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C.M.A.No.2441 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A.No.2441 of 2022

and

C.M.P.No.19056 of 2022

Branch Manager,
United India Insurance Company Ltd.,
G.P.M.Street, Ambapuram,
Gudiyattam, Vellore District.

... Appellant

VS.

1.J.M.Gladys @ Devagi
2.J.Abraham Sundar Singh
3.J.Agustin Peter,
4.J.Ezekial
5.M.Venkatesan

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 29.09.2016 made in M.C.O.P.No.193 of 2010 on the file of the Motor Accident Claims Tribunal (Sub-Court), Gudiyattam.

For Appellant : Mr.D.Bhaskaran
For Respondents 1 to 4 : Mr.K.A.Ravindran



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JUDGMENT

The Insurance Company has challenged the award passed by the Motor Accident Claims Tribunal (Sub-Court), Gudiyattam in M.C.O.P.No.193 of 2010 on the ground of liability as well as quantum.

2. The appellant is aggrieved by the fact that the Tribunal has taken the monthly income of the deceased at Rs.12,944/- to which multiplier of 9 has been taken and the amount awarded under the head of loss of income is calculated at a sum of Rs.13,97,952/-, Rs.25,000/- each has been granted towards loss of love and affection and granted Rs.25,000/- towards funeral expenses and the total compensation awarded was a sum of Rs.15,47,952/-.

3. The Tribunal has taken into account Ex.P4 which is the last drawn salary slip of the deceased where his income is shown as Rs.27,638/-. The Tribunal has taken into account the deductions and after deducting them from the salary of the deceased had arrived at a monthly income of Rs.17,258/-. After deducting 1/4th towards personal expenses the Tribunal had arrived at a monthly income of Rs.12,944/-, to which, multiplier of 9 has been adopted. Thereby the compensation of a sum of Rs.15,47,952/-



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was arrived at by the Tribunal.

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4. The Insurance Company is aggrieved by the fact that the deceased who was aged about 56 years when he had died was due to retire in two years. However, the Tribunal has adopted a uniform monthly income of Rs.12,944/- to which a multiplier of 9 has been taken.

5. Mr.D.Bhaskaran, the learned counsel appearing for the appellant/Insurance Company would submit that the adoption of uniform sum of Rs.12,944/- was totally erroneous since the deceased was due to retire within a period of two years and thereafter, his salary would come down. However, the Tribunal has uniformly assessed the salary for the amount now being received. He would further submit that there must be one amount for the period of two years where the deceased would have earned his entire salary and thereafter, the multiplier should be on the basis of his pension amount.

6. The learned counsel for the respondents would submit that this stand taken by the Insurance Company no longer holds good after the



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judgment and decree in the case of *Valli and others v. Tamil Nadu State*

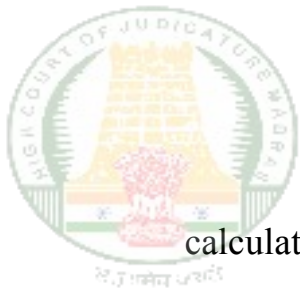
Transport Corporation Ltd., in Civil Appeal No.1269 of 2022, wherein,

the Hon'ble Supreme Court has stated that there cannot be two multipliers which would run counter to the judgment in the case of Pranay Sethi which had affirmed the judgment in Sarla Verma case. The Tribunal in that case had adopted a multiplier of 11 as the deceased was aged about 54 years.

7. The learned counsel would further submit that 10% of the liability has to be mulcted on the deceased since he has violated certain provisions of the Motor Vehicles Act, by not possessing a valid driving licence.

8. Heard the learned counsels on either side and perused the materials on record.

9. A perusal of the records would indicate that the deceased was working as Superintendent in the Primary Health Centre. The petitioners have produced the salary certificate of the deceased - Ex.P4. The Tribunal has taken only a sum of Rs.12,944/- as monthly income on the basis of the above Ex.P4. The Tribunal has taken this amount as the salary for



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calculating the compensation on the basis of multiplier method. A perusal of the order would show that the Tribunal has not taken into account the future prospects and had adopted a multiplier of 9. Although in the claim statement, the petitioners have stated the deceased was aged 48 years. However, the Tribunal has taken his age as 56 years on the basis of the records.

10. The arguments of the learned counsel for the appellant that two multipliers have to be adopted to arrive at the compensation is no longer available as a defense in the light of the judgment in the case of ***Valli and others v. Tamil Nadu State Transport Corporation Ltd.***, in Civil Appeal No.1269 of 2022, wherein, the learned Judge has held as follows:

"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



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Court in Pranay Sethi."

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11. In view of the above, I see no reason to interfere with the monthly income that has now been adopted. However, the deceased did not possess a valid driving licence at the time of accident. Though the same was brought to the notice of the Tribunal, the Tribunal had not deducted any amounts towards contributory negligence. Since it is an admitted fact that the deceased did not possess a valid driving licence, 10% is deducted towards contributory negligence from the award of the Tribunal. Therefore, the Compensation awarded by the Tribunal is reworked as below:

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1	Loss of Income	Rs.13,97,952/-	Rs.13,97,952/-	Confirmed
2	Loss of Consortium	Rs. 25,000/-	Rs. 25,000/-	Confirmed
3	Loss of Love and Affection for four petitioners (4 x Rs.25,000/-)	Rs. 1,00,000/-	Rs. 1,00,000/-	Confirmed



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S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
4	Funeral Expenses	Rs. 25,000/-	Rs. 25,000/-	Confirmed
	TOTAL	Rs.15,47,952/-	Rs.15,47,952/-	Confirmed
	Less 10% for contributory negligence		(Rs.15,47,952/- x 10% = Rs.1,54,795/- = Rs.13,93,157/-	Reduced

12. In the result, this Civil Miscellaneous Appeal is partly allowed. The appellant / Insurance Company is directed to deposit 90% of the award amount of Rs.15,47,952/- which works out to Rs.13,93,157/- to the credit of M.C.O.P.No.193 of 2010 on the file of the Motor Accident Claims Tribunal (Sub-Court), Gudiyattam together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs, less, the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, as apportioned by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary



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application before the Tribunal. The claimants are directed to pay the Court fee for the award amount, 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 claimants. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking / Non-speaking order
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To:

1. The Motor Accident Claims Tribunal,
Sub-Court,
Gudiyattam.

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



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P.T.ASHA, J.,

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