

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 22.10.2018	Delivered on 01.11.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.767 of 2016 & CMP No.6298 of 2016
and
Cross Objection No.79 of 2016

The New India Assurance Company Limited,
Branch Office Working at,
Coffee Kripa Building,
M.G.Road, Madikeri Post,
Kodagu District, Karnataka State.

... Appellant in CMA No.767 of 2016
& 1st Respondent in Cross Obj. No.79 of
2016

-Vs-

1. D.Neela ... 1st respondent in CMA No.767 of 2016
Cross Objector in Cross Obj. No.79 of 2016

2. A.Latheef @ Abdul Latheef

3. B.N.Prashanth

4. M/s. United India Insurance Co. Ltd.,
Micro Office, No.112, 80-Feet Road (1st floor)
Near Canara Bank, Geddalhalli,
Ashwathnagar Bus Stop,
Bangalore 560 094, Karnataka State.

5. L.S.Laderpet Subramania Subbajayaramn (Died) as per memo dated
22.10.18

[L.S.Kallappan Subbajayaram Jayamma (Died)]

6. L.S.Sudharshan

7. L.S.Vasudeva

8. L.S.Dayananda

...Respondents 2 to 8 in
Appeal & Cross obj.

(Amended as per order passed
in I.A.No.505/15, dt:10.03.2015)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award in MCOP No.654 of 2010, dated 07.10.2015, on the file of the Motor Accidents Claims Tribunal, Additional District Court No.3, Dharapuram.

Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, to enhance the compensation amount awarded in the Award in MCOP No.654 of 2010, dated 07.10.2015, on the file of the Motor Accidents Claims Tribunal, Additional District Court No.3, Dharapuram.

For Appellant : Mr.N.Vijayaraghavan

For Appellant in CMA No.767 of 2016
& 1st Respondent in Cross Obj. No.79 of 2016

For Respondents : Mr.Ma.P.Thangavel for RR1 & R6 to R8
in CMA No.767 of 2016
Cross Objector & RR6 to 8 in Cross.
Objection No.79/16

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

R.SUBRAMANIAN, J.

The Insurance Company which suffered an award for a sum of Rs.3,60,35,088/- as compensation for the death of one L.S.Kumar in a motor accident that occurred on 08.01.2010 is the appellant. The 1st respondent/wife of the deceased Kumar has filed the cross-objection seeking enhancement.

2. According to the claimant, who is the wife of the deceased, on 08.01.2010 at about 4.00 a.m. when the deceased along with his two friends were travelling the car bearing Registration No. KA 24/N 234, as passengers, the lorry bearing Registration No. KL 12/ 4725, owned by the 3rd respondent and driven by the 2nd respondent in a rash and negligent manner came in the opposite direction and dashed against the car. As a result of the impact, the husband of the claimant/1st respondent suffered grievous injuries and died on the spot. The deceased

who was aged about 34 years at the time of the accident was employed in the United States as a Net Work Engineer and he was earning about 63,987 US dollars per annum. Contending that the deceased had very bright future prospects and would have earned much more, but for his untimely death in the road accident, the claimant/1st respondent sought for a sum of Rs.5,15,00,000/- towards compensation.

3. The Insurance Company resisted the Claim Petition contending that the accident occurred due to the rash and negligent driving of the car and the driver of the car was not possessed of a valid driving licence. It was also contended that the Educational qualifications and the income of the deceased had been exaggerated with a view to claim higher compensation.

4. The Tribunal, which heard the Original Petition, concluded that the accident occurred due to the rash and negligent driving of the lorry, in coming to the said conclusion, the Tribunal relied upon the First Information Report filed as Ex.P11, and its translation Ex.P12, the judgments of the Criminal Court in MVC No.2336 of 2010 and MVC No.3416 of 2010 which were produced as Exs.P13, P14, P15 and P16, wherein, the Criminal Court also had concluded that the accident had occurred due to the rash and negligent driving of the lorry by its driver, namely the 2nd respondent. The Tribunal also found that the Insurance Company has not let in any acceptable oral or documentary evidence to dislodge the effect of the above documents, namely the FIR and the judgments of the Criminal court.

5. On the question of liability of the Insurance Company, the Tribunal concluded that inasmuch as the existence of the Insurance cover was admitted, the Insurance Company is liable to indemnify the owner of the lorry for the award. On the quantum, the Tribunal assessed the annual income at 66,146 US dollars. The Tribunal added 50% towards future prospects and concluded that the annual income for the purposes of determination of the loss of dependency would be 99,219 US dollars. Applying the rate of conversion during the year 2009, the Tribunal arrived at the annual loss of dependency in Indian Currency at Rs.45,64,074/-. The Tribunal deducted a sum of Rs.11,94,222/- towards Income Tax, Rs.11,23,284/- as 1/3 of the amount towards personal expenses and arrived at the annual loss of dependency at Rs.22,46,568/-. Considering the age of the deceased i.e. 33, the Tribunal adopted a multiplier of 16 and arrived at the total loss of dependency at Rs.3,59,45,088/-, the Tribunal awarded a

sum of Rs.50,000/- towards loss of consortium, Rs.30,000/- towards loss of love and affection to the parents of the deceased, Rs.10,000/- towards funeral expenses. In all the Tribunal awarded a sum of Rs.3,60,35,088/- along with interest 7.5% per annum.

6. The Tribunal also apportioned the award amount between the wife, father and brothers of the deceased.

7. The mother of the deceased, who was arrayed as the 6th respondent in the original proceeding died pending the same. Hence the other sons were impleaded as respondents 7, 8 and 9. The Tribunal apportioned the award amount between the wife/1st respondent, the father/5th respondent and his brothers, namely respondents 7 to 9.

8. Aggrieved by the award, the Insurance Company has come forward with the above appeal and the 1st respondent/claimant has filed cross-objections seeking enhancement.

9. Pending the appeal, the 5th respondent, namely the father of the deceased died, a Memo has been filed by the learned counsel for the respondents 1 and 6 to 8 seeking to declare them as the legal representatives of the father. The said memo was accepted and respondents 1 and 6 to 8 were declared as the legal representatives of the deceased 5th respondent in the appeal as well as the cross-objection on 22.10.2018.

10. We have heard Mr.N.Vijayaraghavan, learned counsel appearing for the appellant Insurance Company. Mr.Ma.P.Thangavel, learned counsel appearing for respondents 1 & 6 to 8. The respondents 2 and 3, the driver and the owner of the offending lorry had remained ex-parte before the Tribunal and hence, notice to them, in this appeal, is dispensed with. The 4th respondent, namely United India Insurance Company was served on 13.06.2016 despite such service, none appears for the Company.

11. Mr.N.Vijayaraghavan, learned counsel appearing for the appellant Insurance Company would contend that the Tribunal erred in awarding compensation based on the income drawn in United States of America, without taking into account the prevailing economic situation in India. According to him, while

considering the payment of compensation for the death of by individual who was earning in foreign currency, the Courts cannot adopt a direct conversion into Indian Rupee. The Court must take into account the prevailing economic conditions, while fixing the compensation payable to the dependants, who are resident in India. He would also invite our attention to the judgment of the Hon'ble Supreme Court in United India Insurance Co Ltd v. Patricia Mahajan and others, reported in 2002 ACJ 1441. He would also fault the Tribunal for adding 50% towards future prospects. According to him, the addition of future prospects can at best be 40%, in view of the judgment of the larger Bench of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2017 (2) TNMAC 609 (SC).

12. Contending contra, Mr.Ma.P.Thangavel, learned counsel appearing for the respondents 1 & 6 to 8 would submit that the decision in Patricia Mahajan's case, cited supra, cannot be applied uniformly in the absence of any evidence to show that the loss of income would be different or lesser if the deceased had been working in India. He would also add that the deceased being a qualified Computer Engineer would have drawn the same or equivalent salary if he had been employed in India.

13. We have considered the rival submissions.

14. The fact that the deceased was a Nonresident Indian earning in US dollars is not in dispute. While deciding on the quantum of compensation payable in cases of death or injury caused, to a Nonresident Indian earning in foreign currency, the Hon'ble Supreme Court in Patricia Mahajan's case, cited supra, had observed as follows:

"18. The purpose to compensate the dependants of the victims is that they may not be suddenly deprived of source of their maintenance and as far as possible they may be provided with the means as were available to them before the accident took place. It will be just and fair compensation. But in cases where the amount of compensation may go much higher than the amount required for providing the same amenities, comforts and facilities and also the way of life, in such circumstances also it may be a case where, while applying the multiplier system, the lesser multiplier may be applied. In such cases amount of multiplicand becomes

relevant. The intention is not to over compensate."

15. In the case on hand, the deceased was aged about 33 years at the time of the accident, as per the larger Bench judgment of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2017 (2) TNMAC 609 (SC), cited supra, the percentage of future prospects to be added is 40% of the income. The Tribunal has assessed the income of the deceased at 66,146 US dollars, the 40% of the same would be 26,458 US dollars. Adding 26,458 US dollars towards future prospects, the annual income for the purposes of calculating the loss of dependency would be 92,604 US dollars. The Tribunal has rightly applied the rate of conversion of the year 2009, i.e., INR 46 per one US dollars. The annual income for the purposes of loss of dependency had been arrived at Rs.42,59,784/- (Rs.92,604/- x 46). Since the annual income is about the taxable limits, we will have to deduct Income Tax at 30%. 30% of Rs.42,59,784/- is equal to Rs.12,77,935/-, this leaves the balance of Rs.29,81,849/-. The deceased left behind his wife and his parents, therefore, 1/3 amount is deducted towards personal expenses, leaving a balance of Rs.19,87,899/- as annual loss of dependency. The deceased was aged about 33 years at the time of the accident, thus the Tribunal has adopted a multiplier of 16. We have already adverted to the fact that the deceased was earning in US dollars and the multiplier fixed by the Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation, reported in 2009 INSC 756, were fixed taking into account the prevailing economic conditions in India and as such it will not be just and reasonable to adopt the same multiplier for a claim which relates to a person who was earning in foreign currency.

16. In Patricia Mahajan's case, cited supra, the Hon'ble Supreme Court had applied a multiplier of 10 instead of 13 for a person who was aged about 37 years. We had considered a similar case in United India Insurance Co. Ltd., v. Dhanabalan (in CMA 536 of 2018), wherein, following the judgment of the Hon'ble Supreme court in Patricia Mahajan's case, cited supra, we had applied a multiplier of 10 instead of 14 for the injuries caused to a person who was earning in Singapore Dollars. We, therefore, fixed the multiplier, in the case on hand at 13 instead of 16. We have already worked out the annual loss of dependency at Rs.19,87,899/-, applying a multiplier of 13, the total loss of dependency would be

$$[\text{Rs.19,87,899/-} \times 13] = \text{Rs.2,58,42,687/-}$$

The other amounts awarded by the Tribunal under the conventional heads, namely loss of consortium, loss of love and affection and funeral expenses are just and reasonable and we do not see any

ground to interfere with these awards. Thus, the total compensation would be Rs.2,59,32,687/- and the same is rounded off to Rs.2,59,33,000/-. The award will carry interest at 7.5% per annum.

17. Mr.N.Vijayaraghavan, learned counsel appearing for the appellant Insurance Company would invite us to consider the liability of the Insurance Company to deduct tax at source and point out that there is a conflict of opinion on the liability of the Insurance Company to deduct tax at source on the compensation awarded under the Motor Vehicles Act. The said question does not arise directly for determination in this appeal hence we refrain from going into the said question.

18. In view of the above, the appeal is partly allowed and the award of the Tribunal is modified. The compensation is reduced to Rs.2,59,33,000/- The Cross-objections will stand dismissed. There shall be no order as to costs in this Appeal as well as the Cross Objection. Consequently, the connected miscellaneous petition is closed.

19. We have already recorded that the parents of the deceased are no more. The 1st respondent is the wife and respondents 6 to 8 are the brothers of the deceased. There is nothing on record to show that the brothers of the deceased were dependant on him. However, the parents of the deceased had died after the accident, therefore they would be entitled to a certain amount as compensation if they were alive.

20. The award of the compensation under the Motor Vehicles Act cannot be strictly governed by the Rules of Succession under the Hindu Succession Act, as the same relates to the dependency. As per the interim order of this Court dated 12.04.2016, the Insurance Company has been directed to pay a sum of Rs.75,00,000/- to the 1st respondent and Rs.25,00,000/- to the deceased 5th respondent. As already stated that there is nothing on record to show that the brothers, namely the respondents 6, 7, & 8 were dependants on the deceased. The father even during his lifetime has been paid a sum of Rs.25,00,000/- towards his share of the compensation. We, therefore, conclude that the brothers, viz. the respondents 6, 7 and 8 are not entitled to any share in the compensation that remains to be paid.

21. The Insurance Company is directed to deposit the balance award amount, after adjusting a sum of Rs.1,00,00,000/- has

already been paid to the credit of MCOP No.654 of 2010 on the file of the Motor claims Tribunal, Tarapuram, within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, the claimant, namely, the 1st respondent/wife of the deceased, will be permitted to withdraw the entire amount.

jv

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Additional District Court No.3,
Dharapuram.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.76548

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.75416

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CMP No.6298 of 2016
Cross Objection No.79 of 2016

Kak(09/04/2019)

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