IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A. NO.2026 OF 2015
and M.P. NO.1 of 2015

The Branch Manager,
Reliance General Insurance Company Ltd.,
NTG Complex, B-1, No.14,
Ramasamy Street, West Tambaram,
Chennai .. Appellant/2nd Respondent

- Vs -

1. K.P.Shyni
2. Prabagaran
3. Pushpalatha
.... Respondents/petitioners
4. Prabhu
.... Respondent/1st Respondent
5. Rajaram
.... Respondent/3rd Respondent
6. The Authorised Signatory
Cholamandalam MS General,
Dare House, 2nd Floor,
NSC Bose Road, Chennai.
.... Respondent/4th Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Award and decree dated 08.06.2015 passed by the Motor Accidents Claims Tribunal (III Additional District Judge), Puducherry, made in M.C.O.P.No.617 of 2009.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.D.Senthilkumar - R1 to R3
Mr.N.Vijayaraghavan - R6
No appearance - R4 and R5

J U D G M E N T

(DELIVERED BY R.SUDHAKAR, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents/claimants.

2. The appellant/insurer of the vehicle has filed the appeal challenging the Award dated 08.06.2015 passed by the Motor Accidents Claims Tribunal (III Additional District Judge), Puducherry, made in M.C.O.P.No.617 of 2009.

3. It is a case of fatal accident. On 04.06.2009, at about 6.15 a.m., when the deceased Pradish Babu and his wife were traveling from Puducherry to Chennai through ECR Road in TATA India Car, near Achipatti village, a Toyota Qualis Car bearing Registration No.TN-22-P-0743 came in the opposite direction in a rash and negligent manner and dashed against the vehicle of the deceased, as a result, the deceased sustained multiple injures. Immediately, the deceased was taken to the PIMS Hospital, however, he died on the way to the hospital. Hence, the claimants, who are wife, aged 25 years, father, 64 years and mother, aged 55 years of the deceased, have filed claim petition claiming a sum of Rs.80,00,000/- as compensation. According to the claimants, the deceased Pradish Babu was working as Branch Manager in Axis Bank and was earning a sum of Rs.55,000/- per month.

4. In support of the claim petition, the first claimant, viz., the wife of the deceased examined herself as P.W.1 and one V.S.Durai Murugan was examined as P.W.2 and Exs.P-1 to P-13 were marked, the details of which are as follows:-

Ex.P-1	4.6.2009	Photocopy of the FIR in Cr.No.471/2009 marked through PW1
Ex.P-2	7.11.2000	Photocopy of the Registration Certificate marked through PW1
Ex.P-3	23.4.2009	Photocopy of the insurance policy marked through PW1
Ex.P-4	8.6.2009	Photocopy of the Accident Inspection report marked through PW1
Ex.P-5	27.9.2007	Photocopy of the Driving licence of Jothiraja, marked through PW1
Ex.P-6	6.6.2009	Photocopy of the Accident Study Report, marked through P.W.1
Ex.P-7	10.6.2009	Photocopy of the brought dead certificate marked through PW1
Ex.P-8	4.6.2009	Photocopy of postmortem reo

Ex.P-9	4.6.2009	Photocopy of the Death Certificate of the deceased marked through P.W.1
Ex.P-10	14.5.2007	Photocopy of the Marriage Certificate, marked through P.W.1
Ex.P-11	15.7.2005	Photocopy of the Family Ration Card of the petitioner 2 and 3 marked through P.W.1
Ex.P-12	21.1.2008	Photocopy of the appointment order of the deceased, marked through P.W.2
Ex.P-13	June, 2009	Photocopy of the salary slip of the deceased marked through P.W.2

5. On the side of the respondents, V.Rajaram, fifth respondent herein was examined as R.W.1 and no documentary evidence was marked.

6. The Tribunal based on the oral evidence of P.Ws.1 and 2, the F.I.R. and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant-Insurance Company to refute the evidence as to the rash and negligent driving of the vehicle, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the Toyota Qualis Car, and therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads :-

Towards pecuniary loss	-	Rs.75,47,592/-
Towards Funeral Expenses	-	Rs.10,000/-
Loss of consortium	-	Rs.50,000/-
Loss of estate	-	Rs.10,000/-
Total Compensation less Tax	-	Rs.76,17,592/-

7. In all the Tribunal awarded a compensation of Rs.76,17,592/= with interest at the rate of 7.5% from the date of claim petition, i.e., 13.8.2009 till date of payment/deposit with apportionment of 2/4 share to the first claimant and 1/4 share each to claimants 2 and 3. Aggrieved by the said award, the insurer of the Toyota Qualis is before this Court by filing this appeal.

8. Learned counsel appearing for the appellant-Insurance Company submitted that the income fixed is on the higher side, since the employment of the deceased was not permanent and he was in probation period only. He also submitted that the

Tribunal has committed wrong in calculating the monthly income by adding the allowances and perks. Further, the Tribunal has not deducted any income tax. Per contra, it is submitted by the learned counsel for the claimants that under many of the other heads, the amount awarded by the Tribunal is on the lower side and the Tribunal has not awarded any amount towards loss of love and affection. Further, it is submitted by the learned counsel for the claimants that the Tribunal has fixed the income of the deceased based on Ex.P-13, the pay certificate and, therefore, no interference is called for with the well considered finding of the Tribunal.

9. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials available on record. Though it is trite law that the income should be arrived at keeping in mind the avocation of the deceased, on a perusal of the order, this Court is of the considered opinion that the multiplier adopted by the Tribunal is higher and as per the dictum of the Honourable Apex Court in Sarla Verma - vs. - Delhi Transport Corporation, 2009(2) TNMAC 1 (SC), the correct multiplier is 16. Accordingly, the multiplier adopted by the Tribunal is modified from 17 to 16.

10. With regard to the contention of the learned counsel appearing for the appellant that the allowances and perks should not be taken into consideration while computing monthly income of the deceased, we feel that the allowances and perks given to the deceased are beneficial to the entire family of the deceased during his tenure, but for his untimely death the claimants are deprived of such benefit which they would have enjoyed if the deceased is alive.

11. In the decision reported in 2008 (1) TNMAC 166 (National Insurance Company Ltd. V.Indira Srivastava & Ors.), the Honourable Supreme Court, while dealing with the term 'income', held that for the purpose of computation of total income, the facilities provided to the deceased should be taken. For better appreciation, the relevant portion of the decision reads as follows:

> "8. 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 monetory terms.
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> 9. 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."

12. The Honourable Supreme Court in the case of Concord of India Insurance Co. v. Nirmaladevi and Ors. reported in 1980 ACJ 55 (SC) held that determination of quantum must be liberal and not niggardly since law values life and limb in a free country 'in generous scales'.

13. Hence, taking into consideration the entire gamut of facts, the monthly income of the deceased having been substantiated by the pay certificate, Ex.P-13 and the above-said decision of the Honourable Supreme Court, this Court is of the considered view that the monthly income fixed by the Tribunal is not on the higher side and hence, it requires no interference by this Court.

14. Insofar as the argument advanced by the learned counsel for the appellant that no amount has been deducted under the head of income tax is concerned, a perusal of the order of the Tribunal reveals that the Tribunal had not deducted any amount towards income tax. In the net taxable income, standard deduction of Rs.2,00,000/= has to be deducted and the rest of the amount is taxable under the respective tax slabs. The Tribunal ought to have deducted the standard deduction permissible during the said financial year while arriving at the income for which tax is deductible. Accordingly, the compensation that is to be awarded after deducting appropriate tax is as under :-

Rs.55497 X 12	=	Rs.6,65,964/=
Less : Standard Dedn.	=	Rs.2,00,000/=
Taxable Income	=	Rs.4,65,964/=
Tax on income	=	Rs.46,596/=
Surcharge @ 2%	=	Rs. 932/=
Total	=	Rs. 47528/=
Total income per year	=	Rs.6,18,436/=

1/3 dedn. Towards personal exp.	=	Rs. 2,06,145/=
Loss of income to family	=	Rs.4,12,291 X 16
	=	Rs.65,96,656/=

15. Accordingly, the compensation awarded by the Tribunal is modified as hereunder :-

	Compensation awarded by the Tribunal	Compensation awarded by this Court
Towards pecuniary loss	Rs.75,47,592 /-	Rs.65,96,656/-
Towards Funeral Expenses	Rs.10,000/-	Rs. 10,000/-
Loss of consortium	Rs.50,000/-	Rs. 50,000/-
Loss of estate	Rs.10,000/-	Rs. 10,000/-
Total Compensation less Tax	Rs.76,17,592/-	Rs.66,66,656/-

16. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above modification. The appellant/insurer is directed to deposit the entire award amount ordered by this Court, less the amount, if any deposited at the time of preferring the appeal, along with interest @ 7.5%, as directed by the Tribunal, to the credit of MCOP No.617 of 2009 within a period of eight weeks from today. On such deposit, the respondents/claimants are permitted to withdraw the amount, as per the above award passed by this Court as per apportionment made by the Tribunal. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District Judge,
   Motor Accidents Claims Tribunal
   Puducherry.

+1 cc to M/s.A.Arunkumar, Advocate, sr.15846
+1 cc to Mr.D.Senthilkumar, Advocate, sr.15846
+1 cc to Mr.N.Vijaya Raghavan, Advocate, sr.16181

C.M.A. NO.2026 OF 2015
and M.P. NO.1 of 2015

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