC)**, in case of a bachelor, half of the income is required to be deducted towards personal expenses of the deceased. In this case on hand, since the deceased was a bachelor at the time of the accident, 50 % of the income towards personal expenses of the deceased is deducted and accordingly the loss of income would come to  $\text{Rs.}12,60,000/-$  and future prospects would come to  $\text{Rs.}3,78,000/-$ .

21. In so far as other heads are concerned, the Tribunal has not awarded any amount towards loss of love and affection and this Courts awards  $\text{Rs.}1,50,000/-$  towards the same. The Tribunal has not awarded any amount towards Transportation and this Court awards  $\text{Rs.}10,000/-$  towards the same and the Tribunal has awarded  $\text{Rs.}5,000/-$  towards funeral expenses and the same is enhanced to  $\text{Rs.}25,000/-$ .

22. The Tribunal has awarded  $\text{Rs.}5,000/-$  towards loss of estate and the same seems to be reasonable and needs no interference.

23. The compensation awarded by the Tribunal is modified as hereunder:-

| HEAD                                          | AMOUNT CLAIMED<br>BY THE<br>CLAIMANT<br>(Rs.) | AMOUNT<br>AWRDED BY<br>THE TRIBUNAL<br>(Rs) | AMOUNT<br>AWARDED BY<br>THIS COURT<br>(Rs.) |
|-----------------------------------------------|-----------------------------------------------|---------------------------------------------|---------------------------------------------|
| Loss of income                                | 1,77,60,000/-                                 | 27,89,880/-                                 | 12,60,000/-                                 |
| Loss of future prospects                      | -                                             | -                                           | 3,78,000/-                                  |
| Loss of love and affection                    | -                                             | -                                           | 1,50,000/-                                  |
| Transportation                                | 10,000/-                                      | -                                           | 10,000/-                                    |
| Loss of future prospects & love and affection |                                               | 8,39,664/-                                  | -                                           |
| Extra nourishment                             | 5,000/-                                       | -                                           | -                                           |
| Damages to clothing and articles              | 3,000/-                                       | -                                           | -                                           |
| Medical Expenses                              | 25,000/-                                      | -                                           | -                                           |
| Attendant Charges                             | 5,000/-                                       | -                                           | -                                           |
| Shock and Mental agony                        | 6,00,00/-                                     | -                                           | -                                           |
| Loss of estate                                | -                                             | 5,000/-                                     | 5,000/-                                     |
| Funeral expenses                              | 15,000/-                                      | 5,000/-                                     | 25,000/-                                    |
| Total                                         | <b>1,84,23,000/-</b>                          | <b>36,48,544/-</b>                          | <b>18,28,000/-</b>                          |
| Restricted to                                 | <b>75,00,000/-</b>                            |                                             |                                             |

24. In the result,

(i) This Civil Miscellaneous Appeal in C.M.A.(MD) No.1645 of 2013 is partly allowed and the award passed by the Tribunal is modified as shown above.

(iv) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

25. The appellant is directed to deposit the compensation with interest at 7.5% per annum from the date of petition along with proportionate interest and cost to the credit of the claim petition, within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. The claimant are entitled to the modified compensation, in which the 2<sup>nd</sup> claimant being the mother of deceased as well as the dependant of the deceased is entitled to Rs.10,00,000/-, 1<sup>st</sup> claimant is the father of the deceased is entitled to Rs.5,00,000/-, 3<sup>rd</sup> claimant is the sister of the deceased is entitled to Rs.3,28,000/-. Since the accident occurred in the year of 2010, the claimants are permitted to withdraw their entire share with proportionate interest and cost would be deposited by the appellant. The claimants are permitted to



withdraw their share with award amount less the amount already withdrawn if any, with proportionate interest and cost, through RTGS by filing necessary Application before the Tribunal. The appellant is permitted to withdraw the excess amount, if any.

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Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

**To**

1. The Motor Accident Claims Tribunal,  
Principal District Judge, Thoothukudi.
  2. The Record Keeper,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.
- + 1 CC TO Mr.S.SIVATHILAKAR, ADVOCATE IN SR No. 58387  
+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 58403

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TE/KK/SAR-I : 08/08/2017 : 10P/5C

Judgment made in  
C.M.A. (MD) No.1645 of 2013  
05.06.2017