**IN THE HIGH COURT OF JUDICATURE OF MADRAS**

**Reserved on 07.12.2022**

**Pronounced on 02.03.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

and

**THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN**

**C.M.A. Nos.1825 and 1066 of 2018**
**and C.M.P. No.14099 of 2018**

**C.M.A. No.1825 of 2018**

M/s.National Insurance Company Limited,
2nd Floor, 81-D North Car Street,
Tiruchengode Taluk,
Namakkal District. ... Appellant

***versus***

1.Mallika
2.Thangaraja ... Respondents

**C.M.A. No.1066 of 2018**

Mallika ... Appellant

***versus***

1.Thangaraja

2.M/s.National Insurance Company Limited,
2nd Floor, 81-D North Car Street,
Tiruchengode Taluk,
Namakkal District. ... Respondents

**Common Prayer**: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.02.2018 made in M.C.O.P.No.100 of 2015 on the file of the Motor Accidents Claims Tribunal [Subordinate Court], Sankagiri.

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|---|---|
| For Appellant [in C.M.A.No.1825/2018] | : Mrs.N.B.Surekha |
| For Respondent No.1 [in C.M.A.No.1825/2018] | : Mr.C.Paraneedharan |
| For Respondent No.2 [in C.M.A.No.1825/2018] | : Dispensed with |
| For Appellant [in C.M.A.No.1066/2018] | : Mr.C.Paraneedharan |
| For Respondent No.1 [in C.M.A.No.1066 /2018] | : Exparte in Tribunal |
| For Respondent No.2 [in C.M.A.No.1066 /2018] | : Mrs.N.B.Surekha |

# COMMON JUDGMENT

**S.S.SUNDAR, J.**

(1)Today, the above Appeals are listed for "Re-hearing" at the instance of this Court. After dictating the judgment in open Court, we came across a few more judgments regarding reduction of multiplier in cases where the deceased was working in abroad and the income of the deceased was required to be determined on the basis of the salary of the deceased earned in abroad.

(2)After hearing the learned counsels on either side, this Court reserved judgment in the above appeals.

(3)C.M.A.No.1066 of 2018 is filed by the claimant and C.M.A.No.1825 of 2018 is filed by the Insurance Company. The Insurance Company is the second respondent in M.C.O.P.No.100 of 2015 before the Motor Accidents Claims Tribunal cum Sub Court, Sankaragiri. The claimant / first respondent in C.M.A.No.1825 of 2018 filed claim petition in M.C.O.P.No.100 of 2015 for the death of her son, who met with an accident on 05.11.2014. The deceased while travelling in his motor vehicle was hit by a car which belongs to the second respondent in C.M.A.No.1825 of 2018. The deceased died on the way to hospital on the date of accident. It is admitted that the deceased was working as a Manager in a Supermarket in a place called Dunstable in England. Stating that the deceased was drawing a salary of more than Rs.1,00,000/- per month, the first respondent claimed a sum of Rs.1,50,00,000/- as compensation.

(4)The claim petition was opposed by the Insurance Company on various grounds particularly disputing the income of the deceased as stated in the petition. The Tribunal found that the deceased was drawing a salary of 912.24 pounds per month. After deducting towards taxes, it was held that the income of the deceased was Rs.807.97 pounds per month.

(5)After considering the documents filed by the claimant and deposition of co-worker of the deceased, the Tribunal came to the conclusion that the deceased was earning a sum of Rs.807.97 pounds per month as salary. Though the deceased came to India about 11 months prior to the accident, it is the case of the claimant that the deceased had planned to go abroad and therefore, the deceased could have earned more. The Tribunal comes to the conclusion that the deceased would have earned not less than 1000 pounds per month if he is made permanent.

(6)The Tribunal then found that the value of one pound at the time of accident was Rs.102.51906. Taking into consideration the age of the deceased as 29 at the time of accident, Tribunal adopted 17 as multiplier. Since the deceased was not married, Tribunal deducted ½ towards personal expenses and added 40% towards future prospectus to monthly income. Tribunal awarded a sum of Rs.1,00,000/- towards loss of love and affection, Rs.10,000/- towards travelling expenses, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. The Tribunal then awarded a sum of Rs.1,42,80,000/- as compensation. Challenging the award of the Tribunal, the claimant as well as the Insurance Company have filed these appeals.

(7)The learned counsel for the Insurance Company produced before this Court the judgment of the Hon'ble Supreme Court in the case of ***Oriental Insurance Co. Ltd. & Others vs. Deo Patodi & Others*** reported in ***CDJ***

***2009 SC 1052*** for the proposition that in cases where the loss of income has to be calculated on the basis of the salary which the deceased had drawn in foreign country, it should be reduced to 1/3rd of amount which he has received in foreign country. In the said judgment, the Hon'ble Supreme Court has held as follows:-

> *"9. The question in regard to the calculation of loss of dependency, it is trite, would vary from case to case.*
> *The fact that the deceased was a brilliant student is not in dispute. He had graduated in Business Administration in U.K. Even as a student, in a job on a part-time basis he was being paid a salary of Rs.80,000/- per month ((UK # 1008.31). He paid his income-tax even in U.K.*
>
> *After his graduation, he came back to India. He was offered a job as EU Controller by GOA LLC, a company based in Chicago, USA at an annual salary of Rs.18 lakhs (i.e. $ 41,600/-). However, when the accident took place he was not working; having not accepted the said offer. He was still a student. It would have been hazardous for the Tribunal to calculate the amount of compensation towards the loss of dependency on that basis.*
>
> *10. The Tribunal and the High Court, however, in our opinion, keeping in view the aforementioned backdrop might not be correct in holding that he would have earned only Rs.18,000/- per month. It is true that the cost of living in the western countries would be higher. The standard of living in the western countries cannot be followed; in the absence of any material placed before this Court it should not be followed in India. Even in a case*

*where the victim of an accident was earning salary in U.S. Dollars, this Court opined that a lower multiplier should be applied.*

*In United India Insurance Co. Ltd. & Ors. vs. Patricia Jean Mahajan & Ors. [(2002) 6 SCC 281], this Court held:*

*"19. In the present case we find that the parents of the deceased were 69/73 years. Two daughters were aged 17 and 19 years. The main question, which strikes us in this case is that in the given circumstances the amount of multiplicand also assumes relevance. The total amount of dependency as found by the learned Single Judge and also rightly upheld by the Division Bench comes to 2,26,297 dollars. Applying multiplier of 10, the amount with interest and the conversion rate of Rs 47, comes to Rs 10.38 crores and with multiplier of 13 at the conversion rate of Rs.30 the amount comes to Rs 16.12 crores with interest. These amounts are huge indeed. Looking to the Indian economy, fiscal and financial situation, the amount is certainly a fabulous amount though in the background of American conditions it may not be so.* ***Therefore, where there is so much of disparity in the economic conditions and affluence of the two places viz. the place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne. Looking by the Indian standards*** *they may not be much too overcompensated and similarly not very much undercompensated as well, in the background of the country where most of the dependent beneficiaries reside. Two of the dependants, namely, parents aged 69/73 years live in India, but four of them are in the United States.*

*Shri Soli J. Sorabjee submitted that the amount of multiplicand shall surely be relevant and in case it is a high amount, a lower multiplier can appropriately be applied. We find force in this submission....*

*20. The court cannot be totally oblivious to the realities. The Second Schedule while prescribing the multiplier, had maximum income of Rs. 40,000 p.a. in mind, but it is considered to be a safe guide for applying the prescribed multiplier in cases of higher income also but in cases where the gap in income is so wide as in the present case income is 2,26,297 dollars, in such a situation, it cannot be said that some deviation in the multiplier would be impermissible. Therefore, a deviation from applying the multiplier as provided in the Second Schedule may have to be made in this case. Apart from factors indicated earlier the amount of multiplicand also becomes a factor to be taken into account which in this case comes to 2,26,297 dollars, that is to say an amount of around Rs. 68 lakhs per annum by converting it at the rate of Rs.30. By Indian standards it is certainly a high amount. Therefore, for the purposes of fair compensation, a lesser multiplier can be applied to a heavy amount of multiplicand."*

*The said decision, however, to some extent was clarified by this Court in Punjab National Bank v. Indian Bank & Anr. [(2003) 6 SCC 79].*

*11. **It is in the aforementioned situation, we are of the opinion that the fair amount of compensation should have been calculated at Rs.25,000/- per month being about 1/3rd of the amount which he was receiving in U.K.**"*

(8)The above judgment of the Hon'ble Supreme Court was also followed by the Division Bench of this Court in ***C.M.A.No.1739 of 2016 dated 27.06.2018 [M/s.United India Insurance Co. Ltd. vs. M.Ravikumar and Another]***. This Court is unable to reconcile how the Court's opinion to adopt lower multiplier could be construed to take just one third of the net income earned in U.K. It is true that the standard of living in the Western Country cannot be compared with the standard of living in India and the deduction cannot be uniform and it may depend upon several circumstances. In ***Chandra & Others vs. The Branch Manager, The Oriental Insurance Company Ltd. & Another in C.A.No.5635 of 2021***, the Hon'ble Supreme Court took the converted value of Rs.15,000/- per month as monthly income without further deduction. Since it has been held in Patricia Jean Mahajan, a lesser multiplies can be applied to a case of high amount, this Court has to strike a balance. In ***United India Insurance Company Limited vs. Satinder Kaur @ Satvinder Kaur & Others*** reported in (2020) SCC Online 410, the Hon'ble Supreme Court suggested deduction of 50% of income even when the deceased had left four number of dependents. Hence this Court is inclined to deduct 60% towards personal expenses as the income is calculated on the basis of the income earned by the deceased in U.K. It is in evidence that the deceased was forced to stay due to the ill health of father of deceased and on account of marriage proposal of the deceased. The deceased was capable of securing a decent job in U.K. and his earnings and prospects are supported by the evidence of a co-employee of the deceased.

(9)The learned counsel for the Insurance Company then submitted that the appellant has no objection to add 40% towards future prospectus while arriving at the monthly income of the deceased. Similarly, the Insurance Company has approved a sum of Rs.40,000/- towards love and affection, Rs.15,000/- towards love of estate and further sum of Rs.15,000/- towards funeral expenses.

(10)The Insurance Company though did not dispute the fact that the proper multiplier would be 17, the learned counsel for the claimant contended that the compensation should be fixed taking into account the value of foreign currency on the date of claim petition and not on the basis of value as on the date of accident.

(11)The deceased was drawing a salary of Rs.807.97 pound per month. Since the value of dollar as on 06.04.2015 (on the date of claim application) was Rs.92.5104, the monthly income can be safely arrived at as Rs.74,746/- per month. Taking into account the fact that the income of deceased is the salary he received in U.K. only 50% of the salary is taken. Hence the monthly income is taken as Rs.37,373/-. It is admitted that the deceased was a bachelor at the time of accident. Since the mother alone is the claimant as dependent, the deduction of 60% towards personal expenses has to be allowed. Deducting 60% and adding 40% towards future prospects, the monthly income can be arrived at Rs.31,393/- rounded off to Rs.31,390/-. Since only 50% is taken, multiplier can be 17. Claimant is entitled to a sum of Rs.64,03,560/- (31,390 x 12 x 17).

(12)Taking into account the admitted facts, the compensation payable under difference headss above indicated, this Court holds that the claimant is entitled to a sum of Rs.64,83,560/- towards pecuniary loss, a sum of

Rs.40,000/- towards love and affection, a sum of Rs.15,000/- towards loss of estate, further sum of Rs.15,000/- towards funeral expenses and the claimant is entitled to a sum of Rs.64,73,560 /-. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. Accordingly, the award of the Tribunal in M.C.O.P.No.100 of 2015 (i.e.,) Rs.1,44,20,000/- is reduced to Rs.64,73,560 /-. As far as the award amount of the claimant in M.C.O.P.No.100 of 2015 is concerned, the Tribunal is directed to transfer the said amount to the Bank Account of the claimant through RTGS/NEFT within a period of two weeks from the date of receipt of a copy of this judgment.

(13)Accordingly, the award of Tribunal is modified. The Tribunal has also found that the vehicle belongs to the second respondent is not driven by the driver having valid driving license and therefore, the Insurance Company is entitled to get the amount reimbursed. Therefore, the right of Insurance Company to recover the amount from the owner of the vehicle, is not interfered with.

(14)It is admitted that the appellant has deposited the amount as awarded by the Tribunal. Therefore, the amount deposited is more than the amount which is now awarded in favour of the claimant as per this order. In such circumstances, the claimant is permitted to withdraw the amount as per this order and the Insurance Company is permitted to withdraw the balance amount.

(15)In the result, C.M.A.No.1825 of 2018 is partly allowed with the reduction in the compensation amount from Rs.1,44,20,000/- to Rs.64,73,560/-. In view of the order passed in C.M.A.No.1825 of 2018, the appeal filed by the claimant in C.M.A.No.1066 of 2018 is dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

**[S.S.S.R.J.,]** **[A.A.N.J.,]**
**02.03.2023**

Index : Yes / No
Internet: Yes
AP

To

The Motor Accidents Claims Tribunal
[Subordinate Court], Sankagiri.

**S.S.SUNDAR, J.,**
**AND**
**A.A.NAKKIRAN, J.,**

AP

**Common Judgment in**
**C.M.A. Nos.1825 and 1066 of 2018**
**and C.M.P. No.14099 of 2018**

**02.03.2023**

CMA.Nos.1825 & 1066/2018

S.S.SUNDAR, J.,
and
A.A.NAKKIRAN, J.,

[Order of the Court was made by S.S.SUNDAR, J.,]

(1)The above Civil Miscellaneous Appeals are posted under the caption "For Being Mentioned" at the instance of the learned counsel appearing for the appellant in CMA.No.1825/2018.

(2)Learned counsel for the appellant submitted that this Court, vide common judgment dated 02.03.2023, has partly allowed CMA.No.1825/2018 and dismissed the appeal in CMA.No.1066/2018. Learned counsel submitted that in paragraph No.11, the monthly income has been wrongly mentioned as 'Rs.31,393/- rounded off to Rs.31,390/-'. Learned counsel submitted that this Court has taken the monthly income of the victim as Rs.37,373/- and after deducting 60% towards personal income and adding 40% towards future prospects, the monthly income is Rs.20,929/- and however, it has been wrongly mentioned as Rs.31,393/-. She also submitted that by applying the multiplier 17, the claimant is entitled to a sum of Rs.42,69,516/- [Rs.20,929x17x12] and not Rs.64,03,560/- and hence, prays for appropriate orders.

(3)The Court heard the submissions of the learned counsel appearing for the claimant.

(4)This Court, on a perusal of the judgment dated 02.03.2023, finds that due to inadvertence, the monthly income has been wrongly mentioned as Rs.31,393/- in stead of Rs.20,929/-.

(5)Hence, Registry is **directed to replace** the following in paragraph No.11:-

**[a]Rs.31,393/- rounded off to Rs.31,390/-** as **Rs.20,929/- rounded off to Rs.20,930/-.**

**[b]Rs.64,03,560/- [31,390x12x17]** as **Rs.42,69,720/- [20,930x12x17].**

(6)Registry is also directed to replace paragraph No.12 in the judgment dated 02.03.2023 as follows:-

> *"12.Taking into account the admitted facts, the compensation payable under difference heads above indicated, this Court holds that the claimant is entitled to a sum of Rs.42,69,720/- towards pecuniary loss, a*

*sum of Rs.40,000/- towards love and affection, a sum of Rs.15,000/- towards loss of estate, further sum of Rs.15,000/- towards funeral expenses and the claimant is entitled to a sum of Rs.43,39,720/-. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered. Accordingly, the award of the Tribunal in M.C.O.P.No.100 of 2015 (i.e.,) Rs.1,44,20,000/- is reduced to Rs.43,39,720/-. As far as the award amount of the claimant in M.C.O.P.No.100 of 2015 is concerned, the Tribunal is directed to transfer the said amount to the Bank Account of the claimant through RTGS/NEFT within a period of two weeks from the date of receipt of a copy of this judgment."*

(7)Registry is directed to re-issue fresh judgment copy to the parties concerned after incorporating the above corrections in paras 11, 12 and 15 in the judgment dated 02.03.2023. It is made clear that the Tribunal shall transfer the amount to the claimant's Bank Account within a period of two weeks from the date of copy of the order being passed today.

[SSSRJ] [AANJ]
06.07.2023

AP

Internet: Yes

S.S.SUNDAR, J.,

AND

A.A.NAKKIRAN, J.

AP

CMA.Nos.1825 & 1066/2018

06.07.2023