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C.M.A.(MD).No.1157 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

C.M.A. (MD) .No.1157 of 2014

and

M.P (MD) No.1 of 2014

National Insurance Company Limited,
rep. by its Branch Manager,
Jerome Building, 1st Floor,
Trichy Fort Station Road,
Branch No.II, Trichy District,
Tiruchirapalli.

... Appellant/Respondent No.3

Vs.

1.P.Thangappan
2.T.Rajabai
3.T.Sujananthi
4.Nijar Mohammad

...Respondent No.1/Petitioner No.1
...Respondent No.2/Petitioner No.2
...Respondent No.3/Petitioner No.3
...Respondent No.4/Petitioner No.1

5.The Joint Secretary,
S.R.V.Matric Higher Secondary School,
Trichy-Chennai Main Road,
Samayapuram,
Tiruchi District - 621 112.

...Respondent No.5/Respondent No.2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the Judgment and Decree passed by the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Nagercoil in MCOP No.114 of 2013 dated 06.06.2014.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.T.Selvakumaran for R1 to R3
No appearance for R4 & R5

J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

In this appeal, the appellant challenges the award of the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Nagercoil passed in MCOP No.114 of 2013.

<https://hqs.courts.gov.in/Services>



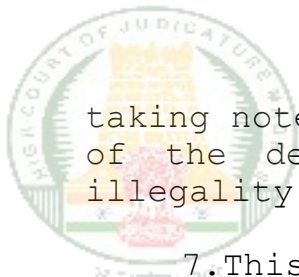
2.The brief facts of the case are that one Sivanantham met with an accident on 24.09.2011 and succumbed to the injuries. His parents and sister filed the above original petition claiming compensation of Rs.39,00,000/-. It is their case that at 08.15 a.m on 24.09.2011, the deceased was riding a motorcycle, Bajaj pulsar bearing Reg.No.TN-76-K.2821 on Trichy Main Road and his friends Subbu Raja was the pillion rider. When they were crossing Pallivasal bridge, which is situated on the Trichy National Highways near Samayapuram, a bus owned by the second respondent driven by its driver came in a high speed and dashed against two wheeler. In the impact, both the rider Sivanantham and the pillion rider Subbu Raja sustained injuries and they were taken to C.A.P.V. Government Medical College Hospital, Periamilaguparai, where the deceased was declared brought dead. It is their further case that the deceased was a bachelor, 26 years old and he was employed as an Accountant in Eversendai Construction Private Limited, Chennai and he was paid Rs.15,000/- per month. Since the accident occurred due to the negligence of the driver of bus, the owner as well as the insurer are liable to pay compensation.

3.The owner as well as Insurance Company, the appellate herein contested the claim petition by filing separate counter affidavits. Both have denied the age, avocation and income of the deceased. It is further stated that the owner and the insurer of the two wheeler are necessary parties and the claim petition is liable to be dismissed for non-jointer of the necessary parties. It is further stated that the claim was excessive and exorbitant.

4.To substantiate the case, the claimants examined 3 witnesses and marked 8 documents. No oral and documentary evidence was adduced on behalf of the respondents in the claim petition. After analyzing the evidence, the Tribunal held that the driver of the bus was responsible for the accident and awarded compensation of Rs.28,84,500/- along with interest at the rate of 7.5% per month. Questioning same, the present appeal has been filed.

5.Mr.D.Sivaraman, learned counsel for the appellant/Insurance Company contended that the Tribunal has not followed the principles laid down by the Hon'ble Apex Court and this Court to determine the compensation and the award of the Tribunal is not justified. It is his submission that even according to the claimants, the deceased was a bachelor and he was working in a private concern, however, the Tribunal instead of adding 40% towards further prospects and deducting 50% towards personal and living expenses, has added 50% towards future prospects and deducted only 1/3rd towards personal expenses of the deceased.

6.Per contra, Mr.T.Selvakumaran, learned counsel appearing for the claimants submitted that it is true that the deceased was a



taking note of the fact that the 3rd claimant was an unmarried sister of the deceased, has arrived at compensation and there is no illegality in the award passed by the Tribunal.

7.This Court has carefully considered the rival submission and perused the materials available on record.

8.Perusal of the records shows that the second claimant Raja bai gave evidence as P.W.1 in the line of the averments made in the claim petition and produced Ex.P.1-First Information Report, Ex.P.3-Rough Sketch to show that the accident occurred due to the negligence of the driver of the bus. P.W.2, who travelled along with the deceased as pillion rider, has spoken about the manner of the accident in his evidence. Admittedly, no contra evidence was produced by the respondents in the claim petition. So, the Tribunal came to the conclusion that the accident occurred due to the negligence of the driver of the bus. We find no illegality in the said finding.

9.Insofar as the quantum is concerned, according to the claimants, the deceased was 26 years, but no documentary evidence was produced to prove the age of the deceased. The Tribunal found in Ex.P.2-Postmortem Certificate, age of the deceased mentioned as 26 years. But P.W.2 has stated that the deceased is the elder to him, so, the Tribunal fixed his age as 32. Ex.P.6 is the appointment order of the deceased. P.W.3, an employee of the company, has stated that the deceased was drawing Rs.15,000/- per month on probation. The Tribunal added 50% to the salary as future prospects and arrived at income at Rs.22,500/-. After deducting 1/3rd, it is held that he was contributing Rs.15,000/- to the family.

10.At this juncture, it would be relevant to refer the decision of the Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi and others** reported in **2017(2) TN MAC 609(SC)**. The Constitution Bench of the Hon'ble Apex Court has also held at paragraphs 39 to 43 as follows:-

"39. Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from **Sarla Verma, Reshma Kumari, Rajesh and Munna Lal Jain**. Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paragraphs 30, 31 and 32, **Sarla Verma** lays down:-

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra⁴, the general practice is to apply standardised deductions.Having considered several subsequent decisions of this (2003) 3 SLR (R) 601Court, we are of the view that where the deceased was married, the



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deduction towards personal and living expenses of the deceased, should be one-third ($1/3^{\text{rd}}$) where the number of dependent family members is 2 to 3, one-fourth ($1/4^{\text{th}}$) where the number of dependent family members is 4 to 6, and one-fifth ($1/5^{\text{th}}$) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

40. In **Reshma Kumari**, the three-Judge Bench agreed with the multiplier determined in **Sarla Verma** and eventually held that the advantage of the Table prepared in **Sarla Verma** is that uniformity and consistency in selection of multiplier can be achieved. It has observed:-

"35. ... The assessment of extent of dependency depends on examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is



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normally based on the net annual value of the dependency on the date of the deceased's death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a "multiplier" to arrive at the loss of dependency."

41. In **Reshma Kumari**, the three-Judge Bench, reproduced paragraphs 30, 31 and 32 of Sarla Verma and approved the same by stating thus:-

"41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.

42. In our view, the standards fixed by this Court in Sarla Verma on the aspect of deduction for personal living expenses in paras 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out."

42. The conclusions that have been summed up in Reshma Kumari are as follows:-

"43.1. In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the Table prepared in Sarla Verma read with para 42 of that judgment.

43.2. In cases where the age of the deceased is up to 15 years, irrespective of Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in Sarla Verma should be followed.

43.3. As a result of the above, while considering the claim applications made under



Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

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43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma for determination of compensation in cases of death.

43.5. While making addition to income for future prospects, the Tribunals shall follow para 24 of the judgment in Sarla Verma.

43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 41 above."

43. On a perusal of the analysis made in Sarla Verma which has been reconsidered in Reshma Kumari, we think it appropriate to state that as far as the guidance provided for appropriate deduction for personal and living expenses is concerned, the tribunals and courts should be guided by conclusion 43.6 of Reshma Kumari. We concur with the same as we have no hesitation in approving the method provided therein."

11. In the case on hand, the claimants are parents and sister of the deceased. In the light of the observations of the Hon'ble Apex Court made supra, it would be appropriate to deduct 50% towards personal and living expenses of the deceased. In the same judgment, at para 61, it is held as follows:-

"61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the



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deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

12.As rightly pointed out by the learned counsel for the appellant, in the present case, the deceased is an employee in the private company and there is no material to show that he had permanent job. So, the claimants are entitled for 40% addition for future prospectus. So, the contribution of the deceased is arrived at Rs.10,500/- (15,000 + 40% = 21,000 - 50% = 10,500). By applying multiplier '17', the loss of income is fixed at Rs.21,42,000/- (10,500 x 12 x 17). It is relevant to note that in **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others** reported in **(2018)2 TN MAC 452**, the Hon'ble Apex Court has awarded consortium to the wife, parents and minor children of the decision. The relevant paragraph is extracted hereunder:-

"8-7

<https://hcservices.ecourts.gov.in/hcservices/> A Constitution Bench of this Court in Pranay



Sethi dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', parental consortium', and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family.

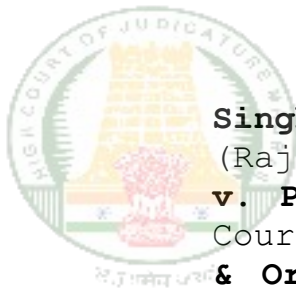
With respect to a spouse, it would include sexual relations with the deceased spouse, (**Rajesh and Ors. vs. Rajbir Singh and Ors**, (2013)9 SCC 54) Spousal consortium is generally defined as rights pertaining to the relationship of a husbandwife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation. " (BLACK'S LAW DICTIONARY (5TH ED 1979))

Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions worldwide have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count (Rajasthan High Court in **Jagmala Ram @ Jagmal**



Singh & Ors. V. Sohi Ram & Ors (2017)4 RajLW 3368 (Raj); Uttarakhand High Court in Smt. **Rita Rana & Anr. v. Pradeep Kumar & Ors**, (2014)3 UC 1687; Karnataka High Court in **Lakshman and Ors. v. Susheela Chand Choudhary & Ors.** (1996)3 KarLJ 570 (DB). However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down Pranay Sethi.

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000/- each for loss of Filial Consortium."

13.Following the decision referred supra, this Court awards Rs.1,20,000/- towards loss of consortium. Further, Rs.15,000/- is awarded towards funeral expenses and Rs.15,000/- towards loss of estate. Accordingly, the award of the Tribunal is reduced from 28,84,500/- to Rs.22,92,000/-.

14.In fine, the Civil Miscellaneous Appeal is partly allowed. The claimants are entitled for Rs.22,92,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. The appellant/Insurance Company is directed to deposit the award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the award amount at the ratio of 25:50:25 less the amount already withdrawn, if any, together with proportionate interest and costs. It is made clear that the father and sister of the deceased are entitled for 25% each and the mother is entitled 50% of the award. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

skn

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the



correct copy, shall be the responsibility of the advocate/
litigant concerned.

To

1.The Motor Accident Claims Tribunal
-cum-Chief Judicial Magistrate, Nagercoil.

2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-21000[F] dated 02/07/2021)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-21167[F] dated 05/07/2021)

C.M.A. (MD) .No.1157 of 2014

and

M.P (MD) No.1 of 2014

01.07.2021

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