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C.M.A.No.3483 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

C.M.A.No.3483 of 2021
and
C.M.P.Nos.20120 of 2021 and 26935 of 2023

The New India Assurance Co. Ltd.,
Commercial Complex,
CSI Building 2nd Floor,
No.1, Officers Line, Vellore – 1.

...Appellant

Vs.

1.Nalini
2.Kalaiselvi
3.Vinothini
4.Jayachitra

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.No.158 of 2017 on 16.04.2019 on the file of the learned III Additional District Judge, Vellore at Tirupattur.



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C.M.A.No.3483 of 2



For Appellant : Mr.J.Chandran
For Respondents : Mr.J.Daniel for R1 to R3
R4-*Exparte* before the Tribunal

J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

With the consent of the learned counsel for the parties the main appeal itself is taken up for hearing.

2. The challenge in this appeal is to the award of the Motor Accident Claims Tribunal, III Additional District Judge, Vellore, Tirupattur made in MCOP.No.158 of 2017 granting a sum of Rs.36,21,456.40/- as compensation for the death of one Pachaiyappan, aged 50 years in a motor accident that occurred on 25.01.2017.

3. According to the claimants, the said Pachaiyappan was proceeding in a motor cycle on the extreme left side of the road, when the driver of the lorry bearing Reg.No.TN-73-B-4696 drove the vehicle in a rash and negligent manner and dashed against him. As a result of the accident, the said Pachaiyappan suffered grievous injuries and despite having been treated



in Government Hospital, Tirupattur, he died on the same day. It is also claimed that the criminal case under Sections 279, 337, 338 and 304(A) IPC was registered against the driver of the lorry by the Jolarpettai Police in Crime No.42 of 2017. Contending that the deceased was employed in Southern Railway and drawing a sum of Rs.40,000/- per month, the claimants sought for a compensation of Rs.75,00,000/-.

4. The Insurance Company resisted the claim contending that the accident occurred when the deceased suddenly crossed the road, at about 6.15 p.m, without looking for the vehicles on either side of the road. It was also contended that the driver of the lorry did not have a license. The age and income particulars were denied. The Insurance Company also contended that since the deceased was aged 50 years and only 8 years of service left, the split multiplier should be applied.

5. At trial before the Tribunal the 1st petitioner was examined as PW1, one Damodharan and Nagajothi were examined as PW2 and PW3. Exs.P1 to P10 were marked. One Rajasekaran was examined as RW1 and Ex.R1 was marked.



6. The Tribunal on a consideration of the evidence on record concluded that the accident took place only due to the rash and negligent driving of the driver of the lorry. The fact that the FIR was filed against the driver of the lorry was taken into account by the Tribunal. As regards the claim that the driver of the lorry did not have a valid license, the driving license was produced as Ex.P5.

7. On the quantum, the Tribunal went by the salary certificate and fixed the monthly income at Rs.34,797/-, after deducting 1/3rd towards personal expenses, the Tribunal fixed the actual monthly income at Rs.23,198/-. It applied the multiplier of '11' and arrived at the loss of dependency at Rs.30,62,136/-. The Tribunal added 15% towards future prospects and it also awarded a sum of Rs.15,000/- for funeral expenses, Rs.40,000/- towards loss of consortium, Rs.40,000/- towards loss of love and affection and Rs.5,000/- towards transportation. In all, the Tribunal awarded a sum of Rs.36,21,456.40/-. It also apportioned the compensation between the petitioners.



8. We have heard Mr.J.Chandran, learned counsel appearing for the appellant/ Insurance Company.

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9. We find that no other grounds, except the ground that the Tribunal should have applied the split multiplier, relying upon the judgment of the Division Bench of this Court in *Anbukarasi Manoharan and another Vs. R.Arul Prakash and another* made in *CMA.No.3210 of 2017*, raised by the appellant. However, subsequently, the Hon'ble Supreme Court in *National Insurance Co. Ltd Vs. Pranay Sethi and others* reported in *2018 (1) LW 331* held that the theory of split multiplier cannot be applied and the claimants would be entitled to compensation as per the multiplier prescribed in *Sarala Varma Vs. Delhi Transport Corporation*.

10. Hence, the sole ground urged in this appeal does not survive and we do not find any merit in this appeal. The appeal therefore fails and it is accordingly **dismissed**. The award of the Tribunal stands confirmed. The Insurance Company will deposit the balance amount, after deducting the amount deposited by it pursuant to the interim order of this Court, within a period of twelve (12) weeks from the date of receipt of a copy of this order.



WEB COPY

C.M.A.No.3483 of 2



No costs. Consequently, the connected miscellaneous petitions are closed.

(R.S.M.,J.) (N.S.,J.)
22.12.2023

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Index :No
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Neutral Citation :No
Speaking order

To

The III Additional District Judge,
Vellore at Tirupattur.



WEB COPY

C.M.A.No.3483 of 2



R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

dsa

C.M.A.No.3483 of 2021

22.12.2023