

IN THE JUDICATE OF MADRAS HIGH COURT

Reserved on : 13.02.2018

Delivered on : 05.06.2018

CORUM

THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKESEVALU

C.M.A.No.3667 of 2014

and

M.P.No.1 of 2014

and

Cross Objection No.2 of 2018

C.M.A.No.3667 of 2014

M/s.National Insurance Company Limited,
Divisional Office,
No.16, State Bank Road,
Coimbatore-641 018.

... Appellant/3rd Respondent

Vs.

1.Sridevi
2.Minor Padmavishalini
3.Minor Vivek
(minors R2 & R3 rep by their mother
and next friend Sridevi-R1)

... 1 to 3 Respondents/ Petitioner

4.R.Balakrishnan

5.C.Krishnaraja

... 4 & 5 Respondents/ 1 & 2 Respondents

Cross Objection No.2 of 2018

1.Sridevi
2.Minor Padmavishalini
3.Minor Vivek
(minors-cross objectors 2 & 3 rep by their mother
and next friend Sridevi-1st cross objector)

... Cross Objectors/1 to 3 Respondents

Vs.

1.M/s.National Insurance Company Limited,
Divisional Office,
No.16, State Bank Road,
Coimbatore-641 018.

... 1st Respondent/Appellant

2.R.Balakrishnan

3.C.Krishnaraja

...2 & 3 Respondents/4 & 5 Respondent

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act 1988 and Cross Objection has been filed under Order 41 Rule 22 of CPC against the judgment and decree dated 21.06.2013 in M.C.O.P.No.1243 of 2010 on the file of Motor Accidents Claims Tribunal (II Additional District Court) at Tiruppur.

Appearance_

For appellant in appeal
and 1st respondent in Cross Objection : Ms.N.B.Surekha

For R1 to R3 in appeal
and for cross objectors in cross objection : Mr.Ma.P.Thangavel

For RR4, 5 in CMA and For RR 2,3
in Cross Objection : Not Ready in Notice

* * * * *

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

The appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (II Additional District Court) at Tiruppur, in and by award dated 21.06.2013 in M.C.O.P.No.1243 of 2010.

2.On the other hand, not being satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed the cross-objection seeking enhancement of the compensation.

3.The claimants are wife, minor daughter and minor son of the deceased T.G.Neelaram. The case of the claimants before the Tribunal is that on 17.06.2010 at about 20.30 hours, while the said T.G.Neelaram was riding a motorcycle bearing Reg.No.TN-38-AC-8822 on Covai Pudur-Perur Main Road, from east to west direction, keeping left side of the road, a SRT Mini Bus bearing Reg.No.TN-37-AS-5999, insured with the appellant/Insurance

Company, came from opposite direction on the wrong side of the road and dashed against the motorcycle, thus caused the accident. In the said accident, the said Neelaram sustained grievous injuries and died on the spot. Hence, the claimants have made a claim as against the owner of the mini-bus and its insurer/appellant herein. With regard to the quantum of compensation, it is the case of the claimants that the deceased Neelaram was aged 49 years at the time of accident and he was working as Assistant Engineer in Tamil Nadu Electricity Board (TNEB) and was earning a sum of Rs.33,000/- per month as salary. He was the only breadwinner of the family. On that basis, the claimants have made a claim for a sum of Rs.75 lakhs as compensation.

4.Before the Tribunal, the case of the claimants was resisted by the Insurance Company by filing a detailed counter denying the averments made in the claim petition.

5.In order to prove their case before the Tribunal, on the side of the claimants, the 1st claimant/wife examined herself as P.W.1 besides examining two other witnesses as P.W.2 & P.W.3 and marked thirteen documents as Ex.P.1 to Ex.P.13. On the side of the Insurance Company, the driver of the mini-bus and a staff of the Insurance Company were examined as R.W.1 and R.W.2 respectively and a copy of the insurance policy was marked as Ex.R1.

6.The Tribunal, after analysing the entire evidence adduced on either side, has come to the conclusion that the accident was the result of the rash and negligent driving of the driver of the mini-bus. By coming to such a conclusion, the Tribunal has made the calculation under different heads and passed an award for a total sum of Rs.42,81,384/-, out of which a sum of Rs.40,76,384/- was awarded under the head of loss of income alone. Now, questioning the sum of Rs.40,76,384/- awarded by the Tribunal under the head of loss of income, the Insurance Company has filed the present appeal stating that the said amount awarded by the Tribunal is highly excessive and as such, the same has to be reduced by way of recalculation.

7.Not being satisfied with the quantum of compensation, the claimants have filed the present Cross-Objection stating that the amount awarded by the Tribunal is not an adequate compensation, hence, the same has to be enhanced.

8.It is the submission of the learned counsel for the appellant/Insurance Company that in order to prove the income earned by the deceased Neelaram, on the side of the claimants, an official viz., an Assistant Engineer from TNEB was examined as P.W.3, Salary Certificate was marked as Ex.P.13. The Tribunal, by placing reliance on Ex.P.13, has fixed the sum of

Rs.39,196/- as monthly income of the deceased. Thereafter, by deducting 1/3rd amount towards personal expenses and by applying multiplier 13, the Tribunal has awarded a sum of Rs.40,76,384/- under the head of loss of income. In this regard, it is the submission of the learned counsel for the Insurance Company that while calculating the compensation under the head of loss of income, the Tribunal has applied multiplier 13 by fixing the age of the deceased as 49 years, but actually the deceased had completed 51 years of age on the date of accident i.e., on 17.06.2010. According to the learned counsel for the Insurance Company, since the deceased had completed the age of 51 years, the correct multiplier that has to be applied in this case is 11 and not 13. In support of his contention, the learned counsel for the Insurance Company has also produced a copy of the Transfer Certificate of the deceased to show that the deceased was born on 02.05.1960. That apart, the learned counsel for the Insurance Company has also submitted that at the time of accident, the deceased was working as an Assistant Engineer in TNEB and he was left with only eight more years of service. Under such circumstance, the Tribunal while calculating the compensation under the head of loss of income ought to have applied split multiplier i.e., for the first 8 years, the Tribunal ought to have calculated the compensation on the basis of the actual salary viz., Rs.39,196/- and for the balance five years, the Tribunal ought to have calculated compensation by taking 50% of the monthly salary into consideration. But, instead of doing so, the Tribunal has calculated the compensation by fixing monthly salary of Rs.39,196/- for the whole thirteen years. It is further submitted by the learned counsel for the appellant/Insurance Company that the Tribunal has not deducted any amount towards income tax. Hence, 20% of the amount has to be deducted towards income tax. Thus, the learned counsel for the appellant/Insurance Company submitted that by deducting 20% amount towards income tax, by fixing the multiplier 11 and by applying the split multiplier, the compensation amount has to be recalculated. In support of his contentions, the learned counsel for the appellant/Insurance Company has also relied upon the judgment reported in 2014(1) TAN MAC 481(SC) [Puttamma Vs. K.L.Narayana Reddy] and another decision reported in 2017(2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others].

9. Countering the submissions made by the learned counsel for the appellant/Insurance Company, it is submitted by the learned counsel for the claimants that at the time of accident, the deceased had completed 50 years 1 month of age and that only if he had completed 51 years of age at the time of his death, the multiplier 11 could be applied. Since he had not completed 51 years at the time of death, the multiplier 13 applied by the Tribunal cannot be found fault with. In this regard, the

learned counsel for the claimants has also relied upon the decision of the Hon'ble Supreme Court in the case of Sarala Verma Vs. Delhi Transport Corporation [2009-5-LW 561]. In this regard, the learned counsel for the claimants has also relied upon another decision rendered by the Division Bench of this Court in C.M.A.No.661 of 2016 (National Insurance Company Ltd., Vs. Aanandhanayaki and others) dated 31.03.2016.

10.Further, the learned counsel for the claimants submitted that the Tribunal has not awarded any amount towards future prospects. Hence, 30% amount has to be added towards future prospects.

11.With regard to the submission made by the learned counsel for the appellant/Insurance Company that since the deceased was having only eight more years of service, while calculating the compensation, the Tribunal ought to have applied split multiplier method, the learned counsel for the claimants replied that as per the decision of Hon'ble Supreme Court in Puttama case (cited supra), split multiplier cannot be applied. The relevant passage from the said decision is as follows:-

"In the Appeal which was filed by the claimants before the High Court, the High Court instead of deciding the just compensation allowed meager enhancement of compensation. In doing so, the High Court introduced the concept of Split Multiplier and departed from the multiplier system generally used in light of the decision in Sarla Verma (supra) case without disclosing any reason. The High Court has also not considered the question of prospect of future increase in salary of the deceased though it noticed that the deceased would have continued in pensionable services for more than 10 years. When the age of the deceased was 48 years at the time of death it wrongly applied multiplier of 10 and not 13 as per decision in 'Sarala Verma'. Thus, We fail to appreciate as to why the High Court chose to apply Split Multiplier and applied multiplier of 10. We, thus, find that the judgment of the High Court is perverse and contrary to the evidence on record and is fit to be set aside for having not considered the future prospects of the deceased and also for adopting split multiplier method against the law laid down by this Court."

The learned counsel for the claimants has also relied upon another decision of the Division Bench of this Court reported in CDJ 2016 MHC 6131 (Oriental Insurance Company Ltd., Vs.

Venkateswari & others), wherein split multiplier was not adopted. Thus, the learned counsel for the claimants submitted that by adding 30% amount and applying multiplier 13, the compensation amount awarded by the Tribunal has to be enhanced.

12. In reply, the learned counsel for the appellant/Insurance Company by reiterating her earlier submission, prayed that since the deceased had completed 51 years of age, by applying multiplier 11 and by adding only 15% amount towards future prospects, the calculation has to be made to arrive at a just and proper compensation.

13. Keeping the submissions made on either side, We have carefully gone through the entire materials available on record.

14. It is the submission of the learned counsel for the appellant/Insurance Company that at the time of accident, the deceased had completed 51 years of age, as his date of birth is 02.05.1960. He has also produced a xerox copy of the Transfer Certificate of the deceased. However, it is seen that as pointed by the learned counsel for the claimants, only if the deceased had completed 51 years of age on the date of accident, the multiplier 11 could be applied. But, on the date of accident, he was only 50 years 1 month old. Hence, the multiplier 13 applied by the Tribunal cannot be found fault with. In this regard, it would be appropriate to place reference in the decision of a Division Bench in C.M.A.No.661 of 2016 (National Insurance Company Ltd., Vs. Aanandhanayaki and others) dated 31.03.2016, wherein it has been held in an identical situation that only the completed age of the deceased should be taken into consideration. In the instant case also, the deceased on completion of 50 years just stepped in one month into his 51st year. Hence, as per the decision of the Hon'ble Supreme Court in Sarala Verma case, based on his completed age, only the multiplier 13 should be applied in the instant case. For the same reason, We are of the opinion that 30% could be added towards future prospects. With regard to the deduction of income tax, We are of the opinion that as the deceased was working as Assistant Engineer in TNEB earning a sum of Rs.39,196/-, income tax deduction has to be made.

15. Based on the material available on record, particularly Ex.P.5-Salary slip, if the monthly salary of the deceased is taken as Rs.39,196/-, 30% amount works out to Rs.11,758/- and if it is added, then the total income comes to Rs.50,954/-. Then, the annual income of the deceased works out to Rs.6,11,448/-. Income Tax exemption available for the individual during the period 2010-2011 is upto Rs.2,50,000/-. Hence, 10% of the amount towards Income Tax has to be deducted over and above the sum of Rs.2,50,000/-. The amount over and above Rs.2,50,000/- works out Rs.3,61,448/- (6,11,448 -

2,50,000). 10% amount in Rs.3,61,448/- comes to Rs.36,145/-, which sum has to be deducted towards income tax. If so deducted, the actual annual income comes to Rs.5,75,303/-. Since there are three dependants in this case, 1/3 amount has to be deducted towards personal expenses and if so deducted, the total loss of annual contribution to the family works out to Rs.3,83,535/- (5,75,448 - 1,91,767). Though the learned counsel for the appellant/Insurance Company submitted that the multiplier 11 has to be applied, We are of the opinion that since the completed age of the deceased alone should be taken into consideration, the correct multiplier that has to be applied in this case is 13. Similarly, We are not inclined to apply the split multiplier method. If multiplier 13 is applied, then the total loss of income works out to Rs.49,85,955/-. Hence, the sum of Rs.40,76,384/- awarded by the Tribunal under the head of loss of income is hereby modified and enhanced to Rs.49,85,955/-. Further, the Tribunal has awarded the sum of Rs.50,000/- for loss of consortium. As per the latest decision of the Hon'ble Supreme Court reported in 2017 SCC OnLine SC 1270 [National Insurance Company Ltd., Vs. Pranay Sethi and others], the wife is entitled to only a sum of Rs.40,000/- as consortium. Hence, the sum of Rs.50,000/- awarded by the Tribunal under the head of loss of consortium is hereby reduced to Rs.40,000/-. Except the above modification, the compensation amounts awarded by the the tribunal under other heads remain unaltered. Consequently, the total compensation amount of Rs.42,81,384/- awarded by the Tribunal is hereby modified and enhanced to Rs.51,80,955/-. The break up details of the modified compensation amount are as follows

Loss of income	=Rs.49,85,955/-
Loss of consortium	=Rs. 40,000/-
Loss of love and affection	=Rs. 1,50,000/-
Funeral expenses	=Rs. 5,000/-

Total	=Rs.51,80,955/-
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16 .In the result, C.M.A.No.3667 of 2014 filed by the Insurance Company is dismissed and Cross.Obj.No.2 of 2018 filed by the claimants is partly allowed. The total compensation amount of Rs.42,81,384/- awarded by the Tribunal is hereby enhanced to Rs.51,80,955/-, out of which the 1st claimant/wife is entitled to 21,80,955/- and the minor claimants 2 & 3 are entitled to Rs.15 lakhs each. The appellant/Insurance Company is directed to deposit the entire compensation amount awarded in this appeal, with interest at the rate of 7.5% per annum, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the 1st claimant is entitled to withdraw her share amount with proportionate accrued interest thereon, by

making necessary application before the Tribunal. The share amounts of the minor claimants shall be deposited in fixed deposit in any one of the nationalised banks till they attain majority and the 1st claimant/their mother is entitled to withdraw the interest accrued thereon, once in every three months. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

ssv

To,

The Motor Accident Claims Tribunal
(II Additional District Judge)
Tiruppur.

Copy to

The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+1cc to Mr.M.N.B.Surekha, Advocate SR.No.35135
+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.34810

C.M.A.No.3667 of 2014
and
M.P.No.1 of 2014
and

Cross Objection No.2 of 2018

RSY (CO)
GN (26/06/2018)

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