

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.1658 of 2015

1. D.Shanmugam
2. D.S.Suguna
3. R.Bhavani
4. Minor H.Anish

Appellants

versus

1. D.Jayakumar
2. ICICI Lombard General Insurance Co. Ltd.,
ICICI Lombard House,
414, Veer Savarkar Marg,
Prabhadevi, Mumbai 400 025.

Respondents

Prayer: Civil Miscellaneous Appeal is filed, against the judgment and decree in M.C.O.P.No.6160 of 2012, dated 27.04.2015, on the file of the Motor Accident Claims Tribunal (IInd Judge, Small Causes Court), Chennai.

For Appellant : Mr.A.Sirajudeen

For 2nd Respondent : Mr.J.Michael Visuvasam

JUDGMENT

(Judgement of the Court was made by S.MANIKUMAR, J.)

In the accident, which occurred on 23.12.2012, Hemachandran, aged about 32 years, claimed to have worked as an Aircraft Maintenance Engineer, Airworks India Engineering Pvt. Ltd., (GAMRO), Gurgaon and earned Rs.1,61,356/- per month, died. Legal representatives of the deceased, parents, wife, minor son, aged about 2 years, have claimed that the deceased had passed a three year course in Aircraft Maintenance Engineering and undergone various trainings in U.S., Canada and Spain. They further claimed that the deceased had also obtained licence to maintain Airbus, Bombardier and worked in Fly Emirates, Jet

Airways and Kingfisher Airlines. According to him, apart from his pay, the deceased was entitled to bonus, incentives, overtime allowance, annual increments and periodical promotions.

2. Legal representatives of the deceased have further submitted that there is an increasing demand for qualified engineers in Airline Industry and had the deceased been alive, he would have earned higher income, with good prospects. To prove the educational qualification and experience of the deceased, they have produced documents, such as, Ex.P3 - Diploma course completion certificate, Ex.P4 - Diploma Certificate, Ex.P5 - Experience Certificate issued by M.Venugopala Reddy & Co., Ex.P6 - Experience Certificate issued by Gemnet Info Systems, Ex.P7 - Course Completion Certificate issued by Jet Airways, Ex.P8 - Aircraft Maintenance Engineer's Licence issued by the Government of India, Ex.P9 - Experience Certificate issued by Jet Airways, Ex.P10 - Practical Training Certificate, Ex.P11 - Course Completion Certificate issued by Emirates, Ex.P12 - Quality assurance authorization/approval certificate issued by Emirates, Ex.P13 - Experience Certificate issued by Emirates, Ex.P14 - Course completion certificate issued by International Aero Engines, Exs.P15, P16 and P22 - Course Completion Certificates issued by Kingfisher Airlines, Ex.P17 - Experience Certificate issued by Kingfisher, Ex.P18 - Training Certificate issued by Jet Airways, Ex.P19 - Experience Certificate issued by Paramount Airways, Exs.P20, P21, P26, P27 - Training Completion Certificates issued by Bombardier, Ex.P23 - Refresher course certificate, Ex.P24 - Performance Certificate issued by the last employer, Air Works India (Engineering) Private Ltd., Ex.P25 - Training Certificate issued by Bombardier, Ex.P28 - Pay Certificate for the month of August 2012, Ex.33 - Experience Certificate by Air Works, Ex.P34 - Pay Fixation letter along with details of pay, paid to the deceased, Hemachandran and Ex.P35 - Service confirmation letter, issued by Kingfisher Airlines, in favour of the deceased.

3. PW.3, Mrs.S.Lakshmi Narayanan, stated to be the Manager (Administration and Operation) of M/s.Air Works (Engineering) Private Ltd., has adduced evidence, regarding salary. Noticing that as per Ex.P28 - Salary Certificate, the basic pay and HRA of the deceased were Rs.46,970/- and Rs.23,485/- respectively, and by observing that Special Allowances, etc., relate to the personal effort of the employee, and deducting the same, the Tribunal has fixed the monthly income of the deceased as Rs.70,355/-, for the purpose of determining the loss of dependency.

4. Thereafter, the Claims Tribunal, taking note of the multiplier, as per the Second Schedule to Section 163-A of the Motor Vehicles Act, for the age group of persons between 30 and 35 years, applied '17' multiplier and the dependents, being

four, deducted 1/4th towards the personal and living expenses of the deceased and thus, arrived at the dependency compensation as Rs.1,13,02,620/-. That apart, the Claims Tribunal has awarded Rs.50,000/- towards loss of consortium, Rs.1,00,000/- towards loss of love and affection and Rs.15,000/- towards Funeral expenses. Altogether, a sum of Rs.1,14,67,620/- has been awarded as compensation to the legal representatives of the deceased.

5. Not satisfied with the quantum of compensation, legal representatives of the deceased have filed the present appeal.

6. Reiterating the memorandum of grounds, filed in support of the appeal, Mr.A.Sirajudeen, learned counsel for the appellants submitted that the Claims Tribunal has failed to consider that the last drawn salary of the deceased was Rs.1,61,356/- per month, which includes various amounts, under different heads and they are part of monthly income, and paid to the deceased. He therefore contended that the Claims Tribunal ought to have taken the entire salary of the deceased, but, grossly erred in fixing the monthly income of the deceased, by taking into account, only the Basic Pay and HRA.

7. Learned counsel for the appellant further contended that as the deceased was employed, his entire HRA is fully exempted from income tax and tax liability upto Rs.10,00,000/- per annum, is only 20%, with a lesser slab upto Rs.5,00,000/- and exemption upto Rs.2,50,000/- per annum. He therefore submitted that the Tribunal has erred in deducting income-tax at 30%. He also submitted that when the actual Basic Pay was Rs.46,970/-, the Tribunal has erred in taking into account, the Basic Pay as Rs.46,870/- per month. Sum of Rs.100/- per month for computation of dependency, is urged.

8. Learned counsel for the appellants further submitted that the quantum of compensation of Rs.50,000/-, awarded under the head, consortium, to the wife of the deceased, aged 24 years, is less. Quantum of compensation of Rs.1,00,000/- awarded to the parents and the minor son, aged about 2 years, under the head, "loss of love and affection", is less. He also contended that a sum of Rs.15,000/- awarded for funeral expenses, is less. Thus, for the abovesaid reasons, he prayed for enhancement of compensation.

9. Though M/s.ICICI Lombard Insurance Company, has not preferred any cross-objection or any independent appeal, challenging the finding of the Tribunal, regarding employment and determination of the monthly income of the deceased at Rs.70,355/-, Mr.J.Michael Visuvasam, learned counsel for the respondent-insurance Company submitted that the accident has occurred on 23.12.2012 and though the deceased was stated to have been employed as an Aircraft Maintenance Engineer in

Airworks India Engineering Pvt. Ltd., (GAMRO), Gurgaon, on the date of accident, ie., 23.12.2012 and issued with Training and Experience Certificates, legal representatives of the deceased have not produced the vital documents, viz., Appointment Order, if any issued, by M/s.Airworks India Engineering Pvt. Ltd., (GAMRO), Gurgaon and Income-Tax returns for the Financial Year, April 2011 to March 2012, to prove that as on the date of accident, ie., on 23.12.2012, the deceased was actually employed in the above Company and earned such a huge sum as salary.

10. It is also contended that though PW.3, Manager (Administration & Operations) of M/s.Airworks India Engineering Pvt. Ltd., (GAMRO), Gurgaon, has adduced evidence and Ex.P28, salary slip for the month of August' 2012, was produced, it is the contention of the Insurance Company that the claimants have not produced any documents for the subsequent months of September and October' 2012. No Attendance Register has been produced. According to the Company, even PW.3, Manager (Personnel and Administration), could not explain the contents of Salary Slip, Ex.P28, said to have been given by M/s.Airworks India Engineering Pvt. Ltd., (GAMRO), Gurgaon, for the month of August' 2012.

11. Therefore, learned counsel for the respondent-Insurance Company submitted that in the absence of any concrete evidence to prove that the deceased was actually employed in M/s.Airworks India Engineering Pvt. Ltd., (GAMRO), Gurgaon, on the date of accident, ie., 23.11.2012, the Tribunal has erred in accepting employment in the above Company, and consequently, erred in fixing the monthly income of the deceased. According to him, the deceased was not employed with M/s.Airworks India Engineering Pvt. Ltd., (GAMRO), Gurgaon, on the date of accident. Thus, he has questioned the very determination of monthly income for the purpose of computing the loss of dependency, on the grounds that, there was no proof of employment, as on the date of accident.

12. Without prejudice to the above, learned counsel for the Insurance Company submitted that as per Ex.P28 - Salary Certificate, allowances given under various heads, viz., Rs.800/- towards conveyance, Rs.41,881/- under special allowance, and Rs.1,250/- towards medical allowances, totaling Rs.43,931/-, cannot be taken as part of income, as they are in the nature of reimbursement, for the expenses incurred by the deceased.

13. Learned counsel for the respondent-Insurance Company submitted that a total sum of Rs.46,970/-, mentioned under the head, "OTHERN", should not BE taken into consideration for determining the monthly income of the deceased. He further submitted that the monthly income of the deceased can be

reckoned only as Rs.1,14,386/- (Rs.1,61,356/- - Rs.46,970/-) and not Rs.1,61,356/-, as claimed by the claimant. He also submitted that the Tribunal has erred in adopting '17' multiplier for computing the loss of compensation, which requires to be rectified. In the written arguments, the appellant-Insurance Company has tabulated, as to how, the compensation ought to have been arrived at.

14. Both the parties have submitted the working sheets, as to how, income should be determined and accordingly, dependency compensation should be arrived at.

Heard the learned counsel for the parties and perused the materials available on record.

15. Wife of the deceased was aged about 24 years. The Tribunal has awarded Rs.50,000/- as loss of consortium. 'Consortium' as per the decision in Best v. Samuel Fox reported in 1952 AC 716 means, "Duty owed by a wife to her husband and vice versa, companionship, love and affection, comfort, mutual services, sexual intercourse, etc." In Rajesh and others v. Rajbir Singh and others reported in 2013(3) CTC 883, the Hon'ble Apex Court, held as follows:

"In legal parlance, 'Consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for Loss of Consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By Loss of Consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the Courts award atleast Rupees one lakh for Loss of Consortium."

Following the judgment and considering the age of the widow, claimant, aged 24 years, this Court is inclined to enhance the compensation under head loss of consortium to Rs.1,00,000/-.

16. Legal representatives of the deceased, wife, parents and in particular, the minor child, aged five years, have lost the love and affection of the deceased. In *Rajesh v. Rajbir Singh* reported in 2013 (2) TNMAC 55, the Hon'ble Apex Court has awarded Rs.1,00,000/- for loss of love and affection. Parents are stated to be aged 66 years and 54 years respectively and they have lost the love and affection of their son. Loss of love and affection cannot be precisely measured in terms of money. But the same has to be quantified, taking into consideration the age of the claimants and decisions on the said aspect. Therefore, this Court is inclined to award Rs.1,00,000/- for the minor child and Rs.75,000/- to each parent. The total compensation under the head, loss of love and affection, would be Rs.2,50,000/-.

17. On the aspect of awarding compensation for funeral expenses, in *Rajesh and others Vs. Rajbir Singh and others* reported in 2013(3) CTC 883, the Hon'ble Supreme Court held as follows:

"21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-."

Following the decision of the Hon'ble Apex Court in *Rajesh's* case (cited supra), funeral expenses of Rs.15,000/- awarded by the Tribunal is enhanced to Rs.25,000/-.

18. The Tribunal has not awarded any compensation for transportation, damages to clothes and articles and loss of estate. We deem it fit to award Rs.10,000/- under the head loss of estate, Rs.10,000/- for transportation, Rs.2,000/- for damages to clothes and articles.

19. Though Mr.J.Michael Visuvasam, learned counsel for the Insurance Company contended that in the absence of any documentary evidence, the appointment letter, salary certificates or slips, after August 2012, the Tribunal ought not to have determined the monthly income of the deceased, by concluding that the deceased was employed on the date of accident i.e., on 23.10.2012 and further contended that 50% of income, ought not to have been added under the head future prospects, this Court is not inclined to accept the said contention, for the reason that the documents produced by the legal representatives of the deceased, makes it abundantly clear that the deceased was not only qualified as an Air Craft Maintenance Engineer, but underwent training, in different areas from many reputed air liners. Air Craft Maintenance is a specialised field and with the required educational qualification, vast experience, knowledge and training, one may be substantively paid. The Insurance Company has not filed any appeal or cross objections, challenging the finding of the Tribunal, regarding employment of the deceased. Therefore, it is not open to them to assail the said finding, in the appeal, filed by the claimants for enhancement. The contentions are untenable.

20. Unlike in the case of qualified engineers, in other non-specialised disciplines, Air Craft Maintenance Engineers with sufficient experience, may be less in number. judicial notice can also be taken that today, air line industry is growing. Air Ports are crowded, though many Airlines are in the trade and operating flights. Therefore, the contention of the appellants that there is a demand for Air Craft Maintenance Engineers, and that they have good prospects, cannot be ignored, while determining the actual income, for the purpose of computing loss of dependency. For the reasons stated supra, this Court is of the view that had the deceased been alive, he would have had good future prospects, with reasonable hike in salary and other perks.

21. To avoid inconsistency in the matter of ascertaining the multiplier and after considering the decisions in Kerala SRTC Vs. Susamma Thomas, reported in 1994 (2) SCC 176, U.P.SRTC Vs. Trilok Chandra, reported in 1996 (4) SCC 362, and New India Assurance Co.Ltd., Vs Charlie, reported in 2005 (10) SCC 720,

the Hon'ble Supreme Court in Smt.Sarla Verma & Ors. v. Delhi Transport Corporation and another reported in 2009 (2) TNMAC 1 (SC), has standardised the multiplier, applicable to different age groups.

22. Though Mr.J.Michael Visuvasam, learned counsel for the Insurance Company, contended that the Tribunal ought to have applied '9' multiplier, applicable to the age of parents, by citing the judgment of the Hon'ble Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum V. Susamma Thomas (Mrs) and Others reported in (1994) 2 SCC 176, this Court is not inclined to apply the multiplier applicable, to the age of the parents for the reason that, at the time of accident, among the claimants, widow/wife was aged about 24 years, and the minor son, was aged about 2 years. At the young age, she has lost her husband, and has to nurture and bring up the minor son. Any compensation amount determined by a Court should be based on the principle of just compensation and on the facts of this case, considering the age of the wife and minor son, who have lost their breadwinner and applying the judgment in Sarla Verma's case (cited supra), we fix the multiplier as '16', applicable to the age of persons, between 30 and 35 years.

23. Before adverting to the rival contentions on the determination of loss of dependency, let us consider few decisions of the Courts, as to how, the claims tribunal/courts should award compensation on the principles of just compensation and what are all the amounts, that should be taken into consideration, while determining the monthly income of the deceased, for the purpose of computing the loss of contribution to the family.

24. In R.D.Hattangadi v. M/s.Pest Control (India) Pvt. Ltd., reported in AIR 1995 SC 755, wherein, the Apex Court held as follows:

"In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards."

25. In Common Cause, A Registered Society v. Union of India reported in 1999 (6) SCC 667, at Paragraph 128, held as follows:

"The object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The elements of damage recognised by

law are divisible into two main groups : pecuniary and non- pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do. In *Re: The Medianna* (1900) A.C. 1300, Lord Halsbury L.C. observed as under:

"How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident...But nevertheless the law recognises that as a topic upon which damages may be given."

26. In yet another decision in *Divisonal Controller, KSRTC v. Mahadeva Shetty* and another reported in (2003) 7 SCC 197, at Paragraph 12, the Supreme Court has held that,

"Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependents of the deceased which includes pecuniary benefits to the dependents of the deceased which includes pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded."

At Paragraph 15 of the said judgment, the Supreme Court has held that,

"Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted

for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness, and non-arbitrariness. If it is not so, it cannot be just."

27. Following Mrs. Helan C. Rebello's case, the Andhra Pradesh High Court in S. Narayanamma and others v. Secretary to Government of India and others [II (2002) ACC 582], held that,

"the contributions made by the deceased-employee towards Employees' Provident Fund, Life Insurance (LIC), Group Insurance and the deductions shown in the salary certificate of the deceased-employee towards the vehicle loan instalment, benefit fund, and also the amounts received by the deceased-employee towards interim Relief, Special Pay, Dearness Allowance, House Rent Allowance, need not be deducted from the gross salary of the deceased for ascertaining the income, because the contributions/deductions made towards, E.P.F., L.I.C., Group Insurance and Benefit Fund would be beneficial to the family of the deceased-employee and it would be the estate of the deceased. "

28. In A. Lakshmi v. Arjun Associated Pvt. Ltd., reported in 2005 ACJ 704, the Andhra Pradesh High Court has considered a question, as to whether the deductions of professional tax from the gross salary of the deceased is permissible while computing compensation. The Court has considered as to whether, deferred payments receivable under Provident Fund Act, as well as Insurance Scheme being contractual benefits are deductible from the gross salary of the deceased, while computing compensation. Following the principles laid down in Mrs. Helan C. Rebello's case, the Court held that,

"savings out of his own earnings, cannot be treated as payable benefit of account of accidental death. The compensation under the Act is a statutory one. While the amounts receivable in respect of contribution are contractual."

On the facts and circumstances, at Paragraphs 38 and 39, in A.Lakshmi's case, the Andhra Pradesh High Court, held as follows:

"The gains that may be received by the victim or his dependants, may be they are out of the accident and death, on account of the savings or other investments made by the deceased would not go to the benefit of wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns.

.....Such amount cannot be deducted from the compensation payable under Section 168 of the Motor Vehicles Act, whereunder the victim has to receive just and reasonable compensation to compensate and loss in monetary terms. Hence I hold that the only judgment of the Supreme Court in Asha's case (supra), whereunder their lordship's approved the action of the High Court in deducting the amounts paid towards life insurance premium, society charges, H.B.A., etc., is not a correct proposition."

Para 40 of the said judgment, reads as follows:

"The Tribunal went wrong in taking only net salary of the deceased after deducting G.P.F., G.I.S., and L.I.C., contributions made by him during his life time. On the other hand, the Tribunal is justified in deducting professional tax in arriving at gross salary of the deceased."

29. In The Manager, National Insurance Co., Ltd., v. Padmavathy & 8 others reported in 2007-2-L.W.182, one of the learned Judges of this Court (Hon'ble Mr. Justice S. MANIKUMAR), held as follows:

"General Provident Fund Act, 1945 is a beneficial enactment with the object that the employee, either from public sector or private sector in case of retirement should have some means to life or in case of death his dependants should have some means to live. Contributions are made by the employee towards provident fund and by the employee towards provident fund and by the employer in equal proportion which carries interest. An employee can avail loan facility from the said amount, depending upon the necessities, such as illness, marriage expenses, or any other bona fide reason. The amount of contribution from his salary towards provident fund is only the part of his

savings and if the employee dies during the course of his employment, whatever savings he had with accrued interest will be refunded. In other words, it is only a deferred payment and the contribution which are made is savings. Similarly, the contribution which are made under the Group Insurance Scheme, a part of social security system is also savings, which are refunded to the employee.

Income tax, Professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., Contribution are amounts paid specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lumpsum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing dependency compensation, then the Legal Representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only statutory deductions such as Income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contribution made by the employee during his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation."

30. The aforesaid view of this Court has been approved by the Hon'ble Supreme Court in National Insurance Co. Ltd., Vs. Indira Srivastava & Others, reported in 2008 (2) SCC 763, wherein, it has been held as follows:

"9. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also

other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

10. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. For the aforementioned purpose, we may notice the elements of pay, paid to the deceased :

"BASIC : 63,400.00
CONVEYANCE ALLOWANCE : 12,000.00
RENT CO LEASE : 49,200.00
BONUS (35% OF BASIC) : 21,840.00
TOTAL : 1,45,440.00

In addition to above, his other entitlements were :

Con. to PF 10% Basic Rs. 6,240/- (p.a.)
LTA reimbursement Rs. 7,000/- (p.a.)
Medical reimbursement Rs. 6,000/- (p.a.)
Superannuation 15% of Basic Rs. 9,360/- (p.a.)
Gratuity Cont. 5.34% of Basic Rs. 3,332/- (p.a.)
Medical Policy-self & Family @ Rs.55,000/- (p.a.)
Education Scholarship @ Rs.500 Rs.12,000/- (p.a.)

Payable to his two children Directly"

.....

19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contra distinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.

20. The term 'income' in P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Ed.) has been defined as under:

"The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture."

It has also been stated :

'INCOME' signifies 'what comes in' (per Selborne, C., Jones v. Ogle, 42 LJ Ch.336). 'It is as large a word as can be used' to denote a person's receipts (per Jessel, M.R. Re Huggins, 51 LJ Ch.938.) income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. AIR 1921 Mad 427 (SB). Ref. 124 IC 511 : 1930 MWN 29 : 31 MLW 438 AIR 1930 Mad 626 : 58 MLJ 337."

21. If the dictionary meaning of the word 'income' is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income-tax or profession tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.

22. In N. Sivammal & Ors. v. Managing Director, Pandian Roadways Corporation & Ors. [(1985) 1 SCC 18], this Court took into consideration the pay packet of the deceased.

23. We may notice that in T.N. State Transport Corporation Ltd. v. S. Rajapriya & Ors. [(2005) 6 SCC 236], this Court held:

"8. 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 together.

9. The manner 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 capitalised by multiplying it by a figure representing the proper number of years' purchase.

10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

24. Yet again in New India Assurance Co. Ltd. v. Charlie & Anr [(2005) 10 SCC 720], the same view was reiterated. However, therein although the words 'net income' has been used but the same itself would ordinarily mean gross income minus the statutory deductions. We must also notice that the said decision has been followed in New India Assurance Co. Ltd. v. Kalpana (Smt.) & Ors. [(2007) 3 SCC 538]".

31. As per Ex.P.28 Pay-slip, for the month of August 2012, issued by M/s.Air Works India (Engineering) Private Limited (GAMRO), the designation of the deceased has been mentioned as Air Craft Maintenance Engineer - A & C (Grade M III). The location of work has been described as Chennai - Airport. The gross salary is Rs.1,61,356/- p.m., which includes,

Basic	...	Rs. 46,970/-
H.R.A.	...	Rs. 23,485/-
Conveyance allowance	...	Rs. 800/-
Special Allowance	...	Rs. 41,881/-
Medical Allowance	...	Rs. 1,250/-
Others	...	Rs. 46,970/-

		Rs.1,61,356/-

The gross deduction from the salary is Rs.16,459/- under the following heads:-

P.F.	...	Rs. 780/-
Professional tax	...	Rs. 183/-
Income tax	...	Rs.14,496/-

		Rs.16,459/-

32. Though Mr.A.Sirajudeen, learned counsel for the legal representatives of the deceased has contended that whole of H.R.A of Rs.23,485/- is fully exempted from Income tax and further contended that the tax liability, upto Rs.10 lakhs p.a., is only 20%, with a lesser slab upto Rs.5 lakhs, and that there is also an exemption upto Rs.2,50,000/- p.a., and therefore, the whole of the Income Tax liability, on the gross salary was only 20% and that 20% alone should have been deducted, and while determining the income, for the purpose of computing the loss of dependency to the family, deduction of Income Tax at 30% made by the claims tribunal, is erroneous, this Court is not inclined to accept the said contentions, for the reason that as per the procedure followed, deduction of certain sum under the head, HRA and computation of Income Tax, is governed by Section 10 (13-A) of the Income Tax Act r/w. Rule 2 A of the Income Tax Rules. House Rent Allowance is no doubt a part of salary. Deduction of certain sum from the purview of tax liability depends upon the salary, H.R.A received, actual rent paid, and the place of residence. In order to claim exemption, rent should actually be paid for the rented premises occupied by the salaried person. From the perusal of Ex.P.28 Pay-slip for the month of August 2012, it could be deduced that H.R.A paid by the employer/Air Works India (Engineering) Private Limited (GAMRO) was Rs.23,485/-. But the actual rent calculated upto 31st March 2013, is Rs.1,20,000/-. 10% of the annual basic pay is Rs.56,364/-. As per the Income-Tax deduction details in Ex.P28, Pay Slip, the abovesaid 10% of the annual basic pay, has to be deducted from the actual rent paid and calculated upto 31st March, 2013. If deducted, the balance amount of Rs.63,640/- (Rs.1,20,000/- (-) Rs.56,364/-) is exempted from the Income-Tax.

33. A perusal of Ex.28 Pay Slip for the month of August 2012 shows that the annual rent that would have been paid by the employee and calculated upto March' 2013, was Rs.1,20,000/-. Annual rent, as per the salary was Rs.2,81,820/-. After deducting the permissible amount of Rs.63,636/-, the employer has arrived at the taxable H.R.A., as Rs.2,18,184/-. Thus, it could be seen that H.R.A deducted and tax computed, cannot be said to be wholly erroneous. Therefore, the contention of the appellants that the whole of H.R.A is exempted from tax liability cannot be accepted. If for any reason, the appellants

were not satisfied or aggrieved over the levy of income tax, on the taxable H.R.A of Rs.2,18,184/-, it is for them, to have approached employer or the Income Tax Department, for redressal, as the case may be. There are no materials to that effect. The gross salary of the deceased, as per the pay slip for the month of August 2012 is Rs.1,61,356/-, as detailed in the foregoing paragraphs. The two heads of payment, which are not very descriptive are hereunder:

Special allowance	...	Rs.41,881/-
Othern	...	Rs.46,970/-

The above said sums, though included in the gross salary of the deceased and stated to be monthly earnings, the monthly deductions are:-

P.F	...	Rs. 780/-
Professional Tax	...	Rs. 183/-
Income Tax	...	Rs.15,496/-

		Rs.16,459/-

34. As per the decision of Hon'le Andhra Pradesh High Court, in S.Narayanamma & Ors V. Secretary to Government of India, Ministry of Telecommunications and Ors, reported in 2002 ACC 582, allowances, like travelling allowance, allowance for newspapers/periodicals, telephone, servant, club-fee, car maintenance, etc., do not form part of income and that the same can be deducted.

35. Medical allowance, can be utilised both by the employee and his family members. Had the employee been alive, this facility could have been continued and availed by the members of the family also. In such a view of the matter, this Court is inclined to hold that there should not be any deduction of medical allowances, while fixing the monthly income.

36. Though Mr.A.Sirajudeen, learned counsel for the appellants, claimed that the annual gross income of Rs.14,66,572/- should be taken, by adding the bonus amount of Rs.46,970/- and Rs.46,970/-, amount under the head, "OTHERN", this Court is not inclined to accept the same, in entirety.

37. Though both the learned counsel for the parties have submitted different working sheets, regarding the monthly income and accordingly, computed the loss of dependency, this Court is not inclined to accept the same. However, having regard to the judgment of the Andra Pradesh Judgement in S. Narayanamma & Ors.

v. Secretary to Government of India, Ministry of Telecommunications and Ors., reported in 2002 ACC 582, that conveyance allowance is a personal amount of the employee and not extended to the family members, to claim, as a loss of estate, this Court is inclined to deduct a sum of Rs.800/-, shown as monthly conveyance allowance, while determining the monthly income.

38. In Ex.P28, Pay Slip for the month of August' 2012, a sum of Rs.46,970/- is shown under the head, "OTHERN", but the details are not specific. There is no other material to indicate that every month, the deceased was paid Rs.46,940/-, under the head, "OTHERN". On the contra, while calculating the annual taxable income, the said sum of Rs.46,940/- is not multiplied by 12. Therefore, the inference that could be made is that only for the month of August, 2012, under the head, "OTHERN", this amount has been paid. Further, as rightly pointed out by the learned counsel for the respondent-Insurance Company, had it been a monthly payment, it would have been multiplied by 12, for the purpose of income-tax. Therefore, this Court is not inclined to take this particular head, "OTHERN" as monthly payment.

39. Likewise, for the purpose of Income-Tax, for the period April' 2012 to March' 2013, a sum of Rs.46,670/- has been shown as Bonus, included as taxable income. This amount also cannot be treated as monthly payment. However, we could reasonably presume that the employer would have paid one month basic pay as bonus.

40. After considering the payments under different heads in Ex.P28, and the monthly saving towards Provident Fund, we propose to consider the following heads,

Basic	...	Rs. 46,970/-
H.R.A.	...	Rs. 23,485/-
Special Allowance	...	Rs. 41,881/-
Medical Allowance	...	Rs. 1,250/-
Provident Fund	...	Rs. 780/-

		Rs.1,14,366/-

41. Annual income, including monthly payments and monthly savings under the head, Provident Fund, a deferred payment, under the above heads, works out to Rs.13,72,392/-. At this juncture, we would like to consider paragraph 11 of the judgment of the Hon'ble Apex Court in National Insurance Co. Ltd., v. Indira Srivastava reported in 2008 (2) SCC 763, wherein, the Hon'ble Apex Court has observed as follows:

"There are three basic features in the aforementioned statement which require our consideration:

1. Reimbursement of rent would be equivalent to HRA;
2. Bonus is payable as a part of salary; and
3. Contribution to the Provident Fund."

42. Therefore, we also propose to add bonus, for arriving at the total sum, which the deceased would have received for the benefit of the family, excluding the conveyance allowance. After including the bonus amount of Rs.46,970/-, the total annual income works out to Rs.14,19,362/-.

43. As per the decision of the Apex Court in *Rajesh and others v. Rajbir Singh and others* reported in 2013(3) CTC 883, followed by this Court in C.M.A.No.3273 of 2014, dated 13.10.2015 [*Royal Sundaram Alliance Insurance Co. Ltd., v. Tmt.Vennila*], 50% of income, should be added under the head, future prospects, for arriving at the loss of dependency. Hence, after adding 50% towards future prospects, the total annual income works out to Rs.21,29,043/- [Rs.14,19,362 + Rs.7,09,681/- (50% future prospects)].

44. As per Ex.P28 - Salary Slip, for the month of August 2012, in the Income-Tax details, in respect of the Financial Year, April 2011 to March 2012, the net tax is mentioned as Rs.95,108/-. When, 50% of the annual income is added towards future prospects, we are of the view that correspondingly and proportionately, there should be deduction, towards income tax also. Hence, the total net tax works out to Rs.1,42,662/- (Rs.95,108/- + Rs.47,554/-). As per Ex.P28, salary slip and income-tax working sheet, conveyance allowance and medical allowance are not taxable. Therefore, the said amount representing income-tax is deducted from the total annual income. Accordingly, the annual income works out to Rs.19,86,381/-.

45. Number of dependents are four. As per the decision in *Sarla Verma's case* (cited supra), one-fourth has to be deducted towards the personal and living expenses of the deceased. After deducting the same, the actual annual income taken into consideration for calculating the loss of dependency is Rs.14,89,785.75. Applying '16' multiplier, loss of dependency works out to Rs.2,38,36,572/- (Rs.14,89,785.75 x 16).

46. In the light of the above discussion and decisions, we are of the view that the appellants are entitled to enhanced compensation of Rs.1,27,65,952/-, with interest at the rate of 7.5% per annum, from the date of claim, till realisation. Total

compensation due and payable to the appellants, is apportioned hereunder:

Dependency Compensation	: Rs.2,38,36,572/-
Loss of Consortium	: Rs. 1,00,000/-
Loss of Love and Affection:	Rs. 2,50,000/-
Funeral Expenses	: Rs. 25,000/-
Transportation	: Rs. 10,000/-
Loss of Estate	: Rs. 10,000/-
Damages to clothes & articles	: Rs. 2,000/-

Total:	Rs. 2,42,33,572/-

47. Out of the said amount, the 1st appellant-Father is entitled to Rs.32,33,572/- and the 2nd appellant-Mother is entitled to Rs.30,00,000/- and both of them are also entitled to the said sum, with proportionate interest. Wife of the deceased is entitled to Rs.90,00,000/-, with proportionate interest and costs. Minor son, aged about 2 years, at the time of accident, is entitled to Rs.90,00,000/-, with proportionate interest.

48. The ICICI Lombard General Insurance Co. Ltd., 2nd respondent herein, is directed to deposit the compensation amount, now determined by this Court to the credit of M.C.O.P.No.6160 of 2012, on the file of the Motor Accident Claims Tribunal (IInd Judge, Small Causes Court), Chennai, within twelve weeks, from the date of receipt of a copy of this order, less the amount, if any already deposited, including the statutory deposit of Rs.25,000/-. On such deposit, except the minor, other claimants are permitted to withdraw the amount apportioned to them, with proportionate interest. Share of the minor shall be deposited in any one of the Nationalised Bank, in fixed deposit, under the reinvestment scheme initially for a period of three years, proximate to the residence of the mother of the child and renewed periodically and she is permitted to receive the accrued interest, from the said deposit, once in three months, till the minor son attains majority.

49. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

skm

To

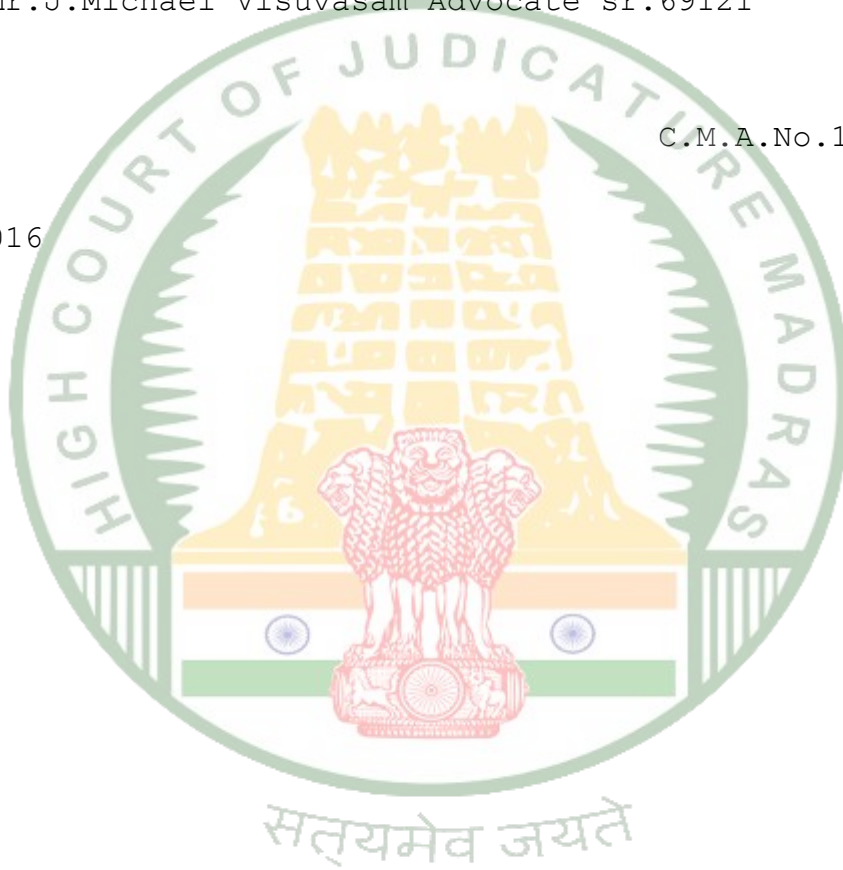
The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Thiruvallur.

Copy to:
The Record Keeper,
VR Section, High Court, Madras-104

+1 cc to Mr.J.Michael Visuvasam Advocate sr.69121

C.M.A.No.1658 of 2015

aa29/01/2016



WEB COPY