

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2584 & 1734 of 2019
and CMP.No.5464 of 2019

C.M.A.No.2584 of 2019

Akilambal

... Appellant/Petitioner

Vs.

1.V.M.Sajan

T.K.Subramanian (Died)

2.The Branch Manager,

M/s.United India Insurance Company Limited,

Municipal Building,

Main Road, Paravoor.

3.Manoj

4.Jaleer

5.Raju KJ.

6.Uma Maheswari Venkat

7.Minor Vibhaa Venkat

8.Minor Anuraa Venkat

...Respondents/Respondents/
Petitioners 1 to 3

(Minors represented by next friend guardian
mother Uma Maheswari Venkat)

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988 for enhancement of compensation
awarded in the Judgment and Decree dated 25.04.2018 made in
M.C.O.P.No.930 of 2010 on the file of MACT / I Additional
District Judge, Tiruppur.

For Appellant : Ms.Shabnam Banu

For Respondents : Mr.S.Arun Kumar for R2.

Mr.J.Franklin for R6 to R8.

C.M.A.No.1734 of 2019

The Branch Manager,

M/s.United India Insurance Company Limited,

Municipal Building,

Main Road, Paravoor.

...Appellant/3rd Respondent

Vs.

1.Uma Maheshwari Venkat

2.Minor Vibhaa Venkat
3.Minor Anuraa Venkat
(Minors represented by next friend guardian
mother Uma Maheswari Venkat)
4.Akilambal
5.V.M.Sajan
6.T.K.Subramanian
7.Manoj
8.Jaleer
9.Raju K.J.

... Respondents/Petitioners
Respondents 1, 2 4 to 6

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and Decree dated 25.04.2018 made in M.C.O.P.No.930 of 2010 on the file of the Motor Accident Claims Tribunal, I Additional District Judge, Tiruppur.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.J.Franklin for R1 to R3.
Ms.Shabnam Banu for R4.

COMMON JUDGMENT

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal in C.M.A.No.1734 of 2019 has been preferred by the Insurance company against the award of Rs.3,78,84,640/- granted as compensation for the death of one Mr.J.Venkat Raghavan aged about 38 years, I.T.Engineer earning about Rs.35,75,520/- per annum in the State of Michigan in the accident occurred on 02.12.2009, when the deceased and his brothers, travelling in Maruthi Gypsy driven by its driver Rajasekar, were hit by a van bearing Registration No.KL 07 AH 8673 driven rash and negligently by its driver and the appeal in C.M.A.No.2584 of 2019 has been preferred for enhancement of the said compensation.

2.Heard Mr.S.Arunkumar learned Counsel for the insurance company and Ms.Shabnam Banu learned Counsel for the appellant in C.M.A.No.2584 of 2019 and Mr.J.Franklin, learned Counsel for the respondents 1 to 3 in C.M.A.No.1734 of 2019.

3.A perusal of the records would reveal that the tribunal found that the accident occurred because of the rash and negligent driving of the van. For coming to the said finding, the Tribunal relied upon the evidence of PW3 eye witness who categorically stated about the rash and negligent driving of the van and the filing of the FIR viz., Ex.P.1 against the driver of the van and rightly found that the accident occurred because of

the rash and negligent driving of the van. Therefore, the finding rendered by the Tribunal is confirmed.

4.The main contention of Mr.S.Arunkumar, learned Counsel for the insurance Company is that the deceased was earning about Rs.1,99,760/- (converted in Indian money value) as per Ex.P.21 salary certificate. After deductions as per Ex.P.22 statement of earnings and deductions, the monthly income earned by the deceased is \$.4317.22 (US dollars). As per Ex.P.25 the exchange rate of dollar is Rs.46.27 per dollar. Hence, the total income of the deceased converted in Indian currency would be \$.4317.22 x Rs.46.27 =Rs.1,99,757/- rounded off to Rs.1,99,760/-. The said determination of Rs.1,99,760/- per month is as per the evidence on record and exhibits and therefore, the said finding cannot be disturbed. Even though, Mr.S.Arunkumar, learned Counsel for the insurance company would argue that the accident occurred because of the mechanical defect viz., breakage of U clamp, the Tribunal rightly rejected the same based on Motor Vehicle Inspection and report and therefore, this Court also agrees with the said finding.

5.The Tribunal rightly added 40% towards Future Prospects as the age of the deceased was 38years as per Ex.P.11 viz., Transfer Certificate of the deceased. If 40% is added, the annual income would be Rs.1,99,760/- + 40% (Rs.79,904/-) = Rs.33,55,968/-. Income tax has to be deducted as per the rates applicable for the year 2008 - 2009 and thus, the income tax deductions are as follows;

2008 - 2009 -	Rs.1,10,001/-	No Tax
	Rs.1,10,001 to 1,50,000/-	Tax 10%
	Rs.40,000 x 10/100 =	Rs.4,000/-
	Rs.1,50,000 to 2,50,000/-	Tax 20%
	Rs.1,00,000 x 20/100 =	Rs.20,000/-
	Above Rs.2,50,000/-	Tax 30%
	Rs.31,05,968 x 30/100 =	Rs.9,31,790/-
Rs.33,55,968 -	Rs.9,31,790 (Tax)	= Rs.24,24,178/-

6.The Tribunal applied the multiplier '15' whereas Mr.S.Arunkumar relied upon the Judgment of "United India Insurance Co.Ltd., Vs.Patricia Jean Mahajan and others" reported in "2002 ACJ 1441" and would urge this Court to adopt multiplier '13' taking into consideration of the differences in the two currencies and the spending rate in two different countries. However, Ms.Shabnam Banu, learned Counsel for the appellant in C.M.A.No.2584 of 2019 would submit that the Tribunal rightly applied the multiplier '15' as per "Sarla Verma's Case" (2009 (2) TNMAC 1 (SC) and there is no occasion for reducing the same. Even though, there is no straight jacket formula, this Court has to balance the rights of the parties and therefore, instead of '15' this Court deems it fit to adopt multiplier '14'.

7.If '14' is adopted, the loss of income would be Rs.24,00,178/- x 14 = Rs.3,36,02,492/-. Further, the Tribunal rightly deducted 1/4th towards personal expenses since the size of the family is 4 and after 1/4th deduction, the loss of income would be Rs.2,52,01,869/-.

8.Rs.40,000/- awarded towards Loss of Consortium, Rs.15,000/- awarded towards Loss of Estate, Rs.15,000/- awarded towards Funeral Expenses, Rs.10,000/- awarded towards Transportation are all confirmed. However, Rs.50,000/- awarded towards Loss of Love and Affection is too negligible and therefore, this Court enhances the same to Rs.75,000/- each to the minor children and Rs.50,000/- to the mother which sums upto Rs.2,00,000/-. Therefore, the sum of Rs.3,78,84,640/- awarded by the tribunal is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of Income	2,52,01,869/-
2.	Loss of Love and affection	2,00,000/-
3.	Loss of Consortium	40,000/-
4.	Funeral Expenses	15,000/-
5.	Loss of estate	15,000/-
6.	Transportation	10,000/-
	Total	2,54,81,869/-

9.Hence, the compensation of Rs.3,78,84,640/- is reduced to Rs.2,54,81,869/-. The interest awarded by the Tribunal at the rate of 7.5% p.a is confirmed. The respondents 1 to 3 /widow and children of the deceased in C.M.A.No.1734 of 2019 are entitled to Rs.2,00,00,000/- and the 4th respondent /mother of the deceased in the said appeal is entitled to Rs.54,81,869/-.

10.The Insurance company is directed to deposit the entire award amount as per the order of this Court before the Tribunal along with interest and costs after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the tribunal is directed to transfer the shares of the major claimants to their respective accounts through RTGS within a period of one week except the shares of the minors which shall be deposited in the interest bearing Fixed Deposit in any one of the Nationalized Banks until they attain majority.

11. In the result, the appeal filed by the insurance company

in C.M.A.No.1734 of 2019 is partly allowed and the appeal filed by the claimant in C.M.A.No.2584 of 2019 is dismissed by reducing the compensation from Rs.3,78,84,640/- to Rs.2,54,81,869/-. No costs.

Sd/-
20/08/2019

being mentioned

This Petition having been posted on this day 'for being mentioned in pursuance to the order of this Court, dated 20/08/2019 and made herein, in the presence of the above said advocates, this Court made the following order :

(Order of the Court was made by N.KIRUBAKARAN, J)

The matter is listed today under the caption "for being mentioned" at the instance of the learned counsel for the appellant in C.M.A.No.2584 of 2019.

2.The learned counsel for the appellant in C.M.A.No.2584 of 2019 would submit that though the prayer sought for by the appellant has been allowed by enhancing the share of the appellant from Rs.3,78,848/- to Rs.54,81,869/-, in paragraph 11 of the order, it has been wrongly stated that C.M.A.No.2584 of 2019 is dismissed.

3.A perusal of the common order dated 20.08.2019 passed by this Court would show that in paragraph 9 this Court has observed that the respondents 1 to 3/widow and children of the deceased in C.M.A.No.1734 of 2019 are entitled to Rs.2,00,00,000/- and the 4th respondent/mother of the deceased in the said appeal is entitled to Rs.54,81,869/-. Thus, it is clear that the prayer sought for in C.M.A.No.2584 of 2019 filed by the appellant viz., Akilambal, who is the 4th respondent in C.M.A.No.1734 of 2019, seeking for the enhancement of compensation has been allowed.

4.Hence, paragraph 11 of the common judgment dated 20.08.2019 made in the C.M.A.Nos.2584 & 1734 of 2019 has to be substituted as follows:

"11.In the result, the appeal filed by the insurance company in C.M.A.No.1734 of 2019 is partly allowed by reducing the compensation from Rs.3,78,84,640/- to Rs.2,54,81,869/- and the appeal filed by the claimant in C.M.A.No.2584 of 2019 is allowed by enhancing the share of the appellant from Rs.3,78,848/- to Rs.54,81,869/-, which has to be paid out of the total compensation of Rs.2,54,81,869/-. Out of the remaining amount of Rs.2,00,00,000/-, the first respondent in C.M.A.No.1734 of 2019 who is the wife of the deceased is entitled to a sum of

Rs.1,00,00,000/- and the second and third respondents in C.M.A.No.1734 of 2019 who are the minor children of the deceased are entitled to a sum of Rs.50,00,000/- each. As far as the share of the minor claimants are concerned, the same shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority. The 1st respondent/mother is permitted to withdraw interest accruing on such deposit once in three months. No costs."

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The I Additional District Judge,
Motor Accidents Claims Tribunal,
Tiruppur.

Copy To: The Section Officer, V.R.Section,
High Court of Madras

+1 cc to M/s.S.Arun Kumar, Advocate Sr.No. 71490
+1 cc to Mr.S.Sivaraman, Advocate, SR.No.71332
+1 cc to Mr.J.Franklin, Advocate SR.No.70774

AKM/24.09.19/6P- 6C /

C.M.A.Nos.2584 & 1734 of 2019

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