BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CMA(MD) No.448 of 2017
and CMP(MD) No.4778 of 2017

The Oriental Insurance Company Limited
Rep. by its Divisional Manager,
TPHUB, KJR Complex
No.16 North Veli Street,
Madurai 625 001 ...Appellant

Vs.

1.Kanjana Devi
2.Jiopridiyonis
3.Roseline Delaney ...Respondents

(R3 declared as major and the guardianship is discharged as per order of this Court in CMP No.5418 & 5419/2018)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the award made in MCOP No.148/2016 dated 29.11.2016 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Sivagangai.

For Appellant : Mr.C.Jawahar Ravindran
For Respondents : Mr.S.Srinivasaraghavan

JUDGMENT

(Judgment of the Court was delivered by N. ANAND VENKATESH,J.)

The Insurance company has preferred this appeal against the order passed by the Motor Accident Claims Tribunal (MACT) cum Chief Judicial Magistrate, Sivaganga in MCOP No.148/2016 dated 29.11.2016, allowing the claim petition filed by the respondents 1 to 3 and granting a compensation of a sum of Rs.48,96,904/- along with interest at the rate of 7.5% per annum.

2.The claimants filed the petition on the ground that one Joseph Selvaraj, who was the husband of the first claimant and the father of the second and third claimants, was travelling in a two wheeler in Madurai-Thondi Main Road on 27.04.2015, at about 1.30 p.m., and near Kalaiyarkoil, the car that was coming on the backside dashed on the two wheeler and as a result, the said Joseph Selvaraj was thrown out of the vehicle and he sustained grievous injuries. Unfortunately, he succumbed to the injuries on the same day at about 9.45 p.m.

3. The further case of the claimants is that the said Joseph Selvaraj was

working as a Headmaster in a Middle School and was earning more than Rs.50,000/- per month. Hence, the claimants made their claim under various heads and sought for a total compensation of Rs.60 lakhs.

4. The insurance company filed a counter stating that the claimants must prove the negligence on the part of the car, which had dashed on the backside of the two wheeler and that the compensation claimed by the claimants is exorbitant.

5. The claimants examined P.W.1 and P.W.2 and marked Ex.P1 to Ex.P11. None was examined on the side of the insurance company and no documents were marked. The tribunal, on appreciation of evidence, came to a conclusion that the accident took place only due to the rash and negligent driving on the part of the car driver whose car was insured with the appellant. The tribunal also fixed the compensation under various heads and directed the payment of total compensation of Rs.48,96,904/- along with 7.5% interest.

6. Heard the learned counsel for the appellant and the learned counsel for the respondents/claimants.

7. The present appeal was filed by the Insurance Company mainly on the ground that the tribunal must have adopted split multiplier method. According to the insurance company, the deceased was aged about 52 years at the time of his demise and he hardly had another six years for retirement and thereafter he will get only pension. Therefore, it was contended that the multiplier must be applied only by considering the remaining years of service.

8. The issue that has been raised by the insurance company is no longer *res integra* and the law has been settled by the Apex Court in ***R.Valli and others v. Tamil Nadu State Transport Corporation Ltd***., reported in ***2022(1) TN MAC 289*** and it was held as follows:

> "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.5, Smt. Kamlesh Devi & Ors. v. Sh. Kitab Singh & Ors.6 and Union of India & Ors. v. K.S. Lakshmi Kumar & Ors.7 to support the applicability of split multiplier i.e., multiplier upto the date of retirement and another multiplier after retirement.
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> 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.8 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 5 2014 SCC OnLine Mad 846 6 2011 SCC OnLine Del 2843 7 2000 SCC OnLine Kar 406 8 2020 SCC OnLine SC 410 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."

9. It is clear from the above that the two multipliers/split multiplier method has been done away with since it runs counter to the decision of the Apex Court in ***National Insurance Co. Ltd v. Pranay Sethi 2017(2) TN MAC 609 (SC)*** and ***Sarla Verma v. Delhi Transport Corporation 2009(2)TNMAC 1 (SC)***. In view of the same, the ground taken by the

insurance company is not sustainable.

10. This Court finds that the tribunal has properly determined the compensation payable under various heads and there is no ground to interfere with the same.

11. In the result, the award passed by the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Sivagangai in MCOP No.148/2016 dated 29.11.2016 is hereby upheld and this appeal stands dismissed. When this appeal was entertained, the insurance company was directed to deposit 50% of the award amount. Since this appeal is dismissed, there shall be a direction to the insurance company to deposit the balance award amount along with interest within a period of six weeks from the date of receipt of a copy of this judgment. No costs. consequently connected Miscellaneous Petition is closed.

[M.S.R.,J] [N.A.V.,J]
17.11.2022

Index : Yes / No
Internet : Yes
RR

To
The Motor Accident Claims Tribunal
cum Chief Judicial Magistrate,
Sivagangai

M.S. RAMESH, J.
AND
N.ANAND VENKATESH,J.

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CMA(MD) No.448 of 2017

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