IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.51 of 2020
and CMP.No.554 of 2020
and CMP.No.10760 of 2021

The Division Manager
New India Assurance Co. Ltd.,
TP Claim HUB, Divisional Office
No.179, J.N.Street, III Floor
Puducherry. .. Appellant

-Vs.-

1. Sagayaraj
2.George Marchel
3.D.S.Sathyaseelan .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.43 of 2017 on 06.03.2019 on the file of the learned Motor Accident Claims Tribunal (II Additional District Judge) Tindivanam.

For Appellant ... Mr.J.Chandran
For Respondents ... Mr.P.Dinesh Kumar [RR1 & 2]
Ms.D.Malarvizhi [R3]

JUDGMENT

The Insurance Company has challenged the Award passed by the Motor Accident Claims Tribunal [II Additional District Judge], Tindivanam in M.C.O.P.No.43 of 2017

2. The Tribunal has calculated the loss of income by taking the entire salary that was received by the deceased at the time of his death to which, 30 % was added towards future prospects and adopted a multiplier of 13. The grievance of the Insurance Company is that the petitioner was due to retire within 11 years and the remaining 2 years, he was entitled to a reduced salary. However, the same has not taken into account and the Tribunal has proceeded to fix the loss of dependency by taking the entire salary as received by the deceased at the time of his death. They had also questioned the excessive amount granted under the head of loss of love and affection to the second petitioner. They have also not deducted the statutory exemptions as well as income tax from the said amount.

3. The learned counsel for the respondents would submit that the Tribunal has rightly taken into account. He would rely upon the judgment reported in ***2022 (5) SCC 107 [R. Valli and Others Vs.Tamil Nadu State Transport Corporation],*** wherein the Hon'ble Supreme Court has held that the determination of compensation applying 2 multipliers is erroneous and had confirmed the judgment reported in (2017) 16 SCC 680 ***[National Insurance Company Ltd., -vs- Pranay Sethi and Others,*** affirming the judgment in Sarla Verma.

4. Heard the learned counsel on either side and perused the materials available on record.

5. As rightly pointed out by the learned counsel for the respondents and following the judgment of the Hon'ble Supreme Court cited supra, there cannot be compensation awarded by adopting 2 multipliers. The last drawn of the petitioner was a sum of Rs.53,094/-. The Tribunal had added 30% future prospects and had arrived at a notional income of Rs.69,022/-. The annual income would work out to a sum of Rs.8,28,264/-,

from out of this, 10% is to be deducted towards the income tax. Since there is no income tax for the slab [Rs.0 – Rs.2,50,000/-] the taxable amount is Rs.8,28,264/- less Rs.2,50,000/- which works out to Rs.5,78,264/-. The income tax deduction of this amount work out to Rs.57,826.40 rounded off to Rs.57,826/-. Therefore, the annual income would be Rs.7,70,438/-, out of which, 1/3rd has to be deducted towards the personal expenses, which works out to Rs.5,13,626/-. The deceased being 49 years of age, the remaining period of service is to be calculated by adopting multiplier of 13. Therefore, the amount under the head of loss income would be a sum of Rs.56,49,886/- (Rs.5,13,626/- x 11). For the last 2 years, the amount would half of the sum of Rs.5,13,624/- [Rs.2,56,812]. The said sum of Rs.5,13,626/- has to be halved post retirement, i.e., Rs.5,13,626/-. The Tribunal has awarded a sum of Rs.1,00,000/- under the head of loss of love and affection to the 2nd petitioner, which is to be reduced to Rs.40,000/-. Likewise, no amount has been granted under the head of loss of estate, for which, a sum of Rs.15,000/- has been granted. Therefore, the total compensation is now awarded is as follows:-

Heads	***Amount awarded by the Tribunal in Rs***	***Amount awarded by this Court in Rs***
Loss of Dependency	71,78,340	6163512
Loss of love and affection to 2nd petitioner	1,00,000	40,000
Funeral expenses	15,000	15,000
Loss of consortium	40,000	40,000
Loss of Estate	-	15,000
Total	**73,33,340**	**62,73,512**

The calculation sheet was provided by the learned counsel for the appellant-Insurance Company to the other counsels to which there was no serious objection.

6. In the result, this civil miscellaneous appeal is partly allowed and the Award of the Tribunal is modified, reducing the compensation amount from **Rs.73,33,300/- to Rs.62,73,512/-** The appellant-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.43 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The claimants are directed to pay

the Court fee for the compensation amount now determined by this Court, if required. The Tribunal below shall not disburse the award amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimant. Excess amount if any deposited shall be withdrawn by the Insurance Company. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petitions are closed.

18.11.2022

Index : Yes/ No
Speaking Order : Yes/No

srn

To

1. The Motor Accident Claims Tribunal (II Additional District Judge)
Tindivanam.

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

C.M.A.No.51 of 2020

P.T.ASHA, J.,

srn

C.M.A.No.51 of 2020

18.11.2022