



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CMA(MD)Nos.810 and 1121 of 2018

and

CMP(MD)Nos.9070 and 11345 of 2018

CMA(MD)No.810 of 2018

The Branch Manager,
Reliance General Insurance Company Ltd.,
2nd Floor, PL.A.Kanagu Towers,
15-A, Thillainagar Main Road 11th Cross
Trichy. ... Appellant/4th Respondent

vs.

1.Thomas John
2.Shawn John
3.Sheena John ... Respondents 1 to 3/Petitioner
4th Respondent/1st Respondent

(Rep. by the Power of Attoreney
Susan Clifton,W/o.Anil Clifton,
D/o.M.J.Jacob,No.17/2,Sakthi Vinayagar
Kovil Street,Crwford,Trichy-620 012 is
recognised as power of Attorny
on behalf of Respondents 1 to 3
vide court order dated 13.04.22
made in CMP(MD) No.3523 & 3525 of 2022
in CMA(MD) No.810 & 1121 of 2018)

4.C.Pachiappan
5.The Branch Manager,
The Oriental Insurance Co.Ltd.,
4, Headquarters Road,
RVR Building II Floor,
Coimbatore-641 018.
6.Sinnathamby ... Respondents 5 & 6/
Respondents 2 & 3

Appeal filed under Section 173 of the Motor Vehicles Act,
against the fair and decreetal order dated 19.12.2017 made in
MCOP.No.416 of 2012 on the file of the Motor Accidents Claims
Tribunal (IV Additional District Judge), Madurai.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 to R3 : Mr.V.Thiyagarajan

<https://hcservices.ecourts.gov.in/hcservices/>



R4 : No appearance
For R5 : Mr.C.Jawahar Ravindran

CMA(MD)No.1121 of 2018:-

The Branch Manager,
The Oriental Insurance Co.Ltd.,
4, Headquarters Road,
RVR Building II Floor,
Coimbatore-641 018.

... Appellant/2nd Respondent

vs.

1.Thomas John
2.Shawn John
3.Sheena John

... Respondents 1 to 3/
Petitioners 1 to 3

(Rep. by the Power of Attoreney Susan Clifton)

4.C.Pachiappan
5.Sinnathamby
(4th and 5th respondents remained
exparte before the lower court)

... 4th Respondent/1st Respondent

6.The Branch Manager
Reliance General Insurance Company Ltd.,
2nd Floor, PL.A.Kanagu Towers,
15-A, Thillainagar Main Road 11th Cross
Trichy.

... Respondents 5 & 6/
Respondents 3 & 4

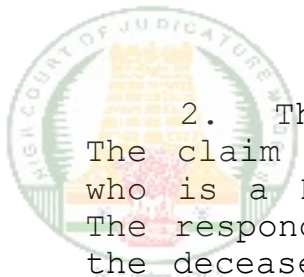
Appeal filed under Section 173 of the Motor Vehicles Act,
against the fair and decreetal order dated 19.12.2017 made in
MCOP.No.416 of 2012 on the file of the Motor Accidents Claims
Tribunal (IV Additional District Judge), Madurai.

For Appellant : Mr.A.Ilango
For R1 to R3 : Mr.V.Thiyagarajan
R4 & R5 : No appearance
For R6 : Mr.S.Srinivasa Raghavan

COMMON JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

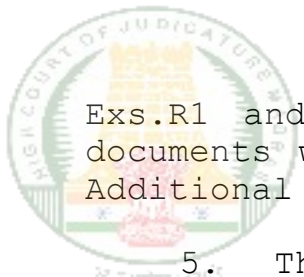
Challenge in these two appeals is by the two insurance
companies to the award of the Motor Accidents Claims Tribunal,
Madurai, granting a sum of Rs.1,05,52,621/- as compensation, for the
death of one Jessie John in a motor accident that occurred on
28.07.2010.



2. The claimants are the husband and children of the deceased. The claim of the claimants is that the 1st respondent/1st claimant who is a Doctor by profession, is practicing medicine in Canada. The respondents 2 and 3/claimants 2 and 3 who are the children of the deceased, are studying in Canada. The deceased was a graduate in Botany. She was working in the medical institution of her husband namely, Thomas John Medicine Professional Corporation, Canada, as a Manager and was earning 50,000/- U.S dollars annually. She was also a shareholder of the said Corporation and was getting an annual dividend income of 75,000/- U.S dollars. During July 2010, when the family had come to India for vacation, they had travelled to Trivandrum by hiring an Innova Car bearing registration No.TN-45-AL-3435 belonging to the 3rd respondent in the claim petition. On their way back from Trivandrum, on 28.07.2010, when they were nearing Kuthiraisalai Vilakku on Thirumangalam four-way road, a Lorry bearing registration No.TN-29-AF-1901 going ahead of the Car, took a sudden turn to right without any signal and it being a 21 feet long Taurus Lorry with 10 wheels, occupied the entire stretch of the road. The driver of the Car despite his best efforts could not stop the Car and the Car dashed in the middle portion of the Lorry. As a result of the collision, all the occupants of the Car were injured. They were admitted to the Government Rajaji Hospital at Madurai. The wife of the 1st respondent/1st claimant namely, Jessie John succumbed to the injuries at the Hospital. The claimants, therefore, sought a sum of Rs.60 Lakhs as compensation. In view of the involvement of the two vehicles in the accident, the respective owners and the insurers of the vehicles, were impleaded as respondents 1 to 4 in the claim petition.

3. While the owners of the vehicles involved in the accident remained ex parte, the insurers resisted the claim. The 2nd respondent in the claim petition/insurer of the Lorry resisted the claim, contending that there was no negligence on the part of the Lorry driver. It was the Car driver who drove the Car in an uncontrollable speed, came from behind and dashed against the Lorry. Therefore, according to the insurer of the Lorry, the Car driver alone is responsible for the accident. The income claimed and the quantum of compensation were termed as excessive. The insurer of the Car/4th respondent in the claim petition, contended that the Lorry took a sudden turn from the extreme left towards the right and because of the length of the vehicle which is about 21 feet and the fact that it is a 10 wheeled Taurus Lorry, it covered the entire road leaving no space for the Car to move. The Car which was coming from behind, was travelling at a good speed and therefore, despite the best efforts of the driver, it could not be stopped resulting in the collision.

4. At trial, before the Tribunal, the 1st respondent/1st claimant was examined as PW1. Exs.P1 to P9 were marked. The driver of the Lorry and the Senior Assistant in the insurance company/2nd respondent in the claim petition, were examined as RW1 and RW2.



Exs.R1 and R2 were marked. Exs.C1 to C3 were marked as Court documents which are E-mails received from the claimants to the IVth Additional District and Sessions Court at Madurai.

5. The Tribunal, upon a consideration of the evidence on record, particularly, the evidence of PW1, who was an eye-witness and the contents of the FIR, concluded that the accident had occurred due to the negligence of both the vehicles. The Tribunal rejected the evidence of RW1 as artificial. Upon consideration of the material on record, nature of the accident and the damages caused to both the vehicles, the Tribunal concluded that the negligence could be apportioned at 70% and 30% between the drivers of the Lorry and the Car respectively. On the quantum, the claimants produced Exs.P3 and P4 which are the income tax returns of the deceased and the notice for assessment of the income tax of the deceased, issued by the Canadian Government. Both the documents were attested by a Notary. On the strength of the said evidence, the Tribunal concluded that the deceased was earning 40,000/- Canadian Dollars per year. The other income projected by the deceased as dividend income, was not taken into account, since that income would not stop on the death of the deceased. The Tribunal after making suitable deduction for income tax, took the annual income of the deceased at 34,880/- Canadian Dollars. Following a judgment of the Hon'ble Supreme Court in **National Insurance Company Ltd., vs. Pranay Sethi** reported in (2017) 16 SCC 680, the Tribunal added 10% towards future prospects. Applying a deduction of 1/3rd for personal expenses, the Tribunal adopted the exchange rate at Rs.45.60/- on the date of the accident and arrived at the annual income of the deceased at Rs.11,66,402/-. The Tribunal applied multiplier of 9 and fixed the total loss of dependency at Rs.1,04,97,621/-, it added a sum of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses. Thus, the total award came to Rs.1,05,52,621/-.

6. We have heard Mr.Srinivasa Raghavan, learned counsel appearing for the appellant insurance company in CMA(MD)No.810/2018, Mr.A.Ilango, learned counsel appearing for the appellant insurance company in CMA(MD)No.1121/2018, and Mr.V.Thiyagarajan, learned counsel for the respondents/claimants.

7. Mr.Srinivasa Raghavan, learned counsel appearing for the appellant insurance company in CMA(MD)No.810/2018 and Mr.A.Ilango, learned counsel appearing for the appellant insurance company in CMA(MD)No.1121/2018 would in unison contend that there is no positive evidence to show the income of the deceased. Relying upon the answers of PW1 in the cross examination, regarding the availability of certain documents to prove the income of the deceased, the learned counsel would submit that the claimants have not placed the best evidence before the Tribunal and therefore, the Tribunal was not right in accepting Exs.P3 and P4 as substantial proof of the income of the deceased.



8. Contending contra, the learned counsel for the respondents 1 to 3/claimants would submit that Exs.P3 and P4 are authentic documents issued by the sovereign Government of Canada and therefore, the same cannot be doubted. They have been duly notarized and a certificate of Notary also accompanies them. Therefore, according to the learned counsel, Exs.P3 and P4 would offer sufficient proof of income of the deceased. He would further point out that in motor accident claims cases, which is a summary trial, the Court need not insist upon the proof beyond reasonable doubt and it can fix compensation on preponderance of probabilities.

9. We are inclined to agree with the submission of the learned counsel for the respondents 1 to 3 in this regard. Ex.P3 is the income tax returns of the 1st claimant/husband of the deceased and the same is accompanied by a certificate of a Chartered Accountant. The said document shows that the employment income of the spouse has been shown as 40,000/- Canadian Dollars and the dividend income has been shown as 31,250/- Canadian Dollars. The Tribunal has not taken into account the dividend income. The Tribunal has taken only the employment income of 40,000/- Canadian Dollars per annum and after deducting income tax paid, the Tribunal has fixed the annual income of the deceased at 34,880/- Canadian Dollars. Ex.P3 is buttressed by Ex.P4 which is an assessment notice issued by the Revenue Agency of Canada. This shows the total income of the deceased was 71,425/- Canadian Dollars. This is attested by a Notary and a certificate of Notary is also attached. These two documents which have emanated before the accident, in our opinion, furnish solid proof of the income of the deceased. We do not see any reason to doubt the authenticity of these two documents. May be, there are other documents and the same have not been produced, but that by itself, cannot dilute the authenticity of the two documents that have been placed before the Tribunal. We are, therefore, unable to fault the Tribunal for having fixed the annual income of the deceased at 34,880/- Canadian Dollars, based on Exs.P3 and P4. The Tribunal has rightly adopted 10% towards future prospects as decided by the Hon'ble Supreme Court in **National Insurance Company Ltd., vs. Pranay Sethi** reported in **(2017) 16 SCC 680**. It has deducted 1/3rd towards the personal expenses and applied multiplier of 9.

10. Though Mr.Srinivasa Raghavan, learned counsel appearing for the appellant insurance company in CMA(MD)No.810 of 2018, would make an attempt to contend that the deceased being a Canadian Citizen, the multiplier that is applied in India cannot be applied, we are afraid, such a contention is not open to the insurance companies after the judgment of the Five Judges Bench judgment of the Hon'ble Supreme Court in **National Insurance Company Ltd., vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, wherein, the Apex Court after an exhaustive examination of the law relating to fixation of compensation, had laid down guiding factors and held that the multiplier and the multiplicand would depend on the income of the deceased and the age of the claimants. Subsequently, in **R.Valli vs.**



Tamil Nadu State Transport Corporation Ltd., reported in **2022 SAR (Civ) 263**. the Hon'ble Supreme Court had held that the Tribunals and the Courts are bound to follow the judgment in **Pranay Sethi's** case and earlier judgments that provided for split multiplier theory are no longer a good law. In doing so, the Hon'ble Supreme Court observed as follows:-

7. In **Pranay Sethi**, this Court held that the age of the deceased is the basis for applying suitable multiplier and that the compensation is to be determined keeping in view the future prospects. The future prospects were held to 15% in respect of a deceased between the age of 50 to 60 years.

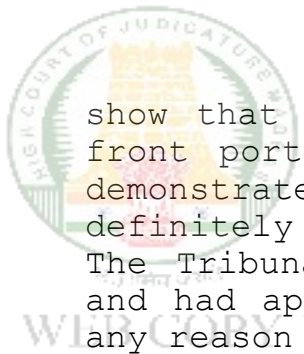
8. Mr. Amit Anand Tiwari, learned Additional Advocate General has referred to certain orders of the High Courts reported as **Uma Shankar v. Revathy Vadivel**, **Smt. Kamlesh Devi v. Sh. Kitab Singh** and **Union of India v. K.S. Lakshmi Kumar** to support the applicability of split multiplier i.e., multiplier upto the date of retirement and another multiplier after retirement.

9. The judgments referred to by Mr. Tiwari are prior to the enunciation of law by this Court in **Pranay Sethi**. Therefore, such judgments no longer can be said to be good law as suitable multiplier is to be applied keeping in view the age of the deceased in terms of para 59.7 of the judgment in **Pranay Sethi**.''

11. In view of the said categorical pronouncement, we are afraid that the contention of the learned counsel for the insurance companies cannot be countenanced by us. The five Judges Bench judgment of the Supreme Court in **National Insurance Company Ltd., vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, is binding on us and the same has to be followed. Therefore, the contention of the learned counsel on the nationality of the deceased, is rejected.

12. Adverting to the negligence, while Mr. Srinivasa Raghavan, learned counsel for the appellant in CMA(MD)No.810 of 2018, would contend that it was the negligence of the Lorry driver in taking immediate right turn without signalling that had caused the accident, Mr. Ilango, learned counsel appearing for the appellant in CMA(MD)No.1121 of 2018/insurer of the Lorry, would contend that the Car was travelling at a breakneck speed and though the distance between the Car and the Lorry was 200 meters, the Car could not stop. This fact by itself would prove that the Car driver was so negligent and he did not anticipate the movement of the vehicle going ahead of it. Both the counsel would attempt to draw support from the evidence of PW1, the eye witness.

13. We have gone through the evidence of PW1. While admitting that the driver of the Car was travelling at a good speed, PW1 said that the Lorry took sudden right turn and from the length of the Lorry, one can visualise that the entire road would have been blocked. A perusal of the Motor Vehicles Inspector's report would



show that the Car had hit the middle of the Lorry and the entire front portion of the Car had been damaged. This by itself will demonstrate that the negligence on the part of the Lorry driver was definitely more than the negligence on the part of the Car driver. The Tribunal has considered the evidence in the right perspective and had apportioned the negligence at 70% and 30%. We do not see any reason to interfere with the said conclusion of the Tribunal.

14. In the upshot, the award of the Tribunal deserves to be confirmed and it is accordingly confirmed. The Civil Miscellaneous Appeals fail and they are accordingly dismissed. No costs. The insurance companies are directed to deposit the compensation as apportioned by the Tribunal within eight weeks from the date of receipt of a copy of this judgment. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To
The IV Additional District Judge,
Motor Accidents Claims Tribunal,
Madurai.

Copy to:

- 1.The Branch Manager,
The Oriental Insurance Co.Ltd.,
4, Headquarters Road,
RVR Building II Floor,
Coimbatore-641 018.
- 2.The Branch Manager,
Reliance General Insurance Company Ltd.,
2nd Floor, PL.A.Kanagu Towers,
15-A, Thillainagar Main Road 11th Cross
Trichy.

+1 CC to M/s.S. SRINIVASA RAGHAVAN, Advocate (SR-19540[F] dated 19/04/2022)

+4 CC to M/s.V. THIYAGARAJAN, Advocate (SR-19575[F], SR-19574[F] dated 20/04/2022)

+1 CC to M/s.S.A.Ilango, Advocate (SR-19656[F] dated 20/04/2022)

CMA(MD)Nos.810 and 1121 of 2018

DATED : 19.04.2022