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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

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

C.M.A. No.1310 of 2020
and
CMP.No.9412 of 2020

M/s.IFFCO-TOKIO General Insurance Company Limited,
Kingstone Park, 2nd Floor,
19/1, Ramalinga Nagar,
Woraiyur,
Trichy 3.

...Appellant/2nd Respondent

Vs.

1. Santhi
2. Kothandapani
3. Varalakshmi
4. Geetha
5. Ranganayaki
6. A.Balagurunathan

...Respondents 1to 5/Petitioners 1 to 5
...6th Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 17.12.2019 passed in MCOP.No.510 of 2016 by the Motor Accidents Claims Tribunal/Sessions Judge, Perambalur.

For Appellant :Mr.J.Michael Visuvasam
For Respondents
for RR1 to 5 :M/s.T.Gobinath
for R6 :Notice Served. No Appearance

J U D G M E N T

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

The second respondent in MCOP.No.510 of 2016 on the file of the Motor Accidents Claims Tribunal/Sessions Court, Perambalur has preferred this appeal, questioning the award passed for Rs.47,97,500/-.



2. The claim petition was filed by the wife, children and the mother of the deceased Dharmalingam. It is their case that the deceased was riding a motorcycle on 28.03.2016 at 6.30 p.m. on Trichy to Karur Main Road and when he was nearing Ayyar Santhanakadai, Kambarasampettai, a Tata 407 Van bearing Registration No.67-W-4917, belonging to the sixth respondent herein and insured with the appellant/Insurance Company, came in a rash and negligent manner from the Northern side and suddenly crossed the road without showing any signal and hit against the 2 wheeler. Due to the accident, the deceased sustained multiple injuries and he was immediately admitted in Kauvery Hospital, Trichy. Despite treatment, he died on 29.03.2016.

3. The claimants have further stated that the deceased was working as an Administrative Officer at Forest Plantation Corporation, Trichy and his monthly salary was Rs.65,000/- and he died at the age of 58 years. Since the accident had taken place due to the negligence of the driver of the Van, the owner and insurer, both are jointly and severally liable to pay a compensation of Rs.75,00,000/-.

4. The claim petition was resisted by the appellant/Insurance Company stating that the accident had occurred due to the negligence of the deceased. It is also stated that he was not having valid driving licence and also not wearing helmet at the time of the accident. Hence, the claimants are not entitled for any compensation.

5. Before the Tribunal, the claimants examined 3 witnesses and in all 17 documents were marked. PW2 Somasundaram was examined as eyewitness to the accident. After analysing the evidence, the Tribunal held that the driver of the Van was solely responsible for the accident and awarded compensation. Questioning the same, the present appeal has been filed.

6. The learned counsel appearing for the appellant Mr.J.Michael Visuvasam would vehemently contend that in the claim petition itself, it has been stated that the deceased was having only 4 months left over service. Hence, it is a fit case for applying split multiplier. It is next contended that in the claim petition, it was stated that the deceased was proceeding from East to West direction on the left side of the road, but the offending vehicle came from the Northern direction and entered the main road. In the light of the averment in the claim petition and the evidence of PW2, it is clear that the deceased without noticing the Van, which was coming from the Northern



side, dashed against it, hence the entire negligence fixed on the driver of the offending vehicle is liable to be set aside.

7. He further added that in the counter, the appellant has specifically stated that the deceased was not wearing helmet at the time of the accident, hence, onus is on the claimants to prove that the deceased was wearing helmet at the relevant point of time, but no evidence was adduced by the claimants. Further, PW2 had admitted that no helmet available in the accident place. Hence, he prayed to fix contributory negligence on the deceased.

8. Per contra, learned counsel appearing for the claimants Mr.T.Gobinath 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 Lt., reported in 2022 LiveLaw (SC) 152, split multiplier cannot be applied. According to the learned counsel, the award is reasonable, hence, no interference is required.

9. Heard rival submissions and perused the materials available on record.

10. In the decision in R.Valli and others (referred supra), the Hon'ble Apex Court 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.



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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."

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.

11. The learned counsel appearing for the appellant submitted that except wife and the mother of the deceased, the claimants 2 to 4, who are major children of the deceased, already got married, but, the Tribunal wrongly deducted 1/4 instead of 1/3 towards personal expenses of the deceased. We find force in the above submission of the learned counsel for the appellant.

12. Further, as rightly argued by learned counsel appearing for the appellant, a perusal of the averments in the claim petition and the evidence of PW2 would reveal that the deceased had contributed to the accident. Had the deceased taken precautionary steps, this accident could have been avoided. Hence, we fix 25% negligence on the part of the deceased.

13. With regard to quantum, on a perusal of Exs.P7, P16 salary bills of the deceased, it is seen that the deceased received Rs.65,000/- per month as salary, but the Tribunal,



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after making income tax deductions, rightly fixed the monthly income of the deceased at Rs.50,000/-. Then by adding 15% towards future prospects, the Tribunal arrived the monthly income as Rs.57,500/- [50,000 + 7,500] and the annual income as Rs.6,90,000/- [57,500 x 12]. As rightly pointed out by the learned counsel for the appellant, only 2 of the legal heirs were the dependents of the deceased, hence, it is proper to deduct 1/3 towards personal expenses. If so deducted, the contribution of the deceased to the family would be Rs.4,60,000/- [6,90,000 - 2,30,000]. Considering the age of the deceased, if the proper multiplier 9 is applied, the Loss of Dependency would be Rs.41,40,000/-.

14. As per the decision of National Insurance Company Limited vs. Pranay Sethi and others [(2017) 16 SCC 680] and Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others [(2018) 2 TN MAC 452 (SC)], Rs.40,000/- is awarded to the first claimant towards Loss of Consortium; Rs.1,20,000/- is awarded to the claimants 2 to 4 towards Parental Consortium; and Rs.40,000/- is awarded to the fifth claimant towards Filial Consortium. In addition to that, the amounts awarded by the Tribunal under other heads are confirmed. Thus, the Total compensation is arrived at Rs.44,40,000/-. Since 25% negligence is fixed on the part of the deceased, the claimant is entitled to Rs.33,30,000/- [44,40,000 - 11,10,000] along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. 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 the Tribunal in Rs.
1.	Loss of Dependency	46,57,500	41,40,000
2.	Loss of Consortium	40,000	40,000
3.	Loss of Parental Consortium	-	1,20,000
4.	Loss of Filial Consortium	-	40,000
5.	Loss of Estate	15,000	15,000
6.	Funeral Expenses	15,000	15,000
7.	Medical Expenses	70,000	70,000



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S.N o.	Heads under which amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by the Tribunal in Rs.
	Total	47,97,500	44,40,000
	Less 25% negligence	-	33,30,000

15. The sum of Rs.47,97,500/- awarded by the Tribunal is reduced to Rs.33,30,000/-. Out of the award amount, the first claimant is entitled to Rs.10,00,000/-; claimants 2 to 4 are entitled to Rs.5,00,000/- each; and fifth claimant is entitled to Rs.8,30,000/-. The appellant is directed to deposit the above modified award amount with proportionate interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the award amount as apportioned above, less the amount already withdrawn, if any, together with proportionate interest and costs.

16. With the above directions, the appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

pvs

To

1. The Sessions Judge
Motor Accident Claims Tribunal, Perambalur
2. The Section Officer,
V.R.Section, High Court, Madras.

+1 CC to Mr.J.Michael Visuwasam, Advocate sr 16840.

+1 CC to Mr.T.Gobinath, Advocate sr 17115.

C.M.A. No.1310 of 2020

AKII(CO)
SP(12/05/2022)