IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1118 of 2024

Mrs.Kirum Beevi (Since Deceased)

K.Syed Ali
S/o.Kadhar Moideen
No.17-A/41, Vivekanandar Street,
M.G.R.Nagar,
K.K.Nagar,
Chennai 600 078 ... Appellant

Vs.

1. Mrs.R.Amudha

2. The Manager,
Oriental Insurance Company Limited,
Oriental House, 2nd Floor,
Old No.115, New No.216,
Prakasam Salai, Broadway,
Chennai 600 108 ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation awarded in judgement and decree dated 30.08.2023, passed in M.C.O.P.No.41 of 2019 on the file of

Motor Accident Claims Tribunal (In the Court of small causes, Chennai).

For Appellant : Mr.K.Balaji

For Respondents : R1 – Set Exparte
Mr.S.Senthil Kumar for R2

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JUDGMENT

The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal challenging the award passed by the Motor Accident Claims Tribunal (In the Court of small causes, Chennai) in M.C.O.P.No.41 of 2019 dated 30.8.2023.

2. The claimants, who are the wife and son of the deceased Kadher Moideen, had filed a claim petition on the ground that Kadher Moideen was riding a two wheeler on 06.05.2018 and was proceeding in P.T.Rajan Salai and at about 8.30 a.m, when the two wheeler was nearing Nagathamman Koil Bus stop, the offending vehicle owned by the 1st respondent was driven in a rash and negligent manner and it dashed on the two wheeler. As a result, the deceased was thrown out of the vehicle and he sustained grievous injuries. He was admitted in the Government

Hospital. But however he succumbed to the injuries on the same day. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for compensation. During the pendency of the claim petition, the 1st claimant died and the claim petition was prosecuted only by the son of the deceased.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the lorry owned by the 1st respondent. After having reached such a conclusion, the Tribunal proceeded to fix the compensation and the total compensation was fixed at Rs.1,25,000/- in the following manner under various heads:-

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Loss of dependency	Rs.48,000/-
2.	Loss of Consortium	Rs.44,000/-
3.	Loss of Estate	Rs.16,500/-
4.	Funeral Expenses	Rs.16,500/-
	Total	Rs.1,25,000/-

The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

4. The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.

5. Heard Mr.K.Balaji learned counsel for appellant/claimant and Mr.S.Senthil Kumar, learned counsel for second respondent insurance company.

6. This Court carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. The main ground that was urged by the learned counsel for

appellant was that the Tribunal failed to apply 5 multiplier while calculating the compensation under the head of loss of dependency. The other ground that was raised by the learned counsel for the appellant was that the deceased was earning a sum of Rs.15,000/- per month and whereas the Tribunal had fixed the monthly income at Rs.8,000/- per month, which is on the lower side.

9. In the instant case, there is no dispute with regard to the fact that the deceased was aged about 78 years at the time of accident. There is no record to show that the deceased was doing any avocation / business and was earning money. Therefore, considering the age of the deceased and the fact that the accident had taken place in the year 2018, the Tribunal had fixed the monthly income at Rs.8,000/-. This Court does not find any illegality in the monthly income that was fixed by the Tribunal.

10. The next question that has to be gone into is with respect to non application of the multiplier in the instant case. The Tribunal had taken into consideration the judgment of the Constitution Bench in ***[M.Gnanasekaran Vs.Mothi Periyakaruppan and another]*** reported in

2017 6 CTC 493 and had come to a conclusion that insofar as the multiplier method is concerned, the law that was settled in ***Sarla Varma*** case reported in ***2009 2 TANMAC 1*** was confirmed and in that case, the Apex Court had fixed the multiplier only up to the age of 70 years. Since the deceased was aged about 78 years, the Tribunal came to a conclusion that the multiplier must be taken to be Nil and no multiplier can be applied while calculating the loss of dependency.

11. There is no dispute with regard to the fact that the Apex Court in ***Sarla Varma*** case had taken into consideration huge discrepancies in the multiplier that has been stipulated in Schedule to the Motor Vehicles Act. In view of the same, the Supreme Court proceeded to fix the multiplier to be adopted starting from the age band of 15 years. While undertaking this exercise, the Supreme Court had restricted the age band up to 70 years and nothing has been stated in the judgment as to what multiplier should be adopted for those persons beyond the age of 70 years.

12. The fact remains that for all those persons above the age category of 66 years, five multiplier has to be adopted. Originally under the II Schedule, it provided multiplier of five for the victim, who is above 65 years and no upper age limit was prescribed. Therefore, on carefully , going through the II Schedule and the judgement of the Apex Court in Sarla Varma, this Court can safely conclude that for the victims aged above 65 years, five multiplier must be adopted irrespective of the upper age limit. It will not be reasonable to restrict the application of the multiplier only up to 70 years and deprive the victim, if the victim is aged more than 70 years. Such restricted interpretation cannot be applied in a welfare legislation like the Motor Vehicles Act.

13. The judgement of Sarla varma with respect to application of the multiplier, deduction for personal expenses, addition for future prospects and the amount to be given under the conventional heads, has now been confirmed by the Constitution bench in ***Pranay Sethi case*** and hence, ***Sarla Varma*** judgement holds the field. Therefore, this Court holds that even if the judgement of ***Sarla Varma*** is taken into consideration for the victim beyond the age of 65 years, five multiplier

can be adopted without any upper age restriction.

14. In the light of the above discussion, this Court is inclined to interfere with the findings of the Tribunal to the effect that no multiplier can be adopted in this case. In view of the same, the compensation under the Head of Loss of Dependency will stand modified to Rs. 2,40,000/- {Rs.8,000 x 12 x 5 x ½ }.

15. Insofar as the future prospects is concerned, it is seen that the Apex Court has restricted the future prospects only up to the age of 60 years and the Tribunal has rightly come to a conclusion that future prospects cannot be applied to the deceased, who was aged about 78 years at the time of his demise.

16. Insofar as the compensation fixed under the other heads, it is reasonable and it does not require the interference of this Court.

17. In the light of the above discussion, the compensation fixed by the Tribunal is modified in the following terms :-

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Loss of dependency =8000x12x5x1/2	Rs.2,40,000/-
2.	Loss of Consortium	Rs.44,000/-
3.	Loss of Estate	Rs.16,500/-
4.	Funeral Expenses	Rs.16,500/-
	Total	Rs.3,17,000/-

18. The compensation awarded by the Tribunal at Rs.1,25,000/- is enhanced to Rs.3,17,000/-. The second respondent insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is partly allowed in the above terms. No costs.

06.06.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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N.ANAND VENKATESH.,J
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To
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