



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2018

CORAM :

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA(MD)No.751 of 2018

1.Lakshmi, W/o.Kumar
2.Deepika, D/o.Kumar
3.Saran, S/o.Kumar

... Appellants/petitioners

vs.

1. Joseph Mathew

2. Bajaj Allianz General Insurance Company Ltd.,
Through its Branch Manager,
No.11, Peoples Park,
3rd Floor,
Government Arts College Road,
Coimbatore.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award, dated 13.03.2017, made in M.C.O.P.No.1109 of 2014, on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Tirunelveli.

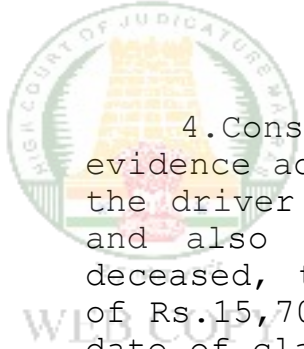
For Appellants : Mr.T.Selvakumaran
For R2 : Mr.J.S.Murali

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Award, dated 13.03.2017, made in M.C.O.P.No.1109 of 2014, on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Tirunelveli.

2.In an accident, which occurred on 18.09.2014, at 3.00 p.m. one Kumar died, for which, the wife and children of the deceased have claimed compensation of Rs.40 Lakhs.

3.The second respondent Insurance Company, with which the Maruthi Alto Car bearing Registration No.TN-37-AW-7392 belonging to the first respondent was insured, filed counter disputing the manner of accident and also contended that the driver of the first respondent did not possess valid and effective driving licence at the time of accident and the amount of compensation claimed under various heads are excessive and prayed for dismissal of the claim petition.



4. Considering the pleadings and both the oral and documentary evidence adduced by the appellants/claimants, the Tribunal held that the driver of the first respondent was responsible for the accident and also considering the age and nature of work done by the deceased, the Tribunal by applying split multiplier, awarded a sum of Rs.15,70,000/- as compensation with interest at 9% p.a. from the date of claim petition till the date of realization.

5. Challenging the application of split multiplier and for enhancement of compensation, the appellants/claimants have come out with the present appeal.

6. The learned counsel appearing for the appellants contended that the Tribunal erred in adopting split multiplier while awarding compensation. The Tribunal ought to have calculated the loss of income based on the salary received by the deceased at the time of his death and ought to have applied multiplier '9'. The Tribunal ought to have awarded Rs.1,00,000/- each to the appellants 2 and 3 towards loss of love and affection and prayed for enhancement of compensation.

7. In support of his submissions, the learned counsel appearing for the appellants relied on the following decisions:-

(i) **2014 (2) TN MAC 546 (SC) [Saraladevi and others Vs. Divisional Manager, Royal Sundaram Alliance Insurance Company Ltd. and another]**, wherein at Paragraph 7, it has been held as follows:-

''7. The High Court, after examining the facts, evidence and circumstances of the case, has held that as per the judgment in **Sarla Verma and Others. Vs. Delhi Transport Corporation and another**, 2009 (2) TN MAC 1 (SC): (2009) 6 SCC 121, the correct Multiplier between the age group of 56-60 should have been 9 since the deceased was 58 years at the time of his death. Further, the High Court held that if the actual salary of Rs.50,809/- is taken into consideration, the annual loss of income of the deceased works out to Rs 6,09,708/- and 10% of the amount is liable to be deducted towards Income Tax deduction. 10% in the sum of Rs 6,09,708/- comes to Rs.60,970.80 and the same can be rounded off to Rs.61,000/-. If so, the balance amount works out to Rs.5,48,708/- (Rs.6,09,708/- minus Rs.61,000/-), rounded off to Rs.5,49,000/- as the annual income of the deceased. Hence, annual loss of income could be fixed at Rs.5,49,000. For the first two years, the Loss of Income would be Rs.10,98,000/- (Rs.5,49,000 × 2 years). For the balance 7 years, only 50% annual income has to be taken into consideration as Notional Income, which comes to Rs.19,21,500/- (Rs.2,74,500/- × 7 years). Therefore, the total Loss of Income works out to Rs.30,19,500/-. Further, the High Court was of the opinion that 1/3rd amount is liable to be deducted towards Personal Expenses of the deceased. If this amount is deducted out of the annual income of the deceased, the balance amount works out to Rs.20,13,000/-



which amounts to a total Loss of Dependency (Rs.30,19,500/- minus Rs.10,06,500/-). The High Court further held that there is Contributory Negligence on the part of the deceased which was assessed at 25% which amount would be Rs.5,03,250/-. When this amount was deducted out of Rs.20,13,000/-, the High Court held that the Legal Heirs of the deceased are entitled to Rs.15,09,750/- towards Loss of Dependency.''

(ii) **2016 (1) TN MAC 269 [Managing Director, TNSTC (Kumbakonam Division - III) Vs. G.Saroja and others]**, wherein at Paragraph 17, it has been held as follows:-

''17.The contention of the learned counsel for the appellant that the Tribunal ought to have applied split multiplier method in arriving at compensation under the heading loss of income, is untenable and unsustainable. In the present case, admittedly the deceased was having 8 years of service. He would have got increment, promotion of service, revision of pay, etc. Taking into consideration the deceased was having 8 years of further service and would have got increase in salary, I hold that split multiplier method is not applicable in the present case. For this reasons, I hold that the Judgment relied on by the learned counsel for the appellant, is not applicable to the facts of the present case, as the deceased in that case, had only one year of service. Whereas in the present case, the deceased had 8 years of service.''

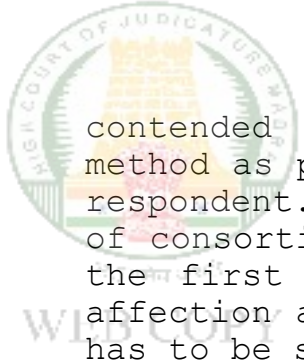
(iii) **2017 (1) TN MAC 652 (DB) [Oriental Insurance Co. Ltd Vs. S.Venkateswari and others]**, wherein at Paragraphs 24 and 25, it has been held as follows:-

''24.The judgments relied on by the learned Counsel for the appellant/Insurance Company would speak about the split multiplier concept. However, in the judgment rendered by the Honourable Supreme Court in **Puttamma and others v. K.L.Narayana Reddy and another**, 2014 (1) TN MAC 481 (SC), at paragraph 34, it has been held that "We, therefore, hold that in absence of any specific reason and evidence on record the Tribunal or the Court should not apply Split Multiplier in routine course and should apply Multiplier as per decision of this Court in the case of **Sarla Verma v. Delhi Transport Corporation**, 2009 (2) TN MAC 1 (SC), as affirmed in the case of **Reshma Kumari v. Madan Mohan**, 2013 (1) TN MAC 481 (SC)".

25.The Honourable Supreme Court in the above cited judgment, in Paragraph 64 held that the judgment of the High Court of Karnataka is perverse and contrary to the evidence on record and while setting aside the same observed that future prospects of the deceased and adoption of split multiplier method is against law laid down by the Honourable

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8.The learned counsel appearing for the second respondent



contended that the Tribunal has rightly applied split multiplier method as per the judgments relied on by the counsel for the second respondent. The Tribunal erred in awarding Rs.1,00,000/- for loss of consortium and Rs.50,000/- towards loss of love and affection to the first respondent. The amount awarded for loss of love and affection and funeral expenses is excessive and therefore, the same has to be set aside.

9.The learned counsel appearing for the second respondent further contended that the deceased was having one month and 13 days in the service and therefore, the Tribunal correctly applied split multiplier and hence, he prayed for dismissal of the Civil Miscellaneous Appeal.

10.In support of his contentions, the learned counsel appearing for the second respondent relied on the following judgments:

(i) **2013 (2) MWN (Civil) 729 [R.Leelavathy Vs. Sheik Dawood and another]**, wherein at Paragraph 11, it has been held as follows:-

'11.In the case on hand, Ex.P.6 is the salary certificate. In the absence of any contrary evidence, Tribunal was not right in fixing the take home salary of the deceased at Rs.11,000/- for the period during which he would have been in employment. The Tribunal ought to have taken the salary of deceased at Rs.22,474/- for the period of one year of left over service of deceased taking into consideration that the deceased is aged 57 years at the time of accident and deducted 1/3rd therefrom towards personal expenses of deceased, to arrive at the loss of dependency to the family. Therefore, we deem it appropriate to take the salary of deceased as Rs.22,474/- for the period of one year i.e., till the deceased attained the age of 58 years. After deducting 1/3rd for personal expenses, Rs.7,491/-, contribution to the family is calculated at Rs.14,983/- which is rounded off to Rs.15,000/- and the yearly loss of contribution to the family is calculated at Rs.1,80,000/- (Rs.15,000/- x 12).'

(ii) **2014 (1) TN MAC 334 (DB) [Branch Manager, National Insurance Co. Ltd. Vs. M.Arulmozhi and others]**, wherein at Paragraphs 13 and 14, it has been held as follows:-

'13.It is an admitted fact that the deceased was employed as Assistant Administrative Officer in Agricultural Department and was earning an income of Rs.17,529/- per month, which is evidenced by Exs.P.6 and P.7-Salary Certificates. From a perusal of Ex.P.6, it could be seen that a sum of Rs.255/- is deducted compulsorily from the salary. Therefore, the deceased was getting a net monthly income of Rs.17,274/-. The age of the deceased on the date of accident was 57 years and the multiplier to be adopted is 8, are not in dispute. From the materials available on record, it can be inferred that on the date of accident, the deceased was 57 years and 3 months old and had only 9 months of service before his retirement. Though normally 8



multiplier would be applied in computing the loss of dependency, in this case, the same cannot be done as the income of the deceased will not be the same from the date of retirement. Though the deceased had only 9 months of service, the appellant has got no serious objection to round it off to one year. Accordingly, the period before retirement is taken as one year. Therefore, the loss dependency before retirement of the deceased would be Rs. 17,274/- X 12 X $\frac{1}{4}$ X 1 = Rs.1,55,466/-.

14. Now, the dependency after the retirement of the deceased is to be considered. Had the deceased Murugesan been alive, after the age of superannuation, he would get only half of the salary as pension. Therefore, it is an exceptional case where the split multiplier has to be adopted, i.e., $1 + 7 = 8$. As there is no scope for evidence about the prospect of future increment of the deceased and since the earning would be reduced to 50% after retirement, the multiplier of 8 as adopted by the Tribunal cannot be sustained. Hence, this Court feels that split multiplier can be adopted and as such, after superannuation, 7 multiplier would apply. Therefore, the loss of dependency from pensionary benefits would be Rs.8,637/- X 12 X $\frac{1}{4}$ X 7 = Rs.5,44,131/-.''

(iii) **C.M.A. (MD) Nos.320 and 321 of 2013, decided on 28.01.2014 [National Insurance Company Limited Vs. Murugammal and others]**, wherein at Paragraph 9, it has been held as follows:-

''9. As stated earlier, the deceased is having only 10 years of service at the time of his death and in that way it comes to Rs.19,08,470/- and with regard to remaining '3' multiplier, it comes to Rs.2,86,272/- and in aggregation, it comes to Rs.21,94,742/-. The Motor Accidents Claims Tribunal has awarded Rs.20,000/- towards consortium and towards consortium Rs.20,000/- can be awarded and towards love and affection, Rs.30,000/- can be awarded. The Motor Accidents Claims Tribunal has awarded Rs.10,000/- towards funeral expenses and the same does not require any modification and in that way it comes to Rs.22,54,742/-.''

(iv) **2015 (2) TN MAC 449 (DB) [Reliance General Insurance Co. Ltd. Vs. K.Meena and others]**, wherein at Paragraphs 20 and 21, it has been held as follows:-

''20. As observed in the foregoing paragraph, the remaining two ($11 + 2 = 13$) was multiplied with the 50% of the annual dependency of the family.

21. The calculation of split multiplier has been detailed as under:-

a. After deducting the 10% of income tax from the annual dependency of Rs.2,20,824/-, the remaining balance would be Rs.2,14,742/-. Since the deceased had to maintain



his family consisting of five members, the Tribunal had allowed $1/4^{\text{th}}$ deduction towards his personal expenses. Accordingly, the $3/4$ remainder would be Rs.1,61,057/-. Then, the life dependency of the family would be Rs.17,71,627/- (Rs.1,61,057 x 11). For the remaining two years, 50% of the annual income of Rs.2,14,742/- has to be multiplied with 2. Then, the 50% of annual income for two years would be Rs.2,14,742/- (Rs.1,07,371/- x 2). Therefore, the life dependency for 11 years would be Rs.17,71,627/- and for the remaining two years would be Rs.2,14,742/-. In total, the pecuniary loss of the family would come to Rs.19,86,369/-.''

(v) **2016 (1) TN MAC 493 (DB) (Ker.) [Parukutty and others Vs. K.P.Joseph and others]**, wherein at Paragraph 31, it has been held as follows:-

'31.The next aspect is regarding the compensation assessed by the Tribunal. As regards the method adopted by the Tribunal, the learned counsel for the appellants submitted that the deceased had a permanent job under the Government Irrigation Department. He was aged 51 at the time of accident. The Tribunal for the purpose of calculating the compensation, assessed the monthly salary as Rs.6,626/- as reflected in Ext.A8. After deducting $1/3$ for the personal expenses of the deceased, the balance amount was reckoned. The multiplier adopted is 13. Going by the judgment of the Apex Court in **Sarla Verma Vs. Delhi Transport Corporation**, 2009 (2) TN MAC 1 (SC) : 2010 (2) KLT 802 (SC), the multiplier will be only 11 since the deceased was aged 51 and retirement age during that period was 55. He had four years of remaining service. The Tribunal actually calculated the period of balance service as six years which may not be the correct one. The Tribunal reckoned the salary upto that period and for the remaining period monthly pension is reckoned as Rs.1,500/-. The learned counsel submits that the same is not correct method. We are also of the view that going by the Pension Scheme for Government Employees, 50% of salary can be assessed as monthly pension. Therefore, the total compensation towards loss of dependency will have to be calculated accordingly. The calculation is the following:

Rs.6,626 x 12 x 4 x $2/3^{\text{rd}}$	= Rs.2,12,032
Rs.3,313 x 12 x 7 x $2/3^{\text{rd}}$	= Rs.1,85,528
Total	= Rs.3,97,560 ''

(vi) **C.M.A.(MD)No.2049 of 2013, decided on 24.10.2017 [The National Insurance Company Limited Vs. Malarvizhi and others]**, wherein at Paragraphs 12, 14 and 15, it has been held as follows:-

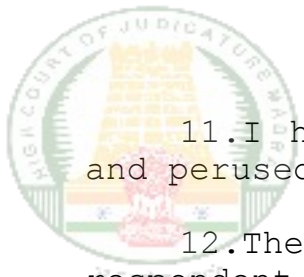
'12.It is true that in **2014 (1) TN MAC 481** in the case of **Puttamma Vs. K.L.Narayana Reddy**, the Hon'ble Apex Court has observed that in the absence of any specific reason and evidence on record, the tribunal or the court shall not apply split multiplier in routine course and should apply multiplier as per the decision in **Sarla Verma**. The issue



came up for consideration before this Court on many occasions and different 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. So, with great respect, we are not able to follow the decisions cited by the learned counsel for the respondents/claimants.

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 1/4th 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 P8 is confirmed. In total, the claimants would be entitled to Rs.14,63,824/- together with interest at 7.5% p.a.''



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

12.The learned counsel for the appellants as well as the second respondent relied on the judgments referred to above, which are for and against applying split multiplier. In the judgments relied on by the learned counsel for the appellants, the Courts have held that not to apply split multiplier, but to apply multiplier as per the judgment of the Hon'ble Apex Court reported in **2009 (6) SCC 121 [Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another]**. In the judgment relied on by the learned counsel for the second respondent, the Courts have held that split multiplier is proper method and even where a Government Servant had 10 years of service, the Court had applied split multiplier. The Hon'ble Apex Court in **Puttamma and others Vs. K.L.Narayana Reddy and another** reported in **2014 (1) TN MAC 481 (SC)**, wherein at Paragraph 34, it has been held as follows:-

'34.We, therefore, hold that in absence of any specific reason and evidence on record the Tribunal or the Court **should not apply Split Multiplier in routine course** and should apply Multiplier as per the decision of this Court in the case of **Sarla Verma** (supra), as affirmed in the case of **Reshma Kumari** (supra).'

[Emphasis supplied]

13.In the judgments referred to above, the Hon'ble Apex Court has held as above, after referring to various judgments including the **Sarla Verma's case** [cited supra] and **Reshma Kumari and others Vs. Madan Mohan and others** [2013 (1) TN MAC 481 (SC)]. From the judgments relied on by both the learned counsel for the appellants and the second respondent and the judgment of the Hon'ble Apex Court reported in **2014 (1) TN MAC 481 (SC)** [cited supra], it is seen that for a specific reason and evidence on record, the Tribunal or Court can apply split multiplier and split multiplier should not be applied in a routine manner and it must be applied as per **Sarla Verma's case** [cited supra]. In the present case, the deceased was having only one month and 13 days of service at the time of accident. There is no possibility of any increment or promotion and as per **Sarla Verma's case** [cited supra], the appellants are not entitled to any future prospects, as the deceased was 57 years 10 months at the time of accident. As per **Sarla Verma's case** [cited supra], the person aged above 50 years, is not entitled for future prospects. In such circumstances, the split multiplier method adopted by the Tribunal is correct.

14.From the materials on record, it is seen that the deceased was aged about 57 years and 10 months on the date of accident. His retirement age is 58 years. Based on the above facts, the Tribunal following the judgments of the Division Bench of this Court, applied split multiplier method. The Tribunal has calculated the loss of income for two months based on the salary received by the deceased.

After deducting 10% towards income tax and $1/3^{\text{rd}}$ towards his personal expenses, the Tribunal has calculated the loss of income for the further period of 106 months $[9 \times 12 = 108 - 2]$, applying multiplier '9', based on 50% of the monthly income received by the deceased at the time of death and deducted 10% towards income tax and also $1/3^{\text{rd}}$ towards personal expenses. The method adopted by the Tribunal is correct, but calculation is not correct. Applying the method, the amount payable to the appellants/claimants for loss of income as follows:-

Last drawn salary	Rs.40,200/-
Less :10% deduction for income tax	Rs. 4,020/-

	Rs.36,180/-
Less : $1/3^{\text{rd}}$ towards personal expenses	Rs.12,060/-

	Rs.24,120/-

Hence, for two months, the loss of income is Rs.48,240/- $[Rs.24,120/- \times 2]$. For the balance period, 50% of the salary $[Rs.40,200 / 2]$ has to be taken into consideration, which works out to Rs.20,100/-. After deducting 10% towards income tax i.e., Rs.2,010/- and $1/3^{\text{rd}}$ towards personal expenses $[Rs.6,030/-]$, the monthly income is arrived at Rs.12,060/- and therefore, the loss of income comes to Rs.12,78,360/- $[Rs.12,060/- \times 106]$ and after adding loss of the income for two months, i.e., Rs.48,240/-, the loss of income would be Rs.13,26,600/-.

15.The Tribunal has erroneously awarded compensation to the first appellant on both the loss of consortium as well as the loss of love and affection and Rs.25,000/- for funeral expenses. As per the judgment of the Hon'ble Apex Court reported in **2017 (16) SCC 680 [National Insurance Company Limited Vs. Pranay Sethi and others]**, the appellants are not entitled to any amount towards loss of love and affection and they are entitled only a sum of Rs.70,000/- under conventional heads. The respondents have not filed any appeal challenging the quantum of compensation awarded to the appellants.

16.Accordingly, the award of the Tribunal is modified as under:-

Sl. No.	Heads	Amount awarded by the Tribunal	Amount Awarded by this Court	Amount enhanced/ granted
1	Loss of Income	12,83,988	13,26,600	Enhanced
2	Loss of consortium	1,00,000	1,00,000	Confirmed
3	Loss of Love and Affection to the first appellant	50,000	50,000	Confirmed



4	Loss of Love and Affection to the appellants 2 and 3	1,00,000	1,00,000	Confirmed
5	Funeral Expenses	25,000	25,000	Confirmed
6	Transportation	10,000	10,000	Confirmed
7	Damage to Clothes	1,000	1,000	Confirmed
	Total	15,69,988	16,12,600	Enhanced by Rs.42,612

17.The second respondent is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited if any, to the credit of M.C.O.P.No.1109 of 2014, within a period of eight weeks from the date of receipt a copy of this judgment. On such deposit being made, the appellants/claimants are entitled to withdraw their respective shares, less the amount, already withdrawn if any, in the ratio as apportioned by the Tribunal by filing necessary application before the Tribunal.

18.Accordingly, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Tirunelveli.

Copy To:-

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Madurai. (2 copies)

+ 1 CC TO Mr.T.SELVAKUMARAN, ADVOCATE IN SR No.90386
+ 1 CC TO Mr.J.S MURALI, ADVOCATE IN SR No.90364

SMN2

TE/SV/SAR-1 : 21/12/2018 : 10P/6C