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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

REVIEW APPLICATION NOS.16, 17, 18, 19, 21, 23,
24 AND 26 OF 2021

IN

CMA NO.3485, 3484, 3481, 3483, 3482, 3480,
3662 AND 3479 OF 2012

1.Renugadevi,

2.Senthil Kumar

...Review Petitioners in Rev.Appl.No.16 of 2021 /
Respondents 1 & 2 / Claimants 1 & 2

1.Senthil Kumar,

2.Renugadevi,

Eaelammal (deceased)

...Review Petitioners in Rev.Appl.No.17 of 2021 /
Respondents 1 & 2 / Claimants 1 & 2

1.Kupputhai,

(died as per memo dated 16.03.2021
and recorded vide order of this Court
dated 01.04.2021 and made in Rev.Appl.16 to 19,
21,23,24 and 26 of 2021)

2.Vanitha,

3.Priya.

...Review Petitioners in Rev.Appl.No.18 of 2021 /
Respondents 1 to 3 / Claimants 1 to 3

1.G.Priya,

2.Minor G.Nithin,

(Minor rep. By his Mother and guardian G.Priya)



3.R.Santhamani.

...Review Petitioners in Rev.Appl.No.19 of 2021 /
Respondents 1 to 3 / Claimants 1 to 3

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1.R.Ramya,

2.R.Aravinthan,

3.P.Gnanambal

(died as per memo dated 16.03.2021
and recorded vide order of this Court
dated 01.04.2021 and made in Rev.Appl.16 to 19,
21,23,24 and 26 of 2021)

...Review Petitioners in Rev.Appl.No.21 of 2021 /
Respondents 1 to 3 / Claimants 1 to 3

1.R.Santhamani,

2.G.Priya,

3.Minor G.Nithin.

(rep. By his mother and guardian G.Priya)

...Review Petitioners in Rev.Appl.No.23 of 2021 /
Respondents 1 to 3 / Claimants 1 to 3

1.Vanitha,

2.Priya.

...Review Petitioners in Rev.Appl.No.24 of 2021 /
Respondents 1 & 2 / Claimants 1 & 2

Ashwathaman (died)

1.R.Ramya,

2.R.Aravinthan.

...Review Petitioners in Rev.Appl.No.26 of 2021 /
Respondents 2, 3 / Claimants

Vs.

1.The New India Assurance Co. Ltd.,
Dindigul.

...1st Respondent in all Review Petitions /
Appellant / 2nd Respondent



2.The United India Insurance Co.,
Divisional Office,
Udumalpet.

...2nd Respondent in all Review Petitions /
6th Respondent / 4th Respondent

3.T.D.Ganeshkumar,

4.P.J.Selvin

...3rd & 4th Respondents in all Review Applications /
Respondents 4 & 5

Common Prayer : Review Applications filed under Order 47, Rule 1 read with Section 114 of the Code of Civil Procedure, seeking to review the judgment passed by this Court on 30.07.2018 in C.M.A.Nos.3479 to 3485 and 3662 of 2012.

Prayer in CMA's : These Civil Miscellaneous Appeals are filed under section 173 of Motor Vehicle Act 1988 against the Judgment and decree dated 08.10.2010 made in MCOP Nos.368, 367, 363, 366, 365, 362, 364, 361 of 2008 on the file of Motor Accident Claims Tribunal, Subordinate Court, Udumalpet.

For Petitioners : Mr.S.Karthikeibalan
in all Rev.Appls.

For Respondents : Mr.M.Krishnamoorthy for R1.
in all Rev.Appls. Ms.I.Malar for R2

COMMON ORDER

Before parting the order in Review Application Nos.18 and 21 of 2021, the counsel for the petitioners have filed a memo dated 16.03.2021. In the said memo it is stated that the 1st review petitioner in Review Appeal NO.18 of 2021 is no more and the same should be recorded. Likewise, the 3rd review petitioner in Review Appeal No.21 of 2021 has died and the same should be recorded. The said memo are taken into file and the Registry is directed to carry out necessary amendment in the cause title.

2. These review applications were filed by the respondents in C.M.A.Nos.3479 to 3485 and 3662 of 2012 as against the judgment passed by this Court on 30.07.2018, raising various grounds.



3. Heard the learned counsel for the review petitioners and the learned counsel for respondents Insurance Company.

4. On the earlier occasions, the arguments advanced by both the parties, after having discussing the issues, this Court has recorded that, even though the review petitioners have raised several grounds in the review applications as against the final judgment passed in the appeals, this Court is inclined to accept the following issues in order to decide the review applications.

5. The first issue raised is the multiplier method adopted in C.M.A.No.3481 of 2012 (Rev.Appl.No.18 of 2021), wherein the age of the deceased was 42 years and the tribunal has adopted wrong multiplier as 13 instead of 14 years, as per the decision of the Hon'ble Supreme Court in the case of Sarla Varma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The second issue raised by the review petitioners is that the order of withdrawal of the 50% of the amount deposited by the 1st respondent viz., The New India Assurance Co. Ltd., Dindigul. According to the petitioners, by this order they would lose the rate of interest which was accrued in the fixed deposits in the Nationalised Banks. There is some force in this argument and therefore, this Court entertained both the issues to be decided in these review applications.

6. Insofar as the first issue is concerned, the multiplier adopted by the tribunal is not in consensus with the judgment of the Hon'ble Supreme Court cited supra. Admittedly, there is no dispute with the age of the deceased. The age of the deceased at the time of death is 42 years. The issue involved is bound by the decision of the Hon'ble Supreme Court cited supra. Therefore, the tribunal has wrongly adopted the multiplier of 13 years and the review petitioner in R.A.No.18 of 2021 is entitled for the multiplier of 14 years in the light of the judgment cited supra.

7. As far as the second issue is concerned, this Court has directed the 2nd respondent-The United India Insurance Company to deposit 50% of the compensation amount as apportioned share as allotted by this Court. In the aforesaid order, this Court has directed the 2nd respondent, the United India Insurance company, to deposit 50% share of the compensation



amount within a period of six weeks from the date of receipt of copy of the judgment. According to the 2nd respondent, the copy of the judgment was received belatedly. But in the counter affidavit filed by the second respondent, they have not mentioned the date of receipt of the copy of the order. But, the delay has been explained in Paragraph 10 of the counter affidavit but no specific explanations for the delay of more than two years.

8. On the other hand, the review petitioners, who have got the final award dated 08.10.2010, disputed the negligence on the part of the insurance company. The first respondent viz., The New India Assurance Co. Ltd, Dindugal, who have been directed to pay the entire compensation amount to the claimants have preferred an appeal before this Court and this Court by judgment dated 30.07.2018 ordered that the Insurance companies are liable to pay 50% each of the compensation amount in each case and therefore, the Insurance companies/respondents 1 and 2 are directed to deposit the award amount in each CMA/MCOP with proportionate interest and cost, within six weeks from the date of receipt of a copy of the order, less the amount already deposited.

9. The learned counsel for the first respondent viz., The New India Assurance Co. Ltd., submitted that except some of the claimants, others have not withdrawn 50% of the amount till date. Therefore, according to the learned counsel, the first respondent is entitled for refund of excess amount lying in deposit. According to the learned counsel for the review petitioners, that the petitioners have already suffered for more than 12 years and they were not able to withdraw the award amount despite they losing their atleast one of their family members and the dependants have lost their earning members of their respective family. Thus, there is some force in the contention of the review petitioners that despite the judgment copy received by the Insurance Companies, they have not deposited the award amount within the time stipulated by this Court. Therefore, he seeks for enhancement in the rate of interest from the date of default in depositing the amount till the date of deposit to comply the judgment of this Court. The learned counsel for the second respondent viz., The United India Insurance Co. Ltd., submitted that in Paragraph 10 of their counter affidavit, they have answered with regard to the delay in depositing the amount. However, on perusal of the counter



affidavit, there is no specific particulars or explanation furnished for the delay in depositing the amount as directed by this Court, but it is stated in the affidavit that in compliance with the judgment passed by this Court, the said amount was deposited on 26.02.2021. Therefore, this Court is satisfied with the submissions made on the above two issues raised and the review petitioners have succeeded on the aforesaid two grounds and this Court passes the following orders:

1.The age of the deceased in CMA No.3481 of 2012 is 42 years and in the light of the decision of the Hon'ble Supreme Court cited supra, 14 years multiplier is to be adopted, which comes to Rs.6,72,000/-.

2.The petitioners in all the review applications is entitled to the rate of interest of 9% p.a. from the date of default of the amount to be deposited as per the judgment passed by this Court on 30.07.2018 in C.M.A.Nos.3479 to 3485 and 3662 of 2012. The difference in the interest amount shall be deposited by the respondents within a period of six weeks from the date of receipt of copy of this order. It is left open to the review petitioners to file appropriate application before the Tribunal to withdraw the amount. On receipt of such application, the Tribunal shall consider the same at the earliest in accordance with law.

10. At this juncture, the learned counsel appearing for the Review Petitioners has a filed memo before this Court stating that the Review Petitioners 2 & 3 in Rev. Application No. 18 of 2021 in CMA.No. 3481 of 2012 are the only surviving dependants to the deceased /1st review petitioner namely Kupputhail and the 1st & 2nd review petitioners in Rev. Application No. 21 of 2021 in CMA.No. 3482 of 2012 are the only surviving dependants to the deceased /3rd review petitioner namely P. Gnanambal. According to the learned counsel appearing for the Review Petitioners the aforesaid persons are the surviving dependants to the deceased and he has also filed the death certificates of the deceased Kupputhail and P.Gananabal to substantiate his claim. At this stage, without establishing the same by the petitioners before the concerned tribunal, this



Court cannot entertain the surviving dependants to claim the share amount of the deceased / 1st review applicant in Rev.A.No.18 of 2021 and deceased / 3rd review applicant in Rev.A.No.21 of 2021.

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11. Therefore, liberty is granted to the Review Petitioners 2&3 in Rev. Application No. 18 of 2021 in CMA.No. 3481 of 2012 and review petitioners 1 & 2 in Rev. Application No. 21 of 2021 in CMA.No. 3482 of 2012 to establish their claim regarding the share of the deceased / 1st review applicant in Rev.A.No.18 of 2021 and deceased / 3rd review applicant in Rev.A.No.21 of 2021 before the tribunal by filing appropriate applications. Liberty is also granted to the above said review petitioners to the effect that, if they succeed before the tribunal, they are permitted to withdraw the compensation amount awarded by this Court in their respective Review Applications equally.

12. Accordingly, to the above extent, these review applications are allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Subordinate Judge, Udumalpet.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.T.Ravichandran, Advocate SR.No.21475

+1cc to M/s.M.Krishnamoorthy, Advocate SR.No.21965

Review Application Nos.16, 17, 18, 19, 21, 23,
24 and 26 of 2021

RR & PVS(CO)

RVM(29/10/2021)