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C.M.A.(MD).No.255 of 2019 and
CMP(MD) No.3501 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 22.09.2020

DATE ON WHICH PRONOUNCED : 20.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.M.A. (MD) .No.255 of 2019

and

CMP (MD) No.3501 of 2019

United India Insurance Co.Ltd.,
Assisi Building,
PWD Road, Nagercoil,
Agateeswaram Taluk,
Kanyakumari District.

... Appellant/3rd respondent

Vs.

1. Ethel Jeyarani

2. Jebin Shanu

... Respondents 1 & 2/Petitioners 1 & 2

3. The Manager,

Saraswathi Transport TNJ

Santhi Nilayam,

53/1746, Rajaveedhi,

Karanthattankudi Village,

Thanjavur Taluk and District.

4. Vijayakumar

... Respondents 3 and 4/Respondents 1 and 2

(The Respondents 3 and 4 remained exparte
before the Tribunal. Hence, Notice is not
necessary to the Respondents 3 and 4)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173
of Motor Vehicles Act, 1988, set aside the judgment and decree dated
16.11.2017 passed in MCOP.No.29 of 2014 before the Motor Accident
Claims Tribunal (1st Additional Sub Court), Nagercoil.

For Appellant

: Mr.I.Robert Chandrakumar
for Mr.G.Prabhu Rajadurai

For Respondents

For R1 and R2

: Mr.T.Selvakumaran

For R3 and R4

: Exparte



JUDGMENT

(Judgment of the Court was made by P.RAJAMANICKAM, J.)

This Civil Miscellaneous Appeal has been filed by the Insurance Company/ 3rd respondent against the order/award passed by the Motor Accident Claims Tribunal (I Additional Sub Court) Nagercoil in M.C.O.P.No.29 of 2014 dated 16.11.2017.

2. The respondents 1 and 2 herein have filed M.C.O.P.No.29 of 2014 on the file of the Motor Accident Claims Tribunal (I Additional Sub Court) Nagercoil under Section 166(a) of Motor Vehicles Act, 1988 claiming compensation of Rs.65,00,000/- for the death of one R.A.Justus Winsly in road traffic accident on 26.09.2012. The learned Tribunal by the Order/Award dated 16.11.2017 has partly allowed the said petition and directed the respondents 1 to 3 therein to pay a sum of Rs.64,09,600/- as compensation with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realization with costs jointly and severally. Feeling aggrieved, the Insurance Company/3rd respondent therein has filed the present Civil Miscellaneous Appeal.

3. For the sake of convenience, the parties are referred to as described before the Tribunal.

4. The averments made in the claim petition are in brief as follows:-

The first petitioner is the wife and the second petitioner is the son of the deceased R.A.Justus Winsly. The deceased was working as Headmaster at St.Peter Higher Secondary School at Thanjavur. On 26.09.2012, when the deceased was returning to his house from the School for taking meals on his Hero Honda motorcycle bearing Regn.No.TN-49-4849, on the Moopanar Road from North to South, the second respondent has driven a private bus bearing Regn.No.TN49-P-9961 on the same direction behind the deceased in a rash and negligent manner and dashed against the deceased's motorcycle and consequently, the deceased fell down and sustained serious injuries. The deceased was taken to the hospital, there the Doctor after examining him declared dead at 2.45 p.m. With regard to the said accident, an FIR has been registered against the second respondent (driver of the private bus) in Crime No.225 of 2012 in the Traffic Police Station, Thanjavur, under Section 304-A IPC. At the time of the accident, the deceased was aged about 54 years and he was working as Headmaster at St.Peter Higher Secondary School at Thanjavur and he was drawing a monthly salary of Rs.65,000/-. Since the deceased died suddenly due to the accident, the petitioners who are being the wife and son suffered a lot. At the time of accident, the bus which was responsible for the accident belonged to the first respondent and the same was duly insured with the third respondent



and hence all the respondents are jointly and severally liable to pay compensation to the petitioners. The petitioners have calculated the compensation as Rs.65,02,000/-, however, they restricted their claim to Rs.65,00,000/-.

WEB COPY 5. Before the Tribunal, the respondents 1 and 2 therein remained exparte. The third respondent/Insurance Company alone contested the claim petition by filing counter statement.

6. The averments made in the Counter Statement filed by the third respondent/Insurance Company are in brief as follows:-

The manner of the accident stated in the petition is not correct. The second respondent drove the bus bearing Regn.No.TN-49-P-9961 with care and caution. The accident was happened only due to the rash and negligent riding of the motorcycle by the deceased. The third respondent/Insurance Company does not admit the age, avocation and income of the deceased. It is for the petitioners to prove the age, avocation and income of the deceased. The petitioners have received all the death benefits from the Government and also getting family pension and there is no loss of income to the petitioners. The first petitioner is working as headmaster in the Government Higher Secondary School, Thiruvonam. So, the petitioners were not depending upon the income of the deceased. In any event, the compensation amount claimed by the petitioners is highly exorbitant and therefore, the third respondent/Insurance Company prayed to dismiss the claim petition.

7. During enquiry, before the Tribunal, on the side of the petitioners, the first petitioner examined herself as P.W.1 and they also examined two more witnesses as PW2 and PW3. They have marked Exs.P1 to P.10 as exhibits on their side. On the side of the third respondent, one witness was examined as R.W.1 and no exhibits were marked.

8. The learned Tribunal after considering the materials placed before it found that the accident occurred due to the rash and negligent driving of the bus by the second respondent. It also found that at the time of the accident, the first respondent was the owner of the said bus and the said bus was duly insured with the third respondent and hence all the respondents are jointly and severally liable to pay compensation to the petitioners for the death caused to the deceased R.A.Justus Winsly. Further, the Tribunal after taking into consideration, the age and the monthly salary drawn by the deceased, it has awarded Rs.64,09,600/- as compensation and directed the respondents to pay the said amount with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realization. Feeling aggrieved, the third respondent/Insurance Company has filed the present Civil Miscellaneous Appeal.



9. Heard Mr.I.Robert Chandrakumar for Mr.G.Prabhu Rajadurai, the learned counsel for the appellant/Insurance Company and Mr.T.Selvakumaran, the learned counsel for the respondents 1 and 2 / claimants.

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10. In the appeal memorandum, the appellant/Insurance Company has not raised any ground with regard to the findings of the Tribunal that the accident had occurred only due to the rash and negligent driving of the bus by the second respondent. It raised grounds only with regard to the quantum of compensation awarded by the Tribunal. Therefore, the only point to be considered is whether the compensation awarded by the Tribunal is a just and reasonable compensation.

11. The learned counsel for the appellant/Insurance Company has submitted that since at the time of accident, the deceased was aged about 55 years, he would retire within three years and as such, the tribunal ought to have applied split multiplier method. He further submitted that the learned Tribunal failed to deduct the income tax. He further submitted that the learned Tribunal erroneously awarded an exorbitant amount of Rs.1,00,000/- towards loss of Love and Affection. He further submitted that the learned Tribunal awarded Rs.10,000/- towards Transportation Charges and Rs.1,000/- towards damages to clothes and articles without any basis and accordingly he prayed to reduce the compensation.

12. The learned counsel for the appellant/Insurance Company in support of his contentions, relied upon the following decisions:

(i) P.Jeeva and Others /Vs/ N.Nehru and another (C.M.A.No2996 of 2019) on the file of this Court dated 09.12.2019;

(ii) National Insurance Company Limited Vs. Pranay Sethi and others (2017) 16 SCC 680

13. Per contra, the learned counsel for the respondents 1 and 2 /claimants has submitted that there must be a specific pleading in the counter statement for applying split multiplier method. In the present case, no such averments made in the counter statement filed by the Insurance Company before the Tribunal. He further submitted that in the absence of any specific reason on record, split multiplier cannot be applied in routine course. He further submitted that the learned Tribunal after taking into consideration, the age of the deceased and the monthly salary drawn by the deceased and relying upon the decision in **Sarla Verma and Others /Vs/ Delhi Transport Corporation 2009 (2) TN MAC** has rightly applied the multiplier 11 and calculated the compensation. He further submitted that the compensation awarded by the learned Tribunal is just and reasonable compensation and hence, he prayed to



dismiss this Civil Miscellaneous Appeal.

14. The learned counsel for the respondents 1 and 2 /claimants in support of his contentions, relied upon the following decisions:

(i) *Puttamma and Others /Vs/ K.L.Narayana Reddy and Another in 2014(1) TN MAC 481 (SC) :*

(ii) *Oriental Insurance Co Ltd., /Vs/ S.Venkateswari and others, 2017 (1) TN MAC 652 (DB) .*

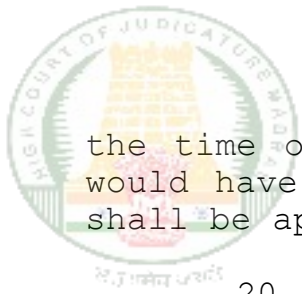
15. This Court has carefully considered the rival submissions and perused the materials produced by both the parties before the learned Tribunal and also the order/award passed by the learned Tribunal.

16. The learned Tribunal has held that since the petitioners have not filed either birth certificate or service records of the deceased to show his date of birth, relying upon the age mentioned in the postmortem certificate, the age of the deceased is fixed as 55 years. But, in Ex.P.10 (Statement of the Salary Particulars), the date of birth of the deceased R.A.Justus Winsly has been mentioned as 13.02.1958. The Tribunal failed to note the said fact. Since deceased's date of birth is mentioned in the statement of salary particulars, (Ex.P10), the same can be taken into account. As already stated that in the statement of salary particulars, the deceased's date of birth has been mentioned as 13.02.1958. The deceased died due to the accident on 26.09.2012. So on the date of death, he has completed only 54 years and hence his age has to be fixed as 54 years.

17. The oral evidence of PWs.1 and 3 and Exs.P.7 and P.10 would show that the deceased was working as Headmaster at St.Peter Higher Secondary School at Thanjavur and his job was permanent in nature and he was drawing monthly salary of Rs.61,503/-. The learned Tribunal taking into consideration the aforesaid facts, rounded the aforesaid amount into Rs.61,500/- and the same has been fixed as the monthly income of the deceased. This Court does not find any infirmity in the said findings.

18. After fixing so, the learned Tribunal has added 15% of the income towards future prospects and thereafter deducted 1/3rd towards personal expenses of the deceased and following the decision in ***Sarla Verma and Others /Vs/ Delhi Transport Corporation 2009 (2) TN MAC 1 (SC)*** has applied multiplier 11 and calculated the income loss at Rs.62,23,800/-

19. As already pointed out that the learned counsel for the appellant/ Insurance Company relying upon the decision in ***P.Jeeva and Others /Vs/ N.Nehru and another*** (cited supra) contended that at



the time of accident, the deceased was aged about 55 years and he would have retired within three years and as such split multiplier shall be applied for calculating the loss of income.

20. In **P.Jeeva and Others /Vs/ N.Nehru and another** (cited supra) the learned Tribunal has awarded compensation by applying split multiplier method. Feeling aggrieved, the claimants have filed an appeal before this Court. The Hon'ble Division Bench after considering the materials produced in the particular case has held that the tribunal has rightly applied the split multiplier method.

21. When the issue with regard to the application of split multiplier method came up for consideration in **Puttamma and Others / Vs/ K.L.Narayana Reddy and Another** (cited supra) relying upon the earlier decisions, the Hon'ble Supreme Court in Paragraph Nos.32, 33 and 34 has held as follows:

" 32. For determination of Compensation in motor accident claims under Section 166 this Court always followed Multiplier method. As there were inconsistencies in selection of Multiplier, this Court in **Sarla Verma** prepared a Table for Selection of Multiplier based on age group of the deceased/victim. Act, 1988 does not envisage application of Split Multiplier.

33. In K.R.Madhusudhan and Others V. Administrative Officer and another, 2011 (1) TN MAC 161 (SC) : 2011 (4) SCC 689, this Court 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 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 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.

15. We are thus, of the opinion that the judgment of the High Court deserves to be set aside for perverse and clearly contrary to the evidence on



record, for having not considered the future prospect of the deceased and also for adopting a Split Multiplier method."

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 decision of this Court in the case of *Sarla Verma (supra)*, as affirmed in the case of **Reshma Kumari (supra)**".

22. From the aforesaid decision, it is clear that the Hon'ble Supreme Court has always followed the multiplier method for determination of compensation in Motor Accident Claims under Section 166 of the Motor Vehicles Act. The Hon'ble Supreme Court has not approved the application of split multiplier method.

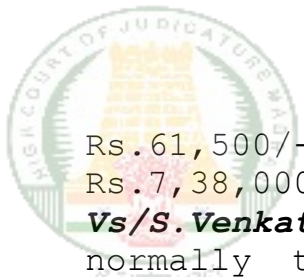
23. Following the aforesaid decision of the Hon'ble Supreme Court a Division Bench of this Court in **Oriental Insurance Co. Ltd., /Vs/ S.Venkateswari and others** (cited supra), in which one of us (M.Sathyanarayanan.,J.) was a party, rejected the contentions of the Insurance Company that split multiplier method has to be applied. Therefore, this Court is not inclined to adopt the split multiplier method. This court decided to apply multiplier as per the decision in **Sarla Varma and Others Vs. Delhi Transport Corporation** (cited supra).

24. In this case, the learned Tribunal has not deducted income tax. A Constitution Bench of the Hon'ble Apex Court in **National Insurance Company Limited Vs Pranay Sethi and others (2017) 16 SCC 680** in paragraph 59.3 has held as follows:-

" 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"

25. In this case, the deceased's age is fixed as 54 years. His job was a permanent one. Hence, in view of the aforesaid decision of the Constitution Bench, an addition of 15% of actual salary should be made. Further, actual salary should be read as actual salary less tax.

26. As already pointed out that the Tribunal, relying on **Exs P 7 and P 10**, has fixed the monthly income of the deceased as



Rs.61,500/-. So, the annual income would be Rs.61,500/- x 12 = Rs.7,38,000/-. In **Oriental Insurance Company Ltd., / Vs/S.Venkateswari and others** (cited supra) it has been held that normally towards income tax 20% ought to have been deducted. Therefore, after deducting a sum of Rs.1,47,600/- towards income tax at 20%, it would come to Rs.7,38,000/- - Rs.1,47,600/- = Rs.5,90,400/-. Since the deceased was aged about 54 years, in view of the aforesaid Constitution Bench decision 15% of actual salary should be added towards future prospects. After adding so, it would come to Rs.5,90,400/- + 88,560/- = Rs.6,78,960/-.

27. Since the deceased had two dependents, as per the decision of the Hon'ble Supreme Court in **Sarla Verma and Others /Vs/ Delhi Transport Corporation** (cited supra) 1/3rd of his income has to be deducted towards personal expenses of the deceased. After deducting so, it would be Rs.6,78,960/- - Rs.2,26,320/- = Rs.4,52,640/-. As already stated that following the Sarla Varma case only regular multiplier has to be applied for calculating the loss of income. As per the said decision for the age group of the deceased between 51 to 55 years 11 multiplier has to be applied. By applying so, the total loss of income would be Rs.4,52,640/- X 11 = Rs.49,79,040/-

28. The learned Tribunal has awarded Rs.15,000/- under the head of loss of Estate and Rs.15,000/- under the head of Funeral Expenses. The aforesaid amounts were awarded in tune with the Constitution Bench decision in **National Insurance Company Ltd., /Vs/ Pranay Shetthi and Others** (cited supra) and hence the same has to be approved.

29. The learned Tribunal has also awarded Rs.40,000/- under the head of loss of consortium and Rs.1,00,000/- under the head of loss of Love and Affection. The Hon'ble Supreme Court in **New India Assurance /Vs/ Somwati and others**, Civil Appeal No.3093 of 2020 dated 07.10.2020 has clarified that the "loss of love and affection" is comprehended in "loss of consortium" hence, there is no justification to award compensation towards "loss of love and affection" as a separate head. Further it has held that the compensation for 'loss of consortium' is not confined to the spouses alone, it will also apply to the parents and children and accordingly, it has ordered to pay Rs.40,000/- to each of the dependents under the head of loss of consortium.

30. Therefore, the compensation of Rs.1,00,000/- awarded under the head of loss of Love and Affection has to be modified to the effect that the petitioners are entitled to get Rs.80,000/- only [Rs.40,000/- x 2 = Rs.80,000/-] under the head of loss of Consortium alone.



31. The learned Tribunal has also awarded Rs.10,000/- under the head of Transportation and Rs.1000/- under the head of Damages to clothes and articles. This court is of the view that the aforesaid amounts are reasonable and hence they have to be confirmed.

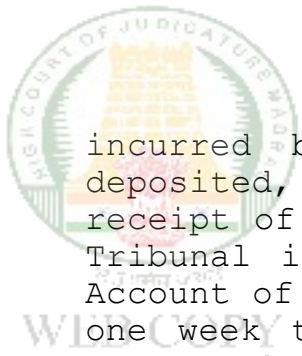
32. The learned Tribunal relying upon Ex.P.8 has awarded Rs.4,800/- for repairing the deceased's vehicle and the same has to be approved.

33. Accordingly, the modified amount is tabulated hereunder:

S.No	Heads	Amount awarded by the Tribunal	Amount modified by this Court
1)	Loss of Income	Rs.62,23,800/-	Rs.49,79,040/-
2)	Loss of Estate	Rs.15,000/-	Rs.15,000/-
3)	Loss of Consortium	Rs.40,000/-	Rs.80,000/-
4)	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
5)	Loss of Love & Affection	Rs.1,00,000/-	-----
6)	Transportation Charges	Rs.10,000/-	Rs.10,000/-
7)	Damages to Clothes and articles	Rs.1,000/-	Rs.1,000/-
8)	Repairing Charges of the deceased's vehicle	Rs.4,800/-	Rs.4,800/-
	Total	Rs.64,09,600/-	Rs.51,04,840/-

Accordingly, the compensation amount of Rs.64,09,600/- awarded by the learned Tribunal has to be reduced to Rs.51,04,840/-.

34. In the result, this Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the learned Tribunal for a sum of Rs.64,09,600/- is modified and reduced to Rs.51,04,840/- . Since there was no dispute that at the time of accident, the offending vehicle (the first respondent's bus) was insured with the third respondent/appellant, the appellant/Insurance Company is directed to pay the aforesaid amount to the claimants/respondents 1 and 2 on behalf of the respondents 3 and 4 with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realization (excluding the period during which the petition dismissed for default, if any) with proportionate costs. Out of the said amount, the first respondent being the wife of the deceased is entitled to Rs.21,04,840/- with interest and proportionate cost and the second respondent being the son of the deceased, is entitled to Rs.30,00,000/- with interest and proportionate cost. The appellant / Insurance Company Ltd., is directed to deposit the modified award amount along with interest and proportionate cost of the claimants



incurred by them before the Tribunal less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount to the Savings Bank Account of the claimants 1 and 2/ respondents 1 and 2 herein, within one week thereafter, through RTGS. In so far as this appeal is concerned, the parties are directed to bear their respective costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Vv

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The I Additional Sub Court,
The Motor Accident Claims Tribunal
Nagercoil.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-22710[F] dated 24/11/2020)

Judgment made in
C.M.A. (MD) .No.255 of 2019
and
CMP (MD) No.3501 of 2019
20.11.2020

mr (CO)
TR(28.12.2020) 10P 5C