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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.07.2020

Judgment Pronounced on : 18-08-2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Civil Miscellaneous Appeal No. 3307 of 2019

1. P. Santhi
2. P. Prakash
3. P. Saranya

.. Appellants/ Petitioners

Versus

1. K. Venkatachalam

2. The Chairman
S.S.M. College of Engineering
NH-47, Salem Main Road
Komarapalayam - 638 183
Tiruchengode Taluk

3. National Insurance Company Limited
403, Karthikeya Complex, First Floor
B-10, Mettur Main Road
Bhavani Town, Bhavani Taluk .. Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 05.02.2015 passed in MCOP No. 595 of 2013 on the file of the Motor Accident Claims Tribunal/Sub Court, Erode.

For Appellants : Mr. M. Lokesh
for Mr. Ma.P. Thangavel

For Respondents : Mr. S. Vadivel for R3

For Respondents R1 &R2 : Set Exparte

JUDGMENT

R. SUBBIAH, J

Not being satisfied with the quantum of compensation awarded by the Tribunal, in and by the award dated 05.02.2015 in MCOP No. 595 of 2013, the claimants therein have come forward with this appeal seeking enhancement of compensation.



2. The claimants are the wife, son and daughter of the deceased Perumal. According to the claimants, the deceased Perumal was employed as Mazdoor in Tamil Nadu Electricity Board, Anthiyur. It is their case that on 01.08.2013, when the deceased Perumal was riding his TVS 50 Moped bearing Registration No. TN 33 Z 4183 on Anthiyur to Bhavani Road, the bus bearing Registration No. TN 45 AK 0067 was driven by its driver in a rash and negligent manner and hit the two wheeler driven by the deceased from behind. In the impact, the deceased was thrown away from his vehicle and eventually came under the left back wheel of the bus, resulting in the head of the deceased being crushed leading to his instantaneous death. According to the claimants, the accident was caused due to the rash and negligent driving of the driver of the bus, the first respondent in the claim petition. The second respondent in the claim petition was the owner of the bus and the third respondent was the insurer of the bus. Thus, for the death of the deceased Perumal, the claimants have filed the claim petition against the respondents, claiming a total compensation of Rs.30 lakhs.

3. Before the Tribunal, the respondents 1 and 2 did not contest the claim petition and they were, therefore, set exparte. The third respondent/ Insurance Company alone contested the claim petition by filing a counter statement. According to the third respondent/Insurance Company, the accident did not occur as stated in the claim petition. It was the deceased who was negligent in driving the two wheeler, which resulted in the accident and the first respondent was no way responsible for the accident. The Insurance company also disputed the age and monthly income of the deceased and prayed for dismissal of the claim petition.

4. Before the Tribunal, in order to prove the averments made in the claim petition, the first claimant examined herself as PW1 besides examining two other witnesses as Pws 2 and 3. The claimants have also marked eleven documents as Exs. P1 to P11. On behalf of the respondents in the claim petition, neither any witness was examined nor any document was marked. The Tribunal, on analysing the oral and documentary evidence, has concluded that the accident had occurred due to the rash and negligent driving by the driver of the bus/first respondent. Having come to such conclusion, the Tribunal awarded a sum of Rs.9,42,296/- as compensation and directed such amount to be paid by the respondents, jointly and severally. The break up details of the compensation is as follows:-

i)	Loss of income (Rs.7444 X 12 X 7) + (4000 X 12 X 4)	
		Rs. 8,17,296.00
ii)	Loss of consortium for first claimant	Rs. 25,000.00
iii)	Funeral expenses	Rs. 25,000.00
iv)	Loss of love and affection to the claimants	
	(Rs.25,000 X 3)	Rs. 75,000.00
Total compensation		Rs.9,42,296.00



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5. As against the judgment of the Tribunal awarding a sum of Rs.9,42,296/- as compensation, the respondents in the claim petition did not prefer any appeal. The claimants alone have come forward with this appeal seeking enhanced compensation.

6. The learned counsel for the appellants would contend that the Tribunal had erroneously applied split multiplier which resulted in awarding only a sum of Rs.9,42,296/- as compensation and such amount is not in consonance with the nature of employment and earning of the deceased. This according to the counsel for the claimants is against the well settled parameters laid down by the Honourable Supreme Court in various decisions. According to the learned counsel for the appellants, the Honourable Supreme Court in the decision rendered in Puttamma and others vs. K.L. Narayana Reddy and another reported in 2014 (1) TNMAC 481 (SC) has specifically held that when the deceased Government servant would have continued in pensionable service for another ten years, there is no justification in adopting split multiplier in determining the compensation besides being contrary to the off-quoted decision rendered in Sarla Verma vs. Delhi Transport Corporation 2009 (2) TNMAC 1 (SC).

7. The learned counsel for the appellants also contended that the Tribunal ought to have applied multiplier '11' befitting the age of the deceased instead of taking multiplier '7' for determining the quantum of compensation. He also submitted that even though the claimants have filed Ex.P11, salary slip of the deceased to show that he was earning Rs.11,166/- the Tribunal without any basis had taken only a sum of Rs.6,000/- as income per month for determining loss of income. Above all, the Tribunal did not consider awarding any amount towards future prospects of the deceased especially when he was working as Mazdoor in the Tamil Nadu Electricity Board at the time of the accident with 7 years of service left over. It is also contended that the amount awarded towards loss of consortium to the first claimant as well as loss of love and affection to the claimants are very low and they are required to be enhanced. The Tribunal also did not award any amount towards transportation and therefore, he prayed for appropriate enhancement. The learned counsel for the appellants also placed reliance on the off-quoted decision of the Honourable Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi and others reported in 2017 (16) Supreme Court Cases 680 for awarding 15% of the earnings of the deceased towards future prospects.

8. The learned counsel appearing for the third respondent would only contend that the Tribunal had taken into account all the materials placed on record and awarded a fair and reasonable amount as compensation. The learned counsel therefore prayed for dismissal of the appeal for enhancement.

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9. We have heard the counsel for the appellants as well as the learned counsel for the third respondent/Insurance



company. We have perused the materials placed on record. The deceased was working as a Mazdoor in Tamil Nadu Electricity Board at the time of his death. As could be seen from Ex.P11, the deceased was earning a sum of Rs.12,992/- as income per month. The sum of Rs.12,992/- reflected in Ex.P11 is the gross salary and the net salary received by the deceased, after deduction, was Rs.9,726/-. The Tribunal had noticed that a sum of Rs.1,240/- deducted towards the festival advance of Rs.200/- and contribution towards CPS Scheme are to be added towards the net income of the deceased and therefore arrived at a sum of Rs.11,166/- (Rs.9,726/- + Rs.1,240) as the total income of the deceased. Out of this amount, one third amount was deducted towards the personal expenses of the deceased to arrive at a sum of Rs.7,444/- as the monthly contribution of the deceased to the family. On the basis of this amount of Rs.7,444/- the Tribunal awarded a compensation amount of Rs.6,25,296/- (Rs.7,444 X 12 X 7) for seven years, the period during which the deceased would have been employed, had he been alive, till his date of superannuation. Further, the Tribunal worked out a sum of Rs.6,000/- notionally as the post-retirement earning of the deceased in which, after deducting one third expenses towards personal expenses, arrived at Rs.4,000/- to award a sum of Rs.1,92,000/- (Rs.4,000 X 12 X 4). Accordingly, the Tribunal arrived at a sum of Rs.8,17,296/- (Rs.6,25,296 + Rs.1,92,000) as total compensation payable to the claimants towards loss of income. The manner aforesaid, in which the Tribunal adopted the split multiplier, to arrive at compensation towards loss of income is vehemently questioned by the counsel for the appellant in this appeal. In this context, the decision relied on by the counsel for the appellants in Puttamma case mentioned supra can usefully be extracted.

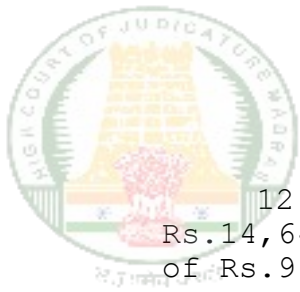
"64. In the Appeal which was filed by the claimants before the High Court, the High Court, instead of deciding the just compensation allowed meager enhancement of compensation. In doing so, the High Court introduced the concept of Split Multiplier and departed from the Multiplier system generally used in the light of the decision in Sarla Verma (supra), case without disclosing any reason. The High Court has also not considered the question of prospect of future increase in salary of the deceased though it noticed that the deceased would have continued in pensionable service for more than 10 years. When the age of the deceased was 48 years at the time of death it wrongly applied multiplier of 10 and not 13 as per decision in Sarla Verma. Thus, we fail to appreciate as to why the High Court chose to apply Split multiplier and applied Multiplier of 10. We, thus, find that the judgment of the High Court is perverse and contrary to the evidence on record and is fit to be set aside for having not considered the future prospects of the deceased and also for adopting split multiplier method against the law laid down by this Court....."



10. A reading of the above judgment would makes it abundantly clear that it cannot be said that split multiplier cannot be applied at all by the Tribunals for determining the compensation. What was stated is that the Tribunal has to assign reason for adopting split multiplier in a given case. In the present case, the deceased was 51 years at the time of his death in the motor accident and he had 7 years of service left over. The seven years of service, if rendered by the deceased, would have enhanced the pensionary benefits payable to him. Further, the deceased was employed as a Mazdoor, one of the lowest positions in the hierarchy of the employer and not in any Managerial or Supervisory position. The salary earned by the deceased also was in the range of Rs.12,992 per month. In such circumstances, we are of the view that the Tribunal ought not to have adopted split multiplier to determine the compensation towards loss of income payable to the appellants.

11. In the light of the decision of the Honourable Apex Court, mentioned supra, we are of the view that the split multiplier adopted by the Tribunal is liable to be interfered with inter alia to award compensation by adding 15% of the monthly income of the deceased towards future prospects. For this purpose, the amount of Rs.12,992/- reflected in Ex.P11, salary slip of the deceased is taken into account. In fact, PW3, Thavasiappan, one of the staff of the Tamil Nadu Electricity Board was examined before the Tribunal through whom Ex.P11 was marked. Therefore, taking the sum of Rs.12,992/- as the gross monthly income of the deceased is proper. For the purpose of awarding future prospects of the deceased, 15% of the amount of Rs.12,992/- is added taking the total monthly income of the deceased to Rs.14,940/- (Rs.12,992/- + Rs.1,948 - 15% of future prospects). Out of this amount, one third amount has to be deducted towards the personal expenses of the deceased and after such deduction, the monthly income of the deceased could be arrived at (Rs.14,940 - 4980) Rs.9,960/-. Applying multiplier '11' inasmuch as the deceased died at the age of 51, the amount payable to the appellants towards loss of earning will be Rs.13,14,720/- (Rs.9960/- X 12 X 11). This according to us will be a fair and reasonable compensation towards pecuniary loss suffered by the appellants/claimants.

12. For loss of love and affection, the Tribunal awarded a sum of Rs.75,000/- to the appellants/claimants, which we enhance to Rs.80,000/-. For loss of consortium to the wife/first claimant, the Tribunal awarded Rs.25,000/- and we feel it reasonable to award Rs.40,000/- towards consortium. The Tribunal did not award any amount towards transportation and loss of estate and therefore, we award Rs.10,000/- and Rs.15,000/- respectively under those heads, which in our opinion, will be a fair and reasonable amount towards those heads. At the same time, we feel that the sum of Rs.25,000/- awarded by the Tribunal towards funeral is on the higher side and therefore, we reduce it to Rs.15,000/-.



12. In the result, we award a total compensation of Rs.14,64,720/- to the appellants/claimants as against the sum of Rs.9,42,296/- awarded by the Tribunal, as shown below:-

Loss of earning	Rs. 13,14,720.00
Loss of Love and affection	Rs. 80,000.00
Loss of consortium to first claimant	Rs. 40,000.00
Transportation	Rs. 10,000.00
Funeral expenses	Rs. 15,000.00
Loss of Estate	Rs. 15,000.00

Total	Rs. 14,64,720.00

13. Accordingly, we allow the Civil Miscellaneous Appeal filed by the appellants/claimants by modifying the compensation amount awarded by the Tribunal, in and by the Judgment dated 05.02.2015 passed in MCOP No. 595 of 2013, as mentioned above. No costs. The amount of compensation, which we have determined in this appeal, is directed to be deposited by the third respondent/Insurance Company, with accrued interest at 7.5% per annum, as awarded by the Tribunal, after deducting the amount, if any, already deposited, to the credit of MCOP No. 595 of 2013 on the file of the Motor Accidents Claims Tribunal (Sub Court), Bhavani, Erode District, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellants/claimants are permitted to withdraw the entire compensation amount, with accrued interest, in equal proportion. It is needless to mention that the appellants/claimants shall pay the court fee for the enhanced compensation amount now determined in this appeal.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal
Sub Judge, Erode.

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

CMA No. 3307 of 2019

PVS (CO)
A.SK(01.12.2021)