BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 24.10.2017

CORAM

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**
AND
THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**

C.M.A(MD)No.2049 of 2013
and
M.P(MD)No.3 of 2013

The National Insurance Company Limited,
through its Regional Manager,
5A, Sub Collector Office Road,
Dindigul Town. : Appellant/2nd Respondent

Vs.

1)Malarvizhi
2)Pradeepa
3)Aarthiya
4)R.Gokilapriya
5)Minor Sangeeth
(Minor is represented through his mother and guardian, the 1st respondent)
6)Rathnavathy : R1 to 6/Petitioners

7)A.P.Amman Sellkutty :R7/ 1st respondent
(Notice to 7th respondent may be dispensed with since he remained exparte before the tribunal)

Prayer : Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in MCOP No.747 of 2009 dated 01.11.2012 on the file of Motor Accident Claims Tribunal/ Additional District and Sessions Court Dindigul.

For Appellant : Mr.J.S.Murali
For R1 to R6 : Mr.Arul Jenifer

J U D G M E N T

[Judgment of the Court was delivered by **K.KALYANASUNDARAM, J**]

Challenging the quantum of compensation of Rs.19,85,000/- with interest @ 7.5% p.a., awarded in MCOP No.747 of 2009, dated

01.11.2012 by the Motor Accident Claims Tribunal/Additional District and Sessions Judge (Fast Track Court), Dindigul, the Insurance Company has preferred this appeal.

2.The wife, daughters and mother of the deceased Rajan approached the tribunal claiming compensation of Rs.20,00,000/- for the death of the deceased in a motor vehicle accident on 25.12.2008. The case of the claimants is that on 25.12.2008, when the deceased was riding his Star City motorcycle TN-57-P-1130 from his house to Dindigul, a Marcel Jeep TN-37-U-3909 came in a high speed and in the rash and negligent manner, hit against the deceased. In the impact, the deceased sustained multiple fractures and after a brief treatment at City Hospital, Dindigul, he was admitted in a hospital at Ernakulam, Kerala State. Despite best treatment, he died on 08.07.2009. In this regard, a case in Crime No.705 of 2008 was registered by the Inspector of Police, Thadikombu Police Station.

3.The claimants would further state that the deceased was 53 years at the time of accident and was working as Assistant Block Development Officer and they lost their only earning member in the unfortunate accident.

4.The claim was opposed by the appellant contending that both the drivers were negligent and since, the owner and insurer of another vehicle was not impleaded, the petition cannot be maintained. It is further stated that it is a case of natural death, so, they cannot be made liable to pay compensation and the claim was excessive.

5.The first claimant examined herself as PW1 and also examined three other witnesses and marked Exs.P1 to P17. On the side of the Insurance Company, no evidence was produced. After analyzing the evidence on record, an award was passed against the appellant. Assailing the same, the present appeal.

6.Mr.J.S.Murali, learned counsel for the appellant urged that admittedly, the deceased was a Government Servant and he was having 5 years left over service before attaining the age of superannuation, hence, the normal theory of multiplier cannot be applied, as per decision reported in **2013(2) TN MAC 528(DB)** *(Rajammal vs. Mahendran)*. It is further contended that the claimants are not entitled for addition towards future prospects, as the deceased was 53 years old.

7.Per contra, Mr.A.Arul Jenifer, learned counsel for the respondents 1 to 6 contended that Ex.P12 salary certificate shows that the deceased was earning Rs.15,192/- in the month of January 2009 and he is entitled for revised scale of pay as per Ex.P15-Salary Certificate and the theory of split multiplier cannot be applied, by placing reliance upon the decision reported in **2013(2)**

TN MAC 528 (DB) (Rajammal vs. Mahendran).

8.We have heard both sides and perused the materials available on record.

9.In the instant case, when there was no contra evidence adduced by the appellant, the tribunal rightly held that the driver of the offending vehicle responsible for the accident, on the basis of evidence of an eye witness PW2, Ex.P1 First Information Report and Ex.P2 final report filed in the criminal case.

10.Perusal of Exs.P12 and P15 salary certificates of the deceased, it is seen that the deceased was working as Assistant Block Development Officer and was earning Rs.15,192/- per month . Ex.P9 postmortem certificate shows that at the time of accident, the deceased was 53 years. The tribunal added 50% towards future prospects and fixed the income of the deceased at Rs.22,788/- (Rs.15,192/- + Rs.7596/-). 20% deduction was made towards Income Tax and 1/3rd was deducted for personal expenses and by applying multiplier '11', as per the decision of **Sarla Verma**, calculated the loss of dependency at **Rs.19,25,220/-** (Rs.14585/- x 12 x 11), which is rounded off to Rs.19,25,000/-.

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 different Divisions 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. So, with great respect, we are not able to follow the decisions cited by the learned counsel

for the respondents/claimants.

13.In the decision relied upon by the learned counsel for the claimants, the Division Bench of this Court has categorically held that the revision of pay fixed by the VI Pay Commission should not be taken into account and only the salary received by the deceased at the time of accident should be taken into account for calculating the pecuniary loss.

14.In the instant case, it is not in dispute that the deceased was working as Assistant Block Development Officer and he died at the age of 53 years. The evidence of PW3 and Ex.P12 would reveal that the last drawn salary of the deceased was Rs.15,192/-. Hence, the tribunal has rightly arrived at the salary as Rs.15,192/- based on Ex.P12 Salary Certificate. The Hon'ble Apex Court, in the case of **Sarla Verma**, has held that if the age of the deceased was more than 50 years, no addition can be made towards future prospects. However, the tribunal has added 50% towards future prospects, which cannot be sustained. In view of the above undisputed fact, the monthly salary of the deceased is fixed at Rs.15,192/-. The annual income of the deceased comes to Rs.1,82,304/- (Rs.15,192/- x 12). After deducting ¼th towards his personal expenses, the loss of contribution to the family would be **Rs.1,36,728/-**

15. Admittedly, the deceased had another five years of service left over. In the light of the above judgments, by applying split multiplier, the loss of dependency before his superannuation is arrived at Rs.6,83,640/- (Rs.1,36,728/- x 5) and after his retirement comes to **Rs.4,10,184/-** (Rs.68,364 x 6). The claimants totally would be entitled for **Rs.10,93,824/-** towards loss of dependency. The award under the head of consortium and loss of love and affection Rs.10,000/- and Rs.40,000/- respectively, in our opinion, requires enhancement and the same is enhanced to **Rs.50,000/-** and **Rs.1,00,000/-**. Further, the award of Rs.5,000/- under the head of funeral expenses is meagre and the same is to be enhanced to **Rs.25,000/-** and Rs.**5,000/-** awarded under the head of loss of estate is confirmed. Rs.1,90,000/- awarded towards medical expenses, based on the evidence of PW1 and PW4 and Exs.P7 and 8 is confirmed. In total, the claimants would be entitled to **Rs.14,63,824/-** together with interest @ 7.5% p.a.

16. In the result, the appeal is partly allowed. The award of the tribunal is modified to Rs.14,63,824/- as against Rs.19,85,000/-. The appellant Insurance Company is directed to deposit the modified award amount, less already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the major claimants are permitted to withdraw the modified amount as apportioned by the tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge/MACT
   Dindigul.

2. The Section Officer, V.R. Section,
   Madurai Bench of Madras High court,
   Madurai. (2 COPIES)

+ 1 cc TO Mr.J.S.Murali , Advocate in SR No. 83451
+ 1 cc TO Mr.A.Arul Jenifer , Advocate in SR No. 83478

skn
AE/JC/SAR2/01.03.2018/5P/6C

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24.10.2017