BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1135 of 2015

National Insurance Company Limited,
Represented by its Divisional Manager,
3, North Veli Street,
Madurai Town. : Appellant/2nd Respondent

vs.

1.Sumathi
2.Parthiban
3.Balaji : R1 to R3/Petitioners
4.Ponnirul (died) : 4th Respondent/1st Respondent
5.Soorammal : 5th Respondent/3rd Respondent
(R4 already died and the notice to R5 may be dispensed with since she remained exparte before the tribunal)

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the judgment and decree made in MCOP No.76 of 2011 dated 15.12.2012 by the Motor Accident Claims Tribunal (Sub Court), Paramakudi.

For Appellant : Mr.J.S.Murali
For R1 to R3 : No appearance

JUDGMENT

[Judgment of this Court was made by K.KALYANASUNDARAM,J]

The appellant Insurance Company aggrieved by the award passed by the Motor Accident Claims Tribunal (Sub Court), Paramakudi, in MCOP No.76 of 2011, dated 15.12.2012, has preferred this appeal.

2.The Legal-heirs of the deceased Balasubramanian filed MCOP No.76 of 2011 seeking compensation of Rs.40,00,000/-alleging that when the deceased was travelling in a Mahindra Van No.TN-65-2979 belonging to the first respondent to attend the Teachers' meeting at Erode, the driver drove the Van in a rash and negligent manner and dashed against a lorry. In the impact, the deceased sustained injuries and he was taken to Government Hospital, Paramakudi. Despite better treatment, he died. A case in Crime No.220 of 2011 was registered by Paramakudi Police Station.

3.The claimants have further stated that the deceased was working as PG Assistant and was earning Rs.44,943/- per month. Since he died due to the negligence of the Van driver, they are entitled for compensation.

4.The appellant Insurance Company resisted the claim by contending that the deceased was responsible for the accident and the claim is excessive.

5.Before the tribunal, in order to prove their case, the first claimant was examined as PW1 and also examined other witnesses as PW2 and PW3 and marked 10 documents as Exs.P1 to Ex.P10. On the side of the Insurance Company, no witness was examined and no document was marked.

6.Mr.J.S.Murali, learned counsel for the appellant submitted that the deceased was a Government servant and he died at the age of 54 and when he was having another 4 years of service before his retirement, however, the tribunal wrongly applied multiplier '11' and hence, it has to be reduced.

7.Despite service, the respondents have not chosen to appear either in person or through counsel.

8.PW1, who was examined as an eye witness, supported the case of the claimants. When there was no contra evidence, the tribunal, accepting the evidence of the claimants, has rightly come to the conclusion that the driver of the Van was responsible for the accident. Perusal of Exs.P3 and P6, salary certificate and postmortem certificate reveal that the deceased was earning Rs.45,643/- per month and he died at the age of 54. The tribunal, based on the evidence, fixed monthly salary at Rs.45,643/- and after deducting 1/3rd towards personal and living expenses and by applying multiplier '11', awarded Rs.40,16,496/- towards loss of dependency; Rs.20,000/- towards loss of consortium; Rs.30,000/- towards love and affection and Rs.10,000/- towards funeral expenses. Totally, the tribunal has awarded Rs.40,76,496/- as compensation together with interest @ 7.5% p.a.

9.There is no dispute with regard to age and income of the deceased. The only issue arises for consideration is whether this is a fit case for applying split multiplier.

10.The nature of accident and the finding on negligence are not in dispute and this appeal is confined only to the quantum of compensation awarded by the tribunal.

11.It is to be noted that in the case of fatal accident, on the basis of the age and income of the deceased, the courts determine the loss of dependency. Further, if the deceased is an employee, the age of superannuation again plays a vital role due to the reason that after retirement, the employee would not earn the same income.

12.It is true that in 2014(1) TN MAC 481 in the case of Puttamma Vs. K.L.Narayana Reddy, the Hon'ble Apex Court has observed that in the absence of any specific reason and evidence on record, the tribunal or the court shall not apply split multiplier in routine course and should apply multiplier as per the decision in Sarla Verma. The issue came up for consideration before this court on many occasions and the different Division Benches of this court in the decisions reported in 2013(2) MWN (Civil) 729, 2014(1) TN MAC 334, 2014(1) TN MAC 651, 2015(2) TN MAC 449 and an unreported judgment made in CMA(MD)Nos.320 and 321 of 2013, dated 28.01.2014 and the Division Bench of Kerala High Court in 2016(1) TN MAC 493 have applied theory of split multiplier taking note of the fact that the Government Servants would get 50% of the salary as monthly pension after their retirement. In view of the above fact, in cases where the claimants have not established the possibility of extension of service and constant income after retirement, it would be appropriate to adopt split multiplier.

13.In that view of the matter, in the instant case, the claimants would be entitled for a sum of Rs.13,14,518/- (Rs.45,643/- x 2/3 x 12 x 4 - 10%) for 4 years left over service and Rs.11,50,204/- (Rs.45,643/- x 50% x 2/3 x 12 x 7 – 10%) after his retirement. In total, the claimants would be entitled for a sum of Rs.24,64,722/- (rounded off to Rs.24,65,000/-) instead of Rs.40,16,496/-. The amount of Rs.60,000/- awarded under the other heads are confirmed. In total, the claimants will be entitled to Rs.25,25,000/- together with interest @ 7.5% p.a.

14.In the result, this Civil Miscellaneous Appeal is partly allowed. The award is modified to Rs.25,25,000/- as against Rs.40,76,496/-. The learned counsel for the appellant submitted that the entire award amount has already been deposited. Hence, the claimants are permitted to withdraw the modified award amount as apportioned by the tribunal. The excess amount shall be refunded to the appellant Insurance Company. No costs.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Sub Judge,
Motor Accidents Claims Tribunal,
Subordinate Court, Paramakudi.

COPY TO:
The Record Keeper,
V.R section,
Madurai Bench of Madras High Court,
Madurai. (Two Copies)

+1cc to M/S.J.S.Murali, Advocate SR.No. 86378

C.M.A(MD)No.1135 of 2015
08.11.2017

am
JM/MR/SAR 2/02.02.2018/4P/5C