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MALARVIZHI & ORS.

v.

UNITED INDIA INSURANCE COMPANY LIMITED & ANR.

(Civil Appeal Nos. 9196-97 of 2019)

B

DECEMBER 09, 2019

**[DR. DHANANJAYA Y. CHANDRACHUD
AND HRISHIKESH ROY, JJ.]**

C *Motor Vehicles Act, 1988 – s.166 – Person died in motor
accident – Survived by the appellants (his wife and four
daughters) – Appellants contended that the deceased derived
income from many sources including business, agricultural land
admeasuring 36.76 acres (sold in recovery proceedings after his
death) and was also wholesale dealer of cement and owned wine
shops – Sought compensation in the amount of Rs.99,90,000/- –
D Tribunal allowed the claim in the amount of Rs.59,04,000/- with
interest @ 7.5% p.a. – High Court reduced the compensation to
Rs.33,55,000/- – Held: Tribunal proceeded to determine the
agricultural income arising from 36.76 acres of land on the basis
of two judgments of the High Court, arrived at two different figures
and determined the agricultural income on an average of the two
E amounts – It superimposed a possible value of income from
agricultural land despite clear indication in the income tax returns
of the income from agricultural land – Such method not sustainable
in law – Determination must proceed on the basis of the income
tax return, where available, a statutory document on which reliance
F may be placed to determine the annual income of the deceased –
To the benefit of the appellants, the High Court proceeded on the
basis of the income tax return for the assessment year 1997-98 and
not 1999-2000 & 2000-01 which reflected reduction in the annual
income of the deceased – Tax return indicates annual income of
G Rs.2,11,131/- in the relevant assessment year – In the peculiar
circumstances of the case, Rs. 1,04,987/-, payment for prepaid
license fee to the Tamil Nadu Government having been paid
upfront and for a future period is added to the annual income of
the deceased – Thus, the net annual income of the deceased is
Rs.3,16,118/- – In accordance with Sarla Verma case, the multiplier
H applied is 13, appellant being 49 at the time of accident– Loss of*

dependency is at Rs.3,16,118 X 13= Rs.41,09,534/- – In accordance with Pranay Sethi case, Rs.15,000, 15,000 and 40,000 added for funeral expenses, loss of estate and loss of consortium respectively – Rs.50,000/- for loss of love and affection – Thus, total compensation payable to the appellants is Rs.42,29,534/- with interest @ 9% p.a. from the date of filing of the application till the date of its payment of the appellants.

Partly allowing the appeals, the Court

HELD: 1.1 The method adopted by the Tribunal is not sustainable in law. The tax return indicates an annual income of Rs 2,11,131 in the relevant assessment year. The determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for the assessment year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased. Depreciation is the deduction allowed for the decline in the real value of tangible or intangible assets over its useful life. Its value varies over time and cannot amount to tangible income for the purposes of computing annual income in a claim before the MACT. An annual amount of Rs.1,04,987 is reflected as payment for a prepaid license fee to the Tamil Nadu Government. In the peculiar circumstances of the case, this amount, having been paid upfront and for a future period is to be added to the annual income of the deceased. Thus, the net annual income of the deceased is: Rs 2,11,131 + 1,04,987 = Rs 3,16,118. [Paras 10, 12 and 13] [1091-G; 1092-A-C; 1093-B-D]

1.2 The determination of the amount payable to the appellants is as follows: (i) The deceased was self-employed and aged 49 at the time of the accident. In accordance with the Constitution Bench judgment of this Court in National Insurance Company Limited v Pranay Sethi, 25% of the annual income is to be added for future prospects. 25% of Rs 3,16,118 = 79,029.5. Annual income, accounting for future prospects, is Rs 3,16,118 + 79,029.5 = Rs 3,95,147.5; and (ii) In accordance with paragraph 30 of the decision of this Court in Sarla Verma v Delhi

- A Transport Corporation⁴, the deduction for personal expenses for a married person where the dependents are between four to six people is 1/5th or 20%. 20% of Rs 3,95,147.5 = 79,029.5. Net annual income is Rs 3,95,147.5 - 79,029.5 = Rs 3,16,118. In accordance with the judgment of this Court in *Sarla Verma*, the multiplier to be applied when the deceased is between the age group 46 to 50 is 13. The loss of dependency is calculated at Rs 3,16,118 x 13 = Rs 41,09,534. In accordance with the judgment of this Court in *Pranay Sethi*, Rs 15,000, 15,000 and 40,000 must be added for funeral expenses, loss of estate and loss of consortium respectively. The total compensation payable to the appellants is Rs 42,29,534 with interest at 9% per annum from the date of filing of the application till the date of payment of the compensation to the appellants. [Paras 14, 16] [1093-D-G; 1094-A-E]

- D *Sarla Verma v. Delhi Transport Corporation* (2009) 6 SCC 121 : [2009] 5 SCR 1098 – followed.

National Insurance Company Limited v. Pranay Sethi (2017) 16 SCC 680 – relied on.

- E *New India Assurance Company v. Yogesh Devi* (2012) 3 SCC 613 – referred to.

Case Law Reference

- | | | |
|---------------------|-------------|---------|
| (2012) 3 SCC 613 | referred to | Para 11 |
| (2017) 16 SCC 680 | relied on | Para 14 |
| F [2009] 5 SCR 1098 | followed | Para 14 |

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9196-9197 of 2019.

- G From the Judgment and Order dated 20.07.2018 of the High Court of Judicature at Madras in Civil Miscellaneous Appeal No. 1635 of 2013 and Cross Objection No. 1 of 2018

Jayanth Muth Raj, Sr. Adv., Mrs. Malavika Jayanth, Advs. for the Appellants.

- H Ravi Bakshi, Sudhir Mathur, Ms. Sayma Feroz, Shashank Kumar, C.S. Ashri, Advs. for the Respondents.

The Judgment of the Court was delivered by A

DR. DHANANJAYA Y. CHANDRACHUD, J.

1. The present appeals arise from a judgment of a Division Bench of the Madras High Court dated 20 July 2018 in a first appeal and cross-objection from the decision of the Motor Accident Claims Tribunal¹, Ranipet. B

2. The appellants are the heirs and legal representatives of Aranganathan who died as a result of a motor accident on 25 May 2001. He was travelling in an Ambassador car bearing Registration No TN 23 A 7549 which was being driven by another person. At about 12:45 am, a Tata Sierra car bearing Registration No TN 20 Z 1613 came from the opposite direction and dashed against the car of the deceased. Aranganathan was seriously injured and died during the course of the accident. He is survived by his wife and four daughters who are the appellants before this Court. C

3. The appellants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Tribunal, seeking compensation in the amount of Rs 99,90,000. By its award dated 11 July 2012, the Tribunal allowed the claim in the amount of Rs 59,04,000 together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of realization of the decreed amount. The appellants filed a first appeal before the High Court of Madras. The High Court, by its impugned judgment partly allowed the appeal of the first respondent. The High Court estimated the income of the deceased at a reduced figure of Rs 2,50,000 per annum from Rs 4,48,790.55. The total compensation awarded was thus reduced from Rs 59,04,000 to Rs 33,55,000. Aggrieved by the judgment of the High Court, the claimants are in appeal before this Court. D E F

4. The deceased was 49 years old at the time of the accident. The appellants contended that the deceased was a businessman who derived income from many sources including business and agricultural land admeasuring 36.76 acres. It was stated that the deceased was, amongst others, a wholesale dealer of cement and also owned wine shops. The land was sold in recovery proceedings after the death of the deceased. G

¹ Tribunal

A 5. The Tribunal assessed the agricultural income of the deceased
at Rs 3,40,708 per annum and the total income from business at Rs
89,590. The Tribunal added to this Rs 30,000 per annum for income
through real estate and contract business. The annual income of the
deceased was assessed at Rs 4,60,298. 30% was added to this towards
B future prospects bringing the annual income to Rs 5,98,387.40. After a
deduction of 1/4th of the total income towards living expenses, the
Tribunal used a multiplier of 13 to arrive at a compensation of
Rs.58,34,277. Damages under conventional heads, including funeral
expenses, loss of consortium and loss of love and affection were
computed at Rs 70,000. A total compensation of Rs 59,04,000 was
C awarded.

6. In appeal, the High Court concluded that on an analysis of
the income tax returns filed by the deceased for the financial years
1995-1996 to 2000-2001, the income declared for the financial year
1997-1998 was the highest and must be taken as the annual income of
D the deceased. Hence, Rs 2,09,211 was determined to be the annual
income of the deceased. Rs 40,000 per annum was added towards future
prospects. The total income was thus arrived at Rs 2,50,000 per annum.
No deduction was made towards personal expenses. Applying a
multiplier of 13, the loss of dependency was calculated to be Rs
E 32,50,000. To this, funeral expenses, loss of consortium and loss of love
and affection were added in the amount of Rs 1,05,000. A total
compensation of Rs 33,55,000 was awarded.

7. Assailing the reduction of the compensation, Mr Jayanth Muth
Raj, learned Senior Counsel appearing on behalf of the appellants has
F contended:

- G (i) The High Court has held that income tax returns take
precedence over other documents in the determination
of annual income. Over 52 documents were marked
before the Tribunal demonstrating income from various
sources, all of which were not disclosed in the income
tax returns;
- H (ii) The High Court erred in not considering other
contractual work awarded to the deceased and other
solvency certificates of the deceased in the computation
of his annual income;

- (iii) Even assuming that the High Court is justified in taking the income reflected in the tax return for the financial year 1997-1998 as the determinant, the High Court has erred in not accounting for the depreciation costs on fixed assets which have been reflected therein; and A
- (iv) The High Court ought to have calculated the monthly income of the deceased at Rs 50,000 taking into account the turnover from his trade and wine business. B

8. On the other hand, learned counsel for the respondents contended:

- (i) The High Court is justified in according precedence to the income tax returns of the deceased to determine his annual income; C
- (ii) There is no merit in the contention that the appellant has suffered a loss on account of the sale of properties for the settling of the debt owed to banks; D
- (iii) Depreciation on fixed assets cannot be added to the income of the deceased; and
- (iv) The award of the High Court is legally sustainable and calls for no interference by this Court. E

9. The rival submissions fall for our consideration.

10. The Tribunal proceeded to determine the agricultural income arising from 36.76 acres of land on the basis of two judgments of the High Court. The Tribunal arrived at two different figures by applying the decisions and proceeded to determine the agricultural income on an average of the two amounts. The Tribunal superimposed a possible value of income from agricultural land despite a clear indication in the income tax returns of the income from agricultural land. The method adopted by the Tribunal is not sustainable in law. On the other hand, the High Court has proceeded on the basis of the income reflected in the income tax returns for the assessment year 1997-1998. The relevant portion of the return reads: F

“Income from House property	–	Rs. 1,920	
Business profit (other than 14.b)	–	Rs. 1,21,071	
Net Agricultural income	–	Rs. 88,140”	H

- A The tax return indicates an annual income of Rs 2,11,131 in the relevant assessment year. Mr Jayanth Muth Raj, learned Senior Counsel appearing on behalf of the appellant contended that other documents were marked which reflected the income of the deceased. We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for the assessment year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased.

- C 11. Learned Senior Counsel appearing on behalf of the appellants drew the attention of this Court to the judgment of this Court in **New India Assurance Company v Yogesh Devi**² to contend that this Court may reasonably determine the income that accrues to the deceased and also compute the expenses incurred in the upkeep of agricultural land. In that case, a two judge Bench of this Court dealt with a claim where “there was no evidence regarding the amount of income derived from the abovementioned properties.” The only evidence available in regard to the monthly income of the deceased was the statement of the claimant. In the present case, the High Court has relied on the income tax return of the deceased. Further, the Court in **New India Assurance** opined that though a court may be required to account for the depletion in the net income accruing from the assets of the deceased on account of payments for engaging managers, evidence must be adduced to compute the depletion. The Court held:

- F “In the normal course the claimants are expected to adduce evidence as to what would be the quantum of depletion in the income from the abovementioned asset on account of the abovementioned factors.”

- G In the present case, no evidence was adduced by the appellants at any stage of the proceedings to assist in the computation of the depletion in the net income which accrues to the deceased. The judgment of this Court in **New India Assurance** does not help the case of the appellants.

H ² (2012) 3 SCC 613

12. It was then contended by Mr Jayanth Muth Raj that this Court must add to the annual income of the deceased, depreciation costs on capital assets to the amounts of Rs 21,642, 74,685 and 7701 as reflected in the tax return for the assessment year 1997-1998. We are unable to accede to this contention. Depreciation is the deduction allowed for the decline in the real value of tangible or intangible assets over its useful life. Its value varies over time and cannot amount to tangible income for the purposes of computing annual income in a claim before the MACT. A B

13. Mr Jayanth Muth Raj has then drawn our attention to the balance sheet dated 31 March 1997 of Pavai Wines, Sholinghur for the assessment year 1997- 1998. An annual amount of Rs 1,04,987 is reflected as payment for a prepaid license fee to the Tamil Nadu Government. In the peculiar circumstances of the case, this amount, having been paid upfront and for a future period is to be added to the annual income of the deceased. Thus, the net annual income of the deceased is: Rs 2,11,131 + 1,04,987 = Rs 3,16,118. C D

14. The determination of the amount payable to the appellants is as follows:

- (i) The deceased was self-employed and aged 49 at the time of the accident. In accordance with the Constitution Bench judgment of this Court in **National Insurance Company Limited v Pranay Sethi**³, 25% of the annual income is to be added for future prospects. 25% of Rs 3,16,118 = 79,029.5. Annual income, accounting for future prospects, is Rs 3,16,118 + 79,029.5 = Rs 3,95,147.5; and E F
- (ii) In accordance with paragraph 30 of the decision of this Court in **Sarla Verma v Delhi Transport Corporation**⁴, the deduction for personal expenses for a married person where the dependents are between four to six people is 1/5th or 20%. 20% of Rs 3,95,147.5 = 79,029.5. Net annual income is Rs 3,95,147.5 - 79,029.5 = Rs 3,16,118. G

³ (2017) 16 SCC 680

⁴ (2009) 6 SCC 121

A In accordance with the judgment of this Court in **Sarla Verma**, the multiplier to be applied when the deceased is between the age group 46 to 50 is 13. The loss of dependency is calculated at Rs 3,16,118 X 13 = Rs 41,09,534. In accordance with the judgment of this Court in **Pranay Sethi**, Rs 15,000, 15,000 and 40,000 must be added for funeral expenses, loss of estate and loss of consortium respectively.

B 15. Therefore, the appellants shall be entitled to compensation under the following heads:

C	Loss of dependency	Rs 41,09,534
	Funeral expenses	Rs 15,000
	Loss of estate	Rs 15,000
	Loss of consortium	Rs 40,000
	Loss of love and affection	Rs 50,000
D		Rs 42,29,534

16. Thus, the total compensation payable to the appellants is Rs 42,29,534 with interest at 9% per annum from the date of filing of the application till the date of payment of the compensation to the appellants.

E 17. The appeals are partly allowed to the extent indicated above. There shall be no order as to costs.

18. Pending application(s), if any, shall stands disposed of.