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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 05.09.2018	Delivered on 26.09.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
CMA.No.3210 of 2017

1.Anbukarasi Manoharan
2.Sindhuja Deepak

... Appellants/Claimants

-vs-

1.R.Arul Prakash

2.The Oriental Insurance Co. Limited,
No.216, Prakasam Salai,
Broadway, Chennai - 600 108. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award dated 09.02.2017 made in MACTOP.No.4572 of 2011 on the file of the Motor Accident Claims Tribunal, Chennai, (In the Court of the Chief Judge, MCOP Tribunal, Chennai).

For Appellants : Mr.K.Suryanarayanan

For Respondents: Mr.J.Chandran for R2
R1 - No Appearance

J U D G M E N T

R.SUBRAMANIAN, J.

1. The claimants who were favoured with an award for a sum of Rs.28,64,024/- for the death of one Manoharan who died in a motor accident that occurred on 16.08.2011 at about 21.05 hours are the appellants. They seek enhancement of compensation.

2. According to the claimants, the accident occurred due to the rash and negligent driving of the rider of the Bajaj Pulsar motorbike bearing registration No.TN-33-AP-9238. The claimants would contend that when the said Manoharan along with his wife and daughter was crossing the road after taking all precautions, the rider of the motor cycle drove the vehicle in a rash and negligent manner at a high speed and dashed against the said Manoharan and his



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daughter. Due to the grievous injuries sustained, the said Manoharan died on the same day at about 23.30 hours. The claimants would further contend that the said Manoharan was employed in Southern Railways and was earning about Rs.43,000/- per month. Contending that the sudden death of Manoharan had left the family in shatters, the claimants would seek a compensation of Rs.40,00,000/-.

3. The claim was resisted by the 1st respondent contending that there was no negligence on his part. According to him, it was the deceased who suddenly crossed the road in a prohibited area which resulted in the accident.

4. The Insurance Company also filed a counter contending that the accident did not occur due to the rash and negligent driving of the rider of the motorcycle. The Insurance Company would also deny the particulars of employment, income and age of the deceased.

5. While the legal representatives of Manoharan filed MCOP.No.4572 of 2011 seeking compensation for his death the 2nd claimant in MCOP.No.4572 of 2011 filed MCOP.No.4903 of 2011 seeking compensation for the injuries suffered by her.

6. The Tribunal on examination of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the driver of the two wheeler. In coming to the said conclusion the tribunal relied upon, Ex.P1, the FIR and Ex.P2, the sketch. The Tribunal also took note of the charge sheet filed against the driver of the two-wheeler which has been marked as Ex.P3. The Tribunal disbelieved the evidence of RW1, the driver of the two-wheeler inasmuch as the charge sheet was also filed against him.

7. On quantum, the Tribunal granted a sum of Rs.28,64,024/-. In arriving at the said quantum of compensation, the Tribunal took note of the fact that the deceased was a railway employee and he was aged about 54 years at the time of the accident and he had only five years of service left. Taking the multiplier at '11', the Tribunal worked out the loss of pecuniary benefits on the basis of the salary for a period of five years and for the remaining period of six years the Tribunal worked out the loss of pecuniary benefits at the assumed pension that would be drawn by the deceased.

8. It is this split multiplier method adopted by the Tribunal which is very seriously challenged by Mr.Suryanarayanan, learned counsel appearing for the appellants. We have heard Mr.J.Chandran, learned counsel



appearing for the insurance Company also.

9. Admittedly, the deceased was working as an accountant in Southern Railways and earning a sum of Rs.42,197/- per month as salary at the time of the accident. The Tribunal added 15% towards future prospects, and deducted 1/3rd towards his personal expenses. The Tribunal also deducted 20% of Rs.3,96,124/- being the income tax payable by the deceased. On such working the Tribunal arrived at the yearly loss of dependency at Rs.3,44,600/-. Applying a multiplier of '5' the Tribunal worked out the pecuniary loss upto the date of retirement of the deceased at Rs.17,23,000/-. Thereafter, the Tribunal took the pension at 50% of the salary drawn at Rs.22,000/-. After deducting 1/3rd towards his personal expenses, the Tribunal arrived at the monthly loss of dependency at Rs.14,667/-, adopting the multiplier of '6' the Tribunal arrived at the remaining loss of dependency at Rs.10,56,024/-. Thus, the total loss of dependency was granted at Rs.27,79,024/-. The Tribunal had granted Rs.10,000/- towards loss of consortium to the wife, Rs.20,000/- towards loss of love and affection, Rs.25,000/- towards medical bills, Rs.5,000/- towards transport expenses and Rs.25,000/- towards funeral expenses. In all the Tribunal had awarded a sum of Rs.28,64,024/-.

10. Mr.K.Suryanarayana, learned counsel appearing for the claimants would contend that the Tribunal erred in adopting the split multiplier. Relying upon the judgment of the Hon'ble Supreme Court in Puttamma and others Vs. K.L.Narayana Reddy and another reported in 2014 (1) TN MAC 481 (SC) would contend that the Hon'ble Supreme Court has pointed out that the Hon'ble Supreme Court while deciding the multipliers to be applied in Sarala Varma & Other Vs. Delhi Transport Corporation & another reported in 2009 (2) TN MAC 1, has not suggested application of split multiplier.

11. Mr.K.Suryanarayanan would invite our attention to paragraph 34 of the judgment in Puttamma and others Vs. K.L.Narayana Reddy and another reported in 2014 (1) TN MAC 481 (SC) to contend that the split multiplier should not have been adopted. As regards applicability of split multiplier the Hon'ble Supreme court in Puttamma and others Vs. K.L.Narayana Reddy and another referred to supra observed as follows:-

32. For determination of compensation in motor accident claims under Section 166 this Court always followed multiplier method. As there were inconsistencies in the selection of a multiplier, this Court in Sarla Verma prepared a table for the selection of a



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multiplier based on the age group of the deceased/victim. The 1988 Act, does not envisage application of a split multiplier.¹

33. In K.R Madhusudhan v. Administrative Officer and another, 2011 (4) SCC 689 this Court held as follows:

"14. In the appeal which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefor. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years the multiplier is 11, which is specified in the 2nd column in the Second Schedule to the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6.

15. We are, thus, of the opinion that the judgment of the High Court deserves to be set aside for it is perverse and clearly contrary to the evidence on record, for having not considered the future prospects of the deceased and also for adopting a split multiplier method."

34. We, therefore, hold that in absence of any specific reason and evidence on record the tribunal or the court should



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not apply split multiplier in routine course and should apply multiplier as per decision of this Court in Sarla Verma as affirmed in Reshma Kumari (supra).

12. The law laid down by the Hon'ble Supreme Court as extracted above clearly indicates that there is no prohibition against the use of split multiplier. All that the Hon'ble Supreme Court had pointed out is that normally multiplier suggested by the Hon'ble Supreme Court in Sarala Varma & Other Vs. Delhi Transport Corporation & another referred to supra should be applied. When there is evidence on record to show that the income of the deceased would not be the same after a certain point of time, then the High Court or the Tribunal can adopt a split multiplier if it is shown that the dropping income would be within the span of number of years suggested as multiplier in Sarala Varma & Other Vs. Delhi Transport Corporation & another.

13. In the case on hand we find that the deceased was aged about 54 years and he had only five years of service left. Thereafter, his income would have drastically reduced and he would be earning only a pension which would be 50% of the income. A perusal of the award of the Tribunal would show that the Tribunal has taken note of the future prospects and had worked out the loss of dependency till the date of retirement properly at Rs.17,23,000/-.

14. But, after the period of five years the Tribunal has adopted the pension at Rs.22,000/- which is almost equal to the 50% of the salary drawn by the deceased at the time of the accident. While we find no error in the approach of the Tribunal in adopting a split multiplier, we are constrained to point out that the Tribunal erred in adopting 50% of the salary drawn by the deceased at the time of the accident as the base figure to work out the monetary loss for the remaining period. Normally, the pension is 50% of the last drawn salary. By adopting 15% for future prospects the Tribunal has determined the income for the purposes of calculation of compensation at Rs.49,677/-. Therefore, the last drawn salary of the deceased should be assumed to be Rs.49,677/- and the pension would be 50% of the same. If thus worked out, the basis for calculation of the loss of dependency for the period of six years after the date of retirement should have been half of Rs.49,677/-, and we take it at Rs.25,000/-. If thus worked, the loss of dependency for the remaining period of six years after retirement would



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work out to Rs.12,00,000/- [25000x2/3x12x6] adding a sum of Rs.17,23,000/- calculated as the loss of pecuniary benefits for the five years the total compensation payable under the head of pecuniary loss or loss of dependency would be Rs.29,23,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards loss of consortium the same is enhanced to Rs.40,000/- in view of the judgment of the larger bench of the Hon'ble Supreme Court in National Insurance Co. Ltd Vs. Pranay Sethi and others reported in 2018 (1) LW 331 and award of the Tribunal at Rs.20,000/- for loss of love and affection is enhanced to Rs.80,000/-. The other amounts granted by the Tribunal are confirmed. Therefore, the total award works out to Rs.30,98,024/- and the same is rounded off to Rs.31,00,000/-.

15. In fine, the appeal is partly allowed, the compensation awarded by the Tribunal is modified to Rs.31,00,000/- with 7.5% interest per annum from the date of petition till date of payment. The award amount is apportioned as follows considering the fact that the 2nd appellant is a married daughter, the 1st appellant, wife will take Rs.20,00,000/- with proportionate interest and entire costs. The 2nd appellant, daughter will take Rs.11,00,000/- with proportionate interest. The Insurance Company is directed to deposit the balance amount with proportionate interest and costs within a period of four (4) weeks from the date of receipt of a copy of the judgment and on such deposit the claimants would be entitled to withdraw the same. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dsa

To

The Motor Accident Claims Tribunal,
The Chief Judge, MCOP Tribunal, Chennai.

Copy to

The section officer,
VR Section,
High court
Madras

+1cc to Mr. J.Chandran, Advocate SR.No. 67011

+1cc to Mr.K.Suryanarayanan, Advocate SR.No. 66509

CMA.No.3210 of 2017

ASK(24/12/2018)