



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2017

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD).No.183 of 2016

1.Kulanthaiammal
2.Nirmalamari
3.Loorthumari

... Appellants/Claimants

Vs.

1.Nagalingam

2.The Branch Manager,
HDFC ERGO General Insurance Company Ltd.,
248, B1 C1 Reka Towers,
Kamarajar Salai, Madurai - 9. ... Respondents /Respondents

Prayer:- This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the order in M.C.O.P.No.944 of 2012 on the file of the District and Sessions Judge, (Communal Clash cases Court), Madurai dated 17.02.2015.

For Appellants : Mr.R.Vijayakumar, Amicus Curiae for
Mr.J.Gunaseelanmuthiah
For Respondent : Mr.S.Srinivasa Raghavan

JUDGMENT

Heard the learned counsel on either side.

2.The claimants have filed this appeal seeking enhancement of the compensation awarded to them. S.Antony, son of Shebastian, was standing on the road on 07.06.2011 at about 11.45 p.m., when the lorry belonging to the first respondent and insured with the second respondent dashed against him. In the resulting accident, the said Antony died. Crime No.141 of 2011, was registered, on the file of the Traffic Investigation Wing- II, Madurai, Tallakulam Police Station. His mother and sisters filed M.C.O.P.No.944 of 2012, on the file of the Motor Accident Claims Tribunal, Madurai.

3.Even though, they claimed that the deceased was running out his livelihood as a driver, his driving licence was not marked. There is really nothing on record to show that he was engaged any gainful employment. Therefore, the Tribunal fixed his monthly notional income at Rs.4,500/-. Though the sisters had also joined the mother in the claim petition, the Tribunal came to the conclusion that the mother alone was the sole dependant. The Tribunal took the view that since the deceased was a bachelor, the



age of the dependant should be taken into account for adopting the relevant employer. It is this that is challenged in this appeal.

4. The claimants would contend that the age of the deceased should be taken for adoption of the correct multiplier. In this case, considering the claim petition, the deceased was aged about 40 years. Therefore, the relevant multiplier should be 15.

5. Mr. S. Srinivasa Raghavan, learned counsel, appearing for the second respondent, contended that where the deceased was a bachelor and the parents alone are the dependants or claimants, it is the age of the parents that should be taken into account and not the age of the deceased. He would also pointed out that in the recent decision the Hon'ble Supreme Court rendered in National Insurance Company Limited Vs. Pranay Sethi and others, even though it was directed that the age of the deceased should be basis for applying the multiplier, the larger bench was not specifically considering the situation of a claim arising out of a death of the bachelor. He would further point out that the issue that was referred for determination of the larger bench pertain to various categories of the deceased. He also drew my attention to the cleavage of opinion between the decision reported in 2007 10 SCC (New India Assurance Company Limited Vs. Shanti Pathak) and the decision reported in 2015 ACJ 1985 (Munna Lal Jain Vs. Vipin Kumar Sharma and others). Both the decisions are by the benches of coordinate strength. He, therefore called upon this Court to revisit the issue.

6. Mr. R. Vijayakumar, learned counsel appearing for the appellant, on the other hand contended that the issue had actually been settled. While admitting that in Shanthi Pathak's case, the Hon'ble Supreme Court chose to take the multiplier of five, considering the age of the dependant/mother, in Munnalal Jain's case, the Honourable Supreme Court chose to hold that the multiplier must be determined with reference to the age of the deceased. Though both are by the benches of coordinate strength, though the latter one would prevail. He also drew my attention to two other decisions of the Hon'ble Supreme Court reported in TN 2012 (2) TN MAC 321 (Amrit Bhanu Shali and Others Vs. National Insurance Company Limited & Others). The Hon'ble Supreme Court categorically laid down that the selection of multiplier is based on the age of the deceased and not on the basis of the age of dependant. There may be a number of dependants of the deceased whose age may be different and therefore the age of dependants has no nexus with the computation of compensation. In the case of Sarala Verma v. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC), the 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 that 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



bringing it down to the multiplier of 13.

7. In a recent decision reported in AIR 2017 SC 1732 in (Chikkamma Vs. Parvathamma), it had been observed as under:-

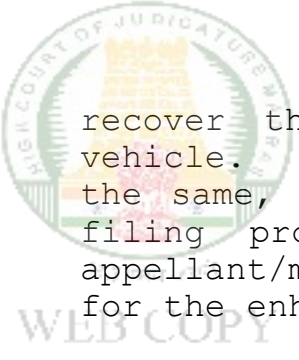
"While the issue with regard to adoption of the age of the deceased or that of the dependent for picking up an approximate multiplier, in a case where the deceased was a bachelor is pending before a larger Bench of this Court, we are of the view that in the facts of the present case, as the deceased had left his aged mother and a younger sister (physically handicapped), it is the age of the deceased which should be taken into account for adoption of the multiplier. On the said basis the multiplier which would require to be adopted is 17."

8. The counsel are not able to enlighten me as to whether the larger bench referred to above actually is the decision rendered in the case of Pranay Sethi. In any event, the five Judges Bench of the Hon'ble Supreme Court while regarding their conclusions categorically held that the age of the deceased should be the basis for applying the multiplier. When the Supreme Court did not choose to distinguish the categories of the dependants, it is not for this Court to place a narrow construction thereon. I, therefore, agree with the appellant's contention that even in cases where the deceased is a bachelor, it is the age of the deceased, which should be the basis for determining the multiplier and not the age of the parents.

9. Coming to quantum it is seen that the accident took place in the year 2011. Therefore, the notional income will have to be fixed as Rs.4,500/- . Adding future prospects at 25%, the monthly income will be at Rs.5625/-. Since, he was a bachelor, there must be 50% deduction. By applying the multiplier 15, the pecuniary loss for the family will be Rs.5,06,250. Adding damages towards other conventional heads, further a sum of Rs.1,70,000/- will have to be added. Therefore, the compensation payable to the claimant is enhanced from Rs.3,42,000/- to Rs.6,76,250- with interest. This can be rounded off to Rs.6,77,000/-. It is made clear that the mother of the deceased alone will be entitled to six lakhs while the two sisters will be entitled to Rs.38,500/- each.

10. Therefore, the award dated 17.02.2015, made in M.C.O.P.No.944 of 2012, on the file of the District and Sessions Judge, Madurai cum Communal Clash cases Court) is modified accordingly.

11. The second respondent is directed to deposit the entire compensation amount of Rs.6,77,000/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. In view of the above, the second respondent/Insurance company is directed to pay the compensation to the claimants and



recover the same from the first respondent/ the owner of the vehicle. On such deposit, the claimants are entitled to withdraw the same, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal. The first appellant/mother of the deceased is directed to pay the Court fee for the enhanced amount.

13.This Civil Miscellaneous Appeal is partly allowed accordingly. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To
The District and Sessions Judge,
(Communal Clashes cases Court),
Madurai.

The Record Keeper,
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+1CC to Mr.S.Srinivasa Raghavan, Advocate, SR.No. 91843

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