

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 24.07.2017

CORAM:

WEB COPY

**THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA**

**C.M.A. (MD) No.978 of 2011 and
Cross Objection (MD) No.62 of 2012**

C.M.A. (MD) No.978 of 2011

M/s.Bajaj Allianz General Insurance Company Ltd.,
12, K.M.A.Complex,
Bye Pass Road, Madurai.

... Appellant/1st Respondent

-vs-

1. R.Padma
2. Minor R.Vignesh
3. Minor R.Sanjana ... 1st to 3rd respondents/petitioners
4. A.Selvarani
5. C.P.Krishnamachary ... Respondents 4 & 5/2nd & 3rd respondents

(Minors 2nd and 3rd respondents are represented
through their mother and next friend the 1st respondent)

PRAYER:Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set aside and modify the order of the learned Tribunal in MCOP No.1146 of 2008 dated 10.01.2011 on the file of the MACT Additional District & Sessions Court, FTC No.3, Madurai and allow the appeal with costs and thus render justice.

For Appellant	: Mr.J.S.Murali
For R1 to R3	: Mr.R.Nandakumar
For R4 & R5	: No Appearance

Cross Objection (MD) No.62 of 2012

1. R.Padma
2. Minor R.Vignesh
3. Minor R.Sanjana ... Cross Objectors/respondents 1 to 3

(Minors 2nd and 3rd respondents are represented
through their mother and next friend the 1st respondent)

-vs-

1.M/s.Bajaj Allianz General Insurance Company Ltd.,
<https://hcservices.ecourts.gov.in/hcservices/>
12, K.M.A.Complex,
Bye Pass Road, Madurai. ... 1st respondent/Appellant



2. A.Selvarani

3. C.P.Krishnamachary ... Respondents 2 & 3/Respondents 4 & 5

PRAYER: Cross objection is filed under Order 41 Rule 22 CPC by Cross Objectors / Respondents 1 to 3 against C.M.A.No.978 of 2011, filed by the appellant and notice served to the Cross Objectors on 18.08.2011.

For Cross Objectors : Mr.R.Nandakumar
For R1 : Mr.J.S.Murali
For R2 & R3 : No Appearance

C O M M O N J U D G M E N T

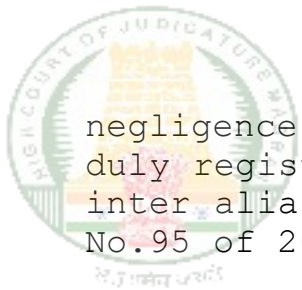
[The judgment was made by **The Hon'ble Chief Justice**]

This Civil Miscellaneous Appeal filed by the Appellant / Insurer is against a judgment and award dated 10.01.2011, passed by the Additional District Court / Fast Track Court No.III, Madurai / Motor Accident Claims Tribunal in M.C.O.P.No.1146 of 2008. The respondents / claimants have also filed a cross objection against the said judgment and award.

2. On 02.06.2007, the deceased victim Ragunathan was riding his motorcycle bearing Registration No.TN-58-Q-5594 to Nagamalai, Pudukottai District on personal work along with one Mr.Raman, the Contractor of his Firm, who was following him in a different vehicle. When they were nearing H.M.S.Colony on the left side of Theni-Madurai road, a TATA 709 milk van bearing Registration No.TN-72-C-6919, owned by the 4th respondent and covered by a policy of insurance taken out by the appellant (hereinafter referred to as "the offending vehicle), which was being driven in a rash and negligent manner in uncontrollable speed, came from the opposite direction, without blowing the horn and collided against the motorcycle.

3. As a result of the accident, the deceased victim Ragunathan was thrown off the vehicle and he fell unconscious. The Contractor Raman, who was following the deceased in on other vehicle stopped his vehicle and took Ragunathan to the Government Rajaji Hospital, Madurai in an ambulance. The doctors of the hospital declared the deceased victim as brought death.

4. The heirs of the deceased victim, namely, the private respondents filed an application for compensation inter alia under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") inter alia contending that the accident, which caused the death of the victim was on account of the



negligence of the offending vehicle. It appears that the Police duly registered a case against the driver of the offending vehicle inter alia under Section 304-A of IPC, which was numbered as Crime No.95 of 2007.

5. The respondents claimants, being the wife and the two minor children of the deceased victim claimed total compensation of Rs.1 Crore under various heads. While the trial was in progress, the father-in-law of the 1st claimant, that is, father of the deceased victim was impleaded. However, such impleadment was, in our view, inconsequential, since the father is not a Class-I heir under the provisions of the Hindu Succession Act. In terms whereof, the mother, wife and children and in case of predeceased children, the children of such pre deceased children are Class-I heirs. The father is only an heir of the Second Class, who would inherit in case of failure of heirs of the First Class and not otherwise.

6. The appellant insurer filed an application before the learned Tribunal under Section 170 of the M.V.Act, seeking leave to contest the claim on all grounds and this was duly allowed by the learned Tribunal. The claim was decided exparte as against the owner, who chose not to appear.

7. In the course of proceedings before the learned Tribunal, it was established that the deceased victim Ragunathan had been working in M/s. Fenner India Ltd., Madurai, a multinational Company as Sales Executive Engineer. It was proved that at the time of accident, the deceased victim was aged 40 years and was getting gross salary of Rs.23,272/- in addition to special allowances, bonus and incentives of Rs.12,000/- per month. It was also proved that the accident took place due to the negligence and fault of the offending vehicle.

8. To prove the income of the deceased victim, the claimants only examined the wife of the deceased victim (PW1), and also examined an employee of M/s.Fenner India Ltd., who proved Ex.P8, a letter addressed to P.W.1 by the General Manager, H.R., M/s.Fenner India Ltd., informing her of the projected salary of the deceased victim for the month of May, 2007. The pay slip showed that the net pay of the victim was Rs.13,221/-.

9. The learned Tribunal proceeded on the basis that the deceased victim had monthly income of Rs.13,221/-. As per the Postmortem report, the age of the victim was 42 years at the time of the accident. Considering the age of the deceased victim and considering the evidence, which indicated prospects of the deceased, being promoted to a higher post, the Tribunal took the monthly salary of the deceased victim to be Rs.15,000/- per month, and therefrom towards personal and living expenses of the deceased and calculated the loss of dependency at Rs.10,000/-. Significantly, the learned Tribunal applied the multiplier of 14

applicable to the age group of 40 to 45 years, following the principles laid down by the Hon'ble Supreme Court in the case of Smt. Sarla Verma and Others vs. Delhi Transport Corporation and another, reported in 2009 (6) SCC 121, but calculated the loss of dependency only at Rs.16,80,000/- by taking the salary inclusive of future prospects to be only Rs.15,000/- per month.

10. It is not in dispute that the deceased victim was a permanent salaried employee with a fixed income and in terms of the law laid down by the Supreme Court in Sarla Verma's case (supra), he would be entitled to additional 30% of his salary towards future prospects, as he was found to be in the age group of 40 to 45 years.

11. Appearing on behalf of the appellant insurer, learned counsel submitted that the appellant insurer had no liability at all towards the claimants, since the owner of the vehicle or its driver had violated the terms and conditions of the policy of insurance, in terms whereof, the insured vehicle was required to be driven by a driver possessing a valid driving licence.

12. The evidence on record and in particular the evidence of a Junior Assistant from the Regional Transport Office S. Gnanasekaran, reveals that the driver of the offending vehicle had licence to drive Light Motor Vehicle. He thus had the expertise to drive the vehicle, which caused the accident. The licence, which was a licence for the Light Motor Vehicle did not have the commercial endorsement, which, according to the appellant insurer was required in case of commercial vehicles.

13. The short issues before us are,

i) whether the appellant / insurer can avoid its liability on the ground that the driver of the offending vehicle did not possess a valid driving licence, as there was no "commercial endorsement" on his licence and

ii) whether the claimants are entitled to enhancement of compensation, considering the future prospects having regard to his age and the nature of his employment at the time of his accidental death.

14. It is now well settled that the Motor Accident Claims Tribunal is bound and obliged to award just and fair compensation irrespective of the claim made by the claimants. Having regard to the law interpreted and enunciated in Sarla Verma's case (supra), the income of the deceased victim ought to be calculated in the following manner:

a) Rs.13,221/- x 12 x 14 = **Rs.22,21,128/-**

b) Add: 30% of Rs.22,21,128/- = **Rs.6,66,338/-**

Total (Rs.22,21,128/- + Rs.6,66,338/-) = **Rs.28,87,466/-**

Less: 1/3 towards personal and living expenses

= **Rs.19,24,976/-** [Rs.28,87,466 - Rs.9,62,490/- (1/3)]



15. In addition, learned Tribunal awarded Rs.10,000/- towards loss of consortium to the 1st claimant, Rs.5,000/- each towards loss of love and affection to the 2nd and 3rd claimants, being the minor children and Rs.10,000/- towards funeral and other incidental expenses.

16. We deem it fit to enhance the amount awarded towards loss of consortium and loss of love and affection to Rs.30,000/-. The claimant wife will be entitled to Rs.10,000/- towards loss of consortium and the minor children shall each be entitled to Rs.10,000/- towards loss of love and affection. The learned Tribunal rightly awarded Rs.10,000/- towards funeral and other incidental expenses and also interest at the rate of 9%.

17. In view of the judgment of the Supreme Court in S.Iyyapan vs. United India Insurance Company Limited and another, reported in 2013 (7) SCC 62, wherein the Supreme Court held that the insurance company could not disown its liability on the ground that the driver of the vehicle, although duly licensed to drive a Light Motor Vehicle, was not having any endorsement in the licence to drive a light motor vehicle used as a commercial vehicle, we cannot accept the contention of the appellant / insurer that the appellant had no liability. It is not in dispute that the offending vehicle was a light motor vehicle.

18. In the result, the appeal of the appellant insurer fails and the cross appeal of the claimants is allowed to the extent indicated above. The insurer shall pay the entire compensation amount to the claimant wife and children less the amount already paid. The compensation shall carry interest at the rate of 9% per annum, which shall be computed as per the reducing balance. The balance amount shall positively be paid within a period of 30 days from the date of receipt of a copy of this order.

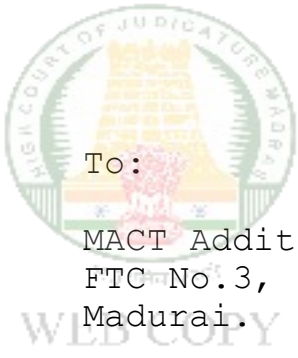
19. It is submitted that the minor children/respondents 2 & 3 in the Cross Appeal have attained majority and they may represent on their own. Therefore, the respondent no.1 / mother of the minor children is discharged from her guardianship.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar



To:

MACT Additional District & Sessions Court,
FTC No.3,
Madurai.

+1cc to M/S. J.S.MURALI, Advocate, SR.No.67409.

C.M.A.(MD) No.978 of 2011 and
Cross Objection (MD) No.62 of 2012
24.07.2017

ar/sss

SDS/SV:AAMS/SAR 2/02.08.2017/6P/3C