

**(2010) 12 MAD CK 0206**

**Madras High Court (Madurai Bench)**

**Case No:** C.M.A. (MD) No. 1373 of 2008 and Cross Objection No. (MD) No. 39 of 2009

The Branch Manager, Oriental  
Insurance Company Ltd.

APPELLANT

Vs

Mascomalar and Others

RESPONDENT

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**Date of Decision:** Dec. 21, 2010

**Hon'ble Judges:** R. Subbiah, J; R. Banumathi, J

**Bench:** Division Bench

**Advocate:** P. Ramani, for Respondent No. 1 to 3 in C.M.A. No. 1373/2008 and Cross Objection No. 39/2009, for the appearing parties; M. Thirunavukkarasu, for Respondents 1 and 2 in C.M.A. No. 1374/2008, for the Respondent

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### **Judgement**

R. Subbiah, J.

These appeals arise out of a common award, dated 27.08.2004 made in MCOP. Nos. 72 and 110 of 2004 passed by the Motor Accident Claims Tribunal (Principal District Court) Virudhunagar at Srivilliputhur. These appeals are filed by the Appellant insurance company challenging the quantum of compensation awarded by the tribunal in both the claim petitions.

2. The Respondents in C.M.A. No. 1373 of 2008 have filed Cross Objection No. 39 of 2009 for enhancement of the award amount stating that the compensation awarded by the tribunal is not adequate.

3. Brief facts which are necessary to decide the appeals are as follows :

a)The Respondents 1 to 3 in C.M.A. No. 1373 of 2008 are the wife and minor children and the Respondents 1 and 2 in C.M.A. No. 1374 of 2008 are the parents of the deceased. The wife and minor children of the deceased made a claim for a sum of Rs. 32 lakhs as compensation in MCOP. No. 72 of 2004 and the parents of the deceased made a claim for a sum of Rs. 15 lakhs as compensation in MCOP. No. 110 of 2004 before the Tribunal. In the claim made by the wife and minor children of the deceased, the Tribunal awarded a sum of Rs. 19,33,000/- and in the claim made by

the parents of the deceased, the Tribunal awarded a sum of Rs. 2,50,000/- as compensation, thus totally to a sum of Rs. 21,83,000/-.

b) Before the Tribunal, it was case of the claimants that the deceased was working as a Post Graduate Teacher earning a sum of Rs. 12,194/- as monthly income. In order to prove the income earned by the deceased, on the side of the claimants, the Headmaster of the school was examined as P.W.3 and through whom the salary certificate of the deceased was produced and marked as Ex.P.16.

c) By placing reliance on Ex.P.16 that the deceased was earning a sum of Rs. 12,194/- and considering the future prospects of the deceased, the Tribunal by adding 50% of the salary amount, fixed the monthly income as Rs. 18,000/- and applying multiplied "15" arrived at a sum of Rs. 21,60,000/- after deducting 1/3 amount towards personal expenses of the deceased as total loss of dependency. That apart, the Tribunal by adding another sum of Rs. 10,000/- towards "loss of consortium", Rs. 10,000/- for "loss of love and affection" and Rs. 3,000/- for "funeral expenses" awarded a sum of Rs. 21,83,000/- as compensation. The said amount was apportioned by granting Rs. 8,33,000/- to the first Respondent/wife of the deceased, Rs. 5,50,000/- each to the Respondents 2 and 3/minor children of the deceased and Rs. 1,25,000/- each to the parents of the deceased. Aggrieved over the same present appeals have been filed.

4. Learned Counsel appearing for the Appellant submitted that when the salary certificate produced by the Respondents reveals that the deceased was earning only Rs. 12,194/- per month, the Tribunal ought not to have added another 50% of the amount towards future prospects which ultimately resulted in awarding of exorbitant sum as compensation. Hence, by reducing 50% of the salary amount fixed by the Tribunal which added for the future prospects, the amount awarded by the Tribunal has to be modified. That apart, learned Counsel appearing for the Appellant submitted that the Tribunal while calculating the amount under head of loss of dependency has failed to deduct the amount towards "tax deductions". Therefore, on that ground also the amount awarded by the Tribunal, needs modification.

5. Per contra, learned Counsel appearing for the Respondents 1 to 3/cross objectors by placing reliance on the judgment reported in 2010 (4) TAC 1(SC) (Leela Gupta and Ors. v. State of Uttar Pradesh and Ors.) submitted that the Tribunal while considering the future prospects ought to have added entire salary towards future prospects and ought to have made the calculation on that basis. But in the instant case, the Tribunal has taken only 50% of the salary amount towards future prospects. Hence by fixing a sum of Rs. 24,000/- i.e., double the salary, the compensation awarded by the Tribunal has to be enhanced.

6. Heard the learned Counsel appearing on either side and perused the materials available on record.

7. In view of the submission made on either side, the only question that has arisen for consideration is whether the monthly salary fixed by the Tribunal for "future prospects" needs further reduction or further enhancement.
8. The judgment reported in 2009(4) MLJ 997 (SC) (Sarla Verma and Ors. v. Delhi Transport Corporation and another) is squarely applicable to this question. In the said case, it has been held that the Courts can take note of future prospects and it will be unreasonable to estimate loss of dependency on actual income of the deceased at the time of death. In our opinion, the amount fixed by the Tribunal, by taking 50% of the salary towards "future prospects" is well in consonance with the dictum laid down by the Hon"ble Supreme Court in the judgment cited supra.
9. The judgment relied upon by the learned Counsel appearing for the Respondents 1 to 3/cross objectors reported in 2010 (4) TAC 1(SC) (Leela Gupta and Ors. v. State of Uttar Pradesh and Ors.) in support of his submission that double the salary has to be taken into consideration while fixing the amount towards future prospects, is not applicable to the present case since in the said case only lessor amount of Rs. 2,260/- per month was taken into consideration while fixing the amount towards future prospects and only in those circumstances, double the amount was fixed as monthly income.
10. It is well settled principle that each case has to be decided on the facts of that case. In the instant case, when the Tribunal has fixed a higher sum of Rs. 12,194/- as monthly salary, we do not find any justification in the submission made by the learned Counsel for the Respondents 1 to 3 that double the salary has to be taken into consideration while fixing the amount towards "future prospects".
11. Applying the ratio laid down in Smt. Sarla Verma's case, for future prospects 50% of the salary of the deceased is to be added towards his salary. As pointed out earlier, the deceased was getting Rs. 12,194/- per month rounded off to Rs. 12,000/-. Adding 50%, the total income of the deceased is calculated at Rs. 18,000/- (Rs. 12,000 + Rs. 6,000) per month. However, we find that the Tribunal has failed to deduct the amount towards tax deductions. In our considered opinion, since the deceased was in the income tax zone, 10% deduction is to be made towards the income tax. Thus, deducting Rs. 1,800/-, the total income is calculated at Rs. 16,200/- per month. Deducting 1/3 for personal expenses, 1/3rd of Rs. 16,200/- i.e., Rs. 5,400/- the loss of dependency is calculated at Rs. 10,800/-. If multiplier "15" is taken into consideration, the loss of dependency is calculated at Rs. 1,62,000/- [Rs. 10800 x 12 x 15]. Hence, the compensation amount of Rs. 21,60,000/- awarded by the Tribunal towards loss of dependency is hereby reduced to Rs. 1,62,000/-.
12. Insofar as the amount of Rs. 10,000/- awarded by the Tribunal towards "loss of love and affection" we are of the opinion that the said amount cannot be said to be adequate compensation. Hence, we are of the opinion, a sum of Rs. 10,000/- each has to be awarded for the Respondents 2 and 3/minor children and parents of the

deceased (Respondents in C.M.A. No. 1374 of 2008). Accordingly, a sum of Rs. 40,000/- for "loss of love and affection" is awarded. However, we find that a sum of Rs. 3,000/- awarded by the Tribunal towards funeral expenses is on the lower side and hence, the same is hereby enhanced to Rs. 6,000/-.

13. The break up details of the award are as follows :

	Rs .
For Loss of dependency ..	19,44,000/-
For Loss of love and affection ..	40,000/-
For Loss of Consortium	10,000/-
For Funeral expenses ..	6,000/-
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Total	20,00,000/-
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14. Accordingly, the appeals are modified reducing the award to Rs. 20,00,000/- from Rs. 21,83,000/- awarded by the Tribunal. The Cross Objection No. 39 of 2009 is dismissed.

15. In view of the above modification, the first Respondent is entitled to a sum of Rs. 8,00,000/-, the minor children Respondents 2 and 3 are entitled to a sum of Rs. 5,00,000/- each and the parents of the deceased are entitled to a sum of Rs. 1,00,000/- each. The wife and parents of the deceased are permitted to withdraw their respective shares and so far as the shares of the minor children Respondents 2 and 3 are concerned, the Tribunal is directed to invest the same in any one of the nationalised banks in a reinvesting scheme, till they attain majority, the first Respondent/the mother of the minor children/Respondents 2 and 3 is permitted to withdraw the accrued interest once in three months. No costs.