
(2015) 12 MAD CK 0028

In the Madras High Court

Case No : C.M.A. Nos. 1587 and 2050 of 2015

Kulanthaiyammal and Others

APPELLANT

Vs

S. Padmanaban and Others

RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 12 MAD CK 0028

Hon'ble Judges : S. Manikumar and G. Chockalingam, JJ.

Bench : Division Bench

Advocate : MA.P. Thangavel, for the Appellant

Judgement

S. Manikumar, J.—Being aggrieved by the quantum of compensation of Rs. 21,69,000/-, with interest, at the rate of 7.5% per annum, from the date of claim till realisation, awarded to the parents of the deceased Kandasamy, in M.C.O.P. No. 75 of 2014, on the file of Motor Accident Claims Tribunal-cum-Additional District Court, Namakkal, IFFCO-TOKIO General Insurance Company Ltd., Chennai, has filed C.M.A. No. 2050 of 2015. Not satisfied with the said quantum of compensation, parents of the deceased have filed C.M.A. No. 1587 of 2015.

2. Since in both the appeals, quantum of compensation is the only issue, they are taken up together, and disposed of by a common judgment.

3. According to the claimants, the accident has occurred on 05.07.2013 at 05.00 p.m., on Malayalapatti-Ulipuram Main Road, near Cooliyandi Kadu, Mullukurichi Village, when a motorcycle, bearing registration No. TN-28-AV-9100, driven by Kandasamy was hit by a private bus, bearing registration No. TN-28-AT-4041, driven in a rash and negligent manner, by its driver. The private bus was insured with IFFCO-TOKIO General Insurance Company Ltd.

4. On evaluation of pleadings and evidence, the Claims Tribunal has fixed negligence on the driver of the bus, and, consequently, fastened liability on the

Insurance-Company, to pay compensation.

5. Before the Claims Tribunal, legal representatives of the deceased Kandasamy have contended that the deceased was aged 24 years and he was a Post-Graduate in Commerce, and as an employee in Priyadarshini Traders, Namakkal, earned Rs. 20,000/- per month. However, there is no proof of income. Considering the abovesaid educational qualifications, the Claims Tribunal has fixed the monthly income of the deceased as Rs. 9,000/-, and added 50% under the head "future prospects". The Tribunal applied ""18"" multiplier; deducted 1/3 towards the personal and living expenses, and computed the loss of dependency as Rs. 19,44,000/-. In addition to the above, the Claims Tribunal has awarded Rs. 2,00,000/- under the head ""loss of love and affection"", Rs. 25,000/- for ""funeral expenses"". Altogether, the Tribunal has awarded Rs. 21,69,000/-, with interest, at the rate of 7.5% per annum, from the date of claim till deposit.

6. Assailing the quantum of compensation as excessive, Mr. C.R. Krishnamoorthy, learned counsel for the appellant-insurance company, submitted, that in the absence of production of any document to prove the income of the deceased, the Claims Tribunal has erred in fixing the same as Rs. 9,000/- per month. He further submitted that since the deceased was a bachelor, as per the decision of the Hon"ble Supreme Court in Reshma Kumari and Others Vs. Madan Mohan and Another, , the Claims Tribunal ought to have deducted 50% of the income, towards personal and living expenses of the deceased, instead of 1/3. It is also his submission that when the deceased had no permanent income, the Tribunal ought not to have added 50% of the income, under the head ""future prospects"", for computing the loss of dependency. He further submitted that as per the decision of the Hon"ble Apex Court in Kaunsingh v. Tukaram reported in 2015 (1) TNMAC 1 (SC), the Tribunal ought to have applied ""13"" multiplier, to the age, applicable to the mother of the deceased, for computing the dependency, instead of ""18"", to the age applicable to the deceased. It is also his submission that a sum of Rs. 2,00,000/- awarded to the parents, under the head ""loss of love and affection"", is excessive.

7. Per contra, placing reliance on a decision of the Hon"ble Supreme Court in V. Mekala Vs. M. Malathi and Another, , wherein the Hon"ble Apex Court had fixed the income of the XI Standard student as Rs. 10,000/- and having regard to the educational qualification of the deceased, Post-Graduation in Commerce, Mr. MA.P. Thangavel, learned counsel for the legal representatives of the deceased, submitted that the Claims Tribunal has erred in fixing the monthly income of the deceased as Rs. 9,000/-, for the purpose of computing the loss of dependency to the family. He, therefore, prayed that a higher monthly income should be fixed by this Court. Attention of this Court was also invited to a decision of this Court in United India Insurance Company Ltd. v. V. Giriprasath, reported in 2013 (2) TN MAC 146 , decided by one of us (Hon"ble Mr. Justice S. Manikumar). While defending the addition of 50% of the income under the head ""future prospects"", and placing reliance on the decisions of the Hon"ble Apex Court, in

New India Assurance Company Ltd. Vs. Gopali and Others, and Vimal Kanwar and Others Vs. Kishore Dan and Others, , learned counsel for the legal representatives of the deceased submitted that the Tribunal ought to have added 100% income under the head ""future prospects"", while computing the loss of contribution to the family. Deduction of 1/3rd towards the personal and living expenses of the deceased, is sought to be sustained, as the legal heirs are aged parents. He further submitted that the Claims Tribunal has failed to award a just and reasonable compensation under the head ""transportation"". According to him, the Tribunal should have awarded Rs. 50,000/- towards funeral expenses, instead of Rs. 25,000/-.

8. Heard the learned counsel for the parties, and perused the material available on record.

9. Perusal of the award shows that though the legal representatives of the deceased have contended that the deceased was a Post-Graduate in Commerce, and as an employee in Priyadarshini Traders, earned Rs. 9,000/- per month, they have not produced any proof of income. The Tribunal has accepted the contention, regarding the educational qualifications. Before this Court, an additional typed set of papers is filed to support the contention that the deceased was a Post-Graduate in Commerce and other qualifications.

10. Perusal of the documents, supporting other qualifications, shows that the deceased had participated in one year Computer-cum-Internet Literacy Programme, conducted by the Directorate of Collegiate Education, Department of Higher Education, Government of Tamil Nadu, in Thiruvalluvar Government Arts College, Rasipuram, during the year 2007-2008, and passed an examination held in December, 2008, in Second Class. He had also participated in a National Seminar on "Global Financial Crisis and its impact on Indian Economy", organised by the Department of Commerce, Selvam Arts and Science College, Namakkal, on 1st March, 2009, for which, a certificate has been given. He had secured First Class in Post-Graduate Diploma in Computer Application in the year 2008-2009, at Rasipuram Centre and to that effect, a Certificate had been issued by Tamil Nadu Computer Education & Development Organisation. Thus, besides Post-Graduate Degree in Commerce, the deceased had acquired knowledge in Computer Applications.

11. Perusal of the impugned award shows that though no document has been filed to prove employment and earning, following the decision of the Hon''ble Apex Court in Syed Sadiq etc. Vs. Divisional Manager, United India Ins. Company, , the Claims Tribunal has fixed the monthly income of the deceased as Rs. 9,000/-, and, from and out of the same, deducted 1/3 towards the personal and living expenses, and then, added 50% of the same, under the head "future prospects".

12. In Mekala's case, referred to above, though the deceased was a XI Standard student, the Hon''ble Apex Court fixed her monthly income, as Rs. 11,000/-, and

added 50% of the same, under the head "future prospects".

13. In the case of United India Insurance Company Ltd. v. V. Giriprasath, cited supra, the accident occurred on 27.01.2011, in which, a 23 year old student of M.Sc. (Computer Science), engineering student sustained injuries and suffered disablement, fixed by the Tribunal at 45%. Though the Insurance Company contended that the injured was only a student and, therefore, notional income as per Second Schedule ought to have been fixed, rejecting the same, one of us (Hon"ble Mr. Justice S. Manikumar), taking note of the educational qualifications of the injured therein and the opportunities of career development, in the field of Computer, fixed the monthly income as Rs. 10,000/-. In the instant case, the accident has occurred on 05.07.2013. Besides Post-Graduation Degree in Commerce, the deceased had obtained Certificate in Post-Graduate Computer Application also. Therefore, taking note of the decisions in Mekala and V. Giriprasath, the value of education, and having regard to the cost of living, inflation, consumer price index and such other economic factors, we deem it fit to fix the monthly income of the deceased as Rs. 12,000/-, for the purpose of computing loss of contribution to the family.

14. After fixing the monthly income as Rs. 9,000/-, the Tribunal has deducted 1/3 towards the living and personal expenses of the deceased. Fixed monthly income of the deceased as Rs. 6,000/- and 50% of the same has been added under the head "personal expenses" and thereafter, for the purpose of computing the loss of dependency, monthly income of the deceased has been fixed as Rs. 9,000/-. The said method is erroneous.

15. Firstly, the Claims Tribunal should fix the monthly income; then, add the required percentage under the head ""future prospects""; and, thereafter, should have deducted certain sum towards the personal and living expenses, depending upon the number of dependants, as per the decision of the Hon"ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . One of the contentions of IFFCO-TOKIYO Insurance Company raised before this Court is that the Claims Tribunal has erred in adding 50% under the head ""future prospects"". But, on the contra, it is the contention of the legal representatives of the deceased that 100% of the income should have been added under the said, for computing the loss of dependency.

16. Admittedly, no document has been filed to prove employment of the deceased, but, the fact remains that the deceased was a Post-Graduate in Commerce and acquired sufficient knowledge in Computer Applications. Had the deceased been alive, he would have been employed in some company, earning a reasonable income, which we have fixed at Rs. 12,000/- per month. At the time of accident, he was aged only 24 years. Considering the educational and other qualifications of the deceased, it is not open to the insurance company to contend that there was no future prospects at all and therefore, addition of even 50% of the income under the head ""future prospects"" as wholly erroneous. At the same time, the contention of the legal representatives of the deceased that

100% of the income should be added under the head ""future prospects"" on the basis of the decision in Vimal Kanwar and Others Vs. Kishore Dan and Others, , cannot be accepted. In fact, in the reported case, the deceased was an Engineer in Public Works Department. He was aged 28 years and 7 1/2 months. There was a pay revision also. Thus, considering the abovesaid aspect, and, by observing that had the deceased been alive, he would have had chances of even becoming a Chief Engineer in Public Works Department, the Hon"ble Apex Court, in Vimal Kanwar"s case, added 100% of income under the head ""future prospects"". Revision of Pay Scale, in the said judgment, was one of the key factors taken into consideration, besides the age of the deceased. The facts in the present case are not similar to the one, in the reported judgment.

17. Having regard to the discussions, we are not inclined to accept the contentions of the learned counsel for the legal representatives of the deceased, to add 100% of the income, under the head "future prospects"", but, on the contra, sustain 50% addition, awarded by the Tribunal. On the aspect of adding certain sum under the head ""future prospects"", recently, in C.M.A. No. 3273 of 2014, dated 13.10.2015 [Royal Sundaram Alliance Insurance Co. Ltd., v. Tmt. Vennila], this Court observed as follows:

"56. As tabulated in the foregoing paragraphs, it should be noted that Consumer Price Index, Gross Domestic Product and Per Capita Income, have increased. One cannot disown the fact that the percentage of those in unorganized sectors is more than the organised sectors. While that be so, would it be appropriate for the Insurance Companies and Transport Corporations, to contend that there is absolutely no chance of any upward revision in wages or salary of those, employed in unorganised sectors or for that matter in the earnings of self-employed. If the contentions of the Insurance Companies and Transport Corporations have to be accepted, whether the self-employed or those engaged in unorganised sectors, can never have any expectation of an event in future, i.e., increase in earnings or wages? With the basic study of the statistics, we are of the considered view that the answer should be a clear "No". When the Consumer Price Index is applicable uniformly to rich or raff, it cannot be contended that those who are engaged in unorganized sectors or self-employed, would continue to earn the same income, for years together.

57. For the abovesaid reasons, we are of the considered view that the word, "prospects" should not be read and understood, only in plural sense, meaning thereby, its prospects or an apparent probability of advancement in employment, in organised sectors alone. Narrowing down the meaning of the words, "future prospects" only to the employment prospects and consequently, more possibility of earning income, only in the case of organised sector and not in unorganised sector or self-employed, would affect the majority and therefore, the meaning of the word, "prospect" used in singular, meaning thereby, expectation, possibility or probability, chances of earning more income in future, depending upon the factors, stated supra, should also be considered.

58. Thus, from the above particulars, extracted supra, it is evident that both the Central and State Governments have periodically revised the minimum wages across the country. It has been raised taking into consideration the Consumer Price Index. In respect of scheduled employments, for skilled, semi-skilled, unskilled, construction workers, labourers, etc., wages, are fixed in various scheduled employments, right from Agarbathi Industry to Woolen Carpet and Shawl wearing machinery.

59. While that be the position in organised sectors, it cannot be contended that insofar as unorganised sectors or self-employed, is concerned, there would not be any revision in the wages or salary or earning. When the minimum wages of an employee in the organised sector, is revised periodically, taking into consideration the Consumer Price Index and Variable Dearness Allowance, the living conditions, then the others, in a unorganised sector may expect more or less the same wage, and if there are more number of persons, there may be chances of lesser wage, on account of surplus human resources and in such cases, the bargaining power of certain class of employees, depending upon the field, for revision of wages or earning, may be less.

60. If a non-salaried domestic worker sells a piece of any article, which he or she manufacturers and if the customer bargains the rate, he or she would immediately reply, as to how much amount, he/she has to spend for buying the basic materials, other materials used, compare the erstwhile travel expenses and the cost of labour. Can anyone in this Country can say that the electricity charges, water charges, rent, fee received by the Government, cost of education, price of commodities, etc., have remained the same, without any change. Cost of tea sold in a ordinary tea stall is the same for any person, whether engaged in organised or unorganised. Contenting inter alia that there would not be any increase in wages or earning for those engaged in unorganised sectors, for years to come, can it be said that he would never take a cup of tea, outside?

61. At this juncture, it should be borne in mind that Consumer Price Index is fixed, taking into consideration that the majority consumers are from unorganised sectors. Thus, with reference to Gross Domestic Product, Per Capita Income, Consumer Price Index and such other economic factors, determined on the basis of participation and contribution of both organised and unorganised sectors, the classification that those engaged in unorganised sectors, should be totally denied of any addition of income under the head, future prospects, would in our humble view, would affect Article 14 of the Constitution of India. When the majority of persons, in unorganised sectors, also decide the economic factors, stated supra, it would be unjust and unreasonable to contend that there would not any prospect or addition in the earning of those engaged in unorganised sector, forever. If there is addition of Variable Dearness Allowance to the basic wages, in the case of organised sector, depending upon the Consumer Price Index, applicable for a particular period, one would reasonably expect the same factor of variable Dearness Allowance, to be a relevant factor, for determining the

variation in the wage in case of unorganised sector also, as Consumer Price Index is common to all, whether engaged in organised or unorganised sector.

62. At this juncture, we deem it fit to consider, what "Dearness Allowance" means? "Dearness Allowance" is a cost of living adjustment allowance paid to Government employees, Public sector employees (PSU) and pensioners. Dearness Allowance is calculated as a percentage of an Indian's basic salary to mitigate the impact of inflation. Variable Dearness Allowance is always linked to Consumer Price Index. The notifications of Minimum wages by the Central and State Government reflects how much is the Variable Dearness in each field.

63. In the light of what we have tabulated above, judicial notice can also be taken that the cost of labour, whether it is in agricultural field or manufacturing or services, has increased. Thus, focusing on the increase in wages or earning, in almost all the fields of operation, right from agricultural or industrial or manual labourers, tea shop or road side vendor, the Consumer Price Index, being the same to rich or poor and therefore, correspondingly to meet out the living conditions, at least for providing the basic amenities, like food, shelter and clothing, and not to add up the expenditure towards health, education, certainly, there would be revision of wages or earning, even in unorganised sectors also. Future is the period of time that will come after the present or things that will happen. Having regard to the consistent and periodical revision of wages by the Governments, it cannot be contended by the Insurers or Transport Corporations that a person in unorganised sector, has no future at all, in the matter of revision of wages or earning.

64. In R.K. Malik's case (cited supra), the Hon'ble Supreme Court considered the quantum of compensation, payable to the legal representatives of the deceased children, aged between 10 and 18 years. Referring to the inflation, price rise, etc., the Hon'ble Supreme Court, by observing that there would be a future prospect, for the children also, granted a sum of Rs. 75,000/- under the head, future prospects, though as on the date of accident, they were children, studying in a school. In V. Mekala's case (cited supra), the injured was a student studying in 11th Standard. While determining the monthly income of the injured as Rs. 10,000/-, the Hon'ble Supreme Court added 50% of the income, under the head, future prospects. In the recent decision in Munna Lal Jain's case (cited supra), the Hon'ble Supreme Court added 50% under the head, future prospects.

65. Thus, from the line of judgments, it could be noticed that the Hon'ble Supreme Court has considered the addition of a quantified sum, under the head, future prospects, in effect, indicating that there is a prospect or chance or possibility of earning more income, after a passage of time, though not periodically, as done in the case of Government or Public Sector Undertakings or Boards or Corporations, Companies owned and controlled by the Government or Limited Companies.

66. We have already extracted the orders of the Chief Labour Commissioner, Ministry of Labour and Employment, Government of India, New Delhi and taken into consideration a sample case, City of Chennai. Wage revision may vary in rural or urban areas or metropolitan cities. At the risk of repetition, as observed earlier, the number of persons, engaged in unorganized sectors, agriculture or industrial, or home based or self-employment, etc., are more in number, than those employed in organised sectors.

67. Income from the organised sector alone, is not the deciding factor, for determining Gross Domestic Product, Consumer Price Index or Per Capita Income. Thus, from a basic study of the factors, taken into consideration by the Governments for revision of wages, to the enumerated categories of employees, one cannot lose sight of the fact that the said factors, would also have an indelible effect on those, engaged in unorganized sectors also. In the light of our discussion and the details considered, we are of the considered view that addition of certain percentage of income under the head, future prospects, has to be done in the case of those engaged in unorganized sector or self-employed also, otherwise, they would be deprived of just compensation. Addition of income under the head, future prospects, should not be restricted to only salaried persons, with stable jobs.

68. Though it is the case of the Insurance Companies and Transport Corporation that in the case of persons engaged in unorganised sector or salaried or persons, who do not have any permanent job, addition of certain percentage of income, under the head, "future prospects", to the income drawn, at the time of death, should not be made, for computation loss of dependency compensation, we are not inclined to accept the same, for the reason that the expression "future prospects" should not be confined only to the prospects of the deceased in the career, progress or upgradation of position, in which, he was engaged, prior to death, but the expression "future prospects" should also be extended to the likelihood of increase in wages/salary, earned by either a skilled or semi-skilled person, clerical and others, considering the upward increase in the cost price, inflation and such other factors."

18. The next question to be decided is, whether the Claims Tribunal was right in deducting 1/3 towards the personal and living expenses of the deceased, instead of 50%. Age of the parents, as per the claim petition, is 53 and 47 years respectively. Though Mr. MA.P. Thangavel, learned counsel for the legal representatives of the deceased, prayed to sustain 1/3rd deduction, on the ground that the parents were aged, this Court is not inclined to accept the same, in the light of the decision of the Hon"ble Apex Court in Sarla Verma's case, cited supra, wherein, it has been made clear that in the case of bachelor, the deduction should be half, towards the personal and living expenses, and, only in the case of a widow, with large number of dependants, deduction should be 1/3. Thus, we conclude that the Claims Tribunal has committed an error.

19. Yet another issue to be considered is, whether the Tribunal was right in

applying ""18"" multiplier, for the purpose of computing the loss of contribution to the family ? The deceased was born on 08.06.1986. The accident has occurred on 05.07.2013. Based on the entries in Ex. P-2-Postmortem Report, and Ex. P-4-Death Certificate, the Tribunal has determined the age of the deceased as 24 years. However, perusal of the marks statement of the deceased, issued by the Secretary, State Board of School Examinations, Tamil Nadu, indicates the date of birth of the deceased, is 08.06.1986. The accident has occurred on 05.07.2013.

20. From the above, it could be deduced that as on the date of accident, the deceased was aged 27 years. Though Mr. C.R. Krishnamoorthy, learned counsel for the insurance company contended that the Claims Tribunal ought to have applied ""13"" multiplier, the age applicable to the mother of the deceased, this Court is not inclined to accept the same, for the reason that the correct multiplier that should have been applied for computing the loss of contribution to the family as per Sarla Verma's case, is ""17"". On the basis of the income, Rs. 12,000/-, now fixed by this Court, computation of loss of dependency has to be worked out. Adding 50% to the income under the head ""future prospects"", the same works out to Rs. 18,000/- per month. If 50% is deducted towards the personal and living expenses, it comes to Rs. 9,000/- per month. Thereafter, by applying ""17"" multiplier, the loss of dependency works out to Rs. 18,36,000/- (Rs. 9000 x 12 x 17). Sum of Rs. 2,00,000/- awarded under the head ""loss of love and affection"" to the parents, who have lost their son, aged about 24 years, cannot be said to be excessive. Therefore, it is sustained. Though the legal representatives of the deceased sought for enhancement of compensation from Rs. 25,000/- to Rs. 50,000/- under the head ""funeral expenses"", this Court is not inclined to enhance the same. However, this Court deems it fit to award a sum of Rs. 10,000/- under the head ""transportation"" and Rs. 10,000/- towards ""loss of estate"". Further, this Court is inclined to award Rs. 5,000/- towards "damage to clothes and articles". Thus, the total compensation, due and payable to the legal representatives of the deceased/appellants in C.M.A. No. 1587 of 2015, after reworking, works out to Rs. 20,86,000/- (Rs. 18,36,000/- + Rs. 2,00,000/- + Rs. 25,000/- + Rs. 10,000/- + Rs. 10,000/- + Rs. 5,000/-). As stated supra, the Tribunal has awarded Rs. 21,69,000/-. In view of reworking, the award of the Tribunal stands modified as Rs. 20,86,000/-. Accordingly, there will be a deduction of Rs. 83,000/-. IFFCO-TOKIO General Insurance Company Ltd. is directed to deposit the entire award amount, less the statutory deposit already made, to the credit of M.C.O.P. No. 75 of 2014, on the file of Motor Accident Claims Tribunal-cum-Additional District Court, Namakkal, with interest, at the rate of 7.5% per annum, from the date of claim till deposit, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, first claimant- mother is permitted to withdraw Rs. 10,56,000/- and second claimant-father Rs. 10,30,000/-, by making necessary applications before the Tribunal.

21. In the result, C.M.A. No. 1587 of 2015, filed by the claimants for enhancement of the award, is dismissed, and C.M.A. No. 2050 of 2015, filed by

the insurance company, is partly allowed. No costs. Consequently, the connected M.P. No. 1 of 2015 is closed.