BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.01.2024

PRONOUNCED ON:12.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1152 of 2018

The Divisional Manager,
The Oriental Insurance Company Ltd.,
K.J.R. Complex 1st floor,
No.16, North Veli Street,
Madurai – 625 001. : Appellant/Respondent No.2

Vs.

1.R.Shanthi
2.Minor R.Chandru
3.Minor R.Sanjay
4.Minor R.Shankari
(Minor respondents 2 to 4
represented by their mother /
natural guardian / next friend
the first respondent herein)

5.I.Pitchaimani(died)
6.P.Kamatchi(died) : Respondents 1 to 6/
Petitioners 1 to 6

7. K.Beermohamed : Respondent No.7 / Respondent No.1

(Respondent No.7 given up)

8.P.Rajendran
9.K.Jeyalakshmi
10.P.Indirani
11.M.Vijaya : Respondents

(Respondents 8 to 11 are brought on record as LRs of the deceased respondents 5 and 6 vide order dated 09.02.2023 made in C.M.P.(MD) Nos.894 to 896 of 2023)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree passed in M.C.O.P.No.2057 of 2015, dated 31.01.2018, on the file of the Motor Accident Claims Tribunal cum VI Additional District Court, Madurai.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.A.Haja Mohideen for R.1 t o R.4
: Mr.P.Balasubramanian for R.8 to R.11
: R.5 and R.6 – died steps taken as LRs R.8 to R.11
: R.7 – notice not necessary vide order dated 16.11.2022

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.2057 of 2015, dated 31.01.2018, on the file of the Motor Accident Claims Tribunal /VI Additional District Court, Madurai.

2. The appellant/Insurer, who was made liable to pay compensation of Rs.39,79,213/- with interest and costs to the respondents / claimants for the death of Radhakrishnan, consequent to an accident occurred on 29.07.2015, challenged the quantum of compensation awarded at by the Tribunal.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking before the Tribunal.

4. It is pertinent to note that the appellant/Insurer has not challenged the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the first respondent / owner-cum- rider of the two wheeler bearing Registration No.TN-67-AB-3310

and the consequent joint and several liability mulcted on the respondents 1 and 2 which includes the second respondent/Insurer.

5. The learned Counsel for the Insurer would submit that the deceased was a Government servant and he got only 6 more years of service at the time of accident, that the Tribunal should have adopted service multiplier for assessing the loss of income, but wrongly applied multiplier “11” for calculating the loss of income and that the trial Court erred in not applying the split multiplier method, taking note of the remaining service period of the deceased.

6. No doubt, the appellant/Insurer in the grounds of appeal itself has quoted some of the earlier judgments of the Hon'ble Supreme Court and this Court, wherein it was held that while calculating the loss of income for a Government servant, split multiplier should be applied. But the Hon'ble Supreme Court in the case of ***N.Jayasree and Others Vs. Cholamandalam MS General Insurance Company Ltd.,*** reported in ***AIR 2021 SC 5218***, has held that the split multiplier should not be applied in a routine course and should only apply multiplier as per the decision of Hon'ble Supreme Court in ***Sarla Verma (Smt) and Others***

Vs. Delhi Transport Corporation and another reported in ***(2009)6 SCC 121***, as affirmed ***in Reshma Kumari and Others Vs. Madan Mohan and another*** reported in ***(2013)9 SCC 65*** and the relevant passages are extracted hereunder:

> *"23. In Sarla Verma MANU/SC/0606/2009 : (2009) 6 SCC 121, this Court has held that while calculating the compensation, the courts should take into consideration not only the actual income at the time of the death but should also make additions by taking note of future prospects. It was further held that though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid disparate yardsticks being applied or disparate methods of calculation being adopted. 24. In Reshma Kumari and Ors. v. Madan Mohan and Anr. MANU/SC/0287/2013 : (2013) 9 SCC 65, a three-Judge Bench of this Court has approved the judgment in Sarla Verma MANU/SC/0606/2009 : (2009) 6 SCC 121. 25. In Pranay Sethi MANU/SC/1366/2017 : (2017) 16 SCC 680, this Court has not only approved the aforesaid observations made in Sarla Verma MANU/SC/0606/2009 : (2009) 6 SCC 121 but also held as under:*
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> *59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition*

should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

26 . In K.R. Madhusudhan and Ors. v. Administrative Officer and Anr. MANU/SC/0129/2011 : (2011) 4 SCC 689, this Court was considering a case where the High Court had applied split multiplier for the purpose of calculation of compensation towards loss of dependency and held as under: 8 . In Sarla Verma MANU/SC/0606/2009 : (2009) 6 SCC 121 judgment the Court has held that there should be no addition to income for future prospects where the age of the deceased is more than 50 years. The learned Bench called it a Rule of thumb and it was developed so as to avoid uncertainties in the outcomes of litigation. However, the Bench held that a departure can be made in rare and exceptional cases involving special circumstances. 9 . We are of the opinion that the Rule of thumb evolved in Sarla

Verma MANU/SC/0606/2009 : (2009) 6 SCC 121 is to be applied to those cases where there was no concrete evidence on record of definite rise in income due to future prospects. Obviously, the said Rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different courts, and to overcome the same.

27. In Puttamma and Ors. v. K.L. Narayana Reddy and Anr. MANU/SC/1321/2013 : (2013) 15 SCC 45, this Court was again considering a case where split multiplier for the purpose of calculation of dependency compensation was applied. It was held thus: 32. For determination of compensation in motor accident claims Under Section 166 this Court always followed multiplier method. As there were inconsistencies in the selection of a multiplier, this Court in Sarla Verma MANU/SC/0606/2009 : (2009) 6 SCC 121 prepared a table for the selection of a multiplier based on the age group of the deceased/victim. The 1988 Act, does not envisage application of a split multiplier. 3 3 . In K.R. Madhusudhan v. Administrative Officer MANU/SC/0129/2011 : (2011) 4 SCC 689 this Court held as follows: (SCC p. 692, paras 14-15) 14. In the appeal which was filed by the Appellants before the High Court, the High Court instead of maintaining the amount of compensation granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from *the multiplier used by the Tribunal without disclosing any reason therefor. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years the multiplier is 11, which is specified in the 2nd column in the Second Schedule to the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6. 15. We are, thus, of the opinion that the judgment of the High Court deserves to be set aside for it is perverse and clearly contrary to the evidence on record, for having not considered the future prospects of the deceased and also for adopting a split multiplier method. 34. We, therefore, hold that in absence of any specific reason and evidence on record the tribunal or the court should not apply split multiplier in routine course and should apply multiplier as per decision of this Court in Sarla Verma MANU/SC/0606/2009 : (2009) 6 SCC 121 as affirmed in Reshma Kumari MANU/SC/0287/2013 : (2013) 9 SCC 65. 28. From the above discussion it is clear that at the time of calculation of the income, the Court has to consider the actual income of the deceased and addition should be made to take into account future prospects. Further, while the evidence in a given case may indicate a different percentage of increase, standardization of the addition for future* *prospects should be made to avoid different yardsticks being applied or different methods of calculation being adopted. In Pranay Sethi MANU/SC/1366/2017 : (2017) 16 SCC 680, the Constitution Bench has directed addition of 15% of the salary in case the deceased was between the age of 50 to 60 years as a thumb rule, where a deceased had a permanent job. In view of the above, the High Court was not justified in applying split multiplier in the instant case."*

7. In the case of ***R.Valli and others Vs. Tamil Nadu State Transport Corporation Ltd.,*** reported in ***AIR 2020 SC 1096***, the Hon'ble Apex Court has reiterated the legal position that application of two multipliers for determination of compensation is erroneous and that suitable multiplier has to be applied keeping in view the age of the deceased as per the decision of the Hon'ble Supreme Court in ***Sarla Verma (Smt) and Others Vs. Delhi Transport Corporation and another*** reported in ***(2009)6 SCC 121*** and the relevant passages are extracted hereunder:

"8. Mr. Amit Anand Tiwari, learned Additional Advocate General has referred to certain orders of the High Courts reported as Uma Shankar and Ors. v. Revathy Vadivel and

Ors., Smt. Kamlesh Devi and Ors. v. Sh. Kitab Singh and Ors. and Union of India and Ors. v. K.S. Lakshmi Kumar and Ors. to support the applicability of split multiplier i.e., multiplier upto the date of retirement and another multiplier after retirement.

9. The judgments referred to by Mr. Tiwari are prior to the enunciation of law by this Court in Pranay Sethi. Therefore, such judgments no longer can be said to be good law as suitable multiplier is to be applied keeping in view the age of the deceased in terms of para 59.7 of the judgment in Pranay Sethi.

10. A three-Judge Bench in an order reported as United India Insurance Co. Ltd. v. Satinder Kaur alia Satwinder Kaur and Ors. has applied the multiplier keeping in view the age of the deceased even if he was a bachelor. The Court held as under:

> *48. Another three-judge bench in Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud, MANU/SC/0507/2019 : (2019) 5 SCC 554 traced out the law on this issue, and held that the compensation is to be computed based on what the deceased would have contributed to support the dependants. In the case of the death of a married person, it is an accepted norm that*

the age of the deceased would be taken into account. Thus, even in the case of a bachelor, the same principle must be applied.

11. Thus, we find that the method of determination of compensation applying two multipliers is clearly erroneous and run counter to the judgment of this Court in Pranay Sethi, affirming the judgment in Sarla Verma. Since the deceased was 54 years of age on the date of incident, therefore, the suitable multiplier would be 11 as per the judgment of this Court in Sarla Verma approved by this Court in Pranay Sethi.

8. As per the settled legal position above referred, the contention of the appellant/Insurer that the Tribunal should have applied split multiplier cannot be sustained. Except the above, the Insurer has not challenged the quantum of compensation awarded by the Tribunal. Hence, this Court concludes that the Civil Miscellaneous Appeal is devoid of merits and the same is liable to be dismissed.

9. Pending appeal, the respondnets 5 and 6 were reported dead and their legal representatives were brought on record as the respondents 8 to

11. The learned Counsel appearing for the respondents 8 to 11 would submit that the Tribunal has awarded Rs.1,98,950/- to each of the respondents 5 and 6 and that since they had died, the said amount can be apportioned between the respondents 8 to 11. The learned Counsel for the other claimants have raised no objection. Hence, the respondents 8 to 11 are entitled to get Rs.99,475/- each with interest and costs. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

10. In the result, the Civil Miscellaneous Appeal is dismissed. The parties are directed to bear their own costs. The respondents 8 to 11 are entitled to get Rs.99,475/- each with interest and costs.

12.01.2024

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

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To

1.The Motor Accident Claims Tribunal/
VI Additional District Court, Madurai.

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

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.1152 of 2018

12.01.2024