

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	09.10.2020
Pronounced On	16.10.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.3923 of 2004 & 328 of 2006

(Through Video Conferencing)

C.M.A.No.3923 of 2004

1.M/s.Samraj & Co.

2.The United India Insurance Co. Ltd.,
Coimbatore. Appellants/ Petitioner

Vs.

1.C.Marimuthu

2.M.Krishnammal

3.R.Jayalakshmi

4.Major. Narmada Devi
Rep.by mother and Next guardian
Jayalakshmi

5.P.R.Muthusamy

6.S.Palanisamy

7.The New India Assurance Co. Ltd.,
Divisional Office,
Kumaran Shopping Complex,
Kumaran Road, Tiruppur.

8.V.Shanmugan Respondents

(R4 - declared as Major and R3 viz.,
R.Jayalakshmi discharged from the guardianship
vide court order dated 13.09.2019 made in
C.M.P.No.16153 & 16155 of 2019)

Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the award and decree dated
07.10.2003 made in MCOP No.452 of 1995 on the file of the
Motor Accidents Claims Tribunal, Additional District Judge,
FTC-V, Coimbatore at Tiruppur.

For Appellants : Mr.N.Rosi Naidu
For 3rd and 4th Respondents: Mr.V.S.Gurusamy
for Mr.P.P.Shanmugasundaram
For 7th Respondent : Mr.J.Chandran.
R1 & R2- Died
5,6 & 8 Batta due Not Ready in Notice

C.M.A.No.328 of 2006

1.S.Palanisamy

2.The New India Assurance Company Ltd.,
Divisional Office, Kumaran Complex,
Tiruppur. Appellants

Vs.

1.C.Marimuthu

2.M.Krishnammal

3.R.Jayalakshmi

4.Minor. Narmada Devi
4th respondent minor rep. by her mother
and next friend Jayalakshmi

5.P.R.Muthusamy

6.V.Shanmugam

7.M/s.Samraj & Company,
390 A, 100 Feet Road, Tatabad,
Coimbatore 641 012.

8.United India Insurance Company,
Divisional Office, Bank of Baroda
Buildings, State Bank Road,
Coimbatore. Respondents

(R4 - declared as Major and R3 viz.,
R.Jayalakshmi discharged from the guardianship
vide court order dated 13.09.2019 made in
C.M.P.No.16196 & 16194 of 2019)

Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the decree and Judgment
dated 07.10.2003 made in M.C.O.P.No.452 of 1995 on the file of
the Motor Accidents Claims Tribunal and Additional District
Court, (Fast Track Court No. 5) Coimbatore at Tiruppur.

For 2nd Appellant : Mr.J.Chandran
For 4th and 7th Respondents : Mr.V.S.Gurusamy
for Mr.P.P.Shanmugasundaram
For 5th Respondent&R3 : No appearance
For 8th Respondent : Mr.N.Rosi Naidu.
R6 -Given Up
R1 & R2 -Died

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

By this common Judgment, both Civil Miscellaneous Appeals are being disposed.

2. These Civil Miscellaneous Appeals have been filed by the two Insurance Companies along with respective owners of the insured vehicles. United India Insurance Company Limited and the owner of the insured mini lorry are appellants in C.M.A.No.3923 of 2004. The New India Assurance Company Limited and the owner of the insured bus are the appellants in C.M.A.No.328 of 2006.

3. These Civil Miscellaneous Appeals are directed against the impugned Judgment and Decree dated 07.10.2003 passed by the Motor Accidents Claims Tribunal and Additional District Court (Fast Track Court No.5), Coimbatore at Tirupur in M.C.O.P.No.452 of 1995.

4. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.11,25,000/- to the 1st to 4th respondents and fixed the liability on the respective appellants (i.e., respective owner of the insured vehicles and the respective Insurance Companies) equally. Details of Compensation are as follows:-

Heads and Calculation	Amount
Loss of Income to the claimants due to the death of deceased Ravichandran (8,000 x 12 x 17 x 2/3)	Rs.10,88,000/-
Loss of love to the 1 st and 2 nd claimants	Rs. 10,000/-
Loss of love and consortium to the 3 rd claimant	Rs. 15,000/-
Loss of love 4 th claimant	Rs. 10,000/-

Heads and Calculation	Amount
Funeral Expenses	Rs. 2,000/-
Total	Rs.11,25,000/-

5. In these appeals, the respective Insurance Companies have questioned the quantum of compensation awarded to the 1st to 4th respondents who had filed M.C.O.P.No.452 of 1995.

6. These cases pertain to the accident between the lorry of the 1st appellant insured with the 2nd appellant Insurance Company in C.M.A.No.3923 of 2004 with the bus belonging to the 1st appellant insured with the 2nd appellant Insurance Company in C.M.A.No.328 of 2006.

7. The case of the appellants in these appeals is that the Tribunal erred in awarding the aforesaid compensation to the 1st to 4th respondents/claimants by considering a notional income of the deceased Ravichandran together with future prospects as Rs.8,000/- per month though the deceased was merely an Electrician and the notional income of the deceased could not have been more than Rs.3,000/- per month on the date of accident on 02.03.1995.

8. It is further submitted that in a connected case involving the death of another passenger who also travelled in the same bus, the monthly income has been considered as Rs.3,000/-. In this connection, a reference was made to order in the connected case of the other claimants/legal representatives of the deceased passenger.

9. Reference was also made to another order passed by a learned Single of this Court in C.M.A.No.3945 of 2004, wherein, this Court has taken the notional income of the deceased in M.C.O.P.No.474 of 1995 arising out of the same accident as Rs.3,000/- while re-quantifying the compensation.

10. Per contra, the learned counsel for the 1st to 4th respondents/claimants vehemently opposed these appeals and stated that the deceased Ravichandran was a permanent employee of the M/s.SCM International Textiles Processing 100% EOU and therefore, the Tribunal came to a correct conclusion that the deceased was earning a sum of Rs.5,000/- per month at the time of his death based on the evidence of P.W.14 Processing Manager of S.M.C.Textile Processing Company, as per which, the deceased Ravichandran was working as Electrician and based on Ex.P.37 Salary Certificate of the deceased Ravichandran. It is further submitted that the Tribunal has correctly fixed the monthly notional income of the deceased as Rs.8,000/- after considering future prospects.

11. I have heard the learned counsels for the respective appellants in the respective appeals and the learned counsel for the 1st to 4th respondents/claimants.

12. The question that needs to be addressed in these appeals is whether the Tribunal was correct in considering the notional income of the deceased Ravichandran as Rs.8,000/- per month after considering future prospects for the purpose of awarding compensation for the accident that took place on 02.03.1995.

13. The brief facts of the cases are that on 02.03.1995 at about 06.00 p.m., the deceased Ravichandran was travelling in NRT Bus bearing registration No.TN-39-A-3443 belonging to the 1st appellant insured with the 2nd appellant in C.M.A.No.328 of 2006 which was proceeding from Palladam to Coimbatore, when a lorry bearing registration No.TN-37-E-8944 belonging to the 1st appellant insured with the 2nd appellant in C.M.A.No.3923 of 2004 came from the opposite direction and collided with the said bus. In the process, the deceased Ravichandran who was travelling with other co-passengers sustained grievous injuries and died on the spot.

14. There is no dispute regarding accident and the manner in which the said Ravichandran and other fellow passengers died. In M.C.O.P.No.474 of 1995, the deceased Easwaramoorthy a fellow passenger of the deceased Ravichandran is said to be earning only Rs.3,000/- per month though the claim was made by the dependents of the deceased Easwaramoorthy that he was earning a sum of Rs.5,000/- per month as Pattern Master in Saran Garaments. P.W18 in the said M.C.O.P. clearly deposed that the said deceased Easwaramoorthy was earning only Rs.3,000/- per month.

15. However, as far as the deceased Ravichandran in the present case is concerned, P.W.14 the Processing Manager of S.M.C.Textile Processing Company 100% EUO deposed that the deceased Ravichandran was earning a sum of Rs.5,000/- per month and marked Ex.P.37 Salary Certificate of the deceased Ravichandran to confirm the same. The Tribunal has considered the amount of Rs.8,000/- as notional income of the deceased Ravinchandran.

16. The aforesaid amount of Rs.8,000/- appears to be slightly on the higher side considering the date of the accident, i.e. 02.03.1995. The facts arrived by the Tribunal regarding montly income of Rs.5,000/- cannot be disturbed. The findings of fact arrived also cannot be reversed merely based on the assumption. The evidence on record indicates that the deceased Ravichandran was earning a sum of Rs.5,000/- per month. Therefore, the income of the deceased Ravichandran is to be considered as Rs.5,000/- as per Ex.P37 Salary Certificate. As per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, reported in (2017) 16 SCC 680, the future prospects in case of an employee having a fixed salary shall be calculated at 40%. Therefore, there should be an addition of Rs.2,000/- (5,000 x 40%) only to the aforesaid montly income of Rs.5,000/- for determining the total income for computation of

the compensation.

17. In this case, the deceased was supporting to his family consisting himself, parents, wife and child. The Tribunal has deducted 1/3rd on the notional income of Rs.8,000/- which inclusive of the future prospects. As per the decision of the Hon'ble Supreme Court in Sarla Verma and Others Vs. Delhi Transport Corporation and Another, reported in (2009) 6 SCC 121, a deduction towards personal expenses should be restricted to 1/4th of the income where the number of family members or the number of dependants of the deceased are more than 3.

18. The compensation awarded by the Tribunal towards conventional heads appears to be reasonable and therefore need not be disturbed considering the fact that the accident is of the year 1995. Since the accident is of the year 1995, I do not wish to alter the rate of interest. Therefore, applying the decisions of the Hon'ble Supreme Court in Sarla Verma's case referred to supra and in Pranay Sethi's case referred to supra, the correct compensation payable to the 1st to 4th respondents is re-quantified as follows:-

Heads and Calculation	Amount
Loss of Income to the 1 st to 4 th respondents due to the death of Ravichandran:-	
Monthly Income : Rs.5,000/-	
Add: Future Prospects at 40% (5,000 x 40/100)	
: Rs.2,000/-	

: Rs.7,000/-	
Less : Personal Expenses 1/4 th (7,000 x 1/4)	
: Rs.1,750/-	

Monthly contribution to the Family : Rs.5,250/-	
Annual Contribution to the Family (5,250 x 12)	
: Rs.63,000/-	
Multiplier 17 (63,000 x 17)	
: Rs.10,71,000/-	
Monthly contribution to the Family : Rs.5,250/-	
Annual Contribution to the Family (5,250 x 12)	
: Rs.63,000/-	
Multiplier 17 (63,000 x 17)	
: Rs.10,71,000/-	

Heads and Calculation	Amount
Loss of Love and Affection to the 1 st and the 2 nd respondents (parents)	Rs. 10,000/-
Loss of Love and Consortium to the 3 rd respondent (wife)	Rs. 15,000/-
Loss of Love and Affection to the 4 th respondent (child)	Rs. 10,000/-
Funeral Expenses	Rs. 2,000/-
Total	Rs.11,08,000/- rounded off to Rs.11,10,000/-

19. Thus, there is not much difference between the compensation awarded by the Tribunal and the compensation now determined by this Court applying the above two rulings of the Hon'ble Supreme Court.

20. The aforesaid amount of compensation of Rs.11,10,000/-, is to be distributed in the same proportion adopted by the Tribunal to the 1st the 4th respondents.

21. At the end of hearing, the learned counsel for the 1st to 4th respondents/claimants submitted that the parents of the deceased, i.e, 1st and 2nd respondents, have died and the 4th respondent/4th claimant who was minor at the time of the accident has got married and has settled down with her family. He therefore prays that the amount awarded to the 1st and 2nd respondents to be paid to the 3rd respondent, the widow of the deceased Ravichandran.

22. Considering the same, the compensation awarded to the 1st and the 2nd respondents is directed to be paid directly to the 3rd respondent the widow of the deceased as she would be a middle aged person, i.e. 45 years since she was aged about 23 years at the time of claim petition in the year 1995.

23. The 3rd and 4th respondents are directed to furnish their respective bank account details to the Tribunal for direct transfer of the amount through RTGS or NEFT by the Tribunal to their respective accounts after due verification.

24. Though the Tribunal has directed both the Insurance Companies and the drivers and the owners of the respective vehicles to deposit the compensation jointly or

severally, I am of the view that it is the 2nd appellant Insurance Companies in the respective appeals who are liable to pay the compensation to the 1st to 4th respondents as the 2nd appellant Insurance Companies in the respective appeals have contracted a contract of indemnity to indemnify the respective 1st appellant owner of the insured vehicles against any liability that may be fastened against them under the Motor Vehicles Act, 1988.

25. Therefore, the 2nd appellant Insurance Companies in the respective appeals are each directed to deposit a sum of Rs.5,55,000/- (being 50% of Rs.11,10,000/-) together with interest at 9% per annum thereon from the date of filing of the claim petition till the date of deposit, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment, before the Claims Tribunal.

26. If the 2nd appellant Insurance Companies in the respective appeals have deposited any amount in excess of above amount of compensation awarded by this Court, they are permitted to withdraw the respective excess amount together with interest accrued thereon, by filing suitable applications before the Tribunal.

27. The Motor Accidents Claims Tribunal shall ensure that as and when the aforesaid amount of compensation together with interest is deposited to the credit of M.C.O.P.No.452 of 1995 by the respective 2nd appellant Insurance Companies, the same shall be directly disbursed to the credit of the bank account of the 3rd and 4th respondents through NEFT or RTGS.

28. Accordingly, these Civil Miscellaneous Appeals are partly allowed. No cost.
jen

Sd/-

Assistant Registrar (insp cell)

//True Copy//

Sub Assistant Registrar

To:
Motor Accidents Claims Tribunal,
Additional District Court,
(Fast Track Court No. 5) Coimbatore,
Tiruppur.

Copy to:

The Section Officer, VR Section, High Court, Madras.
+1cc to Mr.N.Rosi Naidu, Advocate SR.No. 34478

C.M.A.Nos.3923 of 2004
& 328 of 2006

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