



C.M.A(MD)No.997 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

**C.M.A(MD)No.997 of 2017
and
C.M.P(MD)No.10311 of 2017**

The Branch Manager,
The Oriental Insurance Company Ltd.,
K.J.R.Complex, 1st Floor,
No.16, North Veli Street,
Madurai.

... Appellant/2nd Respondent

Vs.

1.Nagalakshmi

2.Karthikeyan

Saravanakumar
(Exonerated as per order in Memo, dated 05.01.2017)

3.Subramani

4.Karuppayee

... Respondents 1 to 4/
Petitioners 1 to 4

5.Aasaram

... 5th Respondent/1st Respondent



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PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.257 of 2014, dated 13.03.2017 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Dindigul.

For Appellant : Mr.E.Chandrasekaran
For R1 - R4 : Mr.M.Karunanithi
For R5 : No Appearance

JUDGMENT

(Judgment of the Court was delivered by **P.VADAMALAI, J.**)

This Civil Miscellaneous Appeal is preferred against the Award, dated 13.03.2017 passed in M.C.O.P.No.257 of 2014 by the Motor Accident Claims Tribunal/Principal District Judge, Dindigul.

2. The 2nd respondent in M.C.O.P.No.257 of 2014 is the appellant herein.

3. The respondents 1 to 4 herein are the petitioners/claimants, who filed the claim petition in M.C.O.P.No.257 of 2014. The 5th respondent



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herein is the 1st respondent in the claim petition. The appellant is the 2nd respondent in the claim petition.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 257 of 2014 is adopted hereunder.

5.The brief facts of the case:

On 22.10.2013 at about 01.30 p.m. the deceased Murugesan was riding as a pillion rider in a two wheeler bearing registration number TN 58 AC 0186 along the Kannivadi - Dindigul road, driven by its rider in a moderate speed, while the vehicle was nearing Vakkil Ganesan Thottam of Alathooranpatti, a dog suddenly crossed the road and dashed against the two wheeler. Due to the impact, the deceased fell down and sustained head injuries and other parts of the body. Immediately, the injured Murugesan was admitted in the Government Hospital, Dindigul. After first aid, he was admitted in the Apollo Hospital, Madurai and again he was shifted to Government Rajaji Hospital, Madurai on 27.10.2013. However, despite treatment, Murugesan died on 28.10.2013 due to accidental injuries. At the



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time of accident, the deceased Murugesan was working as a Firka Surveyor and was earning Rs.25,000/- p.m. The petitioners are being wife, son and parents of the deceased depending solely on his income. F.I.R. was registered in Crime No.167 of 2013 of Kannivadi Police Station under Section 279 & 337 of IPC and then altered into Section 304 (A) of IPC against the rider of the two wheeler. The offending vehicle was owned by the 1st respondent and insured with the 2nd respondent. Hence, the petitioners, who are the dependants of the deceased Murugesan, filed the claim petition seeking compensation of Rs.35,00,000/-.

6. The 1st respondent remained ex-parte before the Tribunal.

7. The 2nd respondent/Insurance Company objected that the accident occurred due to careless and negligent driving of the rider of the motorcycle. The rider was not having valid driving licence. The insurance policy and registration certificate are disputed. The particulars of age and income of the deceased Murugesan are denied. The 2nd respondent/Insurance Company is not liable to pay compensation to the claimants.



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8. Before the Tribunal, the petitioners adduced oral and documentary evidence. Petitioners examined two witnesses as P.W.1 and P.W.2 and marked 7 documents as Ex.P.1 to Ex.P.7. On the respondents' side no witness was examined and no document was marked. After hearing both and after considering the evidences, the Tribunal has held that the accident happened due to negligence on the part of the rider of the 1st respondent's motorcycle TN 58 AC 0186 and awarded Rs.21,12,240/- to the petitioners with interest and cost and directed the 2nd respondent to pay the award amount. Aggrieved by the said award, the 2nd respondent has preferred this Civil Miscellaneous Appeal.

9. Heard both side and perused the records in this Civil Miscellaneous Appeal.

10. It is the main contention of the counsel for the appellant/2nd respondent Insurance Company is that the deceased was at the verge of superannuation and the deceased was aged 59 years and 11 months and hence, split multiplier ought to have been adopted. The Tribunal held the



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age of the deceased as 51. It is further contended that even if the deceased was aged 51 years and he would get retirement at 58 years and hence, split multiplier has to be adopted for the persons more than 50 years, but the Tribunal adopted multiplier '11'. As per Ex.P.5, the gross salary of the deceased was Rs.17,260/-, the loss of dependency is Rs.1,39,644/- per annum after deducting 1/4 personal expenditure and income tax and by multiplying '7' the total loss of dependency is Rs.9,77,508/- and thereafter, the pension is Rs.93,096/- p.a. and for three years the amount would be Rs.2,79,288/-. After awarding incidental benefits, the claimants are entitled to Rs.16,45,296/- only, but the Tribunal awarded Rs.21,12,240/-. In support of his argument, the learned counsel for the appellant/2nd respondent relied on the following citations:

"(i) 2008 (2) TNMAC 73 (National Insurance Company Ltd., Vs. Shanthi Pandian and Ors.)

(ii) 2010 (2) TNCJ 925 (Mad) (Managing Director TNSTC Ltd., Vs. Kunjunjamma Mathew and Ors.)

(iii) 2013(2) TNMAC 113 (R.Leelavathy Vs. Sheik Dawood)"



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11. Per contra, the learned counsel for the petitioners submitted that the deceased was working as Firka Surveyor in the Revenue department and he was a permanent employee, so, the Tribunal after considering the settled proposition of law in **Sarla Verma** case, fixed income of the deceased and deducted 1/3 towards his dependency and also adopted the multiplier. The deceased was aged 51 years at the time of accident. The 2nd respondent has not produced any document to show that the deceased was aged 59 years and 11 months. The Tribunal has correctly adopted the multiplier '11' after deducting the amount towards personal expenditure. So, the appeal may be dismissed.

12. On perusal of the records, it is clear that the accident had taken place on 22.10.2013. There is no dispute regarding negligence on the part of the rider of two wheeler and the vehicle was insured with the 2nd respondent/appellant. Though the 2nd respondent stated that the rider of the offending vehicle was not possessing driving license, the 2nd respondent did not produce any valid material records to establish the same.



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13. On perusal of records, the pay certificate of the deceased was marked as Ex.P.5. It is seen from Ex.P.5 that the deceased was working as Firka Surveyor in the Revenue Department. The petitioners state that the deceased was a permanent government employee. The 2nd respondent has not placed any contra material against the petitioners' version. Both sides have not produced any document to show the age of the deceased. Hence, the Tribunal fixed the age of the deceased as 51 on the basis of Ex.P.7 - Post Mortem certificate. It is not disputed by the appellant/2nd respondent. On perusal of the order of the Tribunal, it has correctly fixed multiplier '11' in view of the settled proposition of law in the **Sarla Verma case (2009 (2) TNMAC 1 SC)** and there is no need of interference in it.

14. The main contention raised by the appellant/2nd respondent is that the Tribunal ought to have adopted split multiplier. Admittedly, the deceased was permanent government employee having permanent income and aged 51 years at the time of accident. So, in the absence of any specific reason and record placed by the 2nd respondent, the Tribunal cannot apply split multiplier in routine course. Furthermore, the Division Bench of this



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Court in its order in C.M.A(MD)No.3667 of 2014, dated 05.06.2018 held that split multiplier cannot be adopted and only the completed age of the deceased should be taken into consideration for multiplier, following the decision held in C.M.A.No.661 of 2016, dated 31.03.2016, which is extracted hereunder.

*“In this regard, it would be appropriate to place reference in the decision of a Division Bench in **C.M.A.No.661 of 2016 (National Insurance Company Ltd., Vs. Aanandhanayaki and others)** dated 31.03.2016, wherein it has been held in an identical situation that only the completed age of the deceased should be taken into consideration.”*

Another decision of the Division Bench of this Court reported in **CDJ 2016 MHC 6131 (Oriental Insurance Company Ltd., Vs. Venkateswari & Others)**, wherein also split multiplier was not adopted.

15. The Hon’ble Supreme Court in recent case held that split multiplier is erroneous in accidental cases. **The Division Bench of the**



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Hon'ble Supreme Court held in Civil Appeal No.1269 of 2022, dated 10.02.2022, wherein it is held in paragraph Nos.8 to 11 as follows:

"8. Mr. Amit Anand Tiwari, learned Additional Advocate General has referred to certain orders of the High Courts reported as **Uma Shankar & Ors. v. Revathy Vadivel & Ors. (2014 SCC Online Madras 846)**, **Smt. Kamlesh Devi & Ors. v. Sh. Kitab Singh & Ors. (2011 SCC OnLine Del 2843)** and **Union of India & Ors. v. K.S. Lakshmi Kumar & Ors. (2000 SCC OnLine Kar 406)** 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.**



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Satinder Kaur alia Satwinder Kaur & Ors.

82020 SCC OnLine SC 410 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, (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*



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*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**."*

16. Thus it is held by the Hon'ble Supreme Court that for determination of compensation in accident cases, multiplier should be taken only on the completed age of the deceased. If there is any inconsistency in selection of multiplier, the Court should follow the decision of **Sarla Verma** case. Therefore, multiplier should be adopted as per the decision in the case of **Sarla Verma** case as affirmed in the case of **Reshma Kumari**. In our opinion, the Tribunal has correctly adopted the multiplier '11' and there is no need to interfere in it. Further, in other respects, there is no objection raised by the appellant/2nd respondent/Insurance Company in respect of other compensation under various heads awarded by the Tribunal. Therefore, the compensation awarded by the Tribunal is held correct and the same is not liable to be set aside.

17. In the result, this Civil Miscellaneous Appeal is dismissed and the Award dated 13.03.2017 passed in M.C.O.P.No.257 of 2014 by the



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Motor Accident Claims Tribunal/Principal District Judge, Dindigul is confirmed. No costs. Consequently connected Miscellaneous Petition is closed.

(N.S.S.,J.)

(P.V.M.,J.)

04.07.2024

NCC : Yes / No

Internet : Yes / No

Index : Yes / No

VSD

To

- 1.The Motor Accident Claims Tribunal/
Principal District Judge,
Dindigul
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.

AND

P.VADAMALAI. J.

VSD

Judgment made in
C.M.A(MD)No.997 of 2017
and
C.M.P(MD)No.10311 of 2017

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