

MUNUSAMY & ORS.

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v.

THE MANAGING DIRECTOR, TAMIL NADU
STATE TRANSPORT CORPORATION (VILLUPURAM) LTD.

(Civil Appeal No. 1754 of 2018)

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FEBRUARY 09, 2018

**[DIPAK MISRA CJI, A. M. KHANWILKAR AND
DR. D. Y. CHANDRACHUD, JJ.]**

Motor Vehicles – Motor Accident Claim – Compensation – Computation of – Claim for enhancement – Deceased, around 21 years of age, was riding a motorcycle along with his friend when they collided with a bus belonging to respondent-Corporation – Plea of appellants that compensation granted by High Court be further enhanced as High Court did not provide for future prospects while computing the compensation amount under the head ‘loss of dependency’ – Held: Applying the dictum of Constitution Bench in National Insurance Company Ltd. case, the claim of appellants for grant of future prospects at the rate of 40% of the established income is justified – High Court took the earning of deceased at the relevant time as Rs.4,000/- p.m., but did not provide 40% towards future prospects on the established income of the deceased – Thus, in the facts of the present case, monthly loss of dependency would be Rs.4,000 + 1,600 = Rs.5,600/- – Amount awarded by High Court towards loss of dependency accordingly stands modified from Rs.4,32,000/- to Rs.6,04,800/- with interest @ 9% p.a. – Respondent to deposit the entire award amount with interest @ 9% p.a., less the amount already deposited if any – Appellants shall be entitled to the compensation in the proportion specified by Tribunal.

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Allowing the appeal, the Court

HELD: 1.1 Applying the dictum of the Constitution Bench decision in *National Insurance Company Ltd.* case, the appellants are justified in insisting for grant of future prospects at the rate of 40% of the established income. The High Court had held that the earning of the deceased at the relevant time could be taken as Rs.4,000/- per month. The High Court did not provide 40%

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A towards future prospects on the established income of the deceased. Thus, the monthly loss of dependency, in the facts of the present case would be Rs.4,000 + 1,600 = Rs.5,600/-. In other words, instead of amount awarded by the High Court towards loss of dependency in the sum of Rs.4,32,000/-, the same would stand modified to Rs.6,04,800/- along with interest at the rate of 9% per annum. Other directions given by the High Court in respect of other heads are not being disturbed. Accordingly, respondent Transport Corporation must deposit the additional amount of compensation of Rs.1,72,800/- along with interest, as awarded, within a period of eight weeks from the date of receipt of the copy of this judgment in the Court of Additional District & Sessions Judge, Fast Track Court-IV, Chennai (Motor Accident Claims Tribunal, Chennai). [Paras 5, 6][634-F-H]

National Insurance Company Ltd. v. Pranay Sethi and Ors. AIR 2017 SC 5157– followed.

D 1.2 The compensation awarded by the High Court is enhanced from Rs.5,01,500/- to Rs.6,74,300/- [Rupees six lakh seventy four thousand three hundred only]. The respondent Transport Corporation is directed to deposit the entire award amount as indicated above with interest at 9% (nine percent) per annum less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment and the appellants shall be entitled to the compensation in the proportion specified by the Tribunal. [Para 8][635-C-E]

F Case Law Reference

AIR 2017 SC 5157 followed Para 5

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G From the Judgment and Order dated 16.04.2013 of the High Court of Judicature at Madras in C.M.A. No. 2819 of 2012.

K. V. Jagdishvaran, Ms. G. Indira, Advs. for the Appellants.

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The Judgment of the Court was delivered by A

A. M. KHANWILKAR, J. 1. This appeal emanates from the judgment and order passed by the High Court of Judicature at Madras dated 16.04.2013 in C.M.A. No.2819 of 2012. The High Court allowed the prayer for grant of enhanced compensation amount in favour of the appellants. The appellants seek further enhancement of compensation amount on the ground that the High Court has not provided for future prospects, while computing the compensation amount. The appellants rely upon the recent decision of the Constitution Bench of this Court in the case of *National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*¹ to buttress their submission. B C

2. Before we deal with the grievance of the appellants, it is apposite to reproduce the relevant extract of the impugned judgment which reads thus:

“7. We have heard the learned counsel for the respondent on the above submission. D

8. In the absence of specific proof of employment, the Tribunal rightly has taken the earning of the deceased at Rs.4,000/- per month and deducted 50% towards personal expenses since the deceased were bachelors. However, the proper multiplier to be adopted in the case must be 18, since the deceased were 21 and 20 years respectively. A sum of Rs.20,000/- to each of the claimants towards loss of love and affection and a further sum of Rs.5,000/- towards transport expenses were granted. E

9. Accordingly, in C.M.A. No.2819 of 2012 compensation payable would be as follows: F

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|-----|--|------------------|---|
| (a) | Loss of Dependency (Rs.4,000/-×12×18) | Rs.4,32,000/- | |
| (b) | Loss of love and affection | Rs. 60,000/- | |
| (c) | Transport | Rs. 5,000/- | |
| (d) | Funeral | Rs. 2,000/- | G |
| (e) | Loss of estate | Rs. 2,500/- | |
| | Total | = Rs.5,01,500/-” | |

¹AIR 2017 SC 5157

A 3. On perusal of the judgment under appeal, it is evident that the
High Court has not provided for future prospects while computing the
compensation amount under the head 'loss of dependency'. The
necessity to provide future prospects has been expounded by the Con-
stitution Bench of this Court in *National Insurance Company Ltd.*
B (supra). It will be useful to reproduce paragraph No.59 of the said
judgment, which reads thus:

C *"59. Having bestowed our anxious consideration, we are
disposed to think when we accept the principle of
standardization, there is really no rationale not to apply the
said principle to the self-employed or a person who is on a
fixed 44 salary. To follow the doctrine of actual income at the
time of death and not to add any amount with regard to future
prospects to the income for the purpose of determination of
multiplicand would be unjust. The determination of income
while computing compensation has to include future prospects
so that the method will come within the ambit and sweep of
just compensation as postulated under Section 168 of the Act.
In case of a deceased who had held a permanent job with
inbuilt grant of annual increment, there is an acceptable
certainty. But to state that the legal representatives of a
deceased who was on a fixed salary would not be entitled to
the benefit of future prospects for the purpose of computation
of compensation would be inapposite. It is because the
criterion of distinction between the two in that event would
be certainty on the one hand and staticness on the other. One
may perceive that the comparative measure is certainty on
the one hand and uncertainty on the other but such a
perception is fallacious. It is because the price rise does affect
a self-employed person; and that apart there is always an
incessant effort to enhance one's income for sustenance. The
purchasing capacity of a salaried person on permanent job
when increases because of grant of increments and pay
revision or for some other change in service conditions, there
is always a 45 competing attitude in the private sector to
enhance the salary to get better efficiency from the employees.
Similarly, a person who is self-employed is bound to garner
his resources and raise his charges/fees so that he can live
with same facilities. To have the perception that he is likely to*

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remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of 46 percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.”

Again, in the concluding paragraph No.61 the Court observed thus:

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

** * **

(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 48 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.

A *(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
B *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.”

 4. On 03.03.2007, the deceased (Palani), who was only around
21 years of age at the time, was riding a motorcycle bearing Registration
No. TN-22 AP 5092 along with his friend, one Haridass as a pillion rider,
C from Tambaram to Chengalpattu on GST Road, Maraimalai Nagar,
 opposite Vikram Hotel, when they collided with a bus bearing Registration
 No. TN-21 N 0943 belonging to the respondent Transport Corporation,
 which was driven in a rash and negligent manner. The deceased was
 unmarried and working as a contract worker in Hyundai Car Company,
D Sriperumbudur. Applying the dictum of the Constitution Bench referred
 to above, the appellants are justified in insisting for grant of future
 prospects at the rate of 40% of the established income. The High Court
 has held that the earning of the deceased at the relevant time can be
 taken as Rs.4,000/- per month. The High Court did not provide 40%
 towards future prospects on the established income of the deceased.
E Thus, the monthly loss of dependency, in the facts of the present case
 would be $Rs.4,000 + 1,600 = Rs.5,600/-$.

 5. In other words, instead of amount awarded by the High Court
 towards loss of dependency in the sum of Rs.4,32,000/-, the same will
 stand modified to Rs.6,04,800/- (Rupees six lakh four thousand eight
F hundred only) along with interest at the rate of 9% (nine percent) per
 annum. We are not disturbing the other directions given by the High
 Court in respect of other heads.

 6. Accordingly, the respondent Transport Corporation must
 deposit the additional amount of compensation of Rs.1,72,800/- (Rupees
G one lakh seventy two thousand eight hundred only) along with interest,
 as awarded in the preceding paragraph, within a period of eight weeks
 from the date of receipt of the copy of this judgment in the Court of
 Additional District & Sessions Judge, Fast Track Court-IV, Chennai
 (Motor Accident Claims Tribunal, Chennai).

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7. In other words, the compensation payable to the appellants would be as follows: A

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|---|-----------------|
| (a) Loss of Dependency [Rs.5,600 – 50% of 5600)×12×18] | Rs.6,04,800/- |
| (b) Loss of love and affection | Rs. 60,000/- |
| (c) Transport | Rs. 5,000/- |
| (d) Funeral | Rs. 2,000/- |
| (e) Loss of estate | Rs. 2,500/- |
| Total | = Rs.6,74,300/- |

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8. As a result, the Appeal stands allowed. The compensation awarded by the High Court is enhanced from Rs.5,01,500/- to Rs.6,74,300/- [Rupees six lakh seventy four thousand three hundred only]. The respondent Transport Corporation is directed to deposit the entire award amount as indicated above with interest at 9% (nine percent) per annum less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment and the appellants shall be entitled to the compensation in the proportion specified by the Tribunal. The first and second appellants are entitled to withdraw the amount deposited upon verification of due application and the share of the third appellant (minor) shall be deposited in any of the nationalised banks till she attains majority and the second claimant/mother is entitled to withdraw interest thereon once in three months towards meeting the needs of the minor. Upon turning 18, the minor appellant is entitled to withdraw her respective share.

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9. Accordingly, the appeal is allowed in the aforementioned terms with no order as to costs.

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