

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1358 of 2017
and CMP.No.7151 of 2017

The Managing Director,
Metropolitan State Transport Corporation Ltd.,
Chennai Division, Pallavan Salai,
Chennai - 2

... Appellant

vs.

1. P.L.Rajeswari
2. R.Loganathan

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988,
against the Order and Decreetal Order in MCOP No.1503 of 2007 dated
03.11.2010 on the file of Motor Accidents Claims Tribunal, [Chief Judge, Small
Causes Court], Chennai.

For Appellant : No appearance
For Respondents : No appearance

J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

In the accident which occurred on 24.03.2017, involving a state transport
corporation bus, bearing Regn.No.TN01N4249, a pedestrian died. He was stated

to be aged 34 years and as an Associate Consultant in M/s.Wipro Technologies, earned Rs.37,500/- per month. A case in Crime No.123 of 2007 has been registered against the driver of the bus on the file of GST Road Traffic Investigation, Tambaram. Parents preferred MCOP No.1503 of 2007 on the file of MACT [Chief Judge, Small Causes Court], Chennai, claiming compensation of Rs.40 Lakhs under various heads.

2. Though, transport corporation disputed the manner of accident and negligence attributed to the driver of the bus, on evaluation of pleadings and evidence, vide judgment and decree in MCOP No.1503 of 2007 dated 03.11.2010, the tribunal held that the driver of the bus was negligent in causing the accident. Based on the oral and documentary evidence, Ex.P6, copy of MCA certificate, Ex.P7, Bank statement, Ex.P10, copy of the Identity Card of PW2, Ex.P11, copy of Identity card of PW3, witnesses examined to prove that the deceased was employed as an Associate Consultant in Wipro Technologies, Chennai, Ex.P12, Authorisation letter, Ex.P13, appointment letter of the deceased, Ex.P13, joining report of the deceased, Ex.P15, employment certificate of the deceased, Ex.P16, salary certificate of the deceased and Ex.P17, letter regarding future benefits of the deceased, the tribunal fixed the monthly income of deceased as Rs.33,334/-. Annual income was estimated as Rs.4,00,008/- and rounded off the same to Rs.4,00,000/- and after deducting 20% towards Income Tax, tribunal arrived at the annual loss of Rs.3,20,000/-.

Deceased was a bachelor. Parents alone were the claimants. Therefore, after deducting 50% i.e. Rs.1,60,000/- towards the personal and living expenses of the deceased, and by applying 11 multiplier, the tribunal arrived at the loss of contribution to the family as Rs.17,60,000/-. That apart, awarded Rs.10,000/- for loss of love and affection and Rs.10,000/- for funeral expenses. Altogether, the tribunal awarded compensation of Rs.17,80,000/- with interest at the rate of 7.5% per annum, from the date of claim till deposit and costs.

3. In the appeal, it is contended that the tribunal failed to consider that the deceased crossed the road without noticing the bus and thus invited the accident. Tribunal erred in determining the monthly income as Rs.33,334/-, by including PF, gratuity and other allowances. Tribunal erred in applying '11' multiplier. Excepting the above, no other grounds merit consideration.

4. Adverting to the aspect of negligence, it is the case of the respondents that on 24.03.2007 about 22.00 hours, when the deceased was crossing GST Road, on the Pedestrian Crossing beneath MIT Over bridge, Chrompet, west to east direction, a State Transport Corporation bus bearing Regn.No.TN01N4249 driven in a rash and negligent manner by its driver, on GST Road, south to north direction, hit the pedestrian. He sustained grievous injuries and died. In this regard, a criminal case has been registered.

5. To prove the manner of accident, PW1, father of the deceased has adduced evidence. PW2 is stated to be an eye witness. Corroborating the testimony, Ex.P1, FIR and Ex.P2, Sketch have been marked on the side of the respondents/claimants, RW1, driver of the State Transport Corporation, appellant herein has also admitted that a criminal case was filed against him and that the same was pending before the Magistrate Court, at the time of trial of MCOP No.1503 of 2007. Before the tribunal, he has also admitted that he saw the deceased 50 feet before the place of accident and that he attempted to stop the vehicle, but the accident occurred. Analysing the testimony of PW1 and PW2, corroborated by Exs.P1, FIR and P2, Sketch, vis-a-vis, testimony of RW1, driver, the claims tribunal held that it was the driver of the State Transport Corporation bus, who had caused the accident.

6. Preponderance of probability, is the test in Motor Vehicle Accident cases.

(i) In **N.K.V.Brother's Private Limited v. Kurmai** reported in **AIR 1980 SC 1354**, while dealing with the scope of the enquiry in the Claims Tribunal, the Hon'ble Apex Court has held that,

"Accident Claims Tribunal, must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plaint cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not

succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving."

(ii) In a decision in **Union of India v. Saraswathi Debnath** reported in **1995 ACJ 980**, High Court of Gauhati has held in Paragraph 6 as follows:

"The law is well settled that in a claim under the *Motor Vehicles Act*, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case."

(iii) In **Bimla Devi & Ors. Vs. Himachal RTC** reported in **2009 (13) SCC 530**, the Supreme Court held as follows:

"It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said

purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

7. In the light of the decisions stated supra and on the facts and circumstances of the case, we are of the view that the State transport corporation, appellant herein has not made out a strong case for interfering with the finding of negligence.

8. On the quantum of compensation, it could be seen from the impugned judgment that the legal representatives of the deceased have claimed that at the time of accident, deceased was working as an Associate Consultant in Wipro Technologies and earned Rs.33,334/- per month. Documents stated supra, have been filed. Supporting the same, legal representatives have also examined PW3, Mr.T.K.Lakshman, Manager of WIPRO Technologies. Avocation and income, have been substantiated by marking Ex.P13 to P17.

9. At the time of accident, deceased was stated to be 34 years. His date of Birth is 19.11.1972. Mother was aged 52 years. Therefore, the tribunal appears to have applied '11' multiplier, applicable to the age of the parents and computed the loss of contribution to the family. According to the appellant, application of '11' multiplier is on the higher side. Contention of the appellant transport corporation that application of 11 multiplier is on the higher side

cannot be countenanced in the light of the decision of the Hon'ble Supreme Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another*, reported in 2009 ACJ 1298, wherein the Hon'ble Apex Court held that for the age group of persons between 31 and 35 years, '16' is the appropriate multiplier.

10. At some point of time, there was a doubt as to whether the tribunal should take into consideration the 'multiplier' applicable to the age of the deceased or the parents, as the case may be. Apparently, in the case on hand, tribunal has applied multiplier applicable to the age of the parents. Controversy is no more res integra, in the light of the decision of the Hon'ble Supreme Court in *Munna Lal Jain and another Vs. Vipin Kumar Sharma and others*, reported in 2015 (6) SCC 347, wherein the Hon'ble Apex Court cleared the doubt and held that the multiplier applicable to the age of the deceased alone should be applied for computing the loss of contribution to the family. As per the decision in *Sarla Varma's case* [cited supra], multiplier which ought to have been applied to the case on hand is '16'. If the said multiplier is applied to the multiplicand and if computation is made, loss of contribution to the family would be more. Tribunal has failed to take into consideration the future prospects of the deceased. Quantum of compensation awarded under other heads is less.

11. Contention of the Metropolitan State Transport Corporation Limited, Chennai, appellant herein that PF, gratuity and other allowances ought not to have been added, as income, also cannot be countenanced in the light of the decision of this Court in **The Manager, National Insurance Co., Ltd., v. Padmavathy & 8 others** reported in **2007-2-L.W.182**, wherein one of us (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 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 the 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."

12. 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"

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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."

13. Yet again in **New India Assurance Co. Ltd. v. Charlie & Anr [(2005) 10 SCC 720]**, the same view has been reiterated. The Apex Court held that 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]**."

14. Even taking for granted that some of the allowances ought not to have been added as income, if this Court applies '16' multiplier for computing the loss of contribution, compensation that ought to have been awarded by the

tribunal, to the legal representatives of the deceased, would be more.

15. In the light of the above discussion and decisions cited supra, this Court is of the view that there is no manifest illegality in the impugned judgment warranting interference. Finding of negligence and quantum of compensation, both are sustained. Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

16. Consequent to the dismissal of the appeal, the appellant Transport Corporation, is directed to deposit the entire award amount with interest at the rate of 7.5% per annum, from the date of claim till deposit and costs, less the statutory deposit, to the credit of MCOP No.1503 of 2007 on the file of Motor Accidents Claims Tribunal, [Chief Judge, Small Causes Court], Chennai, within a period of six weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, respondents/claimants are at liberty to seek for withdrawal of their share as apportioned by the tribunal, by making necessary applications.

17. Registry is directed to send a copy of this order to the Motor Accidents Claims Tribunal, [Chief Judge, Small Causes Court], Chennai, and display the same in the notice Board that C.M.A.No.1358 of 2017 filed by the Managing Director, The Metropolitan State Transport Corporation, Chennai

Division, against the judgment in MCOP No.1503 of 2007, has been dismissed, with a direction, to the Transport Corporation, to deposit the entire award amount, to the credit of MCOP No.1503 of 2007 on the file of Motor Accidents Claims Tribunal, [Chief Judge, Small Causes Court], Chennai, within a period of six weeks from the date of receipt of a copy of this order, if not deposited earlier. Motor Accident Claims Tribunal is further directed to mention the M.C.O.P number in the said notice. The Tribunal is directed, to disburse the amount only on proper identification and proof.

[S.M.K., J.] [M.G.R.,J.]
19.04.2017

Index: Yes
Internet: Yes

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To

The Motor Accident Claims Tribunal,
[Chief Judge, Small Causes Court], Chennai

S.MANIKUMAR, J.
AND
M.GOVINDARAJ, J.

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