BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.(MD)No.125 of 2017

1.Shanmugam, S/o.Punamalai Thevar
2.Shanmugathai, W/o.Shanumugam ... Appellants/Petitioners

Vs.

1. Ramesh, S/o.Ganesan

2. I.C.I.C.I. Lombard General Insurance Company Limited, Through its Branch Manager, Zenith House, Keshavarao Khade Marg, Mahalaxmi, Mumbai - 400 034.

3. Kalyani
4. Martin Selvanayagam

5. Bajaj Allianz General Insurance Company Limited, No.43/20, Rithendon Road, Vepery, Chennai - 600 007. ... Respondents/Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 30.11.2012, made in M.C.O.P.No.963 of 2009, on the file of the Motor Accident Claims Tribunal [Principal District Court], Tirunelveli.

For Appellants : Mr.T.Selvakumaran
For R2 : Mr.K.K.Ramakrishnan
For R5 : Mr.J.S.Murali

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants against the judgment and decree, dated 30.11.2012, made in M.C.O.P.No.963 of 2009, on the file of the Motor Accident Claims Tribunal [Principal District Court], Tirunelveli.

2.The appellants are the claimants in M.C.O.P.No.963 of 2009. According to the appellants/claimants, on 28.05.2009 at 23.30 hours, their son *viz.*, Vel Pandian along with his friends were proceeding from Tirunelveli to Kodaikanal in a Hyundai Car, bearing Registration No.TN-22-AD-7989, belonging to the third respondent, insured with the fifth respondent. When the car was proceeding in between Joy Tipper Depot and 4th Toll Gate on Madurai Ring Road, a Lorry, bearing Registration No.TN-46-B-1588, belonging to the first respondent, insured with the second respondent, with Gypsum load was parked on the said road without blinking parking and danger lights and without reflector sticker by its driver. As a result of which, the Hyundai Car dashed against the parked lorry and the entire front portion of the car with heavy damages went under the back portion of the lorry. Due to the said impact, the son of the appellants and two others died and two of his friends sustained multiple injuries. A Criminal Case in Crime No.266 of 2009 on the file of the Avaniapuram Police Station, has been registered against the driver of the lorry belonging to the first respondent. According to the appellants, the deceased was working as Computer Engineer in Haddows D-code Solution at Chennai and was earning a sum of Rs.30,500/- per month. At the time of accident, he was aged about 24 years and was hale and healthy and the appellants, who are the dependants of the deceased - Vel Pandian, lost their affectionate son. Therefore, they have claimed a sum of Rs.92,92,000/- as compensation, but restricted their claim to Rs.50,00,000/- against the respondents 1 and 2. Subsequently, the respondents 3 to 5 were impleaded as party respondents and filed amendment petition praying for the compensation to be paid by all the respondents.

3.The respondents 1, 3 and 4 remained ex-parte before the Tribunal.

4.The respondents 2 and 5 filed separate counter and denied all the averments made by the appellants.

5.According to the second respondent, the driver of the first respondent parked the lorry bearing Registration No.TN-46-B-1588 on the extreme left side of the road and while so, the driver of the Hyundai Car bearing Registration No.TN-22-AD-7989, who drove the car in a rash and negligent manner without observing the traffic rules, in a terrific speed without noticing the parked lorry on the left side of the road with all parked lamps, dashed against the first respondent's lorry from behind and caused the accident.

6.The fifth respondent in the counter stated that the fifth respondent has not issued any policy in the name of the fourth respondent Martin Selvanayagam and further stated that the accident occurred only due to rash and negligent way of parking of the lorry. The Criminal Case has been registered against the first respondent's driver. The respondents 3 and 5 are added only as formal parties and are not liable to pay any compensation to the appellants.

7.Before the Tribunal, common evidence was let in. On behalf of the claimants, 8 witnesses were examined as P.Ws.1 to 8. The first appellant examined himself as P.W.5 and 51 documents were marked as Exs.P.1 to P.51. On behalf of the second respondent, one Loganathan (Driver) was examined as R.W.1 and no document was filed and marked.

8.The Tribunal considered all the materials on record and held that both the drivers of the vehicles are responsible for the accident and awarded a sum of Rs.16,00,000/- as compensation to the appellants/petitioners in M.C.O.P.No.963 of 2009 with interest @ 7.5% p.a. from the date of petition till the date of realisation along with costs. The compensation awarded by the Tribunal under different heads are as under:

Sl. No.	***Heads***	***Amount***
1	Loss of income	15,60,000
2	Transportation Charges	5,000
3	Funeral Expenses	5,000
4	Loss of Love and Affection [Rs.15,000/- each]	30,000
	Total	16,00,000

9.Against the said judgment and decree, the appellants have come out with the present Civil Miscellaneous Appeal, for enhancement of compensation.

10.The learned counsel for the appellants submitted that the Insurance Company has not filed any appeal against the award of the Tribunal. The learned counsel for the appellants further submitted that as per the ratio laid down in judgments of the Hon'ble Apex Court as well as this Court, the multiplier applied by the Tribunal is not correct. The Tribunal taking into consideration the age of the appellants, applied multiplier '13' only to arrive at compensation. The said conclusion is not correct. The age of the deceased was 24 years at the time of accident. The correct multiplier as per judgment of the Hon'ble Apex Court reported in **2009 (2) TN MAC 1 (Sarla Varma and others vs. Delhi Transport Corporation and another)** is '18'.

11.In support of his submissions, the learned counsel for the appellants relied on the following judgments:

(i)**2012 (2) TN MAC 321 (SC) [Amrit Bhanu Shali and others Vs. National Insurance Co. Ltd. & Others]**, wherein at paragraph 18, it has been held as follows:

"18. In the case of **Sarla Verma V. Delhi Transport**

Corporation, 2009 (2) TN MAC 1 (SC), this Court held that the multiplier to be used should be as mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and brining it down to the multiplier of 13."

(ii) **2015 (1) TN MAC 814 (SC) [Munna Lal Jain and another Vs. Vipin Kumar Sharma and others]**, wherein at paragraphs 12 to 14, it has been held as follows:

"12. The remaining question is only on Multiplier. The High Court following **Santosh Devi** (supra), has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another Three-Judge Bench decision in **Reshma Kumari** (supra). It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote:

"36. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of Loss of Dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that the Claimants in case of death claim for the purposes of Compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the Loss of Dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the Personal & Living Expenses of the deceased; and (iii) the Multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma."

13.In **Sarla Verma** (supra), at paragraph-19, a Two-Judge Bench dealt with this aspect in Step 2. To quote:

"19. ... ...

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate Multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a Table of Multipliers with reference to the age has been identified by this Court. The Multiplier should be chosen from the said table with reference to the age of the deceased."

14.The multiplier, in the case of the age of the deceased between 26 to 30 years is 17. There is no dispute or grievance on fixation of monthly income as Rs.12,000.00 by the High Court."

12.The learned counsel for the respondents 2 and 5 submitted that the Tribunal has considered the age of the appellants and applied multiplier. They further submitted that the date of accident is 28.05.2009. The age of the parents ought to have been taken into consideration to apply multiplier to arrive at compensation and prayed for dismissal of the Civil Miscellaneous Appeal.

13.I have heard the learned counsel appearing for the parties and perused the materials available on record.

14.From the records, it is seen that whether the multiplier applied by the Tribunal depending on the age of the dependants or that of the deceased has been decided in a number of judgments by the Hon'ble Apex Court as well as by this Court. In the judgment reported in **2015 (1) TN MAC 818 (DB)** [cited supra], it was held that the multiplier is to be applied with reference to the age of the deceased. The age of the deceased in this case is 24. Therefore, the correct multiplier is 18. There is no dispute or grievance regarding fixation of monthly income of Rs.20,000/- by the Tribunal. In the circumstances, after deducting 50% of the monthly income towards personal expenses, and by applying multiplier 18, the modified compensation towards loss of income, is as follows:

Rs.10,000/- x 12 x 18 = Rs.21,60,000/-

In all other aspects, the award of the Tribunal is confirmed. The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

15.Accordingly, the appellants-claimants are entitled to a sum of **Rs.22,00,000/-** (Rupees Twenty Two Lakhs only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

16.In the result,

(i) This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from Rs.16,00,000/- (Rupees Sixteen Lakhs only) to **Rs.22,00,000/-** (Rupees Twenty Two Lakhs only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs. It is made clear that the date of award is 30.11.2012 and the Civil Miscellaneous Appeal is filed with a delay of 1352 days. Hence, the appellants are not entitled to any interest for the said delay period.;

(ii) The appellants-claimants are entitled to the said compensation as per the apportionment made by the Tribunal.;

(iii) The appellants-claimants are directed to submit the details of their Savings Bank Accounts along with the copies of their passbooks to the Tribunal **forthwith**.;

(iv) The second respondent-Insurance Company and the fifth respondent – Insurance Company are directed to deposit the award amount now modified by this Court, in the ratio of 50 : 50 along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.963 of 2009 on the file of the Motor Accident Claims Tribunal - cum – Principal District Court, Tirunelveli, within a period of **six weeks** from the date of receipt of a copy of this judgment.;

(v) On such deposit, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the Personal Savings Bank Account Numbers of the appellants/claimants, through RTGS/ NEFT system, after getting their Account Details, within a period of **two weeks thereafter**;

(vi) The appellants/claimants are directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment.; and

(vii) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal - cum –
Principal District Judge, Tirunelveli.

+ 1 CC TO Mr.T.SELVAKUMARAN, ADVOCATE IN SR No. 16837
+ 1 CC TO Mr.K.K.RAMAKRISHNAN, ADVOCATE IN SR No. 17789
+ 1 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 16926

SMN2
TE/JC/SAR-IV : 19/04/2017 : 6P/5C

C.M.A.(MD)No.125 of 2017
22.03.2017