



C.M.A.(MD).No.249 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on:18.10.2023 : Pronounced on:18.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

CMA(MD) No.249 of 2021

and

CMP(MD) No.2123 of 2021

The Branch Manager
The Oriental Insurance Company Limited
Old No.145, New No.211
Sekkalai Road, 1st Floor,
Sathiyamoorthi Illam,
Karaikudi - 630 001.

...

Appellant

Vs.

1.Mrs.Ramzan Begam
2.Minor Abdul Rahman
3.Minor Abu Thalha
(Minor respondents 2 & 3 represented
by their mother/guardian the 1st respondent)
4.N.Murugesan
5.Lazar
6.The Branch Manager
Royal Sundaram General Insurance Company Ltd.,
ATP Towers, No.12-A, Bypass Road,
Madurai - 625 010.
(R-4 given up)

...

Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and award passed in M.C.O.P.No.387 of 2016 dated 30.07.2020 on the file of the Motor Accident Claims Tribunal cum Principal District Court, Pudukottai.



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For Appellant : Mr.C.Jawahar Ravindran
For Respondents : Mrs.A.Banumathy for R1 to R3
Mr.S.Srinivasa Ragavan for R5 & R6

J U D G M E N T

RMT.TEEKAA RAMAN, J.

The Insurance Company is the appellant herein. Challenging the award in M.C.O.P.No.387 of 2016 dated 30.07.2020 on the file of the Motor Accident Claims Tribunal cum Principal District Court, Pudukottai, the appellant has filed this appeal on the ground of negligence and quantum.

2.For the sake convenience, the parties are referred to as per their ranking before the Tribunal.

3.As many as six MCOPs namely 387, 388, 389, 390, 391 & 429 of 2016 were filed before the said Tribunal claiming compensation. MCOP No.387 of 2016 was filed by the wife and children of the deceased Akbar Ali, MCOP No.388 of 2016 by Ramzan Begam, wife of deceased Akbar Ali for the injuries sustained by her while riding as a pillion rider in the two wheeler. The passengers who travelled in the offending vehicle, i.e. Private Bus, namely Muthumani,



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Mallika, Alagammal and Kasi filed MCOP Nos.389, 390, 391 & 429 of 2016 respectively which met with an accident with the two wheeler driven by the said Akbar Ali.

4. All the claim petitions in MCOP Nos.387, 388, 389, 390, 391 & 429 of 2016 emerge out of the same accident and hence, a joint trial was ordered and the evidence with respect to the above case has been recorded in MCOP No.387 of 2016.

5(a) In the counter statement, the 2nd respondent/Insurance Company of the private bus has specifically raised a plea that the accident has taken place due to the contributory negligence of the said Akbar Ali who died in the accident. The second respondent namely the Oriental Insurance Co. Ltd. (appellant herein) filed counter statement before the Tribunal that the accident has taken place in the middle portion of the road and the 3rd respondent vehicle (tipper lorry having Regn.No.TN23 AP 4216) came in a rash and negligent manner and due to the contributory negligence of the driver of the bus as well as the driver of the third respondent lorry, the accident has taken place and third respondent's driver has died in the accident. The two-wheeler rider by name Akbar Ali also died in the accident and denied the amount of compensation.



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5(b) The third respondent/owner of the lorry has filed separate counter statement alleging that the driver of the third respondent lorry died on the spot and the accident occurred only because of the negligent act of the Alagarmalayaan Private Bus Services and hence they are not liable to pay the compensation and his driver Isithamilan had valid driving licence and also valid badge endorsement on the date of accident and there is a valid insurance with the 4th respondent /Royal Sundaram Insurance Company. The 4th respondent filed separate counter on the similar lines.

5(c) Before the Tribunal, various claim petitioners were examined as PW1 to PW5 and Exs.P1 to P32 were marked. On the side of the respondents, RW1 & RW2 were examined and copy of charge sheet against the first respondent vehicle was marked as Ex.R1.

6. The Trial Court, taking into consideration the evidence of PW3, PW4 & PW5 who are all the passengers in the first respondent bus came to the conclusion that the accident has taken place only due to the rash and negligence driving by the first respondent driver while driving the private bus bearing Regn.No.TN63 AT 2599 and the first respondent vehicle is duly insured with the second respondent



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insurance company. As per Exs.P7 & P9, third respondent lorry was insured with the 4th respondent / Royal Sundaram Insurance Company.

7. Based upon the oral evidence of the injured, the Tribunal has rightly come to the conclusion that the accident has taken place due to the rash and negligent driving by the first respondent bus driver which is insured with the second respondent / Insurance company and accordingly held that the respondents 1 & 2 are liable to indemnify the insured and awarded compensation by a common judgment dated 30.07.2020. Against other judgments, the Oriental Insurance Company (appellant herein) has not preferred any appeal. However, chosen to prefer the present appeal only against MCOP No.387 of 2016 which is filed by the wife of the deceased Akbar Ali wherein the Tribunal has granted a sum of Rs.46,40,000/- as compensation.

8. The learned counsel appearing for the second respondent / Insurance Company (appellant herein) would contend that the deceased in this case Akbar Ali was aged 42 years as per Ex.P2 - postmortem certificate but as per Ex.P3-death certificate, the deceased was aged 46 years at the time of accident. It is the claim of the claim petitioners that the deceased Akbar Ali was working as Operations Manager in a private company at Malaysia for the past 20 years and



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earning Rs.1,00,000/- per month. In this regard, Ex.P15 - salary certificate issued by the Malaysian Company was marked through PW1 (wife of the deceased). The Tribunal converted the amount mentioned therein at RM 3000 per month and accordingly fixed the notional monthly income of the deceased Akbar Ali as Rs.30,000/- in terms of Indian Currency during March 2016. After adding 25% towards future prospects, applying multiplier 15 and deducting $1/3^{\text{rd}}$ towards personal expenses, awarded a sum of Rs.46,40,000/- as compensation to the claim petitioners.

9. The learned counsel would further contend that when a person who is engaged in foreign employment, his salary being simply calculated as per the money exchange rate on the date of filing of MCOP is unsustainable in law and granting 25% future prospects in those case is unwarranted. Adoption of multiplier method and fixing the remaining age of multiplicand is also unwarranted and hence would contend that the same needs interference.

10. The learned counsel appearing for the claim petitioners made submissions in support of the award passed by the Tribunal.



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11. After hearing the rival submissions and various decisions placed by both the parties, we have gone through the said decisions and other facts which are discussed infra.

12. The following points for determination have arisen in this appeal –

(i) How to determine the notional salary of person employed whether the salary earned by the deceased person in foreign soil however suffered death in a road accident in India ?

(ii) whether the salary said to have been drawn by the deceased in the foreign country has to be simply adopted as income of the deceased de hors economical disparity between two countries?

(iii) whether in case of victim being employed in foreign country, the adoption of multiplier method following the ratio laid down in **SARLA VERMA's case** for multiplier has to be adopted or to be reduced as contended by the learned counsel for the appellant/Insurance Company ?

(iv) Whether the ratio laid down in **Pranay Sethi's case** as to the future prospects has to be applied even in case of death of a person who is said to have been employed in foreign country and died in the road transport accident happened in India ?



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(v) Whether the deduction towards personal & living expenses of the deceased/victim ratio laid down in **SARLA VERMA's case** has to be applied or not ?

13. On factual position, as per Ex.P2 – postmortem certificate, the age of the deceased Akbar Ali was mentioned as 44 years whereas under Ex.P3–death certificate, it is mentioned as 46 years. As per Ex.P12–passport of the deceased, the date of birth of the deceased is mentioned as 02.06.1968. Hence, the age of the deceased is fixed as 44 years.

14. The entire crux of the matter is centred around what would be the notional monthly income of the deceased when the deceased/victim is engaged in foreign employment and earning in foreign currency, however died in RTA in India. In this regard, Exs.P6, P12 & P15 were filed. PW1–wife of the deceased has deposed that her husband was working abroad in Malaysia for about 20 years and was working as Manager. Ex.P6 – Permit Card of the deceased Akbar Ali, issued by the Malaysian Company however she admitted that there is no Malaysian seal on the said permit. It is seen that the said permit card, the date of expiry was mentioned as 13.05.2016. Further, it is seen that in Ex.P4 – monthly pay statement of the deceased, it is mentioned that the deceased Akbar Ali was working as Operation



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Manager and earning a net income of RM.5,400/- during the month of December 2015. Ex.P12 is the copy of passport of the deceased and Ex.P15 is the salary certificate of the deceased issued by the Director of Afrose SDB BHD Restoran Kuala Lumpur certifying that the deceased Akbar Ali was employed as chief cook in their Restoran till March 2016 and he was paid RM 100 per day as salary and RM 3000 per month.

15. Both the counsel have submitted the following decisions for our consideration.

- (i) 2013 9 SCC 166
- (ii) 2020 9 SCC 805
- (iii) SLP(c).26871 of 2019 dated 05.07.2023
- (iv) CMA.(MD).No.1034 of 2021 dated 20.10.2023
- (v) (2020) 4 SCC 413
- (vi) 2006 (4) CTC 433
- (vii) 2010 (2) TNMAC 58 (SC)

16. On the point of deduction of 1/3rd amount in normal circumstances towards personal expenses, the case has been considered and point has been settled by the Hon'ble Supreme Court in ***Sarla Varma and Others Vs Delhi Transport Corporation and Another*** in Civil Appeal No.3483 of 2008 and the same was duly approved by the Constitutional Bench. In the case of National Insurance Company Limited Vs Pranay Sethi, the deduction of personal



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expenses should have been $1/3^{\text{rd}}$ or $1/4^{\text{th}}$ as stated therein and it is $1/2$ when the deceased is a bachelor. In **Sarla Varma Case**, it is categorically held that actual salary should be read as actual salary less tax and further held that:-

i) 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 the necessary method of computation. The established income means, income minus tax component

ii) 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 Varma which we have reproduced hereinbefore

iii) The selection of multiplier shall be as indicated in the Table in Sarla Varma read with paragraph 42 of that judgment



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iv) the age of the deceased should be the basis for applying the multiplier

v) 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.

17. The said proposition has been approved by the Constitutional Bench and hence, in view of the ratio laid down by the Constitutional Bench of the Hon'ble Supreme Court in ***Pranay Sethi case***, the deduction shall be in $\frac{1}{2}$ or $\frac{1}{3}$ or $\frac{1}{4}$ as per the number of dependants or victim being the bachelor and we have no hesitation to held that the same proposition shall apply to any road transport accident that happens in India de hors employment being in India or in foreign country.

18.(a) On coming to the point of (a) what is the income tax and (b) whether the salary fixed or salary mentioned in the salary certificate produced by the claim petitioner shall be taken on the face of it or subject to income tax is no longer *res integra* in view of the decision of



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Hon'ble Supreme Court in ***Pranay Sethi case*** wherein it has been held that actual salary should be read as actual salary less tax. The established income means, income minus tax component and therefore, on that score also we are unable to take a different view since the Constitutional Bench already decided the rate of income tax that has to be deducted.

(b) In this connection, in the decision reported in ***2010 ACJ 168 (SC) in the case of Shyamwati Sharma and Others Vs Karam Singh and Others*** the Hon'ble Supreme Court had confirmed the percentage of deduction towards income tax and surcharge at 30% having regard to the income and hence, the same may be adopted even in respect of employment in overseas and victim met with an accident in Indian soil.

19. The next point that we are proposed to address is whether the salary fixed or mentioned in salary certificate or letter of appointment produced by the claim petitioner in the foreign country for the foreign employment has to be taken as a notional income to arrive at the compensation.

20. For the purpose of conversion of money rate, the Hon'ble Supreme court in ***Jiju Kuruvala and Others reported in (2013) 9 SCC 166***, held as follows:—



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“ Whether the exchange rate prevailing on the date of determination of award, or that prevailing on the date of filing of claim petition to be applied.

Since compensation in instant case was claimed in Indian rupees and not in US dollars, the foreign exchange rate as prevailing on the date of filing of claim petition would be applicable in instant case”

21. Our attention has been drawn to Division Bench judgment of the Hon'ble Supreme Court in ***United India Insurance Company Limited and others Vs Patricia Jean Mahajan and Others reported in 2002 ACJ 1441 SC*** wherein the Hon'ble Supreme Court has considered that the compensation to the dependants of Indian origin in America killed in road accident in India and there was no occasion for the Hon'ble Apex Court to consider the grant of compensation for future prospects wherein the Hon'ble Supreme Court has not allowed any deduction as pressed by the Insurance Company on the account of receipts of Insurance Policy and social security benefit received by the claimants.



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22. In the decision in ***CMA.No.2623 of 2009 in United India Insurance Company Limited Vs S.Malarvizhi and others dated 06.06.2013***, the Division Bench of this Court has considered various points *inter alia* as to whether the multiplier has to be reduced as held by the Hon'ble Supreme Court in ***Patricia Jean Mahajan*** case. However, we have already dealt with the same and in view of the Constitutional Bench, in the above said decision in paragraph No.6 is no longer holds the field. However, for the purpose of computation of compensation, an income has to be arrived at as that of the deceased. In a case when the employment is in foreign state, it remains to be stated as follows:–

“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. It was further held that , 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 at which the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair compensation.

Looking by the Indian standards they may not be much too overcompensated and similarly not very much under compensated as well, in the background of the country where most of the dependent beneficiaries reside”



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23. The insurance company contended that financial and economical condition in the Indian context are entirely different from the foreign countries like Malaysia and Singapore. While so, the salary earned in foreign countries cannot be taken as a basis for awarding the compensation and a balance has to be struck and relied upon the ***Patricia Jean Mahajan*** case. In the said context, the Division Bench of this Court in the ***Malavizhi's case*** has held that instead of taking the salary at Singapore Dollars 3000, the Division Bench has fixed a monthly salary at \$ dollars 2000 as a salary earned by the deceased at Singapore. Wherein, a high percentage of the deduction towards personal expenses at the foreign countries were taken note of.

24. In ***United India Insurance Company Lt. Vs S.Muniandi Santha in C.M.A.No.670 of 2009***, the similar question was considered by the Division Bench as to the manner with which the income of the deceased, who worked in Singapore died in the Indian road condition was considered. The deceased lived in Singapore where the cost of living is very high. The deceased earned in a foreign country in a foreign currency and in view of the disparity in economical situation in Singapore and in India, factors have been discussed and held that high income tax regime and cost of living are said to be the consideration.



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25(a). After hearing the rival submissions and after meticulously following the decisions referred thereto, we come to the conclusion that the relevant aspects such as age of the deceased, income after allowable deduction and in choosing the appropriate multiplier, there cannot be a different yardstick as between in India and a foreigner/non-resident who killed in a road accident. The principles governing the determination of compensation should be same for the both.

(b) However, we also take note of the employment, environment prevailing at foreign country that switching over from one employer to another, where pay is more is so common in abroad. Many persons who are employed in foreign, will not be idle because without a job, it's very difficult to thrive in abroad. Therefore, the last known income is to be taken as a yardstick for the purpose of computation of pecuniary loss sustained by the family.

(c) By sudden loss of life, the sole breadwinner of the family being lost, the plight of the road accident victims become pitiable and hence, we are of the considered view that the maximum 15% has to be deducted from the amount mentioned in the proved salary certificate or the proved document.



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(d) Our attention is also drawn to the decision reported in **2005 3 LW 375** wherein the Hon'ble Justice P.Sathasivam (As His Lordship then was) sitting in the Division Bench has observed while computing the amount of compensation which is extracted hereunder:-

“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 an 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 under compensated as well, in the background of the country where most of the dependent beneficiaries reside”

“In the light of the discussion and conclusion of the Supreme Court, in the above referred case, and in view of the fact that the Indian economy, fiscal and financial situation and the background of UK conditions, it cannot be claimed that the standard of living and other expenses are similar in both the places.



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Undoubtedly, there is much of disparity in the economic conditions and affluent of two places that it is the place to which the victim belongs and the place where the compensation is to be paid. If we consider these aspects and of the fact that in foreign country, particularly UK the extent for own maintenance and for education of their children etc., compared to our country is on the higher side and by applying principles laid down in the Supreme Court's case, we hold that the Tribunal is fully justified in scaling down 50 per cent of her earnings. (emphasis supplied)

26. Thus, in respect of employment in UK, the Division Bench has taken note of the various judgment of the Hon'ble Supreme Court and held that there should be a scaling down by 50 per cent of the earnings of the deceased, we clarify the position, for the purpose of income tax, 30 percent is already deducted as we discussed in the preceding paragraphs and therefore, considering the nature of the employment in the country where the foreign employment is taken note of, another deduction of 10 to 15 per cent can be reasonable and accordingly, we hold that to arrive at the salary or the monthly income in addition to 30 per cent of the tax, 10 to 15 per cent may be deducted. Considering the economical disparity between two countries and the affluent of two places, i.e., the place to which the victim



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belongs and the place where the compensation is to be paid and we answer the point accordingly.

27. In C.M.A.No.1034 of 2021, the Division bench of this Court one of us (where Hon'ble Justice P.B.Balaji), authored a judgment directing the fixation of notional income, sathya's case has to be considered. Since there is no seal or signature authenticating the genuineness of the said document, scaling down of salary was applied and notional income of 50,000/- was fixed and no hard and fast rule fixing the percentage of scale down of salary and the same is subject to variable depending on the country of employment. We hereby clarify the position in the above stated terms.

28. On the point of Diplomatic and Consular (Oaths and Fees) Act, 1948, we have gone through the said Act as per the Section 3(2) of the said Act has stated that if any document has been authenticated by the Diplomatic and Consular officer, such document shall be admitted in evidence without proof of seal of bearing the Officer or the character of that person and hence, we find that under the above said Act if any document, with reference to the matter in the instant case, any salary certificate which has been attested by the Consular office, the same can be admitted in evidence without calling



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upon the claimant to produce the certificate from the concerned office or a person who had issued a salary certificate or pay certificate and such certificate which has the seal of the Consular office shall be admitted in evidence without any further proof as to its admission. the same is akin to the provision contained under Section 273 of Cr.P.C. Hence, the position shall stand clarified to that limited extent.

29. Coming to the contention of requirement of necessary endorsement by the Consular Office of India in the abroad soil, after we perused the said Act, Section 3(1) is extracted below:-

3.Powers as to Oaths and Notarial Acts Abroad-

(2) Any document purporting to have affixed, impressed or subscribed thereon or thereto the seal and signature of any person authorised by this Act to administer an oath in testimony of any oath, affidavit or act, being administered, taken or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person. (emphasis supplied)

30.Hence, a perusal of the said provision in unequivocal terms leads to the conclusion that any certificate, in the instant case the salary certificate, appointment letter or any other certificate issued by



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the employer of the deceased/victim in the accident in the foreign employment in the foreign country by the foreign employer which is duly attested by the Consular of India, can be accepted in evidence without any person associated with the document being examined as a witness and it does not say about the converse.

31. Thus, in respect of the document that has been authenticated under the said Oaths and Fees Act, the said salary certificate or employment certificate or any certificate issued by the alleged employer can be marked without the author being present as witness in the Courts of India and not converse.

32. In view of the discussions in the preceding paragraphs, we hereby summarize the position in respect of computation of compensation for the person who was employed in a foreign country, however met with an road transport accident in India road for the purpose of arriving at compensation under the Motor Vehicle Act.

(i) The date of birth, for the determination of the age of the deceased or the injured, the age as reflected in the passport shall be the guiding factor.

(ii) With regard to the multiplier, the law laid down by the *Hon'ble Supreme Court in Sarla Verma's case as confirmed in Praney*.



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Sethi's case will govern the field. No lesser multiplier can be adopted in view of the decision of the Constitution Bench.

(iii) For the purpose of deduction whether it is $1/2$ or $1/3$ or $1/4$ or $1/5$, the ratio laid down by the Hon'ble Apex Court in Sarla Verma's case shall govern and depending upon whether the deceased is a bachelor or/and number of the dependants on the income of the deceased, as the case may be.

(iv) With regard to deduction from salary, the amount recovered by the family of the claimant from the foreign life insurance or any social security scheme, as per the decision of the Hon'ble Supreme Court in United India Insurance Co.Ltd and Ors. Vs.Patricia Jean Mahajan and Ors in 2002 ACJ 1441 SC is held to be non-deductable.

(v) With regard to the conversion of the rate of the foreign currency with that of the Indian currency, the money exchange rate prevailing on the date of the filing the M.C.O.P shall prevail and it is hereby made clear that date of the award is not a criteria as held by the Hon'ble Supreme Court in (2013) 9 Supreme Court Cases 166 [Juju Kuruvilla and others Vs.Kunjujamma Mohan and other]'s case.

(vi) With regard to admissibility of salary certificate issued by the foreign employer for the victim or the injured, it is clarified that in the event of the salary certificate / pay certificate / offer letter being endorsed by the Consulate General at the respective foreign country, it



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can be received in evidence without insisting upon the examination of the author of the said salary certificate or pay certificate, as the case may be.

(vii) Such a procedure of reception of pay certificates / Salary Certificates, the salary said to have been paid by the foreign employer to the victim or the claim petitioner is akin to Section 273 of the Criminal Procedure Code wherein the Court cannot insist upon the author of the document to come and present document in Court. It is always open to the claim petitioner to adduce evidence in the manner known to law relating to reception of the document.

(viii) For the purpose of fixing the notional income of the deceased claim petitioner, the salary, after deduction of income tax as held by the Hon'ble Supreme Court in 2010 ACJ 1968 (SC) [Shyamwati Sharma and ors Vs.Karam Singh and ors], is to be followed.

(ix) The notional income has to be computed as stated in the above clause and shall be subjected to income tax at the rate of 30% taking into consideration the discussion in the Para No.26 as stated supra. Besides the 'golden rule' to strike the balance between the economical disparity in Indian economy with the eastern countries Malasia and Singapore, western countries U.K and Erope and U.S.A and middle countries, it shall be not less than 10% and maximum to the extent of 20%, which is variable, depending upon the facts and



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circumstances of this case.

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(x) "The doctrine of scaling down" in salary as stated by the Division Bench in C.M.A.No.2623 of 2009 in United India Insurance Company Limited Vs.S.Malarvizhi and others case is found to be valid and even applicable to the present scenario. Accordingly, we have no hesitation to hold that in the event of the claim petitions being filed, alleging that the deceased / victim / claim petitioner said to be in foreign employment and met with an accident in Indian road, the doctrine of scaling down in salary is applicable.

33. The deceased Akbar Ali is said to have worked as a Operation Manager, earned a net income (RM) of Rs.5,400/- during the month of December 2015. As per Ex.P6 is the copy of permit card of the deceased Akbar Ali, wherein the date of expiry was on 13.05.2016. Ex.P12 is the copy of the passport of the deceased Akbar Ali. Ex.P15 is the salary certificate of deceased Akbar Ali, issued by the Director of 'Afrose SDN BHD Restoran, Kuala Lumpur, certifying that the deceased Akbar Ali was employed as chief cook in their Restoran till 10th March 2016 and that he received RM 100.00 as per day salary and RM 3,000.00 as per month salary.

34. Based upon Ex.P2 Post-mortem certificate, Ex.P3 Death certificate and Ex.P12 copy of passport of deceased Akbar Ali and was



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aged about 44 years on the date of the accident viz., the following decisions of the Hon'ble Supreme Court in Jiju Kuruvila's case . The exchange rate herein and date of filing of the claim petition is to be applied. Accordingly, $RM3000 \times 15 = Rs.45,000/-$.

35. Since the age of the deceased was 45 years on the date of the accident, the following decision of Praney Seth's case is to be adopted and 25% has to be added as a future prospectus and hence the income is arrived at $Rs.45,000 + 25\% = Rs.11,250/-$; $Rs.45,000 + 11,250 = Rs.56,250/-$

36. In view of the income tax at the foreign company the place of this employment in the absence of any document relating the tax regime, it has been scaling out of 30% deduction.

37. In view of the discussion in the preceding paragraphs another 10% has to be deducted towards economical disparity between the Indian country and country of this employment. Hence, $Rs.56,250/- - 40\% = Rs.33,750/-$



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38. As per Sarla Verma's case, the multiplier of 15% is to be adopted and considering the Ex.P14 legal heir certificate, the deceased has lived 3 dependants and hence 1/3rd deduction has to be paid towards the personal and living expenses of the deceased and hence the pecuniary loss sustained by the claim petitioner namely the dependants of the deceased Akbar Ali is re-assessed as under:-

$(3000 \times 15 = \text{Rs.} 45,000 + 25\% = \text{Rs.} 11,250/- = \text{Rs.} 56,250 - 40\% = \text{Rs.}$

$33750/- - 33750 \times 12 \times 15 \times 2/3 = \text{Rs.} 40,50,000/-)$

39. This Court confirms the amounts awarded under the heads 'loss of consortium' and 'funeral expenses'.

40. The amounts awarded by the Tribunal under the head 'transportation' is hereby enhanced to Rs.15,000/-

41. The Tribunal has not awarded any amount towards 'loss of estate' and hence a sum of Rs.15,000/- is awarded under the said head.

42. Thus, in toto, the compensation awarded is hereby tabulated:



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<i>Sl. No.</i>	<i>Particulars</i>	<i>Amount granted by the Tribunal</i>	<i>Amount granted by this Court</i>
1.	Loss of income	Rs. 45,00,000/-	Rs. 40,50,000/-
2.	Loss of Consortium	Rs. 1,20,000/-	Rs. 1,20,000/-
3.	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-
4.	Transport Expenses	Rs. 5,000/-	Rs. 15,000/-
5.	Loss of Estate	-----	Rs. 15,000/-
	Total	Rs. 46,40,000/-	Rs. 42,15,000/-

43. Thus, the compensation awarded by the Tribunal is reduced from **Rs.46,40,000/-** to **Rs.42,15,000/-**, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of payment.

44. In the result,

(i) The Civil Miscellaneous Appeal is **partly allowed** to the extent indicated above.

(ii) the appellant/Oriental Insurance Company Limited is directed to deposit the reduced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) On such deposit being made, the first respondent/claimant



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is permitted to withdraw their share of compensation amount, in the proportion mentioned by the Tribunal. The appellant is at liberty to recover the same from the owner of the offending vehicle. As far as the minor respondents 2 and 3/claimants are concerned, their respective share amount of compensation shall be deposited in any interest bearing Nationalized Bank and the interest accrued thereon shall be withdrawn by their natural guardian mother once in three months and their share of compensation amount shall be kept in deposit, periodically renewed till they attain majority.

(iv) Since this Court has reduced the award amount of the Tribunal, the claimants shall pay necessary Court fee, if any on the enhanced compensation amount.

(v) No costs. Consequently, connected C.M.P is closed.

(T.K.R.J.) (P.B.B.J.)
18.04.2024

NCC : Yes/No
Index : Yes/No
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To

1.The Motor Accident Claims Tribunal cum Principal District Court,
Pudukottai.

2.The Section Officer,
V.R.Section,
High Court,Madras.



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RMT.TEEKAA RAMAN,J.
AND
P.B.BALAJI, J.

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Pre-delivery Judgment in
CMA(MD) No.249 of 2021 and
C.M.P.(MD)No.2123 of 2021

18.04.2024