C.M.A(MD)No.452 of 2019
and
C.M.P(MD)No.5427 of 2016

DR.G.JAYACHANDRAN, J.
and
MR.K.K.RAMAKRISHNAN,J.

(Order of the Court is made by Mr.K.K.RAMAKRISHNAN,J)

This case is listed today under the caption 'for being mentioned' at the instance of the learned counsel for the respondents 1 to 5/claimants.

2.The second respondent/insurance company in M.C.O.P.No.350 of 2016 on the file of the Motor Accidents Claims Tribunal, Karur filed C.M.A(MD)No.452 of 2019 before this Court challenging the award passed in M.C.O.P.No.350 of 2016.

3.This Court by order dated 28.02.2023 partly allowed the Civil Miscellaneous Appeal and reduced the award amount from Rs. 88,72,000/- into Rs.56,53,760/- and the modified compensation amount to be paid with 7.5% interest from the date of petition till the date of realisation with cost. This Court further directed that the award amount shared proportionately in the ratio of 50:15:15:15:15 between the claimants 1,2,3,4 & 6.

4.This Court after recording the submission made by the learned counsel appearing for the insurance company that the entire compensation amount has already been deposited, passed the following finding in the judgment:

> *"**9.** The learned counsel for the insurance company states that the entire award amount has already been deposited. If so, the claimants are entitled to withdraw the award amount as per the modification ordered by this Court in this appeal. If any money lay in excess, the insurance company can get refund of it on proper application."*

5. But, there was no such deposit made. Therefore, the learned counsel for the respondents 1 to 5/claimants in the M.C.O.P(MD)No.350 of 2016 made a request to post the case under the caption 'for being mentioned' stating that as per the interim order of this Court, the insurance company has not deposited the entire amount and the remaining amount is yet to be deposited.

6. Hence, the case was posted under the caption 'for being

mentioned' on 06.07.2023.

7. On that day, this Court directed both the counsels to file an affidavit regarding the amount deposited before the Tribunal as well as the remaining amount to be deposited.

8.As per the direction of this Court, the Insurance Company filed a memo stating that Rs.43,80,673/- was deposited towards the part satisfaction of the award amount in compliance with the order of this Court.

9.The relevant portion of memo is extracted as follows:

"The payment advice for remittance of Rs.43,80,673.00/-(Rupees forty three lakhs eighty thousand six hundred seventy three only) towards part satisfaction of the award in compliance of the order passed by the Honourable High Court of Madras Madurai Bench in CMA(MD)No.452 of 2019 is transferred through NEFT/RTGS under UTR No.IDIBH19211120781 dated 30.07.2019 to the account of this Honourable Court is filed herewith."

10.According to the learned counsel for the respondents 1 to5/claimants as well as the counsel for the insurance company, the remaining amount to be deposited is Rs.18,96,148/- with accrued interest.

11. This Court perused the affidavit filed by the first respondent and the memo filed by the insurance company.

12. Since the appellant insurance company has not disputed the averment in the affidavit filed by the first respondent that the remaining amount liable to be deposited is Rs.18,96,148/- with accrued interest, this Court is hereby directed the insurance company to deposit the said amount within a period of four weeks from the date of receipt of a copy of this order.

13. In view of the said clarification, paragraph No.9 of the judgment is substituted as follows.

> ***"9.The appellant insurance company is directed to deposit the amount of Rs.18,96,148/- with accrued interest within a period of four weeks from the date of receipt of a copy***

of this order."

14. While hearing this petition, we also notice an error in the ratio mentioned for apportionment of the award among the claimants at para 7 of the judgment dated 28.02.2023. Hence, the same is amended to be read as 40:15:15:15:15 instead of 50:15:15:15:15.

15. The Registry is directed to carry out the necessary amendment in the judgment as well as the corresponding amendment in the decree and issue fresh judgment and decree. The other portion of the judgment remains intact.

(G.J.,J) & (K.K.R.K., J.)
06.07.2023

PJL

DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN,J.

PJL

C.M.A(MD)No.452 of 2019
and
C.M.P(MD)No.5427 of 2016

06.07.2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2023

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

and

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD)No.452 of 2019
and
C.M.P(MD)No.5427 of 2019

The Manager,
National Insurance Company Limited,
No.63, Rasi Plaza,
West Pradhakshnam Road,
Karur. .. Appellant/2nd Respondent

Vs.

1.Kalyani

2.Manikandan

3.Nithya

4.Saranya

5.Kanniyammal .. Respondents 1 to 5/Petitioners

6.R.Muthuvel .. 6th Respondent/1st Respondent

7.The Manager,
United India Insurance Company Ltd.,
No.78, Kamaraj Salai,
Cauvery Nagar,
Kulithalai, Karur. .. 7th Respondent/
3rd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 14.12.2018 made in M.C.O.P.No.350 of 2016 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Karur.

For Appellants : Mr.J.S.Murali
For Respondents : Mr.K.Sureshkumar
for R1 to R5
R6 & R7 : dispensed with

JUDGMENT

DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.

This appeal is filed by the insurance company being aggrieved by the quantum of compensation awarded to the dependent of the accident victim on the ground that the Tribunal has awarded a sum of Rs.88,72,000/- as compensation as against the claim of Rs.50,00,000/-

and the excessive award based on improper application of the multiplier as well as the salary of the deceased person.

2. The facts of the case is that on 26.04.2016 at about 2.15 p.m. Balasubramanian, who was working as a Headmaster in the High School, Puthupatti was riding his TVS Star City motorcycle bearing Registration No. TN-47-AW-5211 from west to east near Karathupatti on Kulithalai to Tharangampadi Road. At that time, a lorry bearing Registration No.TN-33-U-5757 coming from the opposite direction in a rash and negligent manner, hit Balasubramanian. In the accident, Balasubramanian fell down from the vehicle, sustained Head injury and fracture all over the body. He was taken to the Apollo Hospital at Karur and later he succumbed to the head injury and multiple fracture of the body on 05.05.2016. The wife, children and parents of the deceased preferred claim petition in M.C.O.P.No.350 of 2016 on the file of Motor Accident Claims Tribunal, Karur, seeking compensation of Rs. 50,00,000/-. The claim petition was resisted by the Insurance Company alleging that the accident took place only due to the negligence of the deceased, who had no valid driving licence. The Tribunal, after considering the evidence, particularly, the certified copy of the FIR marked as Ex.P1 and certified copy of the Motor Vehicles Inspector report marked as Ex.P4, had arrived at a conclusion that the accident has occurred due to the negligence of the lorry driver and no evidence placed before the Court that the deceased had no driving licence. Regarding the quantum of compensation, the Tribunal, considering the position of the deceased who was working as Headmaster of Government High School, Puthupatti and had a prospect of being promoted as District Educational Officer fixed his monthly income at the rate of Rs.80,000/- per month after adding 10% towards future prospects awarded a sum of Rs. 88,72,000/- by including Rs.17,000/- towards the non-conventional heads.

3. In this appeal, the learned counsel for the Insurance Company contended that the Tribunal erred in fixing the income of the deceased at the rate of Rs.80,000/- per month which has no basis and contrary to Ex.P12 which is the proceedings of the District Educational Officer, Karur, fixing the pay scale of the deceased in view of pay commission recommendation and also would submit that at the time of accident, the deceased has crossed 55 years and therefore, the adoption of multiplier 11 by the Tribunal is contrary to the settled principle of law as laid in *Sarla Verma* case and approved by the Constitution Bench of the Supreme Court in *Praney Sethi* case. It is also contended by the learned counsel for the appellant that the Tribunal has not taken into consideration the deduction of 10% towards income tax liability.

4. The learned counsel appearing for the claimants submitted that the income of the deceased been substantiated by the claimants not only through Ex.P-12, the statement of fixation of pay after the pay revision but also through evidence of P.W-5, Sidambaranathan, who is the P.A to the District Educational Officer, Karur, who has deposed that after increment, the basic pay of the deceased was Rs.72,700/- and with all other perks, he would have drawn about Rs.80,000/- per month and before he could have attained superannuation, he would have earned an additional increment of Rs.2000/-. Regarding multiplier, the learned counsel for the respondent/claimants admits that as per the schedule for deceased between the age of 56 to 60, the multiplier to be applied is 9. He would state that the deceased has not completed age of 56 at the time of accident and therefore, application of multiplier 11 is appropriate.

5. This Court has perused the material evidence placed by the claimants to prove the loss of income. It is not disputed that the deceased Balasubramanian was working as a Headmaster in a High School at the time of accident. In the service record as spoken by P.W-5, the date of birth of the deceased is recorded as 15.07.1960. At the time of accident, he was 55 years 9 months 10 days old. Schedule 2 of the Workmen Compensation Act which is followed for calculating the multiplier in case of motor accident death and been approved by the decisions of Supreme Court indicates that the multiplier to be applied for a person age between 51 to 55 is 11 and from 56 to 60 is 9. The deceased Balasubramanian in this case has crossed 55 years but less than three months short of 56 years. The slab under which he should be put for applying multiplier is 56 to 60 not 51 to 55 since more than six months has passed after his completion of 55 years and therefore, the error of the Tribunal fixing multiplier 11 instead of 9 has to be rectified. Insofar as the income, it is very clearly stated in the proceedings of pay fixation of the deceased Balasubramanian, which has been marked is Ex.P12, ie.

from 01.01.2016 he has reached level 18 with pay matrix of Rs.72,700/-. The Tribunal has presumed and also relied upon the evidence of P.W-5 that the other perks to the deceased would be Rs.80,000/-, but it is only a presumption without any record.

6. Therefore, this Court is of the view that the error in fixing the salary of the deceased person and the multiplier applied needs to be interfered. However, the claim of the Insurance Company that split multiplier should be applied since the deceased is salaried Government servant and he is supposed to retire of attaining superannuation within a period of three years is not tenable in view of the Suprement Court judgment which has disapproved applying split multiplier. For the said reason, the award of the Tribunal stands modified as below:

(i) **<u>Loss of Income:</u>**

Last drawn pay of the deceased is fixed at Rs.72,700/-

10% towards future prospects is added it comes to;

Rs.72,700/-+7270=Rs.79,970/- rounded off to Rs.80,000/-.

$1/4^{th}$ of it is deducted for the personal expenses of the deceased and multiplier 9 is taken for consideration to work out the loss of future income comes under the said head is;

Rs.80,000x 3/4 x 9 x12 = **Rs.64,80,000/-**

(ii) Consortium for the claimants 1 to 4 & 6

Rs.40,000/-x5	= **Rs.2,00,000/-**
(iii) Loss of Estate	= **Rs.15,000/-**
(iv) Funeral expenses	= **Rs.15,000/-**

Total compensation	**= Rs.67,10,000/-.**
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7. The above modified compensation to be paid with 7.5% interest from the date of petition till the date of realisation with cost. The award amount shared proportinately in the ratio of 50:15:15:15:15 between the claimants 1,2,3,4 & 6.

8. With this modification this Civil Miscellaneous Appeal is partly allowed. No Costs. Consequently, connected miscellaneous petition is closed.

9. The learned counsel for the insurance company states that the entire award amount has already been deposited. If so, the claimants are entitled to withdraw the award amount as per the modification ordered by this Court in this appeal. If any money lay in excess, the insurance company can get refund of it on proper application.

Date:28.02.2023

DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.

This Court, on 24.02.2023 dictated the above order in the open Court fixing future prospects for the deceased Government Employee aged 55 years 9 months at 10%. Next day, before signing the order, the learned counsel appearing for the respondent/ claimant submitted that as per ***Praney Sethi*** case, for Government Servants aged between 50 to 60 being a salaried person, his future prospects must be taken as 15%. Hence, the error is to be rectified. The learned counsel appearing for the appellant/insurance company, who was present conceded the legal position, however, had a counter submission to the effect that since the last drawn pay of the deceased was fixed at Rs.72,700/-, the statutory deduction towards Income Tax ought to have been taken into consideration and the same been omitted in the earlier order that may be taken into consideration. Hence, the case is listed under the caption 'for being mentioned' today.

2. After hearing the submissions, the order dated 24.02.2023 with regard to compensation alone is modified as under and the other aspects remains intact.

(i) **Loss of Income:**
Last drawn pay of the deceased is fixed at Rs.72,700/-
15% towards future prospects:
=[Rs.72,700/-+Rs.10,905/- =**Rs.83,605/-**]
rounded off to **Rs.83,700/-**

$1/4^{th}$ of it is deducted for the personal expenses of the deceased and multiplier 9 is taken for consideration to work out the loss of future income:

=Rs.83,700 x12 x 9 x 3/4 = Rs.67,79,700/-

20% less towards income tax:

[Rs.67,79,700/- Rs.13,55,940/-]**=Rs.54,23,760/-**

(ii) Consortium for the claimants 1 to 4 & 6:

Rs.40,000/- x 5 = **Rs.2,00,000/-**

(iii) Loss of Estate	= **Rs.15,000/-**
(iv) Funeral expenses	= **Rs.15,000/-**

Total compensation	= **Rs. 56,53,760/-**

Accordingly, total compensation is modified to **Rs.56,53,760/-.**

[G.J., J.] & [K.K.R.K., J.]
28.02.2023

Index : Yes/No
Internet : Yes
NCC : Yes/No

PJL

To
The Principal District Judge,
Motor Accidents Claims Tribunal,
Karur.

DR.G.JAYACHANDRAN, J.

and
K.K.RAMAKRISHNAN, J.

PJL

C.M.A(MD)No.452 of 2019
and
C.M.P(MD)No.5427 of 2019

28.02.2023