IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MRS.JUSTICE T.V.THAMILSELVI**

C.M.A.No.2971 of 2021
and C.M.P.No.16933 of 2021

Reliance General Insurance Co. Ltd.
Reliance House, 6th floor
Haddows Road, Chennai-600 006. ... Appellant

Vs.

1.K.Kalyanasundaram
2.K.Rengarajan
3.K.K.Sridaran

4.M/s.Ramky Enviro Engineers Ltd.
Door No.138, Chennakuppam Village
Sriperumbudur Taluk
Kancheepuram District – 631 501. ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.03.2021 made in M.C.O.P.No.7539 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I to deal with MCOP cases, Small Causes Court, Chennai.

For Appellant : Mr.K.Vinod

For R1 to R3 : Mr.M.Mahendran
for Mr.N.M.Muthurajan

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 06.03.2021 made in M.C.O.P.No.7539 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I to deal with MCOP cases, Small Causes Court, Chennai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.7539 of 2014 on the file of Motor Accident Claims Tribunal, Special Sub Court No.I to deal with MCOP cases, Small Causes Court, Chennai. The respondents 1 to 3 filed the said claim petition claiming a sum of Rs.54,00,000/- as compensation for the death of one Subbulakshmi, who died in the accident that took place on 23.11.2014.

3.According to the respondents 1 to 3, on the date of accident i.e., on 23.11.2014 at about 12.30 hours, while the husband of the deceased Subbulakshmi, was riding the motorcycle bearing Registration No.TN-06-K-1814 along with his wife Subbulakshmi as pillion rider, from Adambakkam to Mylapore along Chakarapani street, West to East direction, opposite to TASMAC shop, Maduvankarai, Guindy, the driver of the lorry bearing Registration No.TN-21-AL-0348 drove the same in a rash and negligent manner, hit on the back side of the motorcycle and caused the accident. In the accident, the rider of the motorcycle sustained grievous injuries all over the body and his wife, the pillion rider died. Therefore, the respondents 1 to 3 have filed the above claim petition claiming compensation for the death of said Subbulakshmi and the 1st respondent filed M.C.O.P.No.7589 of 2014 for the injuries sustained by him in the accident, against the 4th respondent, owner of the lorry and appellant/Insurance Company, insurer of the said lorry.

4.The 4th respondent, owner of the lorry remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the accident has occurred only due to rash and negligent riding by the rider of the motorcycle, in which, the deceased Subbulakshmi was travelling as pillion rider. The owner and insurer of the motorcycle were not made as parties to the claim petition and hence, the claim petition is bad for non-joinder of necessary parties. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the respondents 1 to 3. In any event, the total compensation claimed by the respondents 1 to 3 is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent, husband of the deceased Subbulakshmi examined himself as P.W.1 and 29 documents were marked as Exs.P1 to P29. The appellant/Insurance Company did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 4th respondent and directed the appellant/Insurance Company being the insurer of the said lorry to pay a sum of Rs.38,37,750/- as compensation to the respondents 1 to 3.

8.Questioning the quantum of compensation awarded by the Tribunal, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the respondents 1 to 3 claimed that the deceased was aged 54 years at the time of accident, she was working as Senior Higher Secondary Teacher and was earning a sum of Rs.40,719/- per month. She would have retired in six years. The deceased would not have got entire salary after her retirement. The Tribunal failed to adopt split multiplier and ought to have awarded lesser compensation. The monthly income fixed by the Tribunal is also excessive. The Tribunal ought to have applied multiplier '11' instead of multiplier '6'. The Tribunal failed to deduct income tax while granting compensation for loss of dependency. The amounts granted by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal and allowing the appeal.

10.The learned counsel appearing for the respondents 1 to 3 made the submissions in support of the award passed by the Tribunal and contended that the total compensation granted by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant/Insurance Company as well as the respondents 1 to 3 and perused the entire materials on record.

12.From the materials on record, it is seen that it is the case of the respondents 1 to 3 that the deceased Subbulakshmi was working as Senior Higher Secondary Teacher in Government Higher Secondary School, Taramani, Chennai and was earning a sum of Rs.40,719/- per month. To substantiate their contention, the respondents 1 to 3 have marked the education certificates of the deceased, appointment order, payslips for the months of October and November 2014 and Employee ID card as Exs.P17 to P23. The Tribunal, taking into account the net pay of the deceased, fixed a sum of Rs.36,687/- as monthly income of the deceased. The Tribunal ought to have fixed monthly income of the deceased by considering her gross salary. In view of the above, the contention of the learned counsel appearing for the appellant that the Tribunal failed to deduct Income Tax cannot be accepted. There are three dependants of the deceased and the Tribunal has rightly deducted 1/3rd towards personal expenses. The deceased was aged 54 years at the time of accident as per Exs.P13 & P16, Post-mortem certificate and driving license. The Tribunal, following the judgment of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others],** has rightly granted 15% enhancement towards future prospects.

12(i).The next contention of the learned counsel appearing for the appellant is that the deceased had only six years of service and the Tribunal ought to have adopted split multiplier and granted compensation. The said contention is not acceptable in view of the judgment of the Hon'ble Apex Court reported in **(2022) 5 SCC 107 (R.Valli and others vs. Tamil Nadu State Transport Corporation Limited)**. The Hon'ble Apex Court in the said judgment after referring to the earlier judgments of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]** and **2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another),** held that method of determination of compensation by applying two multiplier is erroneous. The only multiplier to be adopted is on the basis of the age of the deceased. The relevant paragraphs are extracted hereunder:

> "5. The learned counsel for the appellants argued that the multiplier methodology adopted by the Tribunal and affirmed by the High Court was erroneous and not sustainable. It was contended that the multiplier is applied keeping in view the age of deceased and income at the time of death and not by considering the remaining years of service. It was argued that if a person who dies in an accident is 31 years of age and has 27 years of service left, the multiplier is not 28 years but keeping in view the judgment of this Court in Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. (2009) 6 SCC 121, the age of the

deceased at the time of death is the base for choosing a multiplier and not the years left in employment. It was held as under:

> "42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Kerala SRTC v. Susamma Thomas (1994) 2 SCC 176 : 1994 SCC (Cri.) 335], U.P.SRTC vs. Trilok Chandra (1996) 4 SCC 362 and New India Assurance Co. Ltd. v. Charlie (2005) 10 SCC 720 : 2005 SCC (Cri.) 1657, which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

6. The judgment in Sarla Verma (2009) 6 SCC 121 was affirmed in Reshma Kumari and Ors. v. Madan Mohan and Anr. (2013) 9 SCC 65. Both the judgments were affirmed by the Constitution Bench of this Court in National Insurance Co. Limited v. Pranay Sethi and Ors. (2017) 16 SCC 680. This Court in Pranay Sethi held as under:

"44. At this stage, we must immediately say that insofar as the aforesaid multiplicand/multiplier is concerned, it has to be accepted on the basis of income established by the legal representatives of the deceased. Future prospects are to be added to the sum on the percentage basis and "income" means actual income less the tax paid. The multiplier has already been fixed in Sarla Verma (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri.) 1002] which has been approved in [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri.) 826] with which we concur.

59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and

10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.7. The age of the deceased should be the basis for applying the multiplier.

7. In National Insurance Company Limited vs. Pranay Sethi (2017) 16 SCC 680, 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.

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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 National Insurance Company Limited vs. Pranay Sethi (2017) 16 SCC 680, 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 view of the judgment of the Hon'ble Apex Court reported in **(2022) 5 SCC 107** cited supra, multiplier adopted by the Tribunal on the basis of the age of the deceased is proper and there is no reason to interfere with the said finding of the Tribunal. The appellant/Insurance Company did not file any document to disprove the claim of the respondents 1 to 3. In view of the above, the appellant is not entitled for any modification in reducing the amount granted by the Tribunal towards loss of dependancy. In the considered view of this Court, the total compensation awarded by the Tribunal is not excessive warranting interference by this Court.

13.In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.38,37,750/- awarded by the Tribunal as compensation to the respondents 1 to 3, along with interest (excluding the default period, if any) and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with 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 respondents 1 to 3 are permitted to withdraw their respective share of the award amount as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (T.V.T.S., J)
23.09.2022

Index : Yes / No
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To

1.Special Subordinate Judge No.I
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2.The Section Officer
VR Section
High Court
Madras.

V.M.VELUMANI,J.
and
T.V.THAMILSELVI,J.

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and C.M.P.No.16933 of 2021

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