IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2014

CORAM

THE HON'BLE MR.JUSTICE V.DHANAPALAN
and
THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.1349 of 2013,
Cros.Obj.No.97 of 2013
and M.P.No.1 of 2013
in
C.M.A.No.1349 OF 2013

Shriram General Insurance Co. Ltd.,
Corporate Office,
E-8, EPIP, RIICO Sitapura,
Jaipur-302 022. ... Appellant in CMA.No.1349/13 and 1st Respondent in Cross Objection 97/2013/ 2nd Respondent

-vs-

1. S.Padmini
2. T.P.Kavin Kumar (Minor)
3. T.P.Rooobesh (Minor)
(Minors 2 and 3 represented by their mother S.Padmini as guardian and next friend)

4. Kamala ... Respondents 1 to 4 in CMA.No.1349/13 and Cross Objectors in Cross Objection 97/13 / Claimants.

5. M.Senthilkumar ... 5th Respondent in CMA.No.1349/13 and 2nd Respondent in Cross Objection 97/2013 / 1st Respondent

(5th Respondent remained ex-parte in Lower Court)

Prayer in CMA 1349/2013: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act against the Judgment and Decree passed in M.C.O.P.No.900 of 2010 dated 05.07.2012 on the file of the Motor Accident Claims Tribunal (Sub-Court), Poonamallee.

Prayer in Cross Objection 97/2013: Cross Objection Petition is filed under Order XLI Rule 22 of CPC against the Decree and Judgment dated 05.07.2012 made in M.C.O.P.No.900 of 2010 on the file of the Motor Accident Claims Tribunal (Sub-Court), Poonamallee.

For Appellant in C.M.A. And 1st Respondent in Cross Objection : Mr.B.Murugavel

For R1 to R4 in C.M.A. and Cross Objectors in Cross Objection : Mr.K.Varadha Kamaraj

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by V.Dhanapalan,J.,)

This Civil Miscellaneous Appeal arises against the Judgment and Decree passed in M.C.O.P.No.900 of 2010 dated 05.07.2012 on the file of the Motor Accident Claims Tribunal (Sub-Court), Poonamallee. The claimants have also filed an appeal by way of Cross Objection against the very same judgment and decree.

2. The appellant insurance company was the 2nd respondent before the Tribunal. The respondents 1 to 4 / claimants are wife, minor children and mother of the deceased Tamilarasu respectively, who, while travelling in a car bearing Regn.No.TN-45-AL-5511 from Chennai to Perambakkam to purchase house sites, met with an accident on 19.06.2010 at about 02.45 p.m on account of the rash and negligent driving of the driver of Eicher Van bearing registration No.TN-37-X-4772, coming from north to south direction, due to which, the deceased had died on the spot. The deceased aged 38 years was an Assistant Section Officer in Tamil Nadu Secretariat and was earning a sum of Rs.20,865/- per month. The 1st respondent / 5th respondent herein is the owner of the Van. The petitioners / claimants, by filing claim petition before the Tribunal, sought compensation of a sum of Rs.50,00,000/-.

3. Before the Tribunal, on behalf of the claimants, five witnesses were examined and 37 exhibits were marked. On behalf of the appellant / insurance company, one witness was examined and an exhibit was marked.

4. On appreciation of materials before it, the Tribunal awarded compensation of a sum of Rs.29,23,952/- together with interest at 7.5% p.a. from the date of petition till the date of deposit and the break-up details are as follows:

Loss of Income (Rs.2,20,304/- x 13)	- Rs.	28,63,952/-
Loss of consortium	- Rs.	20,000/-
Loss of love and affection (Rs.10,000x3)	- Rs.	30,000/-
Funeral expenses	- Rs.	10,000/-
Total	- Rs.	29,23,950/-

The said award is being challenged by the appellant / Insurance Company on the following grounds:

i) that the cause of the accident was due to the negligent driving of the car, in which the deceased travelled and not due to the driver of the Eicher Van;

ii) that the learned Tribunal erred in taking 50% of the last drawn salary of the deceased in arriving at the loss of income.

The claimants / petitioners have also filed Cross Appeal for enhancement of the amount awarded to them.

5. Learned counsel for the appellant / 2nd respondent would submit that the award passed by the Tribunal is unsustainable insofar as fixing the entire liability on the appellant / insurance company, when there is a clear proof of violation of terms and conditions of the policy. He has also submitted that without any proof or material to substantiate the income of the deceased, the Tribunal derived at the annual income of the deceased as Rs.2,20,304/-, which is wholly unsustainable.

6. On the other hand, learned counsel appearing for the claimants / respondents has vehemently contended that the Tribunal, though perused all oral and documentary evidence, has granted a lesser sum as compensation towards loss of consortium and also contended that the multiplier is wrong as to the age of the deceased. He has further contended that in view of lesser fixation of the amount, the claimants have come out with the cross appeal. However, he has fairly conceded that the claimants have restricted the claim in the cross appeal to a sum of Rs.9,00,000/-.

7. We have heard the learned counsel on either side and perused the material documents available on record.

8. A circumspection of the fact would reveal that on 19.06.2010 at 02.45 hours, the deceased Tamilarasu, who, while travelling in a car bearing Regn.No.TN-45-AL-5511 from Chennai to Perambakkam to purchase house sites, met with an accident on 19.06.2010 at about 02.45 p.m on account of the rash and negligent driving of the driver of Eicher Van bearing registration No.TN-37-X-

4772 coming from north to south direction, due to which, the deceased had died on the spot. As against the claim of a sum of Rs.50,00,000/- the Tribunal has awarded a sum of Rs.29,23,952/- as compensation. Aggrieved over the same, the appellant / Insurance Company is before this Court for determination of their liability and quantum of compensation, by this Court.

9. To support its contention, appellant / 2nd respondent has made a statement to the effect that the driver of the car had no valid driving licence and therefore, the appellant is not liable to pay any compensation to the claimants.

10. The Tribunal, on looking into the claim and rival submissions, has framed the following two questions for consideration:

i) Whether the accident had happened due to rash and negligent act of the driver of the Eicher Van?

ii) Whether the claimants / respondents are entitle to any compensation and if so, what is the quantum?

11. The Tribunal has firstly examined the negligence aspect. The van insured with the appellant insurance company and the car in which the deceased travelled, were driven by the driver and the deceased respectively. The claim petition before the Tribunal was filed by the claimants / petitioners under Sections 166 of Motor Vehicles Act, which makes a provision for application for compensation arising out of an accident, which after few amendments reads as under:

> "Section 166 – Application for compensation:-
>
> (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may made-
>
> (a) by the person who has sustained the injury; or
>
> (b) by the owner of the property; or
>
> (c) where death has resulted from the accident, by all or any of the Legal Representatives of the deceased; pr
>
> (d) by any agent duly authorised by the person injured or all or any of the Legal Representatives of the deceased, as the case may be:
>
> Provided that where all the Legal Representatives of the deceased have not joined in any such Application for compensation, the Application shall be made on behalf of or for the benefit of all the Legal Representatives of the deceased and the Legal Representatives who have not so joined, shall be impleaded as Respondents to the Application.

(2) Every Application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under Section 140 is made in such Application, the Application shall contain a separate statement to that effect immediately before the signature of the Applicant."

In an application filed under Section 166, claiming compensation, it is necessary for a claimant to prove negligence on the part of the driver or owner of the vehicle. The burden is on the claimant to establish the negligence on the part of the driver or owner of the vehicle and on proof thereof, the claimant is entitled to compensation.

12. Keeping in mind the above, in order to arrive at a firm decision in respect of 1st point, the Tribunal has first analyzed the cause for the death of the deceased in the accident and examined P.Ws.1 to 4, who also sustained injuries in the said accident. According to P.W.2, while travelling in an Indica Car bearing Regn. No.TN-45-AL-5511 from east to west to visit the housing plots, an Eicher Van bearing Regn.No.TN-37-X-4772 dashed against them, due to which, his friend / the deceased herein died on the spot and he and other inmates of the car sustained injuries. P.Ws.3 and 4 also deposed the same version as that of P.W.2. A copy of FIR was also marked as Ex.P1, which stood registered against the driver of the Eicher Van and a final report in Ex.P11 was also filed before concerned Magistrate against him. No contra evidence has been let in by the appellant / insurance company therein. Apart from this, Ex.P3 / rough sketch also discloses that the Eicher Van exceeded the centre of road and dashed against the car, which came on the right path. Having agreed and inspired with the oral and documentary evidence, the Tribunal held that the accident occurred solely due to the rash and negligent driving of the driver of the Eicher Van, resulting in the death of Tamilarasu and sustainment of injuries by P.Ws.2 to 4.

13. The Hon'ble Supreme Court, while deciding the factor and circumstances of negligence in the case of Vijay Kumar Kulhar vs Rajasthan State Road Transport (C.A. @ S.L.P.(C)Nos.3889 & 3890 of 2008) decided on 27.07.2009, has held as under:

"17. P.W.5 Ghosh Mohammad driver of RSRTC Bus had lodged a report in the Police Station, Jhunjhunu in respect of the accident, registered as FIR No. 33/83 for the offence

under Section 279 IPC against the present appellant. Exh. 26 is the said report. No doubt, it is true that appellant has been acquitted of the said offence but nothing turns on his acquittal.

18. After the receipt of the report, police had prepared a spot map Exh.1 wherein it has been noticed that left side of the truck had hit the right side of the bus, as a result whereof, the bus was found in hanging position on the left side of the bridge.

19. The mechanical examination report of the truck is marked as Exh. 37 in which it has been noticed that the mudguard on the left side of the truck was dented and there were marks of peeling off and dents on the left side gate of the truck.

20. Exh. 38 is the mechanical examination report of the bus according to which front portion of the bus was damaged and was lying on the floor, the steering control was also lying broken and there were damages on the right side of the bus.

21. From the aforesaid evidence, it is clearly made out that left side of the truck collided with right side of the bus and then it reached the main road. P.W.1 Mahinder Kumar Sharma conductor of the bus and P.W.5, driver of the bus have deposed in one voice that the bus was going at a moderate speed whereas the truck came at a high speed and dashed violently to the rear right side of the bus as a result of which the bus dashed against the bridge and broke the wall and was lying in a hanging position.

22. After carefully going through the FIR, the inspection reports of both the vehicles and the oral evidence available on record, it is clearly made out that it was truck driven by the appellant which had come in a rash and negligent manner from behind and while attempting to overtake the bus had dashed against it causing damage.

23. Once it is held that the accident was caused on account of rash and negligent driving of the truck by the appellant, then obviously the appellant would be liable to pay the amount of compensation, which has been assessed by learned Single Judge at Rs. 40,000/-."

14. The Hon'ble Karnataka High Court has also elaborately dealt with the negligence aspect in M.N. Rajan and others vs Konnali Khalid Haji and another, reported in [ILR 2004 KAR 3731]. The relevant portion of the judgment is as under:

"23. A Division Bench of this Court in the case of GENERAL MANAGER, BANGALORE TRANSPORT SERVICE v. N. NARASIMHAIAH AND ORS., 1976 ACJ 379 held as follows:

"If it is found that the negligent act of omission of a driver was the proximate and efficient cause of an accident, it will not be a valid defence to say that the person injured was also negligent unless it is shown that the person injured had made it extremely difficult for the other to avoid the accident. In this case the evidence of the witness referred to above clearly establishes that Raju was riding the cycle along when the vehicle came from behind him and dashed against the cycle. The evidence of the driver of the bus, if scrutinized carefully, clearly goes to show that he did not see at all how the accident happened. It is only after he heard the sound he stopped the bus. Therefore, his story that it was due to the negligence of Raju the accident happended cannot be believed. A person driving a motor vehicle on a busy road like the one in question must drive the vehicle with reasonable care strictly observing the traffic regulations and the rules of the road so as not to imperil the safety of the other persons whether they are pedestrians or cyclists or others who have a similar right to use the highways on which he drives it.

24. It is well settled that the burden of establishing the defence of contributory negligence is on the defendant who admits that on account of the conduct of the plaintiff, his negligence had gone into the background and it was the conduct of the plaintiff that resulted in the accident; it is not for the claimant to disprove it. In the case of SHARADA BAI v. KARNATAKA STATE ROAD TRANSPORT CORPORATION (supra) speaking about the burden of proving contributory negligence, the Court held: "The burden of proving contributory negligence is on the cross-objectors in this case. It is not for the Appellant to disprove it. If the tort-feasor's negligence or breach of duty is established as causative of the damage, the onus is on him to establish that the victim's contributory-negligence was a substantial or cooperating cause. In order to establish the defence of contributory negligence the propounder of that defence must prove, first, that the victim failed to take reasonable care of himself or, in other words, such care as a man of ordinary prudence would have done and that was a contributory-cause of the accident. The amount of care which a person could reasonably be expected to take, must needs vary with the circumstances and the conditions actually prevailing at the material point of time. However, it is relevant to note that, in order to discharge the

burden of proof, it is unnecessary for the propounder of that defence to adduce evidence about the matter. Contributory negligence can be - and very often is- inferred from the evidence adduced already on the claimants behalf or from the perceptive facts, either admitted or found established, on a balance of probabilities in the case.

25. In this case, there is neither pleading nor any proof of contributory negligence. Further, contributory negligence on the part of the deceased or the driver of the motor cycle cannot be inferred on the basis of the evidence on record. In the case of DARYAOBAI AND ORS. v. MADHYA PRADESH STATE ROAD TRANSPORT CORPORATION, 1996 ACJ 1233 a Division Bench of the Madhya Pradesh High Court while holding that if the driver of the vehicle involved in the accident is not examined in the case, an adverse influence can be drawn, was pleased to observe that - "The statement of Kanhaiya Lal as corroborated by the statement of Amol Das goes to prove that the accident had occurred due to rash and negligent driving of the vehicle by the driver of the jeep. It may also be observed here that if a party specially the owner of the vehicle fails to examine the driver of the vehicle involved in the accident, an adverse inference will have to be drawn. This is not the case of respondent Union of India that the driver is not available or his attendance could not be procured despite efforts being made. Thus, it would be deemed that the driver of the jeep was purposely withheld and was not produced in the court for examination and cross-examination. In such a situation, we are inclined to believe Kanhaiya Lal and Amol Das that goes to prove that the accident occurred due to rash and negligent driving of the jeep owned by the Union of India. Even otherwise, it is the driver of the vehicle which is required to keep constant vigil on the road and vehicle coming from opposite direction including other vehicles overtaking the vehicle driven by him and, therefore, he is the best person to depose about the manner of accident. We are, therefore, not in agreement with the finding of the learned Tribunal and further hold that the accident occurred due to rash and negligent driving of the vehicle by the driver of the jeep of Narcotics Department."

In this case also, evidence of PW-2 proves that the accident had occurred due to rash and negligent driving of the lorry by its driver. Quite curiously, the driver of the lorry was not examined by the owner or insurer of the vehicle. Therefore, an adverse inference can be drawn against them. Therefore, the plea of contributory negligence urged by the learned Counsel for the respondents

1 and 2 for the first time in this appeal is required to be noticed only to be rejected in limine.

15. Thus, in these circumstances, taking into consideration the oral evidence of the injured witnesses coupled with the documentary evidence namely Ex.P.3 rough sketch, which discloses that the van exceeded the center of the road and dashed against the car, which was on the right path, we have no hesitation to concur with the finding rendered by the Tribunal that the accident had in fact occurred because of the rash and negligent driving of the Eicher van by its driver.

16. The next question, which arose for consideration is as to whether the compensation to the claimants, which was ordered to be paid by the 2nd respondent / appellant insurance company is in accordance with law or not? In order to deal with the said question, the Tribunal has primarily perused the evidence of P.W.1, the wife of the deceased, who had inter alia deposed that her husband was employed as Assistant Section Officer in Secretariat and earned Rs.21,000/- per month, besides marking Ex.P3 (postmortem report) to show the age of the deceased as 38 years. In proof of the income of the deceased, Ex.P5 (last drawn pay certificate) was produced. To ascertain, as to who are all the legal heirs of the deceased, Ex.P8 (legalheirship certificate) was taken into consideration. Since the deceased is aged less than 40 years, as per the judgment of the Supreme Court rendered in Sarala Verma and others vs. Delhi Transport Corporation and another, reported in 2009 (6) S.C.C. 121, the Tribunal has added 50% of his last drawn salary of Rs.10,432.50 with the monthly income of the deceased as future prospects. Thus calculated, the annual income of the deceased would be Rs. 3,75,570/- [Rs. 31,297.50 x 12]. The Tribunal has deducted a sum of Rs.45,114/- as tax payable and arrived at the annual income of the deceased at Rs.3,30,456/-. Thereafter, one third of the amount i.e. Rs.1,10,152/- is deducted and the sum of Rs.2,20,304/- is taken as the income of the deceased to arrive at the just compensation. Thus, considering the overall circumstances, the Tribunal, after deducting 1/3rd of his income towards personal expenses has fixed the income of the deceased as Rs.27,538/- per month, thereby fixing the total loss of income to the family due to the demise of the deceased as Rs.28,63,952/-, after deducting a slap of 20% tax for the financial year 2009-2010

17. Thereafter, when the Tribunal went on to arrive at the just compensation by adopting the multiplier method, the counsel for the insurance company, the appellant herein raised two contentions. The first one is that since the deceased is a Government employee, the claimants have been provided with family pension and such sum of family pension being received by the claimants every month had to be taken into account and further amount has to be deducted from the compensation and the second contention is that the 1st claimant had

got an appointment on compassionate ground and proper deduction in the compensation should be made on this ground also. While the Tribunal rejected the 1st contention as to the deduction on account of the grant of family pension in toto, it indeed took into consideration the fact that the 1st claimant was given compassionate appointment and on that score, the Tribunal thought it fit to take 13 as multiplier instead of 15 as per the schedule. It is relevant to mention that In Sarla Verma's case, the Supreme Court had also compared the multiplier indicated in various decisions with the multiplier mentioned in the second schedule of Section 163-A of Motor Vehicles Act and identified a table. Relevant portion of the said judgment would read as under:

> "19. In New India Assurance Co. Ltd. vs. Charlie [2005 (10) SCC 720], this Court noticed that in respect of claims under section 166 of the MV Act, the highest multiplier applicable was 18 and that the said multiplier should be applied to the age group of 21 to 25 years (commencement of normal productive years) and the lowest multiplier would be in respect of persons in the age group of 60 to 70 years (normal retiring age). This was reiterated in TN State Road Transport Corporation Ltd. vs. Rajapriya [2005 (6) SCC 236] and UP State Road Transport Corporation vs. Krishna Bala [2006 (6) SCC 249]. The multipliers indicated in Susamma Thomas, Trilok Chandra and Charlie (for claims under section 166 of MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims under section 163A of MV Act (with appropriate deceleration after 50 years):

Age of deceased	Multiplier Scale as envisaged in General Manager, Kerala State Road Transport Corporat-ion, Trivandr-um v. Susamma Thomas and others, 1994(2) SCC 176	Multiplier Scale as adopted by U.P. State Road Transport Corporat-ion and others v. Trilok Chandra and others, 1996 (4) SCC 362	Multiplier Scale in U.P. State Road Transport Corporation and others v. Trilok Chandra and others, 1996(4) SCC 362 as clarified in New India Assurance Company Ltd. v. Charlie and another, 2005 (10) SCC 720	Multiplier Specified in Second Column in the Table in Second Schedule to the MV Act	Multiplier actually used in Second Schedule to M.V. Act (as seen from the quantum of compensation)
(1)	(2)	(3)	(4)	(5)	(6)
Upto 15 years	-	-	-	15	20
15 to 20 years	16	18	18	16	19
21 to 25 years	15	17	18	17	18
26 to 30 years	14	16	17	18	17
31 to 35 years	13	15	16	17	16
36 to 40 years	12	14	15	16	15
41 to 45 years	11	13	14	15	14
46 to 50 years	10	12	13	13	12
51 to 55 years	9	11	11	11	10

Age of deceased	Multiplier Scale as envisaged in General Manager, Kerala State Road Transport Corporat-ion, Trivandr-um v. Susamma Thomas and others, 1994(2) SCC 176	Multiplier Scale as adopted by U.P. State Road Transport Corporat-ion and others v. Trilok Chandra and others, 1996 (4) SCC 362	Multiplier Scale in U.P. State Road Transport Corporation and others v. Trilok Chandra and others, 1996(4) SCC 362 as clarified in New India Assurance Company Ltd. v. Charlie and another, 2005 (10) SCC 720	Multiplier Specified in Second Column in the Table in Second Schedule to the MV Act	Multiplier actually used in Second Schedule to M.V. Act (as seen from the quantum of compensation)
56 to 60 years	8	10	9	8	8
61 to 65 years	6	8	7	5	6
Above 65 years	5	5	5	5	5

20. Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas (set out in column 2 of the table above); some follow the multiplier with reference to Trilok Chandra, (set out in column 3 of the table above); some follow the multiplier with reference to Charlie (Set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in

> column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under section 166 and not under section 163A of MV Act. In cases falling under section 166 of the MV Act, Davies method is applicable.
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> 21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

18. At this juncture, it would be appropriate to consider the contention of the learned counsel for the Cross Objectors / claimants that inspite of the fact that the deceased was aged 38 years at the time of accident and the proper multiplier applicable for the said category is 15, learned Tribunal, heavily relying on the judgment of the Hon'ble Supreme Court in the case of Bhakra Beas Management Board vs. Kanta Aggarwal and others, reported in 2008 ACJ 2372, had adopted the multiplier of 13, on account of grant of compassionate appointment to the 1st claimant, which decision as to the application of multiplier cannot be accepted and also goes against the ruling of the Hon'ble Supreme Court and provisions laid down under the Schedule to the Act.

19. It is also submitted that the amount awarded towards loss of consortium is very meagre and that may be enhanced as per the recent judgment of the Hon'ble Supreme Court in the case of Rajesh and others vs. Rajbir Singh and others, reported in 2013 (2) TN MAC 55 (SC) and the minor children could also be compensated with reasonable amount for the loss of love and affection.Keeping this contention in mind, when we go through the order passed by the Motor Accidents Claims Tribunal, we could see that the Tribunal has taken 13 as the multiplier though the appropriate multiplier for the age group of the deceased in this case is 15 as per the decision rendered in Sarala Verma, cited supra. Though the Tribunal has given a reason for such an act stating that the 1st claimant had got an appointment on compassionate ground, we are afraid that we may not be able to approve such a view taken by the Tribunal, in the light of the

decision of the Supreme Court rendered in Vimal Kanwar vs. Kishore Dan reported in 2013 (AIR) SC 3830 wherein it was held that,

" 20. The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction." "Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

20. The Hon'ble Supreme Court also in the case of Reshma Kumari vs. Madan Mohan, reported in 2013 (2) CTC 680 has held as under:

"39. We have noticed herein before that in Patricia Jean Mahajan and Abati Bezbaruah and the other cases following them multiplier specified in the Second Schedule has been taken to be guiding factor for calculation of the amount of compensation even in a case under Section 166 of the Act. However, in Shanti Pathak8 this Court advocated application of lesser multiplier, although no legal principle has been laid therein.

40. In Trilok Chandra, this Court has pointed out certain purported calculation mistakes in the Second Schedule. It, however, appears to us that there is no mistake therein. Amount of compensation specified in the Second Schedule only is required to be paid even if a higher or lower amount can be said to be the quantum of compensation upon applying the multiplier system.

41. Section 163-A of the 1988 Act does not speak of application of any multiplier. Even the Second Schedule, so far as the same applies to fatal accident, does not say so.

The multiplier, in terms of the Second Schedule, is required to be applied in a case of disability in nonfatal accident. Consideration for payment of compensation in the case of death in a case vis-à-vis the amount of compensation payable in a case of permanent total disability and permanent partial disability in terms of the Second Schedule is to be applied by different norms. Whereas in the case of fatal accident the amount specified in the Second Schedule depending upon the age and income of the deceased is required to be paid where for the multiplier is not to be applied at all but in a case involving permanent total disability or permanent partial disability the amount of compensation payable is required to be arrived at by multiplying the annual loss of income by the multiplier applicable to the age of the injured as on the date of determining the compensation and in the case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) of the Second Schedule.

42. The Parliament in its wisdom thought to provide for a higher amount of compensation in case of permanent total disablement and proportionate amount of compensation in case of permanent partial disablement depending upon the percentage of disability.

43. Thus, prima facie, it appears that the multiplier mentioned in the Second Schedule, although in a given case, may be taken to be a guide but the same is not decisive. To our mind, although a probable amount of compensation as specified in the Second Schedule in the event the age of victim is 17 or 20 years and his annual income is Rs. 40,000/-, is heirs/legal representatives is to receive a sum of Rs.7,60,000/-, however, if an application for grant of compensation is filed in terms of Section 166 of the 1988 Act that much amount may not be paid, although in the former case the amount of compensation is to be determined on the basis of liability and in the later on liability. In the aforementioned situation the Courts, we opine, are required to lay down certain principles."

21. The Hon'ble Supreme Court also in the case of Hardeo Caur Vs. Rajasthan State Road Transport Corporation, 1992 ACJ 300 (SC), made it clear that the Court should award compensation by multiplying the life expectancy without making any deductions and the determination of the quantum must be liberal, not niggardly, since the law values life and limb in free country in generous scales.

22. Following the aforesaid decisions, we hereby modify the multiplier from 13 to 15 and thereby fix a sum of Rs.33,04,560/- under the head "Loss of Income".

23. It is also seen that the amount fixed towards loss of consortium, in our considered opinion, is on the lower side, as the Hon'ble Supreme Court in the case of Rajesh and others vs. Rajbir Singh and others, reported in 2013 (2) TN MAC 55 (SC), while deciding cases in respect of non pecuniary damages, was pleased to hold as under:

> "20. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santosh Devi v. National Insurance Company Limited and others, 2012 (2) TN MAC 1 (SC). We may, therefore, revisit the practice of awarding compensation under conventional heads: Loss of Consortium to the spouse, Loss of Love, care and guidance to children and Funeral Expenses. It may be noted that the sum of Rs.2,500/- to Rs.10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (2) TN MAC 1 (SC), it was held that compensation for Loss of Consortium should be in the range of Rs.5,000/- to Rs.10,000/-. In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise

adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award at least rupees one lakh for Loss of Consortium."

24. Following the above judgment and also taking into account the fact that the 1st claimant, the wife of the deceased was 31 years at the relevant point of time and she lost her husband at the young age and also taking judicial notice of the above facts, compensation awarded under the head "Loss of Consortium" is enhanced to Rs.50,000/. Similarly, we also feel that the amount of Rs.10,000/- awarded towards love and affection for each of the claimants, is inadequate and accordingly, we fix Rs.25,000/- as compensation for each of the claimants / respondents 2 to 4 under the heading "love and affection", thereby totalling Rs.75,000/-. Insofar as the amount awarded towards Funeral Expenses is concerned, it has been rightly fixed by the learned Tribunal and therefore, we are not inclined to modify same.

25. With the above modifications, the Civil Miscellaneous Petition filed by the insurance company is dismissed and the Cross Appeal of the claimants is hereby allowed in part. The new break-up details are as follows:

Sl.No.	Description	Amount awarded by Tribunal	Amount now modified by this Court
1.	Loss of Income	Rs.28,63,952/-	Rs.33,04,560/- (Rs.2,20,304 x 15)
2.	Loss of Consortium	Rs.20,000/-	Rs.50,000/-
3.	Loss of Love and Affection	Rs.30,000/-	Rs.75,000/- (Rs.25,000 x 3)
4.	Funeral Expenses	Rs.10,000/-	Rs.10,000/- (No Change)
Total		Rs.29,23,952/-	Rs.34,39,560/-

26. Thus the respondents 1 to 4 / claimants are entitled to a sum of Rs.34,39,560/- as compensation with accrued interest @ 7.5% from the date of petition till the date of realization, as apportioned by the learned Tribunal. The appellant / insurance company is directed the deposit the enhanced amount after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.900 of 2010 on the file of the Motor Accident Claims Tribunal (Sub-

Court), Poonamallee. Liberty is also granted to the appellant / insurance company to recover the amount from the insured as ordered by the learned Tribunal. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)
Dated: 7.10.2014

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
(Subordinate Judge),
Poonamallee.

+1 cc to Mr.K.Varadhakamaraj,Advocate,SR.40362.

Copy To:
The Section Officer,
V.R.Section, High Court, Madras.

Gr(co)
krd 8/10

C.M.A.No.1349 of 2013