IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2885 OF 2017

1.R.Usharani

2.R.Gayathri

3.R.Tamilselvan .. Appellants/Petitioners

Vs.

1.D.Jamesrobinson

2.The Divisional Manager
The Oriental Insurance Company Ltd.,
No.44/3, Thiruvalluvar salai opp.
Ambika complex, Velur post
P.Velur Taluk, Namakkal District.
.. Respondents/Respondents

(Since quantum alone is disputed, notice to R1 is dispensed with)

Prayer:
Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.09.2015 made in M.C.O.P.No.1177 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellants : Mr.MA.P.Thangavel

For R2 : Mr.K.Vinod for Ms.Elveera Ravindran

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 22.09.2015 made in M.C.O.P.No.1177 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal.

2.The appellants are claimants in M.C.O.P.No.1177 of 2013 on the file of Motor Accident Claims Tribunal, Principal District Court, Namakkal. They filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation for the death of one Raju, who died in the accident that took place on 10.09.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Ace belonging to the 1st respondent and directed both the 1st respondent as well as the 2nd respondent/Insurance Company being insurer of the said Tata Ace to jointly and severally pay a sum of Rs.17,53,000/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in applying split multiplier for awarding compensation towards loss of dependency. The Tribunal ought to have applied multiplier '11' instead of applying split multiplier. The deceased was aged 52 years at the time of accident and the Tribunal failed to grant 15% enhancement towards future prospects. The appellants have produced Ex.P9/medical bills for having spent a sum of Rs.1,73,882/- towards medical expenses, but the Tribunal awarded only a meagre sum of Rs.80,000/- towards medical expenses. The Tribunal ought to have awarded compensation towards transportation, pain & suffering, extra nourishment, attendant charges and loss of estate. The amounts awarded by the Tribunal towards loss of consortium, loss of love & affection and funeral expenses are meagre and prayed for enhancement of compensation. In support of his contention, he relied on the following judgments:

(i) 2017 (1) TNMAC 652 (DB) (Oriental Insurance Co. Ltd., vs. S.Venkateswari and others);

> "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 reported in 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 reported in 2009 (2) TN MAC 1 (SC) as

affirmed in the case of Reshma Kumari v. Madan Mohan reported in 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 Supreme Court.”

(ii) (2011) (1) TN MAC 161 (SC) (K.R.Madhusudan and others vs. Administrative Officer and Another);

“14. In view of this evidence the Tribunal should have considered the prospect of future income while computing compensation but the Tribunal has not done that. 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 therefore. 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 II Column in the II Schedule in 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.”

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the deceased was aged 52 years at the time of accident and he had only six years of service. The Tribunal accepting the evidence of P.W.3, co-worker of the deceased and Ex.P18/pay slip of the deceased, fixed monthly income of the deceased at Rs.26,992/-, which is gross income and rounded off to Rs.27,000/-. The appellants failed to prove that they have spent a sum of Rs.1,73,882/- towards medical expenses. The Tribunal after verifying Ex.P9/medical bills, awarded a sum of Rs.80,000/- towards medical expenses, which is proper. The appellants are not entitled for any compensation towards pain & suffering, extra nourishment and attendant charges. The amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent/Insurance Company and perused the entire materials available on record.

8.It is the case of the appellants that the accident has occurred on 10.09.2013 and due to the injuries, the deceased Raju died in the hospital on 17.09.2013. According to the appellants, the deceased was working as Line Inspector in Tamil Nadu Electricity Board and was earning a sum of Rs.24,905/- per month. To substantiate the same, the appellants have examined one Sakthivel as P.W.3, the co-worker of the deceased, marked Exs.P17/letter issued by the Superintending Engineer and P18/Pay slip of the deceased, wherein gross salary was mentioned as Rs.26,992/- and rounded off the salary to Rs.27,000/-. The Tribunal considering the fact that the deceased was having six years of remaining service, applied split multiplier for calculating loss of income, gross salary for 6 years and reduced the salary for five years. It is the contention of the learned counsel appearing for the appellants that the Tribunal ought to have applied multiplier '11' on gross income instead of split multiplier and in support of his contention, he relied on the judgments as referred to above.

8(i).In the present case, the deceased was working as line inspector in Tamil Nadu Electricity Board at the time of accident. The appellants have not let in any evidence to show that even after retirement, the deceased would have got similar job with same salary. In the absence of any evidence, the Tribunal has rightly applied split multiplier. The two judgments relied on by the learned counsel appearing for the appellants referred to above are not applicable to the facts of the present case, as the appellants have failed to prove that even after retirement, the deceased would have got similar job with same salary. The deceased was aged 52 years at the time of accident.

The Tribunal applied multiplier '11' and deducted 1/3rd towards personal expenses. The Tribunal has not granted any enhancement towards future prospects. The appellants are entitled to 15% enhancement towards future prospects. Thus, the compensation awarded by the Tribunal towards loss of dependency till the retirement of the deceased by applying multiplier 6 is Rs.14,90,400/- (Rs.27,000/- + 4050 [Rs.27,000/- X 15%] X 12 X 6 X 2/3). The Tribunal fixed a sum of Rs.4,000/- as monthly income of the deceased after his retirement, which is not proper. After retirement, the deceased would have got pension of 50% of his last drawn salary. In view of the same, the appellants are entitled to get compensation of 50% of Rs.27,000/- by applying multiplier 5. After deducting 50% of Rs.27,000/-, the monthly income of the deceased comes to Rs.13,500/-. By awarding 15% enhancement towards future prospects, the loss of dependency after retirement of the deceased is Rs.6,21,000/- (Rs.13,500/- + 2025 (Rs.13,500/- X 15%) X 12 X 5 X 2/3). The total loss of dependency is arrived at Rs.21,11,400/- (Rs.14,90,400/- + Rs.6,21,000).

8(ii).The learned counsel appearing for the appellants contended that the appellants are entitled to compensation towards pain & suffering, attendant charges, extra nourishment, transportation and loss of estate. The said contention is without merits. The appellants are not entitled to any compensation towards pain & suffering, attendant charges and extra nourishment and they are entitled to only a sum of Rs.15,000/- towards loss of estate and Rs.10,000/- towards transportation.

8(iii).As far as the compensation awarded by the Tribunal towards medical expenses is concerned, though the appellants claimed a sum of Rs.1,73,882/- towards medical expenses, the Tribunal after verifying Ex.P9/medical bills, awarded only a sum of Rs.80,000/- towards medical expenses holding that there are some variations in the medical bills and the medical prescription was not filed. The reason assigned by the Tribunal is valid and proper and the same is not interfered with.

8(iv).The sum of Rs.10,000/- and Rs.5,000/- awarded by the Tribunal towards loss of consortium and funeral expenses are meagre and the same are hereby enhanced to Rs.40,000/- and Rs.15,000/- respectively. The compensation awarded by the Tribunal towards loss of love and affection to the appellants 2 & 3 is just and reasonable and hence, the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	16,48,000	21,11,400	Enhanced
2.	Loss of love & affection to the appellants 2 & 3	10,000	10,000	Confirmed
3.	Loss of consortium	10,000	40,000	Enhanced
4.	Funeral expenses	5,000	15,000	Enhanced
5.	Medical expenses	80,000	80,000	Confirmed
6.	Loss of estate	-	15,000	Granted
7.	Transportation	-	10,000	Granted
	Total	17,53,000	22,81,400	Enhanced by Rs.5,28,400/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.17,53,000/- is hereby enhanced to Rs.22,81,400/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellants are not entitled for any interest for the delay period on the amount of Rs.5,28,400/- enhanced by this Court as per the order of this Court dated 06.09.2017 made in C.M.P.No.13300 of 2017 in C.M.A.SR.No.53646 of 2016. Both the 1st respondent as well as the 2nd respondent/Insurance Company are directed to jointly and severally deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount if any, already deposited by them, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal along with proportionate interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge
The Motor Accident Claims Tribunal
Namakkal.

2. The Section Officer
V.R.Section, High Court,
Chennai.

+1cc to Mr.MA.P.Thangavel, Advocate, S.R.No.11591
+1cc to Ms.Elveera Ravindran, Advocate, S.R.No.11461

C.M.A.No.2885 of 2017

SPD(CO)
CS/04/03/2021