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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :14.06.2017

Delivered on :30.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A. (MD) No. 279 of 2013

National Insurance Co.Ltd,
Madurai Division,
No.3, North Veli street,
2nd Floor, Madurai 625 001.

... Appellant/Respondent No.2

Vs.

1.K.Ramya
2.Minor Kailash Krishnan
3.Minor Nagul Kumaresh
(Minor respondents 2 & 3 are
rep. by Mother and guardian 1st
respondent)
4.M.Swaminathan
5.S.Saraswathi
6.R.M.Meyyammai
7.Oriental Insurance Co.Ltd
73, B1, Salai Road,
Lakshmi Complex,
Thillai Nagar,
Trichy - 18

..Respondents 1 to 5/Petitioners
..Respondent No.6/Respondent No.1

...Respondent No.7/Respondent No.3

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order dated 06.10.2012 passed in MCOP.No.1908 of 2004 on the file of the Motor Accidents Claims Tribunal (Sub Court,)Trichy.

For Appellant

: Mr.D.Sivaraman

For respondents

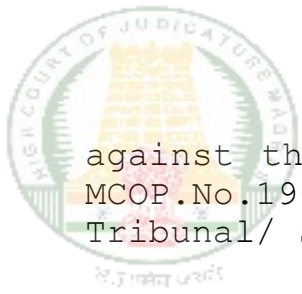
: Mr.Niranjan S.Kumar for
Mr.M.Suresh Babu, For R1 to R5
: Mr.K.Bhaskaran for R7
: No appearance for R - 6

JUDGMENT

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

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The Civil Miscellaneous Appeal in C.M.A. (MD) No.279 of 2013 has been filed by the respondent 2nd respondent Insurance Company



against the fair and decreetal order dated 06.10.2012 passed in MCOP.No.1908 of 2004 on the file of the Motor Accidents Claims Tribunal/ Sub Court,Trichy.

2.For the sake of convenience, the parties are referred to according to their litigative status before the Tribunal.

3.The case of the claimants before the Tribunal, as per the Claim petition is that on 10.06.2004 at about, 16.00 hrs when the deceased was driving his Lancer Car bearing Registration No. TN 45 S 9199 at the left side (western side) of the road from South to North and while he was coming between Settupatti and Soriyampatti an Ambassador Car bearing Registration No.TN 59 E 9288, belonging to the first respondent was driven by its driver in a rash and negligent manner at a high speed and without observing Motor Vehicle Rules came from North to South and dashed against the Lancer Car driven by the deceased in its front side as a result of which, the deceased sustained grievous injuries in his chest, head, left knee, right knee and all over the body and he died within few minutes after the accident while proceeding to the hospital.

4.The deceased was 32 years and hale and healthy and was a hard worker and he was doing various business. Because of the death of the deceased the business were totally collapsed. The first claimant is the wife of the deceased, 2nd and 3rd claimants are his minor children and 4th and 5th claimants are his parents. Due to the accident, they lost the income derived from the deceased. He was an income tax assessee and his monthly income is Rs.87,500/- and hence the claimants claimed a sum of Rs.7,00,00,000/- as compensation. The accident had occurred only due to rash and negligent driving of the driver of first respondent and a case was also registered against him and hence, first respondent who is the owner of the car and third respondent with whom the car is insured, are liable to pay compensation.

5.The case of the 2nd respondent Insurance Company, before the Tribunal is that the age, occupation and income of the deceased have to be proved by the claimants. It is false to state that the accident had occurred due to rash and negligent driving of the driver of the 1st respondent. The deceased was driving the Lancer Car in a rash and negligent manner without care and caution and invited the accident. Therefore, the accident had occurred only due to the negligence of the deceased. Therefore, this respondent is not liable to pay any compensation to the claimants. The claim petition is liable to be dismissed, since, the owner of the Lancer Car and the insurer were not parties to the claim petition and the petition is bad for non joinder of parties. The compensation and interest claimed by the claimants are highly excessive. For all the above reasons this respondent is not liable to pay any compensation to the claimants.



6. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.9 were examined and Exs.P.1 to P.91 were marked and on the side of the respondents, R.W.1 and R.W.5 were examined and Exs.R.1 to R.6 were marked.

7. After considering all the facts and circumstances of the case and oral and documentary evidence let in by the parties, the Tribunal has held that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent and since, the first respondent car is insured with the second respondent and hence, both first and second respondents are liable to pay a compensation of Rs.4,29,37,700/-.

Sl. No.	Head	Award (Rs)
1	Loss of income	4,26,97,700/-
2	Loss of consortium	1,00,000/-
3	Loss of love and affection	1,00,000/-
4	Transportation	15,000/-
5	Funeral Expenses	25,000/-
	Total	4,29,37,700/-

8. Aggrieved by the impugned award passed by the Tribunal, the 2nd respondent Insurance Company has filed the present Civil Miscellaneous Appeal, stating that the Tribunal has wrongly fixed the liability on the driver of the first respondent Car and the award passed by the Tribunal is highly excessive.

9. Considering the facts and circumstances of the case, documents placed before the Tribunal and award passed by the Tribunal, the following points arise for consideration:-

(i) Whether the accident had occurred due to rash and negligent driving of the driver of the 1st respondent Car bearing registration No. TN 59 E 9288?

(ii) Whether the accident had occurred due to rash and negligent driving of the driver of the Lancer Car bearing Registration No. TN 45 S 9199

(iii) Whether the award passed by the Tribunal is just and reasonable?

(iv) To what relief the parties are entitled to ?

10. Point Nos.i and ii

As far as the negligence aspect is concerned, according to the appellant, there is no serious dispute with regard to the accident and manner of the accident and liability on the respondent. On perusal of oral and documentary evidence, the negligence fixed by the Tribunal is in order and there is no need to interfere with reference to the negligence. Therefore, these points are answered accordingly.



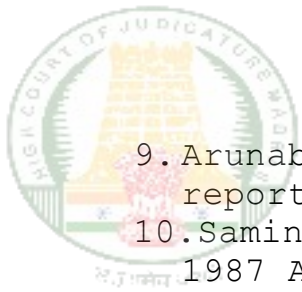
11. Point Nos. iii and iv

As far as the quantum of the compensation is concerned, the learned counsel for the appellant would submit that quantum of the award fixed by the Tribunal is highly excessive and he relied on the following decisions.

1. New India Assurance Co. Ltd Vs. Chalie and Anr, reported in 2005 (1) TN MAC 334 (SC)
2. Shashikala and others Vs Gangalakshamma and anr, reported in (2015) 3 MLJ 373 (SC)
3. Syed Basheer Ahamed and Others Vs. Mohd. Jameel and anr reported in 2009 (1) TN MAC 118 (SC)
4. Reshma Kumari and others Vs. Madan Mohan and anr reported in 2013 (1) TN MAC 481 (SC)
5. National Insurance Company Ltd Vs. Sujatha Rajalakshmi, reported in 2011 (1) TN MAC 34 (DB).
6. A. Abdul Khadar and anr Vs. V. Sathiyavathi @ Sathiya and others reported in 2008 (1) TN MAC 205
7. High Court of Karnataka in the case of B. Parimala Vs. Riyaz Ahamed, reported in 2002 ACJ 154.

12. The learned Counsel for the claimants would submit that the deceased was a partner of M/s. Lakshmi Jewelry and he was proprietor of Silk Shop namely Lotus Silk and Director of KMS & Sons and Marketing Private Ltd and partner in NLJ Exports and CPS Exports, Tiruppur and was earning a sum of Rs. 87,500/- per month. To prove the same they have filed various documents namely Memorandum of Association, Joint Ventures, Auditors Report, Income Tax Returns filed by the deceased and the Tribunal has considered the oral and documentary evidence and awarded a compensation of Rs. 4,29,37,700/- and there is no need to interfere with the award passed by the Tribunal. In support of his contention, he has relied on the following decisions.

1. Rukmani Devi and others Vs. Om Prakash and others, reported I 1991 ACJ 3.
2. Ghaziabad Development Authority Appellant V. Balbir Singh, reported in AIR 2004 SC 2141
3. Santhosh Devi Vs. National Insurance Company Limited and others, reported in (2012) 6 SCC, 421.
4. Pallavan Transport Corporation Vs. Saroj Goyal, reported in 2001 - 2 L.W. 292
5. Divisional Manager, United India Insurance Co. Ltd, Divisional Office, Namakkal Vs. Apoorvam Ammal and others, reported in (2014) 1 MLJ 679
6. Mrs. Maya Devi and 8 others Vs. Mrs. Dhanalakshmi, and others, reported in 1996-1 L.W. 660
7. United India Insurance Co. Ltd Vs. D. Vasantha and Others, reported in 2013 (5) CTC 469
8. Chander and others Vs. Bhawani Singh and others, reported in 1989 ACJ, 106.



9. Arunaben and others Vs. Mehamoodbhai Imamali Kaji and others, reported in 1983 ACJ. 409.

10. Saminder Kaur and anr Vs. Union of India and anr, reported 1987 ACJ, 7

13. We have considered the submissions made by the the counsel for the parties and gone through the above referred decisions. It is needless to say that there is no quarrel with the propositions laid down in the referred decisions and each case has got its own facts and merits.

14. In the case on hand, it is an admitted fact that the deceased was a proprietor of the Silk Shop and partners of various Exports. However, perusal of the evidence of P.W.2 S. Kalamani, Auditor, would show that the shares, capital and profit in favour of the deceased were transferred to his legal heirs and his legal heirs are receiving rental income. He has further stated in his evidence that after his death, his 20 % share in Lakshmi Complex building was transferred to his children. He quit from the partnership of Lakshmi Jewelry and Lotus concern even on 31.03.2004 prior to the accident and on that date he did not get any income from the above concern. The other shares of the C.P.S Textiles were also transferred to the name of his children and they are getting income. From the above evidence, it is clear that the deceased was not at all a partner even prior to his death in Lakshmi Jewelry and Lotus concern. Further the shares were transferred to the children of the deceased after his demise they are getting income from the same and they are also getting rental income as usual even after the demise of the deceased and hence, the partnership is still continuing to his dependants. Therefore, the argument of the learned counsel for the claimant that the claimant lost the income derived by the deceased from the partnership firm is not acceptable and hence, there cannot be any loss of income to the family. Even after the demise of the deceased, income tax returns were filed during the year 2004 -2005 and 2009 - 2010, namely Exs.P.87 to 91, which would show that the family of the deceased got income.

15. Perusal of the evidence of P.W.8, M. Parthiban, Auditor would show that all the interest income amount received from the capital account of firm, wherein the deceased was a partner are still continuing to the legal heirs of the deceased and his capital investments and current account investments are also continuing. The deceased has not contributed any physical labour to his agricultural activity and the agricultural income also is continuing as such. The claimants have failed to produce documents to prove that the deceased has earned income out of his personal skills and there is no separate evidence to prove the same. Therefore, there cannot be any loss of income to the family of the deceased due to his death.



16. At this juncture it is relevant to consider the decision of the High Court of Karnataka in the case of B. Parimala Vs. Riyaz Ahamed, reported in 2002 ACJ 154, wherein the Division Bench, has differentiated the difference between the nature of income from the partnership and the income from the partnership will be categorised with reference to the status of partner for purposes of loss of dependency and discussed with illustrations and the relevant portion of the judgment in paragraph 23 is extracted hereunder.

23. Where the deceased was carrying on any business (either as proprietor or as managing partner) which was run solely on account of his efforts and skill and such business is closed or is drastically reduced in scale, on account of his death, there can be little doubt that the earning of the deceased from such business will have to be taken as 'income' for calculating the loss of dependency. But, what is the position, if the deceased was not carrying on the business by his individual skill and effort, but the deceased was a partner with several others or is a member of a family firm and on his death his widow or son/daughter steps into his place in the partnership and family continues to have the income from the partnership, which the deceased was getting earlier? In that event, can it be said that there is loss of entire income, which the deceased was getting from the partnership firm, for calculating loss of dependency? Obviously not. In that event, the loss of income will be the monetary equivalent of the supervision, skill and effort of the deceased. But, how is it to be calculated? A few illustrations will be useful to highlight and differentiate between several categories of income and determination of income for purposes of arriving at the loss of dependency.

Illustration A: The deceased had invested a sum of Rs. 5,00,000 in fixed deposits with banks and was getting an income of Rs. 5,000 per month, by way of interest. On his death, the said sum of Rs. 5,00,000 is inherited by the dependants (wife and children) and they also continue to get Rs. 5,000 per month as interest. In such a case, the sum of Rs. 5,000 received by the deceased as 'income' is not really a 'loss' of income on his death and cannot, therefore, be taken into account for determining the loss of dependency. The said income will have to be ignored and in the absence of any other income, only a notional income (say Rs. 15,000 per annum as provided in Schedule II to Motor Vehicles Act) should be considered as income for calculating the loss of dependency.



Illustration B: The deceased was owning 10 acres of land and by cultivating the same, through labourers under his supervision, he was earning Rs. 1,00,000 per annum. On his death, the dependent family (wife and children) inherit the land. But, for lack of experience, they engage a manager to supervise the cultivation by paying a salary of Rs. 3,000 per month and continue to get an annual income of Rs. 1,00,000 from the land. In such a case, the annual income of Rs. 1,00,000 earned by the deceased from the land cannot be the loss of income of the family. Only the value of the supervision and personal effort put in by the deceased, which had to be made good by engaging a manager, can be treated as loss of income. Thus, the loss of income will have to be taken as Rs. 36,000 per annum. Even where a manager is not engaged and the family members of the deceased supervise the land, the loss will be the value of supervision by the deceased. The notional value of such effort and supervision, determined with reference to the facts and circumstances, will be the loss on account of the death.

Illustration C: The deceased, during his lifetime, was a partner in a family business of which he and his brother are the partners, each having invested Rs. 1,00,000 to the capital and both participating in the management of the partnership. Each partner was taking a monthly remuneration of Rs. 5,000 and interest at 12 per cent on the capital of Rs. 1,00,000 invested by each of them and 50 per cent share in the profits/losses, the share in profits being Rs. 10,000 per annum during the relevant year. One of the partners died in a motor accident and his son is taken as partner in the place of the deceased on the same terms; and thus the family continues to get the same income (consisting of remuneration, interest on capital investment and share in profits/losses). In such a situation, the entire income which the deceased used to get from the firm (remuneration plus interest on capital plus share in profits) will not be the loss to the family for purposes of calculating the loss of dependency. Only the value of the effort put in by the deceased as partner will be the loss to the family. Thus, the remuneration of Rs. 5,000 per month or Rs. 60,000 per annum will be the loss of income.

17. It is relevant to refer to the decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd Vs. Sujatha Rajalakshmi, reported in 2011 (1) TN MAC 34 (DB) wherein this Court has held in an identical case as follows:



In our considered opinion, the said piece of evidence of P.W.1 undoubtedly goes to prove that the P.W.1 was earning more income by continuing the business of his father. Under such circumstances we do not hesitate to hold that there is no loss of income to the family of the Respondents 1 to 3/Claimants on account of the death of the victim, since the source of income would continue to exist even after the death of the victim. In this regard, reference could be placed in the judgments relied upon by the learned Counsel appearing for the Appellant. In *M.G.Service, Madras and another V. S. Andalammal and others*, reported in 1982 ACJ (Supp.) 408, it has held as follows

" The income from agricultural, house property and from the investments cannot be taken into account for determining the Loss of Income, for those are sources which still continued to exist even after the death of Sanjeevi Mudaliar. Therefore, there cannot be said to be any loss from those three sources".

18.However, it is to be reiterated that the income should be determined with reference to facts of each case for example there may be cases where a family man is well established and reputed and having a large income, with a small capital and death of one of the family members (a partner) may not make any difference in the income. In such case, the entire income may not be the income and appropriate further deductions will have to be made to ascertain the real contribution of the deceased and value thereof.

19.Considering the above decision, we have to determine the earning of the deceased. According to the claimants the deceased had completed his graduation at his 21 years and he would have been inducted to his family business. Therefore, considering his educational qualifications and his income prior to the accident, this Court fixes a sum of Rs.25,000/- per month as notional income of the deceased. Perusal of the Ex.P.4, the date of birth of the deceased is 31.10.1972 and the date of accident is 10.06.2004, hence, he has completed 31 years at the time of accident. considering the age of the deceased multiplier 16 should be adopted and therefore, the loss of income of the deceased would be Rs.25000 X 16X12 = 48,00,000/-

20.In the case of, *Rajesh and Others Vs. Rajbir Singh and others*, reported in, 2013 ACJ 1403 (SC), the Hon'ble Apex 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%. In the case on hand, on the date of accident, the deceased had completed 31 years of age, hence, 50% of monthly



income is taken for future prospects. Accordingly, future prospects works out to Rs.12,500 X 16 X 12 = Rs.24,00,000/-

21. In view of the law laid down by the Hon'ble Apex Court, in the case of, Sarla Verma (Smt.) and Others Vs. Delhi Transport Corporation and Another, reported in 2009 (6) SCC 121 and upheld by a Larger Bench of the Hon'ble Apex Court, in the case of, Reshma Kumari and others Vs. Madan Mohan and others, reported in 2013 ACJ 1253 (SC) : 2013(1) TN MAC 481 (SC), in the case on hand, since there are 5 dependants on the deceased 1/4 of the income has to be deducted towards personal expenses of the deceased. So, the loss of income is Rs.36,00,000/- [Rs.48,00,000 - 1/4] and future prospects would be Rs.18,00,000/- [Rs.24,00,000 - 1/4].

22. The Tribunal has awarded Rs.1,00,000/- towards loss of consortium and awarded Rs.25,000/- towards funeral expenses, which is just and reasonable and the same is confirmed. Tribunal had awarded Rs.1,00,000/- towards loss of love and affection. However, considering the dependants on the deceased, this Court enhances the same to a sum of Rs.2,50,000/-. The Tribunal has awarded Rs.15,000/- towards Transportation and this Court awards Rs.10,000/- towards the same. The Tribunal has not awarded any amount towards loss of estate, however, this Court awards Rs.5000/-. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

23. The compensation claimed by the claimant, the compensation awarded by the Tribunal and the compensation modified by this Court are as follows

HEAD	AMOUNT CLAIMED BY CLAIMANT (Rs.)	AMOUNT AWRDED BY TRIBUNAL (Rs)	AMOUNT AWARDED BY THIS COURT (Rs.)
Loss of income		4,26,97,700	36,00,000
Loss of future prospects		--	18,00,000
Transportation		15,000	10,000
Loss of love and affection		1,00,000	2,50,000
Loss of consortium		1,00,000	1,00,000
Funeral expenses		25,000	25,000
Loss of Estate		--	5,000
Total	7,00,00,000	4,29,37,700	57,90,000

24. In the result,

(i) the Civil Miscellaneous Appeal 279 of 2013 is partly allowed and the order dated 06.10.2012 passed in MCOP.No.1908 of 2004 on the file of the Motor Accidents Claims Tribunal, Sub



Court, Trichy is modified as shown above. No costs. Consequently, connected miscellaneous petition is closed.

(ii) The appellant is directed to pay the compensation amount, as modified by this Court along with proportionate interest and costs from the date of petition till the date of realisation, less the amount already deposited, if any, to the credit of MCOP.No.1908 of 2004 on the file of the Motor Accidents Claims Tribunal, Sub Court, Trichy, within a period of six weeks from the date of receipt of a copy of this judgment and The first claimant, being the wife of deceased as well as the dependant of the deceased is entitled to Rs.20,00,000/- and the second and third claimant the minor children are entitled to Rs.15,00,000/- each and the fourth claimant father is entitled to Rs.2,90,000/- and the fifth claimant mother of the deceased is entitled to Rs.5,00,000/-. The claimants 1, 4 and 5 are permitted to withdraw the entire amount that would be deposited by the appellant, less the amount already withdrawn, if any, with proportionate interest and costs, through RTGS by filing necessary Application before the Tribunal. The Tribunal is directed to deposit the share of the minor children, in a Fixed Deposit in any one of the Nationalized Banks, renewable periodically until they attain majority. The first respondent/first claimant is permitted to withdraw the interest amount once in six months, if she wants, for maintaining the minor children. The appellant is permitted to withdraw the excess amount, if any.

Sd/-

Assistant Registrar(C.O)

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Sub-Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Subordinate Court, Trichy

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Pre-delivery Judgment made in
C.M.A.(MD) No. 279 of 2013
30/06/2017