BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A.(MD)No.825 of 2021
and
C.M.P.(MD)No.7647 of 2021

The Oriental Insurance Company Ltd.,
Rep. by its Branch Manager,
Door No.127/8, Madurai Road,
Bhuvaneshwari Complex,
Virudhunagar Town,
Virudhunagar District. ...Appellant/Respondent No.2

Vs.

1.Kaleeswari
2.Arputharani
3.Jeyalakshmi
4.Karthiga
5.Arumugathai ...Respondents 1 to 5/ Petitioners 1 to 5
6.Santhi M.Vannan
7.Servarathevar ...Respondents 6 & 7/ Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the order of the Motor Accidents Claims Tribunal Cum Principal Sub Court, Srivilliputhur made in M.C.O.P.No.9 of 2016, dated 15.10.2019.

For Appellant :Mr.C.Jawahar Ravindran
For R1 to R5 & R7 :Ms.S.Mahalakshmi

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the order of the Motor Accidents Claims Tribunal Cum Principal Sub Court, Srivilliputhur made in M.C.O.P.No.9 of 2016, dated 15.10.2019.

2.It is a case of fatal accident. On 27.08.2015 at about 06.00 a.m., while the deceased Nallamuthu was riding his TVS XL Heavy Duty, bearing Registration No.TN-67-AS-6636 from M.Puthupatti, when the motorcycle reached near periyapalam, west side of Naduvapatti, a bus bearing Registration No.TN-67-AJ-6366 belonging to the first respondent came on the same road from south to north, in a rash and negligent manner hit the motorcycle. Immediately, he was taken to the Government Hospital, Sivakasi, but he succumbed due to his injuries.

3.The claimants have filed a petition in M.C.O.P.No.9 of 2016 on the file of the Motor Accident Claims Tribunal cum Principal Sub Court, Srivilliputhur, seeking compensation of Rs.25,00,000/-.

4.Before the Tribunal, on the side of the claimants, one witness was examined as P.W.1 and marked seventeen documents as Exs.P.1 to P.17. On the side of the respondents, no one was examined and no document was marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimants and the respondents and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the first respondent and directed the appellant herein to pay a sum of Rs.25,27,612/- as compensation. Against which, the appellant/second respondent has filed this present appeal to set aside the award of compensation passed by the Tribunal.

6.Heard Mr.C.Jawahar Ravindran, learned counsel appearing for the appellant and Ms.S.Mahalakshmi, learned counsel appearing for the respondents 1 to 5 and 7 and perused the materials available on record.

7.The learned counsel for the appellant/Insurance company contended that since the age of the deceased was 56 years, the retirement age for the conductor is 58, the Tribunal fixed the monthly income as regular income for the entire period. The Tribunal has failed to consider the judgment of this Court reported in ***2017 (1) TNMAC 423*** wherein, this Court has fixed 15% contributory negligence for not wearing helmet. He further contended that the Tribunal has wrongly applied multiplier as '9' and excessively awarded Rs.24,57,612/- on the head of loss of income. Hence, it requires modification.

8.A perusal of records would show that the deceased was working as a conductor and earning a sum of Rs.27,000/- per month. But his age was 56 years and he got retirement only in the age of 58. This Court in the decision made in C.M.A(MD)No.751 of 2018 in the case of Lakshmi and others vs.Joseph Methew and others, in paragraph Nos.7 & 14 held as follows:-

> ''7.*In support of his submissions, the learned counsel appearing for the appellants relied on the following decisions:-*

(i) 2014 (2) TN MAC 546 (SC) [Saraladevi and others Vs. Divisional Manager, Royal Sundaram Alliance Insurance Company Ltd. and another], wherein at Paragraph 7, it has been held as follows:-

''7.The High Court, after examining the facts, evidence and circumstances of the case, has held that as per the judgment in Sarla Verma and Others. Vs. Delhi Transport Corporation and another, 2009 (2) TN MAC 1 (SC): (2009) 6 SCC 121, the correct Multiplier between the age group of 56-60 should have been 9 since the deceased was 58 years at the time of his death. Further, the High Court held that if the actual salary of Rs.50,809/- is taken into consideration, the annual loss of income of the deceased works out to Rs 6,09,708/- and 10% of the amount is liable to be deducted towards Income Tax deduction. 10% in the sum of Rs 6,09,708/- comes to Rs.60,970.80 and the same can be rounded off to Rs.61,000/-. If so, the balance amount works out to Rs.5,48,708/- (Rs.6,09,708/- minus Rs.61,000/-), rounded off to Rs.5,49,000/- as the annual income of the deceased. Hence, annual loss of income could be fixed at Rs.5,49,000. For the first two years, the Loss of Income would be Rs.10,98,000/- (Rs.5,49,000 2 years). For the balance 7 years, only 50% annual income has to be taken into consideration as Notional Income, which comes to Rs.19,21,500/- (Rs.2,74,500/- 7 years). Therefore, the total Loss of Income works out to Rs.30,19,500/-. Further, the High Court was of the opinion that 1/3rd amount is liable to be deducted towards Personal Expenses of the deceased. If this amount is deducted out of the annual income of the deceased, the balance amount works out to Rs.20,13,000/- which amounts to a total Loss of Dependency (Rs.30,19,500/- minus Rs.10,06,500/-). The High Court further held that there is Contributory Negligence on the part of the deceased which was assessed at 25% which amount would be Rs.5,03,250/-. When this amount was deducted out of Rs.20,13,000/-, the High Court held that the Legal Heirs of the deceased are entitled to Rs.15,09,750/- towards Loss of Dependency. .....''

(ii) 2016 (1) TN MAC 269 [Managing Director, TNSTC (Kumbakonam Division - III) Vs. G.Saroja and others], wherein at Paragraph 17, it has been held as follows:-

''17.The contention of the learned counsel for the appellant that the Tribunal ought to have applied split multiplier method in arriving at compensation

under the heading loss of income, is untenable and unsustainable. In the present case, admittedly the deceased was having 8 years of service. He would have got increment, promotion of service,revision of pay, etc. Taking into consideration the deceased was having 8 years of further service and would have got increase in salary, I hold that split multiplier method is not applicable in the present case. For this reasons, I hold that the Judgment relied on by the learned counsel for the appellant, is not applicable to the facts of the present case, as the deceased in that case, had only one year of service. Whereas in the present case, the deceased had 8 years of service.''

(iii) 2017 (1) TN MAC 652 (DB) [Oriental Insurance Co. Ltd Vs. S.Venkateswari and others], wherein at Paragraphs 24 and 25, it has been held as follows:-

''24.The judgments relied on by the learned Counsel for the appellant/Insurance Company would speak about the split multiplier concept. However, in the judgment rendered by the Honourable Supreme Court in Puttamma and others v. K.L.Narayana Reddy and another, 2014 (1) TN MAC 481 (SC), at paragraph 34, it has been held that "We, therefore, hold that in absence of any specific reason and evidence on record the Tribunal or the Court should not apply Split Multiplier in routine course and should apply Multiplier as per decision of this Court in the case of Sarla Verma v. Delhi Transport Corporation, 2009 (2) TN MAC 1 (SC), as affirmed in the case of Reshma Kumari v. Madan Mohan, 2013 (1) TN MAC 481 (SC)".

25.The Honourable Supreme Court in the above cited judgment, in Paragraph 64 held that the judgment of the High Court of Karnataka is perverse and contrary to the evidence on record and while setting aside the same observed that future prospects of the deceased and adoption of split multiplier method is against law laid down by the Honourable Supreme Court.''

14.From the materials on record, it is seen that the deceased was aged about 57 years and 10 months on the date of accident. His retirement age is 58 years. Based on the above facts, the Tribunal following the judgments of the Division Bench of this Court, applied split multiplier method. The Tribunal has calculated the loss of income for two months based on the salary received by the deceased. After deducting 10% towards *income tax and 1/3rd towards his personal expenses, the Tribunal has calculated the loss of income for the further period of 106 months [9 x 12 = 108 ? 2], applying multiplier '9', based on 50% of the monthly income received by the deceased at the time of death and deducted 10% towards income tax and also 1/3rd towards personal expenses. The method adopted by the Tribunal is correct, but calculation is not correct. Applying the method, the amount payable to the appellants/claimants for loss of income as follows:-*

Last drawn salary	*Rs.40,200/-*
Less:10% deduction for income tax	*Rs. 4,020/-*
	Rs.36,180/-
Less : 1/3rd towards personal expenses	*Rs.12,060/-*
	Rs.24,120/-

Hence, for two months, the loss of income is Rs.48,240/- [Rs.24,120/- x 2]. For the balance period, 50% of the salary [Rs.40,200 / 2] has to be taken into consideration, which works out to Rs.20,100/-. After deducting 10% towards income tax i.e., Rs.2,010/- and 1/3rd towards personal expenses [Rs.6,030/-], the monthly income is arrived at Rs.12,060/- and therefore, the loss of income comes to Rs.12,78,360/- [Rs.12,060/- x 106] and after adding loss of the income for two months, i.e., Rs.48,240/-, the loss of income would be Rs.13,26,600/-.''

So for three years, full monthly income of Rs.27,000/- to be calculated. For remaining period half of the monthly salary has to be calculated. Thus, the loss of annual income would come to Rs.27,000/- x 12 = Rs.3,24,000/-. Further, 15% added for future prospectus, it would come to Rs.3,72,600 (Rs.3,24,000/- + Rs.48,600/-) and 1/4th deduction towards his personal expenses would come to Rs.93,150/- (48,600/- x 1/4th deduction). Further, the multiplier '3' adopted by the Tribunal is also hereby confirmed. So loss of income would come to Rs.2,79,450/- x 3 = Rs.8,38,350/-. After retirement loss of income Rs.1,39,725/- (50% of Rs.2,79,450/-) and multiplier '6' has to be adopted would come to Rs.8,38,350/-. Thus, total loss of income would come to Rs.16,76,700/-. Further, this Court awarded Rs.40,000/- each of the claimants towards loss of consortium and Rs.15,000/- towards transportation. Except the above, all other terms of the award passed by the Tribunal is confirmed.

9.Accordingly, the claimants are entitled for compensation as follows:

Sl. No.	Compensation heads	Details of amount
1.	Loss of Income	Rs. 16,76,700/-
2.	Loss of Consortium	Rs. 2,00,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Funeral Expenses	Rs. 15,000/-
5.	Transport Charges	Rs. 15,000/-
	Total	Rs. 19,21,700/-

Thus, the compensation awarded by the Tribunal is reduced from Rs.25,27,612/- to Rs.19,21,700/- and rounded as Rs.19,25,000/-, with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.25,27,612/- to Rs.19,25,000/- with interest at the rate of 7.5% per annum.

(iii) The appellant/Insurance Company is directed to deposit the compensation amount i.e., Rs.19,25,000/- (Rupees Nineteen lakhs twenty five thousand only), less the amount already deposited, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.9 of 2016 on the file of the Motor Accidents Claims Tribunal Cum Principal Sub Court, Srivilliputhur, within a period of six weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first claimant is entitled to withdraw Rs.9,25,000/- and 2 to 4 claimants are entitled to withdraw Rs.3,00,000/- each and fifth claimant is entitled to withdraw Rs.1,00,000/- by filing necessary application before the Tribunal. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Principal Subordinate Judge,
The Motor Accidents Claims Tribunal, Srivilliputhur.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

Judgment made in
C.M.A.(MD)No.825 of 2021
and
C.M.P.(MD)No.7647 of 2021
28.01.2022

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