

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1094 of 2013
and M.P.No.1 of 2013

The Branch Manager,
The New India Assurance Co. Ltd.,
No.7, Ramalinga Madalaya Street,
Gugai, Salem - 636 006. ... Appellant/2nd Respondent

Vs

1.Subramani
S/o.Subrayan

2.Pachaimmal
W/o.Subramani

3.Murugammal
W/o.Munusamy

4.Sumithra
W/o.Madhu

5.Murugan
S/o.Subramani

6.Shanmugam
S/o.Subramani ... Respondents 1to6/Petitioner 1to6

7.Mari
W/o.Arumugam ... Respondent/Respondent

8.Priya
W/o.Vediyappan

9.G.Ashok
S/o.C.Govindhasamy ... Respondents/Respondents

Civil Miscellaneous Appeal filed u/s.173 of the Motor
Vehicles Act, 1988, against the judgment and decree of Motor
Accident Claims Tribunal, Principal District Judge,
Dharmapuri, passed in M.C.O.P.No.149 of 2009 on 28.09.2012.

For Appellant : Mr.M.Krishnamoorthy
For Respondents: Mr.A.Prabhakaran [R1 to R8]
Ex parte [R9]

J U D G M E N T

[Judgment of the Court was made by C.T.SELVAM, J.]

This Civil Miscellaneous Appeal arises against the judgment and decree of Motor Accident Claims Tribunal, Principal District Judge, Dharmapuri, passed in M.C.O.P.No.149 of 2009 on 28.09.2012.

2. Appellant is the Insurance Company. Respondents 1 to 8 are legal heirs of one Mathaiah Subramani @ Mathaiah, who died owing to an accident involving a bus bearing registration No.KA-54-2552 in which the deceased was travelling and a crane bearing registration No.TN-37-AS-3935, on 14.12.2008 at about 3.50 a.m. Ninth respondent is the owner of the bus.

3. Before the Tribunal, on the side of respondents 1 to 8/claimants, 3 witnesses were examined and 41 exhibits were marked. On the side of appellant insurance company, none were examined and 1 exhibit was marked.

4. On appreciation of materials before it, Tribunal, under judgment dated 28.09.2012, found that the death has occurred owing to the rash and negligent driving of the bus. To prove the avocation of the deceased, respondents 1 to 8 have marked various documents. However, based on the salary slip of the month November 2009, Tribunal has fixed the monthly income of the deceased at Rs.51,750/-. Following the rationale of the judgment of the Honourable Apex Court in Sarla Verma and others v. Delhi Transport Corporation and another [2009 (5) L.W. 561], the Tribunal has made provision for future prospects at 50% and arrived at annual income at Rs.9,31,500/- (51,750+25,875*12). After deducting income tax of Rs.1,84,450/-, Tribunal has fixed the annual income at Rs.7,47,050/-. As the deceased was a bachelor, Tribunal has deducted 50% towards personal expenses and applied the multiplier 15, given the fact that the age of the deceased was informed to be 36 in the claim petition as also other records. This Court finds that a reasonable sum of Rs.10,000/- each towards loss of love and affection, totalling a sum of Rs.80,000/-, a sum of Rs.15,000/- towards funeral expenses and a sum of Rs.5,000/- towards transport has been awarded. The total compensation awarded amounts to Rs.57,02,875/-. Appellant Insurance Company was directed to pay the said sum together with interest at 7.5% p.a. from the date of claim petition till the date of payment. The Tribunal has also directed due apportionment of the compensation amount between the claimants inter alia directing the deposit in the State Bank of India, Palacode, for a period of three years.

5. The primary contention of learned counsel for appellant insurance company is that the multiplier must have been adopted in keeping with the age of the dependents and not that of the deceased as done by Tribunal. This Court is unable to accept such submission. The Constitution Bench of the Apex Court in National Insurance Co. Ltd. v. Pranay Sethi and others [2017 (2) TN MAC 609 (SC)], following the decision in Sarla Verma, has informed that the age of the deceased should be the basis for applying the multiplier.

The Civil Miscellaneous Appeal is dismissed. The judgment and decree of Motor Accident Claims Tribunal, Principal District Judge, Dharmapuri, passed in M.C.O.P.No.149 of 2009 on 28.09.2012, is confirmed. It is represented that appellant insurance company has deposited 50% of the award amount. Appellant Insurance Company is directed to deposit the balance amount within a period of six weeks from the date of receipt of this judgment. Respondents 1 to 8/claimants are at liberty to withdraw the amount on due application as apportioned by Tribunal. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Principal District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.

2. The Record Keeper, VR Section,
High Court, Madras.

+ 1 cc to M/s. A. Prabhakaran, Advocate SR.77049

+ 1 cc to M/s. M. Krishnamoorthy, Advocate SR.76848

Civil Miscellaneous Appeal No.1094 of 2013

RR(CO)

EU(22/03/2018)