IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1057 of 2011

(Through Video Conferencing)

1.P.Jamuna Rani
2.Minor.V.Sowmiya
3.Minor.V.Soundarya
(Minors 2 and 3 represented by their natural guardian and mother Jamuna Rani)
4.V.Chinnasamy
5.C.Vellaithai ... Appellants

Vs.

1.S.A.Nataraj
2.Samiappa Gounder
3.The New India Assurance Co., Ltd.,
Kongu Complex,
Opp.Bus Stand,
34/35, Bye Pass Road,
Dharapuram 638 357.
4.K.Sekar
5.A.Rajeshwari
6.Bajaj Allianz General
Insurance Co., Ltd.,
No.26, 1st Floor, Vallalai Salai,
45, Feet Road, Venkata Nagar,
(Opp.Professional Courier)
Pondicherry 605 011.
7.Sagubar Ali ... Respondents

Prayer:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award passed by the Motor Accidents Claims Tribunal (Additional District Judge) Fast Track Court No.I, Erode in M.C.O.P.No.196 of 2008, dated 30.11.2010.

For Appellants : Mr.K.Govi Ganesan

For R1 & R2 : No Appearance

For R3 : Mr.J.Chandran

J U D G M E N T

The appellants were the claimants. They are aggrieved by the impugned Judgment and Decree dated 30.11.2010 passed by the learned Motor Accident Claims Tribunal, Additional District Judge cum Fast Track Court No.I, Erode in M.C.O.P.No.196 of 2008.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.5,82,600/- together with interest at 7.5% from the date of filing of the claim petition till the date of deposit to the claimants/appellants. Aggrieved by the same, the appellants have filed the present Civil Miscellaneous Appeal for enhancement of compensation.

3. It is the case of the appellants that the deceased C.Varadharajan was working as a driver in Chief Educational Office, Erode. The deceased C.Varadharajan met with a fatal accident on 18.12.2007, when he was driving a Jeep bearing Reg.TN.33.G.0992 on the Perundurai to Kangayam North South Main Road, near Indian Oil Petrol Bunk, Chennimalai. A bus bearing Reg.No.TN.33.AZ.4757 is said to have been driven by its driver. The bus belonged to the 2nd respondent and was allegedly driven in a rash and negligent manner and hit against the front portion of the jeep. At that time, the 5th respondent's driver who was driving the lorry bearing Reg.No.TN.31/AA.1868 from behind hit the rear portion of the jeep. As a result of which, Varadharajan sustained multiple grievous injuries and died on the way to hospital.

4. Therefore, the appellants/claimants filed the claim petition for compensation of Rs.28,85,000/-. However, the claim was restricted to Rs.20,00,000/- by paying appropriate court fee for Rs.20,00,000/-. In the claim petition, after considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.5,82,600/-. In this appeal, the appellants seek for enhancement of compensation.

5. There is no dispute regarding the nature of the accident and the compensation that has to be awarded. This appeal is confined to the quantum of compensation awarded by the Tribunal. The Tribunal has awarded the aforesaid compensation under the following heads:-

Heads	Amount
Loss of income	Rs.5,37,600
Loss of Friendship and Goodwill to the 1st appellant	Rs. 10,000

Heads	Amount
Loss of Love and affection to the appellants	Rs. 30,000
Funeral expenses	Rs. 5,000
Total	Rs. 5,82,600

6. The learned counsel for the appellants-claimants submits that the Tribunal ought to have adopted the correct multiplier of 13 as per the decision of the Hon'ble Supreme Court rendered in the case of Sarala varma and other Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1, as the age of the deceased was 50 years at the time of the accident, as is evident from Ex.P.27 - postmortem report and Ex.P.37-Service Register of the deceased Varadharajan. It is submitted that the Tribunal ought to have awarded the amounts towards filial consortium and parental consortium separately.

7. Further, the learned counsel for the appellants-claimants submits that the salary of the deceased at the time of the accident as per Ex.P.38 – salary certificate was Rs.8,402/- whereas the Tribunal adopted only Rs.5,600/- while determining the compensation. They also submitted that the Tribunal has not awarded any amount towards future prospects. They therefore prayed for enhancement of compensation in this appeal.

8. The learned counsel for the 2nd respondent submits that Ex.P.27 – Certified copy of Post Mortem Report and Ex.P.37 – Xerox copy of Service Register confirms that the deceased was aged about 50 years as he was born on 01.03.1957. The deceased was working as a driver in the Chief Educational Office, Education Department, Coimbatore and earning a sum of Rs.8,402/- p.m. as he was Government servant.

9. I have considered the arguments advanced by the learned counsel for the 1st respondent and the 2nd respondent Insurance Company. The Tribunal has awarded the compensation by splitting the multiplier. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

10. In C.M.A.No.694 of 2009 and Cross Obj.No.46 of 2009, this Court vide order dated 03.11.2020, this Court held that the multiplier cannot be adopted. The operative portion of the said order which reads under: -

12. The splitting of multiplier has not been expressly accepted by the Hon'ble Supreme Court. The Hon'ble Supreme Court in K.R Madhusudhan Versus Administrative Officer 2011(4) SCC 689 has merely stated that the High Court and the Tribunal have not given any reasoning for adopting split up multiplier, the Hon'ble Supreme Court there 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 Corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased in 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.

13. However, the Division Bench of this Court in Anbukarasi Manoharan and another Vs. R.Arul Prakash and another in C.M.A.No.3210 of 2017 accepted the contention of the insurer while splittling the multiplier and has given reasons.

14. However, it is to be noted that the decision of the Hon'ble Supreme Court in Sarla Verma vs. Delhi Transport Corporation (2009) 6 SCC 121 has examined issue relating to the correct multiplier to be adopted. It has not held that there should be a split in the multiplier, merely because the deceased was approaching the age of superannuation/retirement. In paragraph - 42, the Hon'ble Supreme Court has held as follows:-

> 42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335],Trilok Chandra [(1996) 4 SCC 362] and Charlie [(2005) 10 SCC 720 :

> 2005 SCC (Cri) 1657]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

15. It may not be also out of place to refer to the decision of the Constitutional Division Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680. While laying down the law as far as the " future prospects" it has held as follows in para 59.3

> " 59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

16. The Hon'ble Supreme Court further observed that the selection of a multiplier as indicated in the table in Sarlva Verma r/w para-42 with the said Judgment has to be followed. Thus, only the actual salary should be adopted less the tax on such salary for determining the compensation on account of future prospects.

17. If splitting of the multiplier was to be adopted, the Hon'ble Supreme Court would have given its reasons in the above two Judgments. Further, the multiplier prescribed in the Act which has been made applicable is not precise but itself averaged is based on various factor including the age of the deceased/victim. I therefore do not find any reason to split the multiplier merely because the deceased was approaching the age of superannuation at the time of death. As mentioned above, it is the salary or income at the time of death.

11. Since the Tribunal had adopted the incorrect multiplier of 8, the Judgment and Decree of the Tribunal is to be modified to that extent.

12. It is further noticed that the deceased was employer in the Chief Educational Office, Education Department, Coimbatore and working as a driver and was drawing a monthly salary of Rs.8402/-. Therefore, the compensation awarded by the Tribunal by adopting a sum of Rs.8402 as monthly salary of the deceased. The multiplier 13 is also liable to be modified.

13. In the light of the decisions of the Hon'ble Supreme Court in Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and Another, (2009) 6 SCC 12 and National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680 Magma General Insurance Company Ltd. Vs. Nanuram @ Chuhru Ram and Others, (2018) 18 SCC 130 compensation towards loss of filial consortium is to be awarded. Consequently, I am inclined to re-quantify the compensation awarded under the various heads as follows:

Heads	Awarded by this Court
Monthly Income of the deceased : Rs.8,402.00 Add: Future Prospectus at 30%: : Rs.2,520.00 ----------------- Rs.10,922.60 ----------------- Annual Income (Rs.10,922.60x12) : Rs.1,31,071.20 Less: Personal Expenses 1/4th : Rs. 32,767. 80 ------------------ : Rs. 98,303.40 ------------------ Annual contribution to the family : Rs. 98,303.40 Multiplier 13 (Rs.98,303.40x13) : Rs. 12,77,944.20	Rs.12,77,944.20
Loss of consortium to the 1st appellant-claimant	Rs. 40,000.00
Love and affection to 2nd and 3rd appellants-claimants (Rs.40,000 x 2)	Rs. 80,000.00
Loss of parental consortium to 4th and 5th appellants Rs.40,000 x 2)	Rs. 80,000.00
Funeral expenses	Rs. 10,000.00
Total	Rs.14,87,944.00 rounded off to Rs.14,90,000/-

14. Therefore, the 3rd respondent - Insurance Company is directed to deposit the enhanced amount of compensation of Rs.14,90,000/- together with interest at 7.5% p.a. from the date of filing of the claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment.

15. On such deposit, the appellants are entitled to recieve the compensations in the following porportion together with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till the date of deposit.

Appellants	Loss of income (Rs.12,77,944.20)	Loss of consortium / parental consortium / love and affection	Funeral Expenses	Total (Rs.14,90,000)
1st appellant	Rs . 5,77,944.20	Rs.40,000/-	Rs.10,000/-	Rs. 6,27,944.20 rounded of to R.6,30,000/
2nd appellant	Rs.2,50,000.00	Rs.40,000/-	-	Rs. 2,90,000
3rd appellant	Rs.2,50,000.00	Rs.40,000/-	-	Rs. 2,90,000
4th appellant	Rs. 1,00,000.00	Rs.40,000/-	-	Rs. 1,40,000
5th appellant	Rs. 1,00,000.00	Rs. 40,000/-		Rs. 1,40,000

16. The 1st, 4th and 5th appellants are permitted to withdraw their respective shares together with proportionate interest, less any amount already withdrawn, by filing suitable applications before the Tribunal. The 2nd and 3rd appellants were aged about 15 & 12 years respectively at the time of filing of the cliam petition in 2008. Since the 2nd and 3rd appellants would have attained the age of majority, they are permitted to file appropriate applications before the Tribunal for recording the age of majority to withdraw their share. The Tribunal may thereafter allow the 2nd and 3rd appellants to withdraw their share.

17. Accordingly, this Civil Miscellaneous Appeal is allowed. No cost.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kkd
To

The Motor Accidents Claims Tribunal,
(Additional District Judge)
Fast Track Court No.I, Erode.

Copy to

The Section Officer,
VR Section, High Court, Madras-104.

+1cc to M/s.K.Govi Ganesan, Advocate Sr.41246
+1cc to M/s.J.Chandran, Advocate Sr.41430

C.M.A.No.1057 of 2011

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