IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. NO.1160 OF 2021
AND CMP.NO.19414 OF 2021

The New India Assurance Co. Ltd.,
No.236, VI Floor,
NSC Bose Road, Opp. High Court,
Chennai 1.

... Appellant/
2nd Respondent

Vs.

1. P. Sri Vidhya Devi
... R1/1st Petitioner
2. V.S.Kathiravan
... R2/2nd Petitioner
3. Minor V.S.Rashmi
... R3/3rd Petitioner

[3rd responded being a minor is rep. by her mother and natural friend the first respondent herein]

4. V.Adhilakshmi
... R4/4th Petitioner
5. S.Suresh Pathiputtu
... R5/1st Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 27.07.2020 in MCOP.No.5680 of 2017 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Dhakshnamoorthy
For Respondents
for RR1 to 4 : Mr.G.Balaji Prasad
for R5 : Not served

J U D G M E N T

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

The appeal is heard through video conferencing.

2. Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai in MCOP.No.5680 of 2017, dated 27.07.2020, the present appeal has been filed by the Insurance Company.

3. It is the case of the claimants that the deceased V.Subramanian, who was working as a Head Constable in Tamil Nadu Police service, died in an accident that occurred on 26.04.2017. The legal heirs, viz., wife, children and parents of the deceased, approached the Motor Accidents Claims Tribunal, seeking a compensation of Rs.1 Crore. According to them, the deceased was riding a Scorpio Car bearing Registration No.TN-63-T-3773 from East to West direction on Chinna Salem National Highways. At that time, a Lorry bearing Registration No.AP-04-T-1629, came in a high speed and hit against the Scorpio Car and the deceased sustained fatal injuries and died on the way to Hospital.

4. It is their further case that the deceased was earning Rs.38,035/- per month and since the accident had occurred due to the negligence of the driver of the Lorry, the owner as well as the insurer are liable to pay the compensation.

5. The claim petition was resisted by the appellant/Insurance Company contending that the deceased was responsible for the accident and the amount claimed is on the higher side.

6. Before the Tribunal, the parties had adduced oral and documentary evidence. After analysing the evidence, the Tribunal came to the conclusion that the driver of the Lorry was responsible for the accident and awarded a compensation of Rs.62,83,370/-. Questioning the same, the present appeal has been filed by the Insurance Company.

7. The learned counsel appearing for the appellant/Insurance Company Mr.S.Dhakshnamoorthy would urge that the deceased was admittedly in the Government service and died in the accident at the age of 49 years and he would have retired from service at the age of 58 years after attaining the age of superannuation. The Tribunal instead of applying split multiplier, adopted 13 multiplier, to arrive at the Loss of Dependency.

8. Per contra, the learned counsel appearing for the respondents 1 to 4/claimants by placing reliance on the judgment of Supreme Court in the case of N.Jayasree and others vs. Cholamandalam MS Genral Insurance Co. Ltd., reported in 2021 (2) TNMAC 639 (SC) submitted that in all the cases, split multiplier cannot be applied and the Tribunal is justified in awarding compensation as per the decision of Sarala Varma.

9. In support of this contention, the learned counsel also relied upon the judgment in K.R.Madhusudan and others vs. Administrative Officer, reported in 2011 (1) TNMAC 161 (SC), wherein the Apex Court has held that the High Court without giving any reason is not right in applying split multiplier. The same view was taken by the Apex Court in Pattamal vs. K.L.Narayana Reddy reported in 2014 (1) TNMAC 481 (SC) following the judgment of Madhusudan Case (referred supra).

10. We have heard the submissions of both sides and carefully perused the materials available on record.

11. The Tribunal based on the Identity Card issued by the Police Department, found that the deceased died in the accident at the age of 49 years. PW1 deposed that the deceased was a Head Constable and marked Ex.P6 Salary Slip, which shows that the deceased was earning Rs.39,669/- (rounded off to Rs.39,700/-) per month. The Tribunal, having found that the deceased is entitled for 30% towards additional future prospects, has arrived at the total monthly income at Rs.51,610/- [39,700 + 11,910]. The annual income of the deceased is Rs.6,19,320/- [51,610 x 12]. Then by deducting 1/4 of the amount towards personal expenses of the deceased, arrived the the contribution to the family as Rs.4,64,490/- [6,19,320 - 1,54,830].

12. Now, the only question that arises for consideration in this appeal is as to whether it is a fit case for applying split multiplier.

13. In the Jayasree Case (referred supra), though the Apex Court held that the High Court was not justified in applying split multiplier, but, in that case, the deceased was working as an Assistant Professor and the evidence produced in that case shows that he was a meritorious man having the qualifications of M.Sc., M.Phil. Further, the Apex Court found that the Teachers are employed even after the retirement in coaching centres and they may also hold private tuitions and earn the same salary or more than the salary that they were receiving at the time of death. However, in the case on hand, there is no averment in the claim petition that, after retirement of the deceased, there is a possibility of the deceased earning the same or more income after his employment. Hence, we are of the considered view that,

in this case, we have to apply "split multiplier" method. It is also brought to the notice of this Court by the learned counsel appearing for the claimants that the Government of Tamil Nadu, vide G.O.(MS)No.29, Personnel and Administrative Reforms (S) Department, dated 25.02.2021, increased the age of the retirement to 60 years for all Government servants. Hence, the deceased would be entitled for full salary for the period of 10 years and for the remaining period of 3 years, he is entitled for 50% of the salary. Therefore, the Loss of Dependency in service comes to Rs.46,44,900/- [4,69,490 x 10] and for the remaining period, the amount comes to Rs.7,04,235/- [2,34,745 x 3]. Thus, the total Loss of Dependency comes to Rs.53,49,135/- [46,44,900 + 7,04,235]. In addition to that, this Court awards Rs.40,000/- towards Loss of Consortium; Rs.80,000/- towards Parental Consortium; Rs.40,000/- towards Loss of Filial Consortium; Rs.15,000/- towards Loss of Funeral Expenses; and Rs.15,000/- towards Loss of Estate. In total, the claimants are entitled to Rs.55,39,135/-, which is rounded off to Rs.55,40,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the total compensation payable to the claimants is re-calculated and tabulated below:

S.No.	Heads under which amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Loss of Dependency	60,38,370	53,49,135
2.	Loss of Spouse Consortium	40,000	40,000
3.	Parental Consortium	1,50,000	80,000
4.	Filial Consortium	25,000	40,000
5.	Loss of Estate	15,000	15,000
6.	Funeral Expenses	15,000	15,000
	Total	62,83,370 rounded off to 62,83,400	55,39,135 rounded off to Rs.55,40,000

14. In view of the above modifications, the Civil Miscellaneous Appeal is partly allowed. The wife of the deceased/first claimant is entitled for Rs.20,00,000/-; children of the deceased/claimants 2 and 3, are entitled for Rs.15,00,000/- each; and mother of the deceased/fourth claimant is entitled for Rs.5,40,000/-. It is represented by the learned

counsel for the appellant/Insurance Company that the Insurance Company has already deposited Rs.40,00,000/- to the credit of the claim petition. Hence, the balance modified award amount will be deposited with accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. The major claimants 1, 2 and 4 are permitted to withdraw their respective shares of the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. Insofar as the minor claimant 3 is concerned, her share shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till she attains majority and the interest accrued thereon shall be withdrawn by the first claimant /mother once in three months. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

pvs

To

1. II Court of Small Causes,
   Motor Accident Claims Tribunal, Chennai.

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

+2ccs to Mr.G.Balaji, Advocate, S.R.No.8139

C.M.A. No.1160 of 2021

KV(CO)
PM/30/03/2022