IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2024

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THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.2156 of 2024

1. Indhirani
2. Illavenil
3. Ilayaraja
4. Thangavel
5. Chellammal ...Appellants

vs.

National Insurance Company Ltd.,
situated at K.K.Road, Muruga Theatre Complex,
Villupuram District. ...Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.C.O.P.No.461 of 2021 dated 01.04.2024, on the file of the Motor Accident Claims Tribunal Judge (Additional District Judge) at Kallakuruchi.

For Appellants : Mr.K.Suryanarayanan
For Respondent : Mr.J.Chandaran

JUDGMENT

(Judgment was made by Mrs.R.Kalaimathi, J.)

Not being satisfied by the Award dated 01.04.2024 made in M.C.O.P.No. 461 of 2021 on the file of Motor Accident Claims Tribunal / Additional District Judge, District Court, Kallakuruchi, the claimants hesrein have filed this Civil Miscellaneous Appeal for enhancement of compensation.

2. Heard Mr.K.Suryanarayanan, learned counsel appearing for the appellants/claimants and Mr.J.Chandran, learned counsel appearing for the respondent.

3. Upon consideration, the Tribunal has fixed the monthly income of the deceased at Rs.62,178/- and for future prospects, 10% of the salary was added. 1/3rd deduction was made for personal and living expenses and multiplier '9' was adopted, the loss of income was arrived at Rs.49,24,494/-.

4. At trial, on the claimants side, three witnesses were examined and 16 documents were marked. On the side of the respondent, one witness was examined.

5. It has come on record through the evidence of P.W3-V.Ganesan who is working as Administrative Officer in the Agricultural Department, Chepauk, Chennai that the deceased was working as Agricultural Officer. Her date of birth is 30.07.1979. Her date of superannuation is 30.07.2039. The deceased drew salary of Rs.62,178/- in the month of January, 2021. The age of the deceased at the time of the accident was 41 years.

6. Claim petition has been filed by the mother, siblings (P2 and P3), father in law and mother in law (P4 and P5) and the Tribunal has granted compensation in favour of the mother, father in law and mother in law (P1, P4 and P5) and dismissed the claim petition as against brother and sister (P2 and P3) of the deceased.

7. The claim petition has been filed by the mother (aged about 60 years), Sister Ilavenil (age about 46 years), Brother Ilayaraja (age about 37 years), Father in law of the deceased (aged about 80 years) and Mother in law of the deceased (aged about 72 years). As regards the sister and brother of the deceased, the Tribunal has dismissed the claim petition stating that they are not dependents of the deceased. As regards the appellants no.4 and 5 namely the father in law and mother in law of the

deceased, it is stated that, had the deceased Senthilnathan been alive, she would have maintained her father in law and mother in law of the deceased as her husband Senthilnathan also died along with her in the road traffic accident.

8. Based on who's age whether deceased or dependant has been dealt with by the Apex Court. In the given context, it is profitable to extract the principles laid down by the Apex Court in *General Manager, Karela State Road Transport Corporation Vs. Susama Thomas reported in 1994 (2) SCC 17,* which is given hereunder:

> *"In fatal accident action, the measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant as a result of the death. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or*

might have lost his employment or income altogether."

"The matter of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalized by multiplying it by a figure representing the proper number of year's purchase."

"The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."

9. Therefore, as held in *Susama Thomas case*, multiplier has to be chosen as per the age of the deceased or that of the claimants, whichever

is higher.

10. Whereas the Full Bench of Apex Court in *UPSRTC and others Vs. Trilok Chandra and others* reported in *1996 (4) SCC 362*, where a youngman aged 26 years was knocked down by an omnibus belonging to UPSRTC in the year 1977. His legal representatives filed a claim petition for compensation. His salary was fixed at Rs.300/- per month and after deducting 1/3rd for his personal expenses, his life expectancy was fixed at 60 years. The Tribunal deducted 36 years and concluded that the family was deprived of his earning for 24 years and the compensation was worked out at Rs.200/- x 12 x 24= Rs.57,600/-. On appeal, this was raised to Rs.81,600/- as the Tribunal has taken the age of the deceased at 36 instead of 26 years. The Apex Court further observed that the table can only be used as a guide. Besides the selection of multiplier, cannot in all cases be solely dependent on the age of the deceased. For Example, if the deceased, a bachelor dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of the multiplier.

11. The above said observation was reiterated in Hon'ble Supreme Court in *Mohammed Siddique and another Vs. National Insurance*

Company Limited and others reported in (2020) 3 SCC 57. It has been observed that "...*It may be true that an accident victim may leave a 90 year old mother as the only dependent. It is in such cases that one may possibly attempt to resurrect the principle raised in Trilok Chandra case.*

12. Therefore, based on the above said observations upon consideration of the unique circumstances of this case, among the mother, father-in-law and mother-in-law of the deceased, mother being the youngest among the dependents of the deceased (age about 60 years), justice will be met if multiplier '9' is taken as held by the Apex Court in *Smt.Sarla verma and others vs Delhi Corporation and others,* reported in *2009 (2) TNMAC 1 (SC).*

13. As regards the deduction towards the personal and living expenses of the deceased, we are reminded of the words of the Supreme Court in *Fakeerappa Vs. Karnataka Cement Pipe Factory* reported in *2004 (2) SCC 473*, wherein, it was observed that *what would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would be depend upon on circumstances of each case. The deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents*

would be been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction."

14. It is very pathetic to note that, at the time of accident, the car was driven by the husband of the deceased who is owner of the car. At the time of accident, her son also travelled along with them and all of the three died in the accident.

15. In the case of deduction for personal and living expenses, the Hon'ble Supreme Court has determined the deduction details in *Smt.Sarla verma case*. Had the deceased been alive, she would have taken care of her mother, father in law and mother in law. Therefore, 1/3rd has to be deducted for personal and living expenses as the dependents are three in number.

16. As regards the future prospects, it has been standardised by the Apex Court in *National Insurance Co. Ltd., vs Pranay Sethi and others* reported in *2017 (2) TN MAC 609 (SC).* Wherein, for the persons in permanent job, for the age group of persons between 40 to 50 years, 30% has to be added along with the income while computing the total income.

17. With the above said details, the loss of income is computed as given hereunder:

A	Monthly Income	Rs.62,178/-
B	Future Prospects (30% of monthly income)	Rs.18,653/-
C	1/3rd Deduction towards Personal Expenses	Rs.26,943/-
D	Total Dependency (A + B - C)	Rs.53,888/-
E	Annual Income (D x 12)	Rs.6,46,656/-
F	Age Multiplier	9
	Loss of Income (E x F)	Rs.58,19,904/-

18. We are of the considered view that in all other aspects, the award of the Tribunal appears to be reasonable and we see no reason to interfere with the same. Therefore, the Compensation awarded by the Tribunal is reworked and tabulated below:

Sl. No.	***Description***	***Amount awarded by Tribunal***	***Amount awarded by this Court***	***Award confirmed or enhanced or granted or reduced***
1	For loss of Income	Rs.49,24,494/-	Rs.58,19,904/-	Enhanced
2	For funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
3.	Loss of love and affection	Rs. 75,000/-	Rs. 75,000/-	Confirmed
3	Loss of estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
	Total	Rs.50,29,494/-	Rs.59,24,904/-	**Enhanced**

19. Thus, the compensation awarded by the Tribunal is enhanced from Rs.50,29,494/- to Rs.59,24,904/- which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

20. In the result,

(i) The Civil Miscellaneous Appeal stands Partly Allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.50,29,494/- to Rs.59,24,904/-.

(iii) The Insurance Company is directed to deposit the enhanced compensation amount now determined by this Court i.e., Rs.59,24,904/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.461 of 2021 on the file of Motor Accidents Claims Tribunal, Kallakuruchi, within a period of six weeks from the date of receipt of a copy of this Judgment.

(iv) Out of the enhanced award amount, the 1st petitioner is entitled to a sum of Rs.29,24,904/- and petitioners no.4 to 5 are entitled to a sum of Rs.15,00,000/- each as compensation. As regards as the appellants no.2 and 3, appeal stands dismissed.

(v) On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.

(vi) The claimants are directed to pay the Court fee for the enhanced compensation amount, if required.

(vii) The Tribunal below to disburse the amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

(J.N.B.,J.) (R.K.M.,J.)

18.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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J.NISHA BANU, J.
and
R.KALAIMATHI, J.

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To

1. Motor Accident Claims Tribunal
   Kallakuruchi

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2. The Section Officer,
   VR Section,
   High Court, Madras

C.M.A.No.2156 of 2024

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