BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A(MD)No.724 of 2019
and
C.M.P.(MD)No.9262 of 2019

The New India Assurance Company Limited,
Represented by its Divisional Manager,
Divisional Office,
41B, Victoriya Street,
Thoothukudi,
Thoothukudi District. ... Appellant/2nd Respondent

-vs-

K.Murugananthavalli (died)

1.Kanagavalli Suresh @ Kayathri

2.Ganga Karthikeyan ... 1st and 2nd Respondents/Petitioners

3.Vishal Khatri ... 3rd Respondent/1st Respondent

4.Mubin Khan ... 4th Respondent/3rd Respondent

5.Imran Khan ... 5th Respondent/4th Respondent

6.M/s.Magma HDI General Insurance Company Limited,
Represented by its Manager,
25/1, Yaswant Niwas Road,
2nd Floor, Indore-452 003,
Madhya Pradesh State. ... 6th Respondent/5th Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and Decree in M.C.O.P.No.445 of 2014, dated 02.11.2018 on the file of the Motor Accidents Claims Tribunal, Second Additional District Court, Tuticorin.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.Rajiv Rufus for R1

Mr.S.Srinivasa Raghavan for R2

No Appearance for R3 to R5

Mr.N.Shyllapa Kalyan for R6

JUDGMENT

[Order of the Court was made by RMT.TEEKAA RAMAN, J.]

This Civil Miscellaneous Appeal is directed againt the Judgment and Decree in M.C.O.P.No.445 of 2014, dated 02.11.2018 on the file of the Motor Accidents Claims Tribunal, Second Additional District Court, Tuticorin.

2. The Insurance Company is the appellant herein. The Insurance Company of the offending vehicle has preferred this appeal on the point of quantum alone. The factum of the manner of the accident, rash and negligent on the part of the offending vehicle and the policy coverage with the appellant/Insurance company are not in dispute. Accordingly, the same is hereby confirmed.

3. On the point of quantum of compensation, we heard both sides.

4. The learned counsel for the appellant/Insurance Company would contend that on the date of the accident, the deceased had completed 65 years and therefore, the multiplier ought to be added is 5 not 7 as per ratio laid down in ***Sarla Verma's Case***. He drew our attention to the admission of P.W.1 in cross examination and also to Ex.P.20 and Ex.P.13, and would contend that the income tax was not deducted and the award under the conventional head of “loss of love and affection” is excessive in terms of ***Pranay Sethi's case***.

5. Heard the learned counsel for the respondents/claim petitioners. He has fairly conceded that on the date of the accident, the deceased was aged about 65 years and hence, we have no difficulty in fixing the multiplier as 5 as per ***Sarla***

Verma's case. The deceased Karthikeyan was working as a Senior Consultant in Bharath Oman Refinery Limited at Madyapradesh. Ex.P.20 is the salary certificate and Ex.P.13 is Form 16A namely, TDS Form issued by the employee based upon the salary paid by the employer and as per Ex.P.20, by way of the consultation charges and other charges, he has earned Rs.2,00,000/- per month and along with other heads of incentives, it was a total sum of Rs.2,24,720/- and accordingly, 10% tax has already been deducted as seen in Ex.P13 and hence, based upon the salary certificate issued in Ex.P.20, marked through P.W.2, we fix the salary, inclusive of consultation charges at Rs.2,00,000/- and hence, per annum it works out to Rs.24,00,000/- and after deducting income tax 10% (Rs.2,40,000), the net amount is Rs.21,60,000/-. Considering the rate of deduction for Senior Citizens, at the relevant point of time, the income tax payable is as per the slab below:

Income Tax Slab	**Income Tax Rate**
Up to Rs.3,00,000/-	Nil
Rs.3,00,001-5,00,000/-	5%
Rs.5,00,001 – 10,00,000/-	Rs.10,000/- + 20% above Rs.5,00,000/-
Above Rs.10,00,000/-	Rs.1,10,000/- +30% above Rs.10,00,000/-.

Applying the slab, the working is as follows:

= Rs.3,90,000/- + Rs.2,40,000/- = Rs.5,30,000/-

= Rs.24,00,000/- (-) Rs.5,30,000/- = Rs.18,70,000/-

6. Considering that the employer has already deducted TDS at the rate of 10%, namely, Rs.2,40,000/-. Applying the slab above, TDS deducted is Rs.5,30,000/- (ie.Rs.1,10,000/- + 30% of Rs.14,00,000/- (Rs.4,20,000/-)) and on adjusting the 10% of TDS already deducted by the employer and factoring the same, the net income as Rs.18,70,000/- p.a.

8. After deducting income tax, the annual income of the deceased as Rs.18,70,000/- and after deducting 1/3rd (Rs.6,23,333/-) towards personal expenses, the deceased contributed Rs.12,46,667/- (Rs.18,70,000/- (-) Rs.6,23,333/-) to his family. By applying multiplier '5', the claimants are entitled to Rs.62,33,335/- (Rs.12,46,667/- X5) towards loss of income. With regard to the two daughters, they are entitled to Rs.40,000/- each for the love and affection, Rs.15,000/- for transport charges; Rs.15,000/- for funeral expenses;

and for the loss of estate, Rs.15,000/-. In view of the above discussion, the compensation is reworked in the manner hereunder:

Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of income	Rs. 1,20,00,056/-	Rs.62,33,335/-	reduced
2.Loss of love and affection	Rs. 2,00,000/- each Rs.1,00,00/-	Rs. 80,000/- each Rs.40,000/-	reduced
3.Funeral expenses	Rs. 15,000/-	Rs. 15,000/-	reduced
5.Loss of estate	Rs.	Rs. 15,000/-	awarded
6.Transport expenses	Rs. 20,000/-	Rs. 15,000/-	reduced
Total Compensation	**Rs. 1,14,35,056**	**Rs. 63,58,335/-**	**reduced**

9. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is reduced from Rs.1,14,35,056/- to Rs.63,58,335/-.

10. The appellant/Insurance Company is directed to deposit the modified award amount of Rs.63,58,335/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, together with costs awarded

by the Tribunal, less the amount, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. Excess amount, deposited if any, shall be refunded to the appellant/Insurance Company. On such deposit being made, the claimants are permitted to withdraw their modified award amount along with interest and costs as per the ratio of apportionment made by the Tribunal, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

[T.K.R., J.] [P.B.B., J.]

01.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sji/LS

RMT.TEEKAA RAMAN, J.
and
P.B.BALAJI, J.

sji

To

1.The Motor Accidents Claims Tribunal,
Second Additional District Court, Tuticorin.

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

01.12.2023