BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:30.09.2015
CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A(MD) No.1103 of 2014
and
M.P(MD)No.1 of 2014
and
M.P(MD)No.1 of 2015

The New India Assurance Company Limited,
Divisional Office,
Jerome Building, Fort Station Road,
Trichy. .. Appellant/2nd Respondent

vs.

1.Indira
2.Partiban
3.Priyadharshini
4.Saranya .. Respondents 1to4/Petitioners
5.Durairajan
(R5 exparte in Tribunal) ..5th Respondent/1st Respondent

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Claims Tribunal in M.C.O.P.No.475 of 2011, dated 11.06.2014 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Kulithalai and allow the appeal with costs.

For Appellant :Mr.J.S.Murali
For R1 to R4 : Mr.T.Senthilkumar
For R5 : Ex-parte

JUDGMENT

[Judgment of the Court was made by V.M.VELUMANI, J]

The appeal is against the order, dated 11.06.2014, made in M.C.O.P.No..475 of 2011, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Kulithalai

2.The appellant is the second respondent in MCOP No.475 of 2011, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Kulithalai. The respondents 1 to 4 are the claimants. The fifth respondent is the owner of the lorry, which was involved in the accident. The respondents 1 to 4 claimed a sum of Rs.1,00,00,000/- as compensation. The Tribunal awarded a sum of Rs.69,63,910/- as compensation. Against the said award, the appellant Insurance Company has filed the present appeal.

3.Facts of the case:-

On 12.08.2011 at 1.30 p.m., the deceased Marimuthu was riding in his two wheeler in Trichy to Thanjavur road from West to East direction. At that time, near Angalamman Hotel, Trichy, a lorry bearing Registration No.TN 28 U 7839 belonging to the fifth respondent, was driven by the driver of the fifth respondent in a rash and negligent manner and dashed on the back side of the two wheeler driven by the deceased Marimuthu, due to which, the said Marimuthu suffered injury. He was admitted in KMC hospital, Trichy. Inspite of the treatment, he died. A complaint was registered in Cr.No.271 of 2011 against the driver of the lorry belonging to fifth respondent. The deceased was working as a Fitter in BHEL company and was earning Rs.87,525/- per month. He was 53 years at the time of accident. Therefore, the respondents 1 to 4 filed a claim petition claiming a sum of Rs.1,00,00,000/- against the fifth respondent towards compensation, as the accident occurred due to rash and negligent driving by driver of the fifth respondent.

4.The fifth respondent remained ex-parte before the Tribunal.

5. The appellant filed a counter statement denying that the accident took place due to the rash and negligent driving of the driver of the fifth respondent. According to the appellant, the accident took place only due to the negligent driving of the deceased. The deceased and the driver of the fifth respondent did not have valid driving licences. The deceased was riding his vehicle in a negligent manner and suddenly, crossed the road and invited the accident.

6. Before the Tribunal, the first respondent was examined as P.W.1. One Rajendran brother of the deceased, who was riding another two wheeler at the time of accident was examined as P.W.2. One Sivakumar, was examined as P.W.3. Eleven documents were marked as Ex.A1 to A11. The appellant examined one Sekar, Special Sub Inspector as R.W.1 and Thiyagarajan driver of the fifth respondent was examined as R.W.2 and four documents were marked as Ex.P.1 to P4.

7.The Tribunal considering the pleadings and evidence came to the conclusion that the accident took place only due to the rash and negligent driving by driver of the fifth respondent. The Tribunal fixed the salary of the deceased at Rs.57,525/- as per Ex.A8. Considering the age of the deceased, the Tribunal added 15% of the monthly salary towards future prospects as per the judgment of the Hon'ble Apex Court reported in *2013(3) CTC 883 (Supreme Court) Rajesh & Others vs. Rajbir Singh & Others* fixed the monthly income at Rs.77,650/-. After deducting ¼th amount, towards his personal expenses, the Tribunal applied multiplier 11 as per the guidelines of *Sarla Verma v. Delhi Transport Corporation*, reported in *2009(2) TN MAC 1 (SC)* and awarded a sum of Rs.76,87,680/- (58,240/- x 12 x 11) as loss of income.

8.The Tribunal awarded a sum of Rs.10,000/- towards loss of consortitium to the first respondent and a sum of Rs.10,000/- each to the respondents 2 to 4 for loss of love and affection and a sum of Rs.10,000/- towards funeral expenses. Thus, in total, the Tribunal awarded a sum of Rs.77,37,680/-. The Tribunal directed the appellant and the second respondent to deduct 10% of the said amount towards Income Tax and directed to pay a sum of Rs.69,63,910/- as compensation to the respondents 1 to 4.

9.Against the said award, the present appeal has been filed.

10.The learned counsel for the appellant/Insurance Company contended that the Tribunal failed to consider that the accident took place only due to the rash and negligent driving of the deceased. The driver of the fifth respondent was acquitted by the Criminal Court, after trial. The deceased was 53 years and he would have attained the age of superannuation at 60 years. Therefore, the Tribunal ought to have applied split multiplier of 7 + 4, instead of 11.

11.The learned counsel for the appellant relied on the following judgments:-

(i)2013(2) MWN (Civil) 729 R.Leelavathy vs. Sheik Dawood and another in paragraphs 11 and 12 are extracted hereunder:-

> "11.In the case on hand, Ex.P6 is the Salary Certificate. In the absence of any contrary evidence, Tribunal was not right in fixing the take home salary of the deceased at Rs.11,000/- for the period during which he would have been in employment. The Tribunal ought to have taken the salary of deceased at Rs.22,474/- for the period of one year of left over service of deceased taking into consideration that the deceased is aged 57 years at the time of accident and deducted 1/3rd therefrom towards Personal Expenses of deceased, to arrive at the Loss of Dependency to the family. Therefore, we deem it appropriate to take the salary of deceased as Rs.22,474/- for the period of one year I.e., till the deceased attained the age of 58 years. After deducting 1/3rd for Personal Expenses, Rs.7,491/-, contribution to the family is calculated at Rs.14,983/- which is rounded off to Rs.15,000/- and the yearly Loss of Contribution to the family is calculated at Rs.1,80,000/- (Rs.15,000 x 12).
>
> 12.In respect of the period after superannuation of the deceased on attaining the age of 58 years, he would have got 50% of his last drawn salary as pension, which could be approximately quantified at Rs.11,250/- (Rs.22,474 x 50/100) and deducting 1/3rd for the Personal Expenses therefrom, Loss of Contribution per month would be Rs.7,500/-. The age of the deceased is 57 years and as per the Second Schedule to the Motor Vehicles Act,t he proper multiplier would be "8". As we have taken multiplier "1" for the period of his service, the amount of Rs.7,500/- as Loss of Contribution to the family is to be taken into account for the remaining multiplier of "7". The Loss of Dependency to the Claimant for the remaining period of 7 years works out to Rs.7,500 x 12 x 7 = Rs.6,30,000/-. Therefore, the total Loss of Dependency is Rs.8,10,000/-."

(ii)*2014(1) TN MAC 334 (DB) Branch Manager, National Insurance Co. Ltd., vs. M.Arulmozhi and others*

> "13.It is an admitted fact that the deceased was employed as Assistant Administrative Officer in Agricultural Department and was earning an income of Rs.17,529/- per month, which is evidenced by Exs.P6 & P7- Salary Certificates. From a perusal of Ex.p6, it could be seen that a sum of Rs.255/- is deducted compulsorily from the salary. Therefore, the deceased was getting a net monthly income of Rs.17,274/-. The age of the deceased on the date of accident was 57 years and the Multiplier to be adopted is 8, are not in dispute. From the materials

available on record, it can be inferred that on the date of accident, the deceased was 57 years and 3 months old and had only 9 months of service before his retirement. Though normally 8 Multiplier would be applied in computing the Loss of Dependency, in this case, the same cannot be done as the income of the deceased will not be the same from the date of retirement. Though the deceased had only 9 months of service, the Appellant has got no serious objection to round it of to one year. Accordingly, the period before retirement is taken as one year. Therefore, the Loss Dependency before retirement of the deceased would be Rs.17,274/- x 12 x ¼ x 1 = Rs.1,55,466/-.

14.Now, the dependency after the retirement of the deceased is to be considered. Had the deceased Murugesan been alive, after the age of superannuation, he would get only half of the salary as pension. Therefore, it is an exceptional case where the split multiplier has to be adopted, I.e., 1 + 7 = 8. As there is no scope for evidence about the prospect of future increment of the deceased and since the earning would be reduced to 50% after retirement, the Multiplier of 8 as adopted by the Tribunal cannot be sustained. Hence, this Court feels that split Multiplier can be adopted and as such, after superannuation, 7 Multiplier would apply. Therefore, the Loss of Dependency from pensionary benefits would be Rs.8,637/- x 12 x ¼ x 7 = Rs.5,44,131. ”

(iii)*2009(2) TN MAC 1 (SC) Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Another.*

“..In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words 'actual salary less tax]. The additional should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years.”

12. Since the deceased was 53 years at the time of the accident, the Tribunal was not correct in adding 15% towards future prospects, contrary to the judgments of the Hon'ble Apex Court in *2009(2) TN MAC 1 (SC) Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Another* and *Reshma Kumari and others vs. Madan Mohan and another reported in (2013(9) SCC 65)*. It is also submitted that the quantum of compensation awarded by the Tribunal is excessive.

13.Per contra, the learned counsel for the respondents 1 to 4 contended that the accident took place only due to rash and negligent driving of the driver of the fifth respondent. The respondents 1 to 4 proved negligence on the part of the fifth respondent by examining P.W.2 eye witness.

14.The Tribunal has followed the principles laid down by the Hon'ble Apex Court in judgment reported in *2013(3) 883 CTC Rajesh & others vs. Rajbir Singh & Others* and rightly added 15% as future prospects to the salary of the deceased. The compensation awarded is just compensation and is not excessive and prayed for dismissal of the CMA.

15. The points for consideration in this appeal:-
i)whether the accident took place due to rash and negligent driving of the driver of the fifth respondent or due to rash and negligent driving of the deceased.
ii)Whether the Tribunal is right in applying the multiplier 11 and adding 15% as future prospects to the salary.
iii)Whether compensation awarded is just compensation or excessive.

Point No.1:-

16.The learned counsel for the appellant contended that R.W.2, the driver of the lorry gave evidence that the deceased came behind the lorry and dashed against back wheel of the lorry and caused accident. R.W.2 was acquitted in a Criminal Case lodged against him. Through R.W.1 Special Sub Inspector of Police, the appellant marked charge sheet and sketch and report of the motor vehicles in respect of the lorry and two wheeler. The respondents 1 to 4 have examined P.W.2 eye witness, who deposed that the lorry hit the two wheeler at the back side and caused the accident. The Tribunal considered Ex.P.2, the sketch of the place where the accident took place. From the sketch, it is seen that the accident took place at the left hand side of the road running from west to east. The charge sheet was filed against the driver of the lorry. Therefore, the Tribunal rejected the evidence of the R.W.2 and held that the accident took place only due to rash and negligent driving by R.W.2 driver of the lorry belonging to the fifth respondent. The Tribunal has appreciated the evidence in proper perspective and there is no infirmity in the said finding and hence, the same is confirmed.

17.Points Nos.2 & 3:-

The learned counsel for the appellant contended that age of the deceased at the time of accident was 53 years. His age of superannuation is 60 years. Therefore, the Tribunal ought to have applied the split multiplier relying on the judgments referred to above. The question of split multiplier was considered by Hon'ble Supreme Court in *2014(2) TNMAC 546 (SC) (Saraladevi and others vs. Divisional Manager, Royal Sundaram Alliance Ins. Co. Ltd., and another)* in paragraph 10 of the judgment held as follows:-

> "10.In our considered view, the High Court has erred in not considering the principles laid down in the case of Sarla Verma and Ors. (Supra), in so far as deduction of $1/4^{th}$ of the monthly income of the deceased to arrive at the multiplicand and reducing the Compensation by adopting the Split up Multiplier."

18.In the above Judgment, the Hon'ble Apex Court held that applying split multiplier is not a correct method. In view of said judgment of Hon'ble Supreme Court, multiplier 11 applied by Tribunal as per *Smt.Sarla Verma & Ors. vs. Delhi Transport Corporation & anr reported in 2009(2) TN MAC 1 (SC)* is correct.

19.The learned counsel for the appellant contended that the Tribunal erred in granting 15% future prospects contrary to the judgment of the Supreme Court reported in *Smt.Sarla Verma & Ors. vs. Delhi Transport Corporation & anr reported in 2009(2) TN MAC 1 (SC)* and Resma Kumari's case. In the said two judgments, the Hon'ble Apex Court held that the deceased persons, who are aged more than 50 years at the time of accident, are not entitled to any amount towards future prospects. On the other hand, Tribunal has followed the judgment of the Hon'ble Apex Court reported in *2013(3) 883 CTC Rajesh & others vs. Rajbir Singh & Others*, wherein it has held that the deceased age group 50 to 58 are entitled to addition of 15% as future prospects. Tribunal has extracted the relevant portion of the order in paragraph 11 of the award.

> "Motor Vehicles Act, 1988 (59 of 1988), Section 168-Death-Self-employed and persons on fixed wages-Compensation-Income-Future Prospects-Addition of -Held, if deceased was below 40 years of age, addition of 50% ought to made to actual income of deceased while computing income-Where deceased is in age group of 40 to 50 years, addition to be made at 30%- And, in case of age group of 50 to 60 years, addition of 15% is to be made- In all cases actual income is to be income after paying tax-Decision of Apex Court in Sarla Verma case revised."

20.Therefore, the contention of the learned counsel for the appellant has no force and Tribunal has applied correct multiplier and has added 15% as future prospects following the judgement of Hon'ble Apex Court reported in *2013(3) 883 CTC Rajesh & others vs. Rajbir Singh & Others*, the Tribunal has awarded just compensation. The compensation awarded is not excessive and therefore, there is no infirmity in the compensation awarded by the Tribunal warranting interference by this Court.

21.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

am
To
The Motor Accidents Claims Tribunal,
Subordinate Court, Kulithalai

+1CC to Mr.T.Senthilkumar Advocate Sr.No.57827
+1CC to Mr.J.S.Murali Advocate Sr.No.57853

CSL/AAL/MPA/8.12.2015-6p-4C

C.M.A(MD) No.1103 of 2014
30.09.2015