BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.11.2023	**Delivered on: 01.12.2023**

CORAM:

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

C.M.A.(MD).No.238 of 2018
and
C.M.P.(MD)Nos.3548 & 5476 of 2018

The Branch Manager,
National Insurance Company Ltd.,
Mahalakshmi Nivasham,
Opposite to Kiruba Hospital,
Rajaji Road, Kumadasamypatty,
Post Box No.15, Salem – 636 007.

.. Appellant / Respondent No.2

Vs.

1.K.S.Vasatha .. 1st Respondent /Petitioner No.1

2.Ramkumar
(Mentally retarded- Rep. by his mother and natural guardian K.S.Vasantha, the 1st respondent herein) .. 2nd Respondent/Petitioner No.2

3.Subbash Subramanian .. 3rd Respondent/Petitioner No.3

4.Mariappan .. 4th Respondent/1st Respondent

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Special District Judge, Tiruchirappalli, in M.C.O.P.No.154 of 2015, dated 03.08.2017.

For Appellant	:	Mr.D.Sivaraman
For Respondents	:	Mr. K.K.Senthil for R1 to R3
	:	No appearance for R4

JUDGMENT

P.B.BALAJI,J.

The Insurance Company, aggrieved by the award in M.C.O.P. No.154 of 2015, on the file of the Motor Accident Claims Tribunal, Special District Judge, Tiruchirappalli, is the appellant before us.

2. The respondents 1 to 3, as claimants filed the M.C.O.P., seeking compensation for the accident that occurred on 04.10.2014, resulting in the death of one Sivaraman, who is the husband of the first claimant and the father of the claimants 2 & 3. The second claimant - Ramkumar is a mentally challenged son of the deceased - Sivaraman.

3. The case of the claimants before the Tribunal was that the deceased was riding his two wheeler and travelling from South to North, returning home, after work and the first respondent's lorry being driven by its driver, rashly and negligently, came and dashed the two wheeler resulting in the death of the two wheeler rider – Sivaraman. It is the further case of the claimants that the deceased was 59 years and he was working as Chief Personal Assistant at BHEL, Tiruchirappalli and earning Rs.93,270.40 per month. As he was only the breadwinner of the family, the claimants prayed for Rs.75,00,000/- as total compensation.

4. The 4th respondent, owner of the lorry which was insured with the appellant / Insurance Company remained *exparte*.

5. However, the appellant as second respondent in the M.C.O.P., filed a counter stating that the accident occurred because of the negligence of the deceased and in any event, the amounts claimed by the claimants were highly excessive and exorbitant.

6. Before the Tribunal, the wife of the deceased examined herself as P.W.1 and the occurrence witness, one Harikrishnan, was examined as P.W.2 and 10 documents were marked as Ex.P1 to Ex.P10, on the side of the claimants. On the side of the respondents, there was no oral or documentary evidence forthcoming.

7. The Tribunal fixed the monthly salary of the deceased as Rs.93,270.40 per month and after deducting 1/3rd towards personal expenses and applying a multiplier of '9', awarded compensation towards loss of dependency at Rs.67,15,440/-; Rs.25,000/- towards funeral and transportation; Rs.3,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium, Rs.3,00,000/- towards shock and mental agony, loss of amenities and loss of social pleasure and awarded a total compensation of Rs.74,70,440/- to the claimants.

8. Aggrieved by the said award, the Insurance Company has challenged the same on the grounds that the Tribunal erred in fixing the monthly income at Rs.93,270.40 p.m., in the absence of pay-slip being produced by the claimants; the Tribunal erred in applying multiplicant of Rs.93,270/- for entire 9 years, when the deceased was having only about 8

or 9 months service left; the Tribunal ought to have applied split multiplier formula; the award of conventional damages of Rs.25,000/-towards funeral expenses and transportation, Rs.3,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium, Rs.3,00,000/- towards shock and mental agony, loss of amenities and loss of social pleasure, were against the ratio laid down by the Hon'ble Supreme Court in ***Pranay Sethi's*** case. On these grounds, the award of the Tribunal is sought to be set aside.

9. We have heard Mr.D.Sivaraman, learned counsel for the appellant and Mr.K.K.Senthil, learned counsel for the respondents 1 to 3 / claimants. We have also perused the records placed before us, including the impugned award of the Tribunal.

10. At the outset, the learned counsel for the appellant would contend that the appeal has been filed challenging only the quantum and not the negligence or liability fixed by the Tribunal on the offending vehicle and the appellant, being the insurer of the offending vehicle. However, independently, we have gone through the oral and documentary evidence adduced by the parties and from the evidence of the occurrence

witness – P.W.2 and Ex.P1-F.I.R, Ex.P8- rough sketch and Ex.P9-copy of M.V.I. report, we find that the finding of the Tribunal fixing liability on the offending vehicle is fair and proper and the same does not require interference.

11. The learned counsel for the appellant would contend regarding adoption of a multiplier '9' and referring to various judgments of the Hon'ble Supreme Court as well as this Court, would state that there was no prohibition for applying split multiplier and given that the deceased was on the verge of the retirement, with about only 8 or 9 months left, multiplier '9' could not have been applied for arriving at compensation especially since the multiplicand would have to be necessarily factored and in all probabilities his earning the very same income after his retirement cannot be possible. We would discuss the various judgments by the learned counsel for the appellant, a little latter. We would decide the other heads of compensation, before addressing the arguments of the learned counsel for the appellant with regard to whether the split multiplier method can be adopted or not.

12. Insofar as the monthly salary of the deceased, the Tribunal has taken it as Rs.93,270/- p.m. based on Ex.P5-salary slip. The Tribunal has also taken note of Ex.P6 showing that the deceased had paid Rs.1,13,450/- towards income tax for the assessment year 2014-2015. However, we find from Ex.P5 -salary slip that the amount of Rs.93,270/- included professional tax of Rs.1,190/- and income tax of Rs.8,040/-. These amounts have to be necessarily deducted. Thus, deducting the said amounts (Rs.9,230/-) from the monthly income, the salary would stand reduced to Rs.84,040/- from Rs.93,270/-. This way, the grievance of the appellant with regard to the income tax deduction also stands addressed.

13. We have also noticed that the Tribunal has not awarded any additional compensation towards future prospects. The Hon'ble Supreme Court in ***Pranay Sethi's*** case has laid down the ratio that for a person aged 50 - 60 years, 15% will have to be provided. After adding 15% (Rs.12,606/-), the total income is Rs.96,646/- p.m and after deducting 1/3 (Rs.32,215/-).

14. The Tribunal erred in awarding conventional damages of Rs.25,000/-towards funeral expenses and transportation, Rs.3,00,000/-

towards loss of love and affection, Rs.1,00,000/- towards loss of consortium, Rs.3,00,000/- towards shock and mental agony, loss of amenities and loss of social pleasure. In the above circumstances, we have applied the ratio of the Hon'ble Supreme Court in ***Pranay Sethi's*** case to the facts of the present case. We set aside the award of compensation under the heads “shock and mental agony, loss of amenities and loss of social pleasure”. Insofar as the funeral expenses, love and affection and and loss of consortium, we reduce the amount to Rs.15,000/-, Rs.40,000/- to each claimant, Rs.40,000/- to the wife of the deceased respectively. The funeral expenses, the loss of consortium and loss of estate should be enhanced once in every three years at 10%. Since the above judgment is of the year 2017, from 2017- 2020 , 10% should be enhanced, ie. from Rs.40,000/- to Rs. 44,000/- towards loss of consortium, from Rs.15,000/- to Rs.16,500/- each towards funeral expenses as well as loss of estate and from 2020- 2023, another 10% should be enhanced ie. Rs.44,000/- to Rs.48,400/- towards loss of consortium, from Rs.16,500/- to Rs.18,150/- each towards funeral expenses as well as loss of estate.

15. Now, coming to the issue of split multiplier, the learned counsel for the appellant would mainly place reliance on the judgments of

the Hon'ble Supreme Court in ***Puttamma and others V. K.L.Naraya Reddy*** reported in ***2014-1-TNMAC-481 (SC)*** and in ***K.R.Madhusudhan V. Administrative Officer*** reported in ***2011-4-SCC-689***, and contend that when the deceased was on the eve of retirement, the Court had applied different multiplicand as his contribution to the family, as after retirement, the income of the deceased would certainly not be the same as that of what he was earning before his demise.

16. The learned counsel for the claimants would however bring it to our notice that the Hon'ble Supreme Court in ***R.Valli V. Tamil Nadu State Transport Corporation Limited*** reported in ***2022-5-SCC-107***, held that the method of determination of compensation applying two multipliers was clearly erroneous as it runs counter to the judgment of the Hon'ble Supreme Court in ***Pranay Sethi's*** case, which is also confirmed by the Hon'ble Supreme Court in ***Sarla Verma's*** case.

17. The learned counsel for the appellant would state that neither ***Pranay Sethi's*** case nor ***Sarla Verma'***s case actually dealt with the issue of applying a different multiplicand or the application of the split multiplier method. He would further urge us to fall back on the decisions of the

Division Bench this Court in ***R.Leelavathi V. Sheik Dawood*** reported in ***2013-2-TNMAC-113 (DB); in National Insurance Company V. Arulmozhi*** reported in ***2014-1-TNMAC-334 (CB); in UmaShankar V. Revathy Vadivel*** reported in ***2014-1-TNMAC-651 (DB) and in K.Perumal V. Tmt.Kamalabai*** reported in ***2004-2-TNMAC-535 (DB)***, where this Court has applied split multiplier method in arriving at the compensation amount. In an unreported judgment in ***C.M.A.No.3210 of 2017 (Anbukarasi Manoharan V. R.Arul Prakash), dated 26.09.2018***, the Division Bench of this Court, has held that the law laid down by the Hon'ble Supreme Court clearly indicates that there is no prohibition against the split multiplier and the Hon'ble Supreme Court had only pointed out that the multiplier suggested by the Hon'ble Supreme Court in ***Sarla Verma's*** case, would be normally applied, however, when there is evidence on record to show that the income of the deceased would not be the same at a certain point of time, then the split multiplier can be adopted, if it is shown that there is dropping of income.

18. Per contra, the learned counsel for the claimants would rely on the judgment of the Hon'ble Supreme Court in ***R.Valli's*** case referred supra and also in ***N.Jeyasree V. Cholamandalam MS General Insurance***

Company Ltd., reported in ***2021-SCC-Online-SC-967.*** In ***N.Jeyasree's*** case, the Hon'ble Supreme Court framed a specific question as to whether the High Court was justified in applying split multiplier. Answering the said issue, the Hon'ble Supreme Court after referring to the decision in ***Sarla Verma's*** case held that while calculating compensation, the Court shall be bound to consider not only the actual income of the deceased at the time of his death, but also make additions towards future prospects. The Hon'ble Supreme Court further held in ***Sarla Verma's*** case that though the evidence may indicate different percentage of increase, it is necessary to standardize the addition to avoid disparity in the yardsticks being applied or methods of calculation being adopted. However, the Hon'ble Supreme Court in ***N.Jeyasree's*** case also referred to ***Pranay Sethi's*** judgment, ***K.R.Madhusudhan's*** judgment and ***Puttamma's*** judgment and conclusively held that at the time of calculation of income, the Court has to consider the actual income of the deceased and take future prospects into account and that though evidence in a given case may indicate a different percentage to be adopted, in order to maintain uniformity, the split multiplier method cannot be adopted.

19. In ***Valli's*** case, the Hon'ble Supreme Court has held that after the decision of the Hon'ble Supreme Court in ***Pranay Sethi's*** case, there was no question of application of split multiplier that is one multiplier upto the date of retirement and another multiplier after the date of retirement and held that the method of determination of compensation applying two multipliers was clearly erroneous and referred to the judgment of the Supreme Court in ***Pranay Sethi's*** case, which was confirming the judgment in ***Sarla Verma's*** case.

20. In view of the said settled position of law in this regard, as laid down by the Hon'ble Supreme Court, we are able to countenance the submission of the learned counsel for the appellant that the case on hand should be treated as an exemption merely because the deceased was having only 8 or 9 months of service remaining and therefore, the same multiplicand cannot be adopted for arriving at his loss of income. Further, the learned counsel for the claimants would also bring to our notice the decision rendered by us in C.M.A.No.921 of 2017 on 03.10.2023, where we have held that the split multiplier method is not in accordance with law, in view of the dictum of the Hon'ble Supreme Court.

21. For all the above reasons, we do not find any ground for interfering with the application of multiplier '9' by the Tribunal and we reject the contention of the learned counsel for the appellant that in a special or specific case, different multiplicand can be adopted, considering the age of the deceased, especially, in cases, where the deceased had only few months service left, before his retirement. Therefore, after applying a multiplier '9', the loss of dependency will come to Rs.69,58,548/- (Rs.64,431/- X 12X 9).

22. Though the claimants have not preferred a cross objection or an independent appeal for enhancement, in view of the settled ratio laid down by the Hon'ble Supreme Court that in cases of Motor Accident Claims Compensation, compensation has to be just and reasonable and despite the claimants are not preferring a separate appeal seeking enhancement or at least a cross objection to the appeal preferred by the Insurance Company, even then the Court is not without power to enhance the award amount. A judgment of the Hon'ble Supreme Court in ***Nagappa V. Gurudhayal Singh*** reported in ***2003-2-SCC-274***, held that there cannot be any restriction by the Tribunal or Court to award compensation in excess of the amount claimed by the claimants, as the prime function of the

Tribunal / Court is to award 'just' compensation, which would be reasonable on the basis of the evidence produced on record. Therefore, we proceed to enhance the compensation under the head of “loss of dependency” and also by awarding compensation under the head of “loss of estate”.

23. In view of the foregoing discussions, the compensation is reworked in the manner hereunder:

Head	Awarded by the Tribunal	Awarded by this Court	Enhanced/ reduced/ confirmed
1. Loss of dependency	Rs. 67,15,440/-	Rs.69,58,548/-	increased
2.Loss of consortium	Rs. 1,00,000/-	Rs. 48,400/-	reduced
3.Loss of love & affection (Claimants 2 &3)	Rs. 3,00,000/-	Rs. 96,800/- each Rs.48,400/-	reduced
4.Funeral expenses	Rs. 25,000/-	Rs. 18,150/-	reduced
5.Shock & mental agony	Rs. 3,00,000/-	....	set aside
6.Loss of estate	....	Rs. 18,150/-	awarded
Total Compensation	**Rs. 74,40,440/-**	**Rs. 71,40,048/-**	**Reduced**

24. In fine, the Civil Miscellaneous Appeal stands partly allowed and the compensation awarded by the Tribunal is reduced from Rs. **74,40,440/-** to Rs.**71,40,048/-**-. The first claimant, who is the wife of the deceased is entitled to Rs.31,40,048/- with proportionate interest and costs,

the second and third claimants, who are the sons of the deceased are entitled to Rs.20,00,000/- each with proportionate interest.

25. The appellant / Insurance Company is directed to deposit the modified award amount of Rs.71,40,048/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. Excess amount, if any, shall be refunded to the appellant / Insurance Company.

26. On such deposit being made, the respondents 1 & 3 / claimants are permitted to withdraw their respective award amounts along with interest and costs as apportioned by this Court, less the amount if any already withdrawn by them, after filing appropriate application before the Tribunal. However, since the second claimant is a special and differently abled person, the compensation of Rs.20,00,000/- awarded to the second claimant shall be deposited in any one of the Nationalised Banks in an interest bearing Account in the name of the second claimant - Ramkumar,

represented by his mother and guardian, the first claimant and the first claimant-Vasantha is entitled to withdraw interest periodically, once in three months for the maintenance of the second claimant. There shall be no order as to costs in the present appeal. Consequently, connected Miscellaneous Petitions are closed.

(T.K.R.J.) & (P.B.B.J)
01.12.2023

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
Ls

To

1.The Motor Accident Claims Tribunal,
Special District Judge,
Tiruchirappalli,

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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

Ls

judgment in
C.M.A.(MD).No.238 of 2018

01.12.2023