

Malarvizhi vs United India Insurance Co. Ltd. on 9 December, 2019

Equivalent citations: AIR 2020 SUPREME COURT 90, AIRONLINE 2019 SC 1713, (2019) 17 SCALE 452, (2019) 4 ACC 715, (2020) 138 ALL LR 736, (2020) 1 ACJ 526, (2020) 1 ANDHLD 109, (2020) 1 CURCC 20, (2020) 1 KCCR 489, (2020) 1 KER LT 511, (2020) 1 RECCIVR 488, (2020) 1 TAC 328, (2020) 1 WLC(SC)CVL 236, (2020) 205 ALLINDCAS 33

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Bench: Hrishikesh Roy, Dhananjaya Y Chandrachud

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 9196-97 of 2019
@SLP (C) Nos. 9630-31 of 2019

Malarvizhi & Ors.

...Appellants

Versus

United India Insurance Company Limited & Anr.

...Respondents

JUDGMENT

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. 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 1 Tribunal 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.

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. 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.

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 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 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 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 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 contended:

- (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;

(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

(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.

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;

(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;

(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.

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:

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

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. 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:

“In the normal course the claimants are expected to adduce evidence as to what would be the quantum of depletion in the 2 (2012) 3 SCC 613 income from the abovementioned asset on account of the abovementioned factors.” 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.

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.

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.

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 Sethi³, 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 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.

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

Loss of dependency	Rs 41,09,534
Funeral expenses	Rs 15,000
3 (2017) 16 SCC 680	
4 (2009) 6 SCC 121	
Loss of estate	Rs 15,000
Loss of consortium	Rs 40,000
Loss of love and affection	Rs 50,000
	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.

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.

.....J [Dr Dhananjaya Y Chandrachud]
.....J [Hrishikesh Roy] New Delhi;

December 09, 2019.