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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2022

CORAM:

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

C.M.A.NO.1981 OF 2019
AND
C.M.P.NO.7061 OF 2019

The Branch Manager,
United India Insurance Co. Ltd.,
Pallivasal Street,
Perambalur.

... Appellant/2nd Respondent

.Vs.

1. Tamilarasi
2. Kalaivani
3. Vadivukarasi
4. Kokilavani
5. Ramathilagam
6. Aruirsarvi
7. Senthilkumar

... Respondents/Petitioners
1 to 6

PRAYER:-

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the Judgment and Decree dated 08.11.2018 made in M.C.O.P.No.103 of 2016 on the file of the Motor Accident Claims Tribunal (Principal District Court), Perambalur.

For Appellant : Ms.I.Malar

For Respondents : Mr.C.Sivakumar
(For R1 to R6)

R7 - Not ready in notice



JUDGMENT

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

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Heard, Mrs.I.Malar, learned counsel appearing for the appellant and Mr.C.Sivakumar, learned counsel appearing for the claimants and perused the available materials.

2. Challenging the Judgment and award passed by the Motor Accident Claims Tribunal (Principal District Judge), Perambalur in M.C.O.P.No.103 of 2016, the present appeal has been filed.

3. The brief facts of the case are that on 03.07.2015 at about 20.30 hours, the deceased was riding his two wheeler bearing Registration No.TN 45 T 3371 on Tanjore-Trichy road. When he was near malaikovil bus stop, it is alleged that the 1st respondent vehicle bearing Registration No.TN 27 U 5656 was driven in a rash and negligent manner, which hit against the two wheeler. Due to the accident, the deceased sustained multiple grievous injuries all over the body. Immediately he was admitted at Bharath Heavy Electrical Limited Hospital, Trichy and he died during treatment. The claimants are the legal heirs of the deceased. It is further stated that the deceased was working as Assistant Engineer Grade-II in BHEL and his monthly earning was Rs.80,000/- and had one year service for attaining the age of superannuation. Though the claimants have sought for a sum of Rupees One Crore, the Tribunal chose to award a sum of Rs.69,96,006 along with interest at the rate of 7.5% per annum.

4. This appeal has been filed questioning the award.

5. Learned counsel appearing for the appellant has vehemently contended that even in the claim petition, it has been clearly stated that the deceased was having only one year service left for superannuation. The Tribunal instead of applying split multiplier has applied multiplier '9' to assess the amount under the head 'loss of income'.

6. Per contra, learned counsel appearing for the claimants Mr.C.Sivakumar would argue that, as per the latest decision of the Hon'ble Apex Court, in the case of R.Valli and others vs. Tamil Nadu State Transport Corporation Ltd., reported in 2022 LiveLaw (SC) 152, split multiplier cannot be applied. Hence, he prayed for dismissal of the appeal.

7. In the matter on hand, the only issue that arises for consideration is whether this Court can apply split multiplier to determine the loss of income to the family of the deceased.



8. As rightly pointed out by the learned counsel for the appellant, the claimants have stated in the claim petition that he is having only one year left over service. Though this Court was applying the theory of the split multiplier, in the case of employees of the Government or Private Companies, the Hon'ble Apex Court in R.Valli and others' case has categorically held as follows:-

"7. In Pranay Sethi, this Court held that the age of the deceased is the basis for applying suitable multiplier and that the compensation is to be determined keeping in view the future prospects. The future prospects were held to 15% in respect of a deceased between the age of 50 to 60 years.

8. Mr. Amit Anand Tiwari, learned Additional Advocate General has referred to certain orders of the High Courts reported as Uma Shankar & Ors. v. Revathy Vadivel & Ors.; 2014 SCC OnLine Mad 846, Smt. Kamlesh Devi & Ors. v. Sh. Kitab Singh & Ors.; 2011 SCC Online Del 2843 and Union of India & Ors. v. K.S. Lakshmi Kumar & Ors; 2000 SCC OnLine Kar 406 to support the applicability of split multiplier i.e., multiplier upto the date of retirement and another multiplier after retirement.

9. The judgments referred to by Mr. Tiwari are prior to the enunciation of law by this Court in Pranay Sethi. Therefore, such judgments no longer can be said to be good law as suitable multiplier is to be applied keeping in view the age of the deceased in terms of para 59.7 of the judgment in Pranay Sethi.

10. A three-Judge Bench in an order reported as United India Insurance Co. Ltd. v. Satinder Kaur alia Satwinder Kaur & Ors.; 2020 SCC OnLine SC 410 has applied the multiplier keeping in view the age of the deceased even if he was a bachelor. The Court held as under:

"48. Another three-judge bench in Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud, (2019) 5 SCC 554 traced out the law on this issue, and held that the compensation is to be computed based on what the deceased would have contributed to support the dependants. In the case of the death of a married person, it is



an accepted norm that the age of the deceased would be taken into account. Thus, even in the case of a bachelor, the same principle must be applied."

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11. Thus, we find that the method of determination of compensation applying two multipliers is clearly erroneous and run counter to the judgment of this Court in Pranay Sethi, affirming the judgment in Sarla Verma. Since the deceased was 54 years of age on the date of incident, therefore, the suitable multiplier would be 11 as per the judgment of this Court in Sarla Verma approved by this Court in Pranay Sethi."

In the light of the above decision, we are unable to agree with the submission of the learned counsel appearing for the appellant for applying split multiplier in this case. She also argued that since the family of the deceased was receiving family pension, the entire income of the deceased cannot be taken into account.

9. We find no force in the submission of the learned counsel for the appellant. It is settled legal principle that payment of pension or appointment on compassionate ground cannot be a reason to reduce the income received by the deceased. In this case, the claimants have produced Ex.P.3 - Pay slip to establish that the deceased was paid Rs.83,773/- per month. P.W.3 - Sivakumar, who is the Administrative Officer of BHEL has deposed that the deceased was working as an Assistant Engineer in the Company and through whom, the Salary Certificate was marked. The Tribunal has deducted totally Rs.1,30,000/- towards income tax and education cess. After deducting the said amount, the income of the deceased would be Rs.10,26,075/- and taking note of the fact that the deceased was 59 years old, the '9' multiplier has to be adopted. In addition, Rs.40,000/- was awarded for the wife and Rs.15,000/- for loss of articles; Rs.15,000/- for loss of estate; Rs.15,000/- for funeral expenses.

10 A perusal of the Judgment of the Trial Court shows that it was in conformity with the decision of the Hon'ble Apex Court in the case of National Insurance Co., Ltd., Vs. Pranay Sethi and others. Therefore, we find no reason to interfere with the order of the Tribunal and the Civil Miscellaneous Appeal stands dismissed. The appellant/Insurance company is directed to deposit the award amount of Rs.69,96,006/- together with interest at the rate of 7.5 % p.a., from the date of claim petition, till the date of realization and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit is being made, the respondents 1 to



6/claimants are permitted to withdraw their respective share of the award amount, along with proportionate interest and costs, less the amount already withdrawn if any. Consequently, connected Miscellaneous Petition is closed. No costs.

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Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Court,
Perambalur.
2. The Section Officer,
V.R. Section,
High Court of Madras.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.18656
+1cc to Mr.C.Sivakumar, Advocate, S.R.No.18416

C.M.A.NO.1981 OF 2019

AD(CO)
PBS/25/05/2022