BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 23.07.2021
Delivered on : 29.07.2021
CORAM:
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

C.M.A.(MD).Nos.1327 and 1328 of 2014, 210 and 310 of 2016 & 318 of 2017
and
C.M.P(MD)No.4390 of 2016

C.M.A.(MD).Nos.1327 and 1328 of 2014

The New India Assurance Company Limited,
Through its Manager,
Cantonment, No.43A/2, Suman Centre,
Promenade Road,
Tiruchirappalli District and T.M.Taluk,
... Appellant/2nd Respondent in both petitions

Vs.

1.Dr.Banumathi
2.Renugadevi ... 1st & 2nd Respondent/Petitioners
3.Joseph ... 3rd Respondent/1st Respondent
4.Panneerselvam ...4th Respondent/3rd Respondent
5.Iffco-Tokyo Insurance Company Ltd.,
Through its Manager,
No.195, 3rd Floor, Thulasi Chamber,
T.V.Swamy Road, R.S.Purgam,
Coimbatore District and T.M.Taluk.
... 5th Respondent/4th Respondent in both petitions

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act 1988 to set aside the common order of the Claims Tribunal in MCOP Nos.117 and 118 of 2008 dated 29.08.2013 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Pattukkottai.

In both petitions:-

For Appellant	:Mr.J.S.Murali
For Respondents	:Mr.S.Deenadhayalan (for R1 and R2) Mr.V.Sakthivel (for R5)
R3 & R4	:Exparte

C.M.A.(MD).No.210 of 2016

1.Dr.Banumathi
2.Renugadevi ... Appellants/1st & 2nd Claimants

Vs.

1.Joseph
2.The Manager,
The New India Assurance Company,
No.43/A/2, Suman Centre,
Promenade Road,
Contonment,
Tiruchirappalli.
3.Panneerselvam
4.The Manager,
IFCO Tokya Insurance Company,
No.195, 3rd Floor,
Thulasi Chamber,
T.V. Swamy Road, Coimbatore. ... Respondents/Respondents
5.Marimuthammal ... 5th Respondent/3rd Claimant

PRAYER: Civil Miscellaneous Appeal is filed under Section 173(1) of Motor Vehicles Act 1988 to enhance the compensation to the tune of Rs.4,00,000/- in addition to compensation awarded by the Tribunal by modifying the Judgment in MCOP No.116 of 2008 by the Judgement dated 29.08.2013 by the Motor Accident Claims Tribunal (Sub-Judge), Pattukkottai.

For Appellant :Mr.S.Deenadhayalan
For Respondents :Mr.J.S.Murali (for R2)
Mr.V.Sakthivel (for R4)
R1 & R3 :givenup

C.M.A.(MD).No.310 of 2016

The New India Assurance Company Limited,
Through its Manager,
Cantonment,
No.43A/2, Suman Centre, Promenade Road,
Tiruchirappalli District and T.M.Taluk. ... Appellant/2nd Respondent

Vs.

1.Dr.Banumathi
2.Renugadevi
3.Marimuthammal ...1st to 3rd Respondents/Petitioner
4.Joseph ...4th Respondent/1st Respondent
5.Panneerselvam ...5th Respondent/3rd Respondent
6.Iffco-Tokyo Insurance Company
Through its Manager,
No.195, 3rd Floor, Thulasi Chamber,
T.V.Swamy Road, R.S.Puram,
Coimbatore District and T.M.Taluk ...6th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173(1) of Motor Vehicles Act 1988 to set aside the order of the Claim Tribunal in MCOP No.116 of 2008 dated 29.08.2013 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Pattukkottai.

For Appellant :Mr.J.S.Murali
For Respondents :Mr.S.Deenadhayalan (for R1 and R2)
Mr.V.Sakthivel (for R6)
R4 & R5 :Exparte

C.M.A.(MD).No.318 of 2017

1.Dr.Banumathi
2.Renugadevi ... Appellants/Claimants

Vs.

1.Joseph
2.The Manager,
The New India Assurance Company,
No.43/A/2, Suman Centre,
Promenade Road,
Contonment,
Tiruchirappalli.

3.Panneerselvam
4.The Manager,
IFCO Tokya Insurance Company,
No.195, 3rd Floor,
Thulasi Chamber,
T.V. Swamy Road, Coimbatore. ... 1st to 4th Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173(1) of Motor Vehicles Act 1988 to enhance the compensation to the tune of Rs.2,00,000/- in addition to compensation awarded by the Tribunal by modifying the Judgment in MCOP No.118 of 2008 by the Judgement dated 29.08.2013 by the Motor Accident Claims Tribunal (Sub-Judge), Pattukkottai.

For Appellant :Mr.S.Deenadhayalan
For Respondents :Mr.J.S.Murali (for R2)
Mr.V.Sakthivel (for R4)
R1 & R3 :Exparte

COMMON JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

These appeals arose out of the common award passed by the Motor Accident Claims Tribunal (Sub-Court), Pattukkottai in MCOP Nos.116, 117 and 118 of 2008. The second respondent in the claim petitions are the appellant in CMA(MD)Nos.1327 and 1328 of 2014 and CMA(MD)

No.310 of 2016 while appeals in CMA(MD)No.210 of 2016 and CMA(MD) No.318 of 2017 were filed by the claimants seeking enhancement of compensation.

2.The brief facts of the case are that in an accident, which had taken place on 02.09.2007, one Kasinathan and his wife Vedanayaki and their daughter Jaya died. Their legal heirs have filed the claim petitions alleging that at 05.00 p.m on 02.09.2007, the deceased along with one Gowsalya and Anbalagan were travelling in a Toyota Qualis car bearing bearing Reg.No.TN-50-Z-7555 and the vehicle was driven by one Selvam. When the vehicle was proceeding near Uthangudi, which is situated on Thanjavur-Mannargudi main road, a lorry bearing Reg.No.TAN-7785, which was coming from the opposite direction in a rash and negligent manner rammed the Toyota Qualis car, in which, 3 persons died and the co-passenger one Anbalagan sustained grievous injuries. In MCOP No.116 of 2008, the daughters and the mother of the deceased Kasinathan sought compensation of Rs.75,00,000/-. The daughters of the deceased filed MCOP No.117 of 2008 seeking compensation of Rs.35,00,000/- for the death of their sister Jaya. MCOP No.118 of 2008 came to be filed claiming compensation of Rs.10,00,000/- for the death of their mother Vedanayaki.

3.It is the case of the claimants that the deceased Kasinathan was working as Manager in Bharath Heavy Electricals Limited (BHEL) at Trichy and he was earning Rs.50,000/- per month. He died at the age of 54 years and he was having remaining 6 years service. It is also stated that during the service, he is likely to be promoted to the higher post and he may earn Rs.60,000/- per month. According to them, the deceased Jaya was a Psychotherapist working in a Hospital at Nagapattinam and she was earning Rs.9,000/- per month, however, she died in the accident at the age of 30 years. It is their further case that the deceased Vedanayaki was a homemaker and she died at the age of 53 years. The death of the Vedanayaki caused loss of love and affection to the claimants as well as their children.

4.The appellant resisted the claim petitions by filing a counter, in which, it has been stated that the accident occurred due to the negligence of the driver of the Qualis car. In the additional counter, it is stated that the Motor Vehicles Inspector's Report shows the front side of the Qualis car has heavily damaged, but in the lorry, damage was caused in the right side cabin, it proves that the driver of the car was negligent. So, no liability can be fastened on the appellant Insurance Company. In addition, they have disputed the income, age of the deceased. Further, it is stated that the claim was highly excessive and exaggerated.

5.The owner and the insurer of the car were arrayed as the respondents 3 and 4. The stand of the insurer of the car was that the driver of the lorry was responsible for the accident.

6.During trial, the parties have adduced oral and documentary evidence in support of their case. On the basis of evidence adduced by the parties, the Tribunal came to the conclusion that the driver of the lorry caused the accident and awarded compensation of Rs.37,30,000/-, Rs.8,40,000/- and Rs.2,98,000/- respectively together with interest at 9% per annum. Questioning their liability, the Insurance Company preferred there appeals and the claimants have come up two appeals for enhancement as aforementioned.

7.Since all the appeals arise out of the common award, they are heard together and disposed of by this common Judgment.

8.The learned counsel for the appellant Mr.J.S.Murali would urge that the Motor Vehicles Inspector's report which was marked as Ex.P.4, would categorically prove that the car dashed against the lorry, hence, the finding of the Tribunal that the driver of the lorry caused the accident cannot be sustained. He further added that the deceased Kasinathan was an employee in BHEL, Trichy and he died at the age of 54 years. Since nothing was produced by the claimants that after he retired from service on superannuation, he would earn same salary, the Tribunal ought to have applied split multiplier. It is also contended that the claimants are not dependents on the deceased and hence, the amount awarded is excessive and it has to be reduced.

9.Per contra, the learned counsel appearing for the respondents/claimants would argue that the award of the Tribunal is very meager and the deceased Kasinathan was paid Rs.42,000/- p.m towards salary and in addition, he was earning performance bonus of Rs.33,000/- and special incentive of Rs.34,000/- per annum, but those amounts were not taken into consideration while fixing the monthly income of the deceased and the notional income assessed by the Tribunal for the death of Vedanayaki is very low and hence, they are entitled for enhancement in their appeals.

10.Mr.V.Sakthivel, learned counsel for the respondent/Iffco-Tokyo Insurance Company would argue that the Tribunal has given valid reason to fix negligence on the driver of the lorry. Furthermore, admittedly, the appellant has not examined the driver of the lorry and hence, the finding does not warrant interference by this Court.

11.This Court paid anxious consideration to the rival submission and perused the materials available on record.

12.The occupant of the car, Anbalazhan, who sustained injuries in the accident was examined as P.W.3. He narrated the manner of accident in his evidence. The claimants have also marked FIR (Ex.P.1) to show that the criminal case was registered against the driver of the lorry. R.W.1 Private Investigator appointed by the appellant Insurance Company admitted in the cross examination that he did not examine the driver of the lorry during his investigation and the report of the investigator was not also produced. Further, the driver of the lorry was not examined in support of the case of the appellant. Admittedly, R.W.1 was not an eyewitness to the incident and his investigation commenced after lapse of 8 months. Considering these aspects, the Tribunal rejected the evidence of R.W.1 and held that the accident had occurred only due to the negligence of the driver of the lorry. The Tribunal has further observed that the lorry being heavy vehicle, merely because heavy damage was caused to the car, it cannot be held that the driver of the car dashed against the lorry. In the light of the above facts, we find no merit in the contention of the learned counsel for the appellant that the driver of the car dashed against the lorry.

13.Insofar as the quantum, the claimants have stated that the deceased Kasinathan was working as Manager at BHEL and he was paid Rs.50,000/- per month. To substantiate their case, Ex.P.7- Identity Card, Ex.P.6-Promotion Order and Ex.P.11-Salary Certificate were produced. The Salary Certificate indicates that the deceased was earning Rs.41,314/- per month. P.W.2, Junior Assistant of BHEL, has stated that the deceased was entitled for promotion and he will receive more salary. P.W.2 further stated that in addition to the salary, the deceased was paid Rs.33,000/- and Rs.34,000/- towards performance bonus and special incentive. On the basis of evidence, the Tribunal fixed Rs.42,000/- as income of the deceased. In the claim petition, it has been averred that the deceased Kasinathan was 54 years and he was having 6 years remaining service. The Tribunal following the decision of ***Sarala Verma and others vs. Delhi Transport Corporation [2009 (6) SCC 121]***, has applied multiplier '11' to arrive at loss of dependency.

14.In the present case, there is no dispute with regard to the multiplier. The only short issue that arises for consideration in these appeals is whether it is a fit case for applying split multiplier.

15.In this regard, it would be useful to refer the decisions of the Hon'ble Apex Court in the case of **Puttamma vs. K.L.Narayana Reddy and others (2014(1) TN MAC 481)** wherein, the Hon'ble Apex Court has observed that without any specific reason or evidence on record, split multiplier method cannot be applied in a routine course. The relevant paragraph is extracted hereunder:-

> "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 Sarala Verma 2009(2) TN MAC 1 (SC): 2009 ACJ 1298 (SC), as affirmed in the case of

Reshma Kumari, 2013(1) TN MAC 481 (SC): 2013 ACJ 1243 (SC)."

16.The Division Bench of this Court in the decision reported in **2013(2) MWN (Civil) 729 (R.Leelavathy vs. Sheik Dawood and another)**, in **2014(1) TN MAC 334 (DB) (Branch Manager, National Insurance Company Limited vs. M.Arulmozhi and others)** and in **2015(2) TN MAC 449 (DB) (Reliance General Insurance Company Ltd. vs. K.Meena and others)** and the High Court of Kerala in **2016(1) TN MAC 493** applied split multiplier method in the case of death of a Government Servant to assess loss of dependency. In latest unreported judgment, the Division Bench of this Court in **CMA(MD) No.248 of 2018 dated 15.03.2021** has awarded compensation by applying split multiplier. Division Bench of Karnataka High Court vide order dated 30.03.2021 in M.F.A.No.3878 of 2019 (MV-D) has held as follows:-

> "8.We have considered the submissions made by learned counsel for the parties and have perused the record. The only question which arises for our consideration in this appeal is with regard to the application of split multiplier method to compute the compensation towards loss of dependency. The Supreme Court in PUTTAMMA & ORS. Vs. K.L.NARAYANA REDDY & ORS, 'AIR 2014 SC 406, has held that the split multiplier should not be adopted in the absence of any specific reason or evidence on record. In the instant case, the deceased admittedly was aged about 59 years and his age of superannuation was 60 years. His income could not have been remained the same even after superannuation. Therefore, in our opinion, the Tribunal ought to have applied split multiplier method to ascertain the compensation towards loss of dependency.

17. From the decision referred supra, it is clear that split multiplier method can be applied in the case of death of Government Servant or employee in a Corporation, however, reasons shall be assigned for applying multiplier method. In the instant case, there is no dispute that the deceased Kasinathan died at the age of 54 years and left with another 6 years of service. There is no proof that the deceased after his retirement will be earning the same amount. So, it is a fit case for applying split multiplier. The Tribunal has not made any deduction towards Income Tax, however, adjusted the same with the additional income the deceased was receiving Rs.33,000/- and Rs.34,000/- towards performance bonus and special incentives. Therefore, we can safely take income of the deceased at Rs.42,000/-. From which, 1/3rd is to be deducted towards his personal and living expenses and contribution to the family would come Rs.28,000/-. Since the deceased was aged about 54 years and the regular multiplier is '11'. The claimants are entitled to full salary for a period of 6 years and 50% of the salary for the remaining five years. The claimants shall be entitled to

Rs.20,16,000/- for a period of 6 years and Rs.8,40,000/- for the remaining period of 5 years. Hence, total loss of income comes to Rs.28,56,000/-. In addition, as per the decision of the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd., vs. Nanu Ram and others** reported in **2018(1) TN MAC 452 (SC)**, the claimants are entitled to Rs.40,000/- each, which comes to Rs.1,20,000/-. Rs.15,000/- is awarded for loss of estate. Rs.15,000/- is awarded for funeral expenses. Hence, the award amount is reduced to Rs.30,06,000/- from Rs.37,30,000/-.

18.In MCOP No.117 of 2008, the deceased Jaya was the elder sister of the claimants. Though she was married to one Balakrishnan, the marriage ended in divorce. It is also stated that a child born to them died in the year 2003. Ex.P.37 is the marriage invitation of the Jaya and her husband Balakrishnan. Ex.P.38 is the divorce petition filed by her husband before the Sub-Court, Nagapattinam in HMOP No.114 of 2003. Ex.P.39 is the counter and Exs.P.40 and 41 are the Judgment and decree passed in HMOP No.114 of 2003. Exs.P.42 and 43 are the judgment of the appellate Courts. Ex.P.20 to Ex.P.25 are the educational certificates of the deceased Jaya. Ex.P.29 to Ex.P.31 certificates issued for Jaya to complete her training. Though the claimants have stated that the deceased Jaya was earning Rs.9,000/- per month and she died at the age of 30 years, the Tribunal has taken her monthly income as Rs.6,000/- and after deducting 1/3rd for her personal and living expenses, has fixed her contribution at Rs.4,000/- per month and by applying multiplier '17' has awarded Rs.8,16,000/- (4,000 x 12 x 17). In addition, Rs.4,000/- is awarded for transportation and Rs.10,000/- is awarded for funeral expenses and Rs.10,000/- is awarded towards loss of love and affection. In total, the Tribunal has awarded Rs.8,40,000/-. A perusal of the records, we are of the opinion that the amount awarded by the Tribunal is reasonable, which does not require any interference of this Court. Hence, the award passed in MCOP No.117 of 2008 is confirmed.

19.In MCOP No.118 of 2018, the deceased was a homemaker and she died at the age of 53 years. The claimants are daughters of the deceased Vedanayagi. Though they got married, in the claim petition as well as in the evidence, it has been clearly stated that they have lost their love and affection and parental care not only for the claimants, but also for their children. So, the contention of the insurance company that the claimants are not dependents of the deceased Vedanayagi and they are entitled for compensation cannot be countenanced. The Tribunal has fixed notional income as Rs.3,000/- p.m. Ex.P.33 Postmortem certificate shows that the deceased died at the age of 53 years and the Tribunal, after deducting 1/3rd for her personal expenses, applying multiplier '11', has awarded Rs.2,64,000/- (2000 x 12 x 11) towards loss of dependency. That apart, Rs.4,000/- was awarded towards transportation; Rs.10,000/- for funeral expenses; Rs.20,000/- towards loss of love and affection. In total, the Tribunal has awarded Rs.2,98,000/- with interest at the rate of 7.5% p.a. As per the decision of the Hon'ble Apex Court in **Magma's case** (cited supra), the claimants would be entitled to Rs.80,000/- towards loss of parental consortium instead of Rs.20,000/- towards loss of love and affection. So, the award is enhanced to Rs.3,58,000/-, which is rounded off to Rs.3,60,000/-.

20.For the foregoing reasons, CMA(MD)Nos.310 of 2016 and 318 of 2017 are partly allowed. CMA(MD)Nos.1327 and 1328 of 2014 and 210 of 2016 are dismissed. It is represented that the entire amount has been deposited. The claimants are entitled to receive the modified award amount along with interest at the rate of 7.5% from the date of petition till the date of realization, less already withdrawn. Excess amount, if any, shall be returned to the appellant. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skn

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 Motor Accident Claims Tribunal (Sub-Judge),
Pattukottai.

2.The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+5 CC to M/s.J.S.MURALI, Advocate (SR-24507 to 24511[F] dated 29/07/2021)
+5 CC to M/s.S.DEENADHAYALAN, Advocate (SR-24631 to 24635[F] dated 30/07/2021)
+1 CC to M/s.V.SAKTHIVEL, Advocate (SR-24640[F] dated 30/07/2021)

C.M.A.(MD).Nos.1327 and 1328 of 2014, 210 and 310 of 2016 & 318 of 2017
and
C.M.P(MD)No.4390 of 2016
29.07.2021

KMK (CO)
GC(26.10.2021) 9P 15C