

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5635 OF 2021
(Arising out of SLP (C)No. 31444 of 2017)

CHANDRA & ORS.

Appellant(s)

VERSUS

THE BRANCH MANAGER, THE ORIENTAL
INSURANCE COMPANY LIMITED & ANR.

Respondent(s)

O R D E R

Leave granted.

The appellants have assailed the impugned judgment of the High Court by which allowing the appeal filed by the first respondent-insurer, the compensation which was awarded to the appellants by the Motor Accidents Claims Tribunal (hereinafter referred to as 'MACT' for brevity) in the sum of Rs.30,81,577/- was reduced to Rs.8,20,000/-.

The case of the appellants was based on the death of one J. Jeyachandran in an accident which took place on 28.07.2012. After finding liability as claimed by the appellants, MACT arrived at a sum of Rs.30,81,577/-. The reasoning of the MACT was that the appellant was employed in a job in Saudi Arabia where he was earning 3,500 Riyals.

MACT further took the multiplier at 16. It is this reasoning which did not appeal to the High Court. By the impugned order, the High Court while allowing the appeal filed by the insurer, reasoned as follows:

The High Court found that it may not be safe to arrive at the income of the deceased on the basis of the monthly salary of 3,500 Riyals projected by the appellants. Instead, the High Court substituted the income of the deceased with the sum of Rs.15,000/- per month. Secondly, the High Court also took the view that the age of the parents of the deceased viz., appellants Nos. 1 and 2 being 65 and 61, the average age of the first and the second appellants was taken, which was fixed as 63 years. On the said basis, the multiplier was reduced from 16 to 7. This essentially constituted the reasoning on the basis of which, the amount awarded by MACT was reduced to the amount of Rs.8 and odd lakhs.

We have heard Shri G. Balaji, learned counsel on behalf of the appellants, and also Shri Rajesh Kumra Gupta, learned counsel on behalf of the first respondent-insurer.

Learned counsel for the appellants would point out that the High Court erred in interfering with the Award passed by MACT, insofar as, it modified the income to Rs.15,000/- per month. He would next contend that the multiplier should be that of the deceased which was

correctly fixed at 16 by the MACT. It is further contended that the High Court has also erred in not granting future prospects which is to be given in terms of *National Insurance Company Limited v. Pranay Sethi and Others* (2017) 16 SCC 680. *Per contra*, Shri Rajesh Kumar Gupta, learned counsel for the respondent would point out that the High Court is justified on the material placed before it, in reducing the monthly income to Rs.15,000/-. In this regard, he would point out that the deceased was not having any permanent job. He was working abroad on visa and visa was about to expire.

The appellants have also produced certain additional documents before this Court. Learned counsel for the respondent drew our attention to the appointment order dated 22.10.2011 issued in favour of the deceased, wherein it is shown that, the appellant would be entitled to basic salary of 1,000 Riyals. On the other hand, learned counsel for the appellants drew our attention to certificate which is seen dated 27.08.2012. Learned counsel for the appellants would point out that this certificate was, in fact, relied upon by the MACT also.

We must notice that the accident took place on 28.07.2012. The appointment order dated 22.10.2011 is in close proximity to the date of accident. The basic salary is shown as 1,000 Riyals. There is no mention of any other

allowance as such therein. As far as the certificate dated 27.08.2012 is concerned, no doubt, therein, it is declared that the last salary of the deceased was 3,500 Saudi Riyals. However, we may take note of the other contents of the certificate and it reads as follows:

“This letter has been issued based on his family request to be submitted to authorities in India with no legal obligation what so ever on the company.”

We would think that it may not be safe to place reliance on the certification done about the salary at 3,500 Riyals. Having regard to the facts which we have noticed which includes the actual appointment order which was issued on 22.10.2011 as well, we would rely upon the order of appointment which clearly establishes that the deceased was earning a basic salary of 1,000 Riyals.

Having taken the converted value, we proceed on the basis that the appellants was getting salary of Rs.15,000/- per month.

The deceased was aged 33 years. He was a graduate. He was also qualified in a course in computer. We have indicated this to move on to the next aspect which is the application of the principle enunciated in *National Insurance Company Limited v. Pranay Sethi and Others* (2017) 16 SCC 680. Learned counsel for the first respondent-insurer drew our attention to paragraph No. 59.3.

"59.3 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 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."

He would point out with reference to it that in order to get an increase of 50 per cent, deceased must have a permanent job. *Per contra*, Shri G. Balaji, learned counsel appearing for the appellants, would point out the next paragraph that is 59.4.

"59.4 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 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."

In other words, he would submit that the Court may proceed on the basis of this being a case where the deceased was earning a fixed salary.

We are inclined to accept the argument of the appellants in this regard that the appellants should be granted increase by 40 per cent having regard to the admitted age of the deceased being below 40 years on the basis of the salary which we have arrived upon based on the order of the appointment.

As far as the question relating to multiplier goes, there is hardly any dispute that it is the multiplier which is relevant to the deceased, which shall apply.

We may only refer to the recent judgments of this Court reported in *Smt. Sunita Tokas and Anr. v. New India Insurance Co. Ltd. and Anr.* AIR 2019 SC 3921 and *New India Assurance Company Limited v. Somwati and Others* (2020) 9 SCC 644.

The upshot of the above discussion is that the appellants are entitled to partly succeed. The income of the deceased fixed at Rs.15,000/- per month, applying 40 per cent increase to the basic salary, the income is fixed at Rs.21,000/- per month. Since the deceased was a bachelor, a deduction of $\frac{1}{2}$ from the same has to be made, and resultantly, the monthly income will be Rs.10,500/-.

The amount so fixed must suffer tax, which is stated to be 10 per cent in terms of the Constitution Bench judgment in *Pranay Sethi* (supra). The amount is fixed as Rs.18,84,400/-. To the same, under the conventional heads, we award a sum of Rs.1,10,000/-. The total amount comes to Rs.19,94,400/- which we round up to Rs.20 lakhs. Accordingly, the appeal is partly allowed. The impugned judgment of the High Court is modified substituting the sum of Rs.20 lakhs as the amount of compensation which will be paid with interest at 9 per cent per annum from the date of

filing of the petition till realisation.

The parties are left to bear their own costs.

....., J.
[K.M. JOSEPH]

....., J.
[PAMIDIGHANTAM SRI NARASIMHA]

**New Delhi;
September 09, 2021.**

ITEM NO.24 Court 10 (Video Conferencing) SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 5635/2021
(Arising out of SLP (C)No. 31444/2017)
(Arising out of impugned final judgment and order dated 05-06-2017
in CMA MD No. 562/2014 passed by the Madras High Court at Madurai)

CHANDRA & ORS. Appellant(s)

VERSUS

THE BRANCH MANAGER, THE ORIENTAL
INSURANCE COMPANY LIMITED & ANR. Respondent(s)

(With IA No. 87908/2021 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 09-09-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Appellant(s)

Mr. G. Balaji, AOR

For Respondent(s)

Mr. Rajesh Kumar Gupta, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is partly allowed in terms of the signed
order.

Pending application stands disposed of.

(NIDHI AHUJA)
AR-cum-PS

(RAM SUBHAG SINGH)
BRANCH OFFICER

[Signed order is placed on the file.]