BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

| Reserved on : 13.10.2023 | Delivered on: 20.10.2023 |
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CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**
**AND**
**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**C.M.A.(MD).No.1034 of 2021**
**and**
**C.M.P.(MD)No.9738 of 2021**
**and**
**Cros.Obj(MD)No.44 of 2021**

C.M.A.(MD).No.1034 of 2021:

Reliance General Insurance Company Ltd.,
No.89, Vivain Plaza, First Floor,
100 Feet Road, Muthaliarpettai,
Puducherry,
Through its Branch Manager .. Appellant / Respondent No.2

Vs.

1.A.Sathya
A.Meenakshi @ Meenal (died)
2.P.Alagappan .. Respondents 1&2 / Petitioners
3.J.Suresh .. Respondent No.3 / Respondent No.1

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 16.10.2020, passed in M.C.O.P.No.198 of 2017 on the file of the Motor Accident Claims Tribunal, Sivagangai / Principal District Judge of Sivagangai insofar as liability to pay compensation and the quantum of compensation awarded are concerned.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.N.Madhava Govindan for R1&2

Cross.Obj.(MD).No.44 of 2021:

1.A.Sathya
A.Meenakshi @ Meenal (died)
2.P.Alagappan .. Cross objectors / Respondents 1 & 2

Vs.

1.Reliance General Insurance Company Ltd.,
No.89, Vivain Plaza, First Floor,
100 Feet Road, Muthaliarpettia,
Puducherry,
Through its Branch Manager .. Respondent No.1 / Appellants
2.J.Suresh .. Respondent No.2 / Respondent No.3

Prayer:- Appeal filed under Order 41 Rule 22 of the Code of Civil Procedure, against the award and decree dated 16.10.2020, passed in M.C.O.P.No.198 of 2017 on the file of the Motor Accident Claims Tribunal, Sivagangai / Principal District Judge of Sivagangai.

For Cross objectors : Mr.N.Madhava Govindan

For Respondents : Mr.V.Sakthivel for R1

**COMMON JUDGMENT**

**(Judgment of the Court was made by P.B.BALAJI,J.)**

The Civil Miscellaneous Appeal as well as the Cross objection arise out of the proceedings in M.C.O.P.No.198 of 2017 on the file of the Motor Accident Claims Tribunal / Principal District Judge, Sivagangai.

2. The brief facts, that are necessary for deciding the above Appeal and the Cross objection, are as follows:

The claimants being the wife and parents of the deceased one A.Alagappan, sought for compensation to the tune of Rs.1,00,00,000/- (Rupees One Crore only) for the death of the said Alagappan in a motor accident on 12.06.2016. The said Alagappan was riding his two wheeler bearing Registration No.TN-63-AH-0454 from Trichy to Rameswaram, on the National Highways and a Marthi Swift Dzire Car bearing Registration No.TN-05-Z-5898, being driven in a rash and negligent manner, on the wrong side of the road, hit the two wheeler, in which Alagappan was riding, resulting in Alagappan suffering head injuries. Though he was admitted in the Government Hospital, he died on the same day, without responding to the treatment.

3. It is the case of the claimants that the deceased was working in Singapore as Process Maintenance and Construction Worker and earning Rs.60,000/- per month. The claimants would also state that the deceased was well trained and and completed courses in Construction safety orientation for workers General Trade, Signalman & Rigger Course and Apply workplace safety and health in process plant in Singapore and he had bright future prospects. He was aged 32 years at the time of accident and considering the income of the deceased as well as various other relevant factors, the claimants prayed for compensation to the tune of Rs.1,00,00,000/- (Rupees One Crore only).

4. During the pendency of M.C.O.P, second claimant, who is the mother of the deceased, died. The first respondent, who is the owner of the Car, remained exparte.

5. The Insurance Company as the second respondent with which the first respondent's vehicle was insured filed a counter denying the averments, set out by the claimants. According to the second respondent, the deceased contributed to the accident and he did not possess a valid driving licence and further, he was also riding the two wheeler without wearing helmet.

6. Before the Tribunal, wife of the deceased examined herself as P.W.1 and an eyewitness - Murugesan was examined as P.W.2 and 23 documents were marked as Ex.P1 to Ex.P23. On the side of the second respondent, no oral or documentary evidence was adduced or let in.

7. The Tribunal, after considering the oral and documentary evidence, found that the accident occurred only because of the rash and negligent driving of the first respondent's driver. Insofar as the quantum, the Tribunal fixed the age of the deceased as 32 years and rejecting the documents exhibited on the side of the claimants with regard to income proof and fixed the notional income at Rs.50,000/- per month.

8. The Tribunal adopted a multiplier of '13' and added 50% (Rs.25,000/-) towards future prospects and deducted 1/3 (Rs.25,000/-) for personal expenses of the deceased and arrived at Rs.78,88,85,500/- as compensation, payable along with interest at the rate of 7.5% p.a., from the date of filing of the claim petition.

9. Aggrieved by the said award, the Insurance Company has preferred the above Civil Miscellaneous Appeal in C.M.A.(MD)No.1034 of 2021 on the grounds that the Tribunal failed to fix contributory negligence on the part of the deceased, when admittedly, the deceased was riding a two wheeler, without valid driving licence and also without wearing helmet. Further, insofar as the Tribunal adding 50% towards future prospects, it is contended by the Insurance Company that the same ought to have been 40% only. Insofar as the deduction towards the personal expenses, the finding of the Tribunal is challenged on the ground that since the deceased was working in a Foreign Country, 50% ought to have been deducted towards personal expenses and not 1/3rd.

10. The claimants also, dissatisfied with the award, have filed a

cross objection on the grounds that the Tribunal ought to have fixed the income in terms of the documentary evidence filed by the claimant, establishing that the deceased was earning in Singapore Dollars. It is also the further contention of the claimants that the correct multiplier would have to be applied as '16' and not '13', considering the age of the deceased. It is also further contended that the Tribunal has not granted any compensation towards loss of consortium, loss of amenities and transportation.

11. We have heard Mr.V.Sakthivel, learned counsel for the appellant and Mr.N.Madhava Govindan, learned counsel for the claimants. We have perused the records and also the impugned order of the Tribunal.

12. Though the Tribunal has arrived at a finding that the entire negligence is on the part of the third respondent herein, on a perusal of the oral and documentary evidence, what emerges is that the Motor Vehicle Inspector's Report confirms that the deceased did not possess a valid driving licence and the *Post Mortem* report in Ex.P2 also clearly states that the death was as a result of head injury. The Tribunal, unfortunately, has

not discussed these aspects and based on the oral evidence of P.W.2 alone, though his evidence was attacked on the ground of being an interested witness, held that in the absence of any concrete evidence on the side of the Insurance Company, the claim of rash and negligent driving of the third respondent's vehicle driver was only probablised. Admittedly, the claimants were not in a position to substantiate before the Tribunal that the deceased possessed a valid driving licence for riding the two wheeler and further that he was wearing a helmet which could not have averted head injuries, that resulted in his demise.

13. We find from the evidence of P.W.2 that, though he claims to have been travelling on the road, 50 feet behind the deceased's two wheeler, despite stating that he knew the deceased worked for over 10 years, in the cross examination, he admitted that he had not given the First Information Report and also that he had not given any evidence before the Court concerning the said accident. Thus, the evidence of P.W.2 is not trustworthy. The learned counsel for the appellant has stated that the appellant specifically taken a plea in the counter statement that the deceased did not possess a valid driving licence and he was not wearing a

helmet. Despite the said stand taken by the appellant at the first instance, the claimants have not been able to produce any evidence to dispute contentions. On the contrary, the report of the Motor Vehicle Inspector only confirms that the deceased did not possess any valid driving licence. In view of the above discussion, we fix 20% contributory negligence on the part of the deceased.

14. Coming to the quantum of compensation, according to the claimants, the deceased was employed in Singapore and when he was visiting India, the accident occurred and the claimants have filed exhibits to evidence the factum of employment of the deceased in Singapore, by filing his passports in original and also the work permit issued by the employment man power of Singapore. It is seen that the deceased had applied for the work permit way back on 05.03.2012 and the work permit one be issued on 07.03.2016 with a validity period of 2 years, expiry of the work permit being 07.03.2018 (Ex.P9). Insofar as the income, the claimants have marked Ex.P11. Though Ex.P11 is said to have been issued by the employer of the deceased in Singapore, there is not even seal or signature authenticating the genuineness of the said document filed as

Ex.P11 series. The entire Ex.P11 series contains sealed covers in the nature of Inland covers according to which, the salary of the deceased was 252 Singapore Dollars being basic pay and for every additional over time hour, he was entitled to 3.95 Singapore Dollars. Ex.P11 covers the period for July, September, October, November -2015 and March - 2016. Unfortunately, the claimants have not also produced any Bank statement evidencing that such income has been credited into the Bank account in India. In the absence of any acceptable documentary evidence, the Tribunal has fixed a notional income of Rs.50,000/- per month, taking into account the basic wage applicable for a worker in the construction field in Singapore, during the relevant point of time and for that limited purpose, though he has not relied on Ex.P11 which did not contain any seal or accepting of the employer. In the light of the available evidence, we did not find fault with the Tribunal in fixing the income at Rs.50,000/- per month.

15.The next contention of the learned counsel for the appellant is that for future prospects 50% ought not to have been added and only 40% ought to have been added, applying the ratio of the Hon'ble Supreme Court in ***Sarla Verma's*** case, considering the age of the deceased being 32 years, 40% would have to be added. It is also contended by the learned counsel for the claimants that even in the judgment of the Apex Court, it was held that 50% of the actual salary could be added towards future prospects, when the deceased was below 40 years and had a permanent Job. In the facts of the present case, it is seen from the records that the deceased was employed only as a construction work and apart from basic pay, if he worked for overtime, he was eligible for additional amount of 3.95 Singapore Dollars every hour. Thus, we cannot conclude that the deceased was in a permanent job. Therefore, 40% alone is to be added towards future prospects.

16. Though the learned counsel for the appellant contended that since the deceased was employed in Singapore, the deduction towards personal expenses would be 50%, we are unable to accept the said contention of the learned counsel for the appellant for the simple reason that the appellant has categorically denied the factum of the deceased employed and earning sufficiently well in Singapore. However, when it comes to personal deduction, it is contended that the deceased is residing

in Singapore and therefore, 50% to be deducted towards personal expenses. The Tribunal has also disbelieved Ex.P11 series, which was filed to establish the income of the deceased and adopted only a notional income at Rs.50,000/- per month in INR. In such circumstances, we do not propose to interfere with the finding of the Tribunal regarding the deduction for personal expenses at 1/3, considering the 3 dependants, namely wife and parents of the deceased.

17. Insofar as the multiplier is concerned, as rightly contended by the learned counsel for the claimants, the Tribunal ought to have adopted a multiplier of '16'. However, the Tribunal adopted multiplier '13', which is not correct, considering the age of the deceased, 32 years at the time of accident. The Tribunal has given Rs.20,000/- towards funeral expenses, which stands modified to Rs.15,000/-. Insofar as the loss of love and affection, the Tribunal has granted Rs.50,000/-.

18. As per the ratio of the Hon'ble Supreme Court in ***Pranay Sethi's case*** (***National Insurance Company Ltd., Vs. Pranay Sethi and***

***others*** reported in (***2017)-16-SCC-680),*** future prospects ought to have been added 40% of the income and not 50%.

19. The Hon'ble Supreme Court in ***Pranay Sethi's*** case, held as follows:

> 61. In vi*ew 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 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 enhanc*ed at the rate of 10% in every three years.

20. We notice that despite the Hon'ble Supreme Court in ***Pranay Sethi's*** case specifically ruling that the amounts set out in respect of the funeral expenses, loss of estate and loss of consortium have to be enhanced once in every three years, the same has not given effect to by the Tribunal. In the above circumstances, we have applied the said ratio of the Hon'ble Supreme Court in ***Pranay Sethi's*** case to the facts of the present case. The funeral expenses, the loss of consortium and loss of estate should be enhanced once in every three years at 10%. Since the above judgment is of the year 2017, from 2017- 2020 , 10% should be enhanced, ie. from Rs. 40,000/- to Rs.44,000/- towards loss of consortium, from Rs.15,000/- to Rs.16,500/- each towards funeral expenses as well as loss of estate and from 2020- 2023, another 10% should be enhanced ie. Rs.44,000/- to Rs.48,400/- towards loss of consortium, from Rs.16,500/- to Rs.18,150/- each towards funeral expenses as well as loss of estate. The claimants are entitled to Rs.30,000/- toward loss of amenities.

21. The Tribunal has, however, taken 50% towards future prospects and therefore, we deem it fit to interfere with the said award of 50% of income being added towards future prospects and the same is reduced to 40 %. Hence, after applying 40% (Rs.20,000/-) towards future prospects, the monthly income would come at Rs.70,000 (Rs.50,000/- + Rs.20,000/-). After deducting 1/3$^{th}$ (Rs.70,000/3 = Rs. 23,333/-) towards personal expenses and after applying the correct multiplier **'16'**, the loss of income would come to Rs.89,60,064 /- (Rs.46,667/- X 12 X16) and the same is rounded off to Rs.89,60,000/-. In view of the above discussion, the compensation is reworked in the manner hereunder:

| Head | Awarded by the Tribunal | Awarded by this Court | Enhanced/ reduced/ confirmed |
|---|---|---|---|
| 1. Loss of income | Rs. 78,00,000/- | Rs.89,60,000 /- | enhanced |
| 2.Loss of consortium (first petitioner) | Rs. 25,000/- | Rs. 48,400/- | increased |
| 3.Loss of love & affection (Claimant No.3) | Rs. 25,000/- | Rs. 48,400/ | increased |
| 4.Funeral expenses | Rs. 25,000/- | Rs. 18,150/- | reduced |

| | | | |
|---|---|---|---|
| 5.Loss of estate | Rs. 15,000/- | Rs. 18,150/- | enhanced |
| 6.Loss of amenities | .... | Rs. 30,000/- | awarded |
| **Total Compensation** | **Rs. 78,85,000 /-** | **Rs.91,23,100/-** | **enhanced** |
| **Less** Contributory negligence (20%) | **Rs.18,24,620/-** | **Rs.72,98,480/-** | **Reduced** |

22. In fine, both the Civil Miscellaneous Appeal as well as the Cross Objection are partly allowed. The first claimant, who is the wife of the deceased is entitled to Rs.60,00,000/- with proportionate interest, the third claimant, who is the father of the deceased is entitled to Rs.12,98,480/-with proportionate interest.

23. The appellant / Insurance Company is directed to deposit the modified award amount of Rs.72,98,480/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. Excess amount, if any, shall be refunded to the appellant / Insurance Company.

23. On such deposit being made, the claimants 1 and 3 are permitted to withdraw their share of the award amount along with interest and costs as apportioned by this Court, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**(T.K.R.J.) & (P.B.B.J)**
**20.10.2023**

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
Ls

**RMT.TEEKAA RAMAN, J.,**
**and**
**P.B.BALAJI,J**

Ls

To

1.The Motor Accident Claims Tribunal,
Principal District Judge,
Sivagangai

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

judgment in
**C.M.A.(MD).No.1034 of 2021**
**and**
**C.M.P.(MD)No.9738 of 2021**
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**Cros.Obj(MD)No.44 of 2021**

20.10.2023