

(2017) 01 KL CK 0032
In the High Court Of Kerala
Case No : 3998 of 2016

KUMARAN & Ors.

APPELLANT

Vs

ROY MATHEW & Ors.

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

Citation : (2017) 01 KL CK 0032

Hon'ble Judges : C K Abdul Rehim, Shircy V

Bench : DIVISION BENCH

Advocate : C Suresh Menon, P S Appu, A R Nimod, Mathews Jacob, P Jacob Mathew

Final Decision : Dismissed

Judgement

1. The claimants in OP (MV) No.1715/2009 on the files of the Motor Accidents Claims Tribunal, Thrissur, is in appeal challenging the quantum of compensation awarded by the Tribunal. When the appeal came up for admission, the 3rd respondent Insurance Company entered appearance through Senior Counsel Sri. Mathews Jacob. We heard counsel for the appellants as well as the Senior Counsel appearing for the 3rd respondent.

2. The claim petition before the Tribunal was filed by dependents of a person who died in a motor vehicle accident, which occurred on 23-06-2006 at 9.25 a.m. The deceased while riding a Scooter was hit by a Tipper Lorry at Thrissur-Shornur public road. The Tribunal found that the Driver of the Tipper Lorry was negligent in causing the accident, and hence held that the 3rd respondent insurer is liable to pay the compensation. The Tribunal awarded a total compensation of Rs.13,27,980/- along with interest at 9% per annum. In the appeal the appellants are seeking enhancement of the compensation, mainly disputing the method of computation adopted for determining compensation under the head of "loss of dependency".

3. The deceased at the time of death was working as a Drawing Teacher in the

Government Boys High School, Wadakkancherry. From Ext.A11 Certificate it is proved that she was drawing a net salary of Rs.17,933/- per month. From the records it was revealed that the deceased was aged 52 years at the time of death and was left with a service of 4 more years, till her retirement, which is at the age of 56 years. The Tribunal found that the correct multiplier to be adopted in the case is 11. But taking note of the deduction in the extent of income after her retirement, a split multiplier was adopted. For the period of 4 years left in her service, the full salary was adopted for determining the multiplicand. For the remaining period of 7 years, the multiplicand was fixed by adopting 50% of the salary, observing that if she would have alive she will be entitled only for a monthly pension, which will only be half of the salary.

4. Learned counsel for the appellant contended that adoption of a split multiplier method is illegal. In this regard he relied on a decision of the hon"ble Supreme Court in Puttamma and others V. K.L. Narayana Reddy and another (2014 (1) KLT 738) (SC). The hon"ble Supreme Court observed therein that, in the absence of any specific reason and evidence on record the Tribunal should not apply any split multiplier in a routine course and should apply the multiplier applicable as per decision of the Supreme Court in Sarala Verma V. Delhi Transport Corporation (2010 (2) KLT 802 (SC) which is affirmed in Reshma Kumari V. Madan Mohan (2013 (2) KLT 304)(SC). In support of the above proposition the hon"ble Supreme Court placed reliance on an earlier decision in Madhusudhan V. Administrative Officer and another (2011 (1) KLT SN 98) (Case No.136) (SC). In the said case the split multiplier adopted by the High Court was reversed on observing that, the High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal, without disclosing any reasons thereof. In Madhusudhan's case (cited supra) the multiplier of 11 adopted by the Tribunal was reduced to 6 by the High Court, without specifying any reasons.

5. We are of the considered opinion that in both the decisions of the hon"ble Supreme Court, in Madhusudhan's case (cited supra) as well as in Puttamma's case (cited supra), the dictum laid is only to the effect that in the absence of any specific reasons and availability of evidence on record, split multiplier should not be adopted in a routine course and the multiplier as specified in Sarala Verma's case (cited supra) which is affirmed in Reshma Kumari's case (cited supra) shall be adopted. But in the case at hand the specific reason mentioned for adopting different multiplicands for different periods within the multiplier of 11 years is based on evidence available and the reasoning mentioned thereof is well founded. In a recent decision of a Division Bench of this court in Oriental Insurance Company Ltd. V. Valsa (2015 (1) KLT 781) it was held that, while fixing the compensation a balancing of all essential factors, including disadvantages will have to be adopted by the court. It is held that, when there is a sure date of superannuation it cannot be ignored that there will be a reduction in the multiplicand. In case of a Government employee, it is sure that the deceased would earn only a monthly pension after his/her retirement. Accepting the arguments of the Insurance Company, the Division Bench observed that, while

taking the multiplier of 13 a reduction of salary going by the date of superannuation will be justified. We do not find any illegality or error committed by the Tribunal in adopting dictum contained in Valsa's case (cited supra).

6. Learned counsel for the appellants had cited a Division Bench decision of the Madras High Court (Madurai Bench) in M/s. Oriental Insurance Company Ltd. V. Venkateswari and others (CDJ 2016 MHC 6131). It is evident that, in the said case the learned Judges of the Madras High Court had only followed the dictum in Puttamma's case (cited supra) in holding that, in the absence of any specific reasons and evidence on record, the Tribunal or the court shall not apply split multiplier in a routine course. Learned counsel for the appellants pointed out that, in the said case the Madras High Court had rejected the contention of the Insurance Company for adoption of a split multiplier in the case of a Government employee.

7. But, as already observed, we are of the considered opinion that the dictum laid by the hon"ble Supreme Court in Madhusudhan's case (cited supra) as well as in Puttamma's case (cited supra) is only to the effect that, there should be specific reasons based on evidence available on record in order to apply a split multiplier. When there is a certainty with respect to future earnings of the deceased, if he/she would have been alive, the Tribunal shall not shut its eyes with respect to such certainties. Therefore, when there is clear evidence with respect to the date or year of retirement of the deceased on attaining superannuation, it cannot be contended that the Tribunal should adopt the same rate of earning also for the period of post retirement. The considerable reduction in the income, which would definitely fall in the life of the deceased after attaining superannuation if he/she would have been alive, is a factor which may be taken note of by the Tribunal. Such specific reason for adopting a different multiplicand for different periods, specifically split up from the entire period of multiplier, is based on reasons available in the evidence on record. Application of split multiplier in such cases with different rates of multiplicand is not illegal or erroneous, nor it run against the dictum contained in the decisions of the hon"ble Supreme Court cited above.

8. Eventhough the appellants claimed enhancement with respect to amounts awarded by the Tribunal under different other heads, on an evaluation of the impugned Award, we are convinced that the Tribunal had awarded only reasonable amounts under all other heads. Hence the appellants are not entitled for any enhancement in the amount of compensation awarded by the Tribunal. In the result, the appeal fails and the same is hereby dismissed.