IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.10.2020

PRONOUNCED ON : 03.11.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.694/2009 and Cross Obj.No.46/2009
and M.P.Nos.1 & 2 of 2009

(Through Video Conferencing)

C.M.A.No.694/2009
M/s.The National Insurance Company Ltd.,
Divisional Office,
No.110, J.N.Street,
Pondicherry. .. Appellant/Respondent II

vs.

1.Lalitha Bai ...Petitioner - I
2.Sathesh ...Petitioner - II
Raghunath (died) ...Petitioner - III
3.Saradha ...Petitioner - IV
4.Veerappan ... Respondent I

Cross Obj.No.46/2009

1.Lalitha Bai
2.Sathesh .. Appellants in Cross Appeal/Petitioners 1 & 2

vs.

1. M/s.The National Insurance Company Ltd.,
Divisional Office,
No.110, J.N.Street,
Pondicherry. ...Respondent 3/Respondent2

Raghunath (died)
2.Saradha ...Respondent 4 & 5/Petitioners 3 & 4
3.Veerappan ...Respondent 6/Respondent 1

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P.No.430 of 2006 dated 27.07.2007, on the file of the Motor Accidents Claims Tribunal (Principal District Court) Villupuram.

For Appellant in C.M.A.No.694/09
and 1st respondent in
Cross Obj.No.46/09 : Mr.J.Chandran

For Respondents 1 & 2 in
C.M.A.No.694/09 and appellants 1 & 2
in Cross.Obj.No.46/09 : Mr.C.Prabakaran

For 3rd respondent in C.M.A.No.694/09
and 2nd respondent in
Cross Obj.No.46/09 : No Appearance

COMMON JUDGMENT

The present Appeal has been filed by the Insurance Company in this Appeal. The appellant - Insurance Company has questioned the quantum of compensation awarded by the Motor Accident Claims Tribunal (Principal District Judge, Villupuram), in M.C.O.P.No.430 of 2006.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.12,21,500/- as compensation to the respondents-claimants 1 to 3. They had filed a claim petition for a total compensation of Rs.25,00,000/-.

3. The Respondents 1 & 2 have now filed a Cross Objection and have prayed for enhancement of compensation awarded by the Tribunal. The impugned judgment and decree passed by the Tribunal is sought to be assailed by the appellant-Insurance Company on the ground that the Tribunal ought to have split the multiplier, considering the fact that the deceased was aged about 56 years and had only two years of service left before he attained the age of superannuation and retired from his service.

4. The learned counsel for the appellant/Insurance Company drew my attention to a decision of this Court rendered by a Division Bench dated 26.09.2018, Anbukarasi Manoharan and another Vs. R.Arul Prakash and another in C.M.A.No.3210 of 2017. There relying upon the decisions of the Hon'ble Supreme Court in Puttamma and others Vs. K.L.Narayana Reddy, 2014 (1) TN MAC 481 (SC) and another decision of this Hon'ble Supreme Court in K.R.Madhusudhan V. Administrative Officer and another, 2011 (4) SCC 689, the Division Bench of this Court held as follows:-

> " 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 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. "

5. It is further submitted that the Tribunal erred in adopting 10 multiplier, even though, 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, the correct multiplier for a person aged 56 years would have been only 9.

6. The learned counsel for the claimant (Respondents 1 to 3) submits that the salary of the deceased at the time of the accident as per Ex.P.18 was Rs.17,221/- whereas the Tribunal adopted only Rs.15,152/- 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 their cross objection.

7. The above arguments of the learned counsel for the Respondents-claimants is countered by the learned counsel for the Insurance Company, by stating that the balance amount of Rs. 2,069/- (Rs.17,221/- - Rs.15,125/-) deducted are the Compensatory allowance, MRS Allowance and Food Allowance which are nothing reimbursement which were given to the deceased as an employee of the BSNL.

8. He therefore submits that the Tribunal has correctly adopted gross monthly salary of Rs.15,152/- for determining the compensation but erred in adopting the correct multiplier and in not adopting split up multiplied.

9. It was further mentioned that already, the 3rd claimant died and during the pendency of the present appeal, the 4th claimant namely 4th Respondent/Saradha also died and therefore only two claimants namely R1 and R2 have survived and therefore may be directed the appellant-Insurance to be paid to them.

10. I have considered the arguments advanced by the Insurance Company/Appellant and the Respondents.

11. The facts are not in dispute. The deceased was an employee of a public sector undertaking namely BSNL. He was drawing a consolidated gross salary of Rs.17, 221/- per month which consisted of compensatory components to reimburse the expenses incurred by deceased connection with the work. The Tribunal has deducted a sum of Rs.2,609/- (17,221 – Rs.15,125/-) from the aforesaid amount for determining the composition payable to the respondent No 1-3 the claimants.

12. The splitting of multiplier has not been expressly accepted by the Hon'ble Supreme Court. The Hon'bleSupreme 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.

18. Even otherwise, the submission of the learned counsel for the appellant that the deceased was aged about 56 years and had only two years of service appears to be incorrect as the Government of India vide its Notification No.25012/8/98/Estt.(A) dated 30.05.1998 had increased the age of retirement from 58 to 60 years for the Central Government employees. This also adopted by all the Central Government Public Sector undertaking including the BSNL. Only in the year 2019, BSNL, it reverted back to the age of superannuation to 58 years.

19. Since the Tribunal had adopted the incorrect multiplier of 10, the Judgment and Decree of the Tribunal is to be modified to that extent. In view of the above discussion, the compensation awarded by the Tribunal is re-computed as follows:-

Heads and Calculation	Amount
Monthly Income of the deceased : Rs.17,221.00 Add: Future Prospectus at 15% * (17,221 x 15/100) : Rs. 2,583.15 -------------------- : Rs.19,804.15 Annual Income (19,804.15 x 12) : Rs.2,37,649.80 Less: Personal Expenses 1/3rd : Rs. 79,216.60 (2,37,649.80 x 1/3) -------------------- Annual contribution to the family : Rs.1,58,433.20 Multiplier 4 (1,58,433.20 x 9) : Rs.14,25,898.80	Rs.14,25,898.80
Loss of consortium to 1st respondent -claimant	Rs. 40,000.00
Loss of love and affection to 2nd respondent	Rs. 25,000.00
Loss of love and affection to R3 & R4 (25,000x2)	Rs. 50,000.00
Funeral expenses	Rs. 10,000.00
Transportation	Rs. 5,000.00
Total	Rs.15,55,898.00 rounded off to Rs. 15,56,000/-

20. In the light of the above, this civil miscellaneous appeal filed by the Insurance Company is dismissed and the cross objection filed by the respondent nos.1 & 2 is to be partially allowed.

21. Since 3rd and 4th respondents died, the 1st respondent in C.M.A.No.694 of 2009 who is the wife of the

deceased shall be entitled to receive a sum of Rs.12,50,000/- along with interest at 7.5%, the 2nd respondent in C.M.A.No.694 of 2009 was already aged 27 years at the time of filing of the claim petition. Therefore, he shall be entitled for the balance amount of compensation along with interest at 7.5% .

22. The appellant-Insurance Company (1st respondent in Cross Objection No.46 of 2009) is therefore directed to deposit the aforesaid amount of compensation of Rs.15,56,000/- together with interest and costs, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

23. On such deposit, the 1st, 2nd appellants in Cross Objection No.46 of 2009/ 1st and 2nd respondents in C.M.A.No.694 of 2009 are permitted to withdraw their respective shares together with interest and costs, less any amount already withdrawn by them, by filing suitable applications before the Tribunal. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

kkd

To:

1. The Motor Accidents Claims Tribunal,
   (Principal District Court) Villupuram.

2. The Section Officer,
   VR Section, High Court of Madras.

+1cc to Mr.J.Chandran, Advocate SR.No.35559

+1cc to Mr.C.Prabakaran, Advocate SR.No.35515

C.M.A.No.694 of 2009
andCrs.Obj.No.46 of 2009

SPD(CO)
GMY(01/09/2021)