

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 08.03.2017

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR

AND

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A. No.827 of 2017

1.Mrs.Gowri Krishnan

2.Ms.Bhuvana Krishnan

3.Ms.Ashwini Krishnan

4.Ms.Anuradha Krishnan

... Appellants

Vs.

1.R.P.Agarwal

2.The New India Assurance Company
Adityapur
Jamshedpur

3.Mrs.S.Sampoornam

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 23.04.2012 made in MCOP No.2126/2002, on the file of Motor Accident Claims Tribunal (VI Judge, Small Causes Court), Chennai.

For Appellants : Mr.R.Ramesh

For Respondents : Mr.R.Neethiperumal for R2

JUDGMENT

(Made by **S.MANIKUMAR, J.**)

In the accident, which occurred on 27.03.1998, a 48 years old man working as Office Assistant in Tata Engineering and Locomotive Company Ltd, Jamshedpur, stated to have earned Rs.15,411.86P per month, died. A case in Crime No.631/2009 under Sections 279, 304-A of IPC on the file of Telco Police Dis Singhbhum, Jamshedpur, against the driver of the Maruti 800 car bearing Registration No.BR-16 J-0886 and insured with New India Assurance Company Limited, Alityapur, Jamshedpur. Legal representatives filed MCOP No.2126 of 2002 on the file of Motor Accident Claims Tribunal (VI Small Causes Court), Chennai, claiming compensation of Rs.25,00,000/- under various heads. New India Assurance Company Limited, opposed the claim, denied the manner of accident, negligence attributed against the driver of the vehicle bearing Registration No.BR-16 J-0886. On evaluation of pleadings and evidence, the Tribunal held that the driver of Maruti 800 car bearing Registration No.BR-16 J-0886 was negligent in causing accident.

2. Based on the entry in Ex.P18 - Postmortem certificate, Ex.P10 - certificate issued for conducting last rites, the Tribunal determined the age of the deceased as 48 years. Having regard to

the oral testimony of PW1-wife, that her husband worked as Office Assistant in TELCO, Jamshedpur and earned Rs.15,411.86P, duly supported by Ex.P5-Pay slip issued for the month of September 1997 and taking note of the deductions, the Tribunal fixed the monthly income of the deceased as Rs.7,400/-. Taking note of the number of dependants, the Tribunal applied 1/4th towards the personal and living expenses of the deceased. By the above said method, the Tribunal computed the loss of contribution to the family as Rs.8,65,800/- ($\text{Rs.7,400} \times 12 \times 13 \times \frac{3}{4}$). In addition to the above, the Tribunal awarded Rs.25,000/- towards loss of consortium; Rs.40,000/- under the head loss of love and affection to appellants 2 to 4 and 3rd respondent herein, at the rate of Rs.10,000/- each and Rs.300/- for funeral expenses. Altogether, the Tribunal has awarded a sum of Rs.9,31,100/- as compensation.

3. Not satisfied with the quantum of compensation, legal representatives of the deceased are on appeal and made submissions. Mr.R.Neethiperumal, learned counsel for the 2nd respondent/insurance company, fairly submitted that compensation under some heads requires enhancement. Submission of the learned counsel for the insurance company is placed on record.

4. As per Ex.P5 - Pay Slip of the deceased for September 1997, the deceased was drawing a sum Rs.15,411/- as salary per month. Pay slip indicates basic pay of Rs.3,545/-, DA of Rs.2,077, PF of Rs.562 and premium for LIC of Rs.1,216/-. Tribunal has taken above heads alone as the monthly income and determined the same as Rs.7,400/-. Tribunal has grossly deducted 50% as deductions for arriving at the monthly income for the purpose of computing the loss of contribution to the family.

5. In ***The Manager, National Insurance Co. Ltd. v. Padmavathy & 8 others*** reported in **2007-2-L.2.182**, a learned single Judge of this court (Hon'ble Mr.Justice S.Manikumar) held as follows:

"Income tax, Professional tax which are deducted from the salaried person goes to the corpus 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 dependancy 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 dependancy 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."

6. In ***National Insurance Co. Ltd. vs. Indira Srivastava and others*** reported in **(2008) 2 SCC 763**, the Hon'ble Supreme Court, approved Padmavathy's case and at paragraph Nos.9 to 13, 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"

11. 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.

12. We may furthermore notice that apart therefrom, superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family.

13. We have, however, no doubt in mind that medical reimbursement which provides for a slab and which keeping in view the terminology used, would mean reimbursement for medical expenses on production of medical bills and, thus, the same would not come within the purview of the aforementioned category.

7. In ***Raghvir Singh Matolya & Ors. vs. Hari Singh Malviya & Ors. in Civil Appeal No.2050 of 2009*** arising out of SLP (Civil) No.24394 of 2007 dated 31.03.2009, the Hon'ble Supreme Court at paragraph Nos.7 to 9, held as follows:

" 7. Dearness allowance, in our opinion, should form part of income. House rent allowance is paid for the benefit of the family members and not for the employee alone. What would constitute an income, albeit in a different fact situation, came up for consideration before this Court in [National Insurance Co. Ltd. v. Indira Srivastava and Others](#) [(2008) 2 SCC 763] wherein it was held:

"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 contradistinguished 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 Edn.)* 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). 'It is as large a word as can be used' to denote a person's receipts (per Jessel, M.R., Re Huggins). Income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. Secy. to the Board of Revenue, Income Tax v. Al. Ar. Rm. Arunachalam Chettiar & Brothers. Ref. Vulcun Insurance Co. Ltd. v. Corpn. of Madras."

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 professional 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."

To the same effect is the decision of this Court in Oriental Insurance Co. Ltd. v. Ram Prasad Varma & Ors. [2009 (1) SCALE 598].

8. We, therefore, are of the opinion that 'Dearness Allowance' and 'House Rent Allowance' payable to the deceased should have been included for determining the income of the deceased and consequently the amount of compensation.

9. For the reasons aforementioned, we direct that in calculating the amount of compensation, the dearness allowance as also the house rent allowance should also be taken into consideration."

8. In ***Sunil Sharma & Ors. vs. Bachitar Singh & Ors. in Civil Appeal No.1440 of 2011 dated 07.02.2011***, the Hon'ble Supreme Court, at paragraph Nos.11 and 12 held as follows:

11. Based on the aforementioned judgments, we are of the view that deductions made by the Tribunal on account of HRA, CCA and medical allowance are done on an incorrect basis and should have been taken into consideration in calculation of the income of the deceased. Further, deduction towards EPF and GIS should also not have been made in calculating the income of the deceased.

12. Thus, we calculate the income of the deceased by taking the abovementioned allowances into consideration. However, the computer advance should not form a part of the monthly income. The monthly income of the deceased thus amounts to Rs.15,351/-. Thus, the annual income of the deceased would amount to Rs. 1,84,212/-.

Upon perusal of Ex.P5-Salary slip and taking note of the judgments stated supra, we are of the view that the Tribunal has committed a gross error in determining only Rs.7,400/- as the monthly income for the purpose of computing the loss of contribution to the family. After making statutory deductions, we are of the view that the monthly income should have been fixed as Rs.10,050/-. Deceased was aged about 48 years and therefore, as per the decision of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121**, the Tribunal should have added 30% of the income under the head future prospects for the purpose of computing loss of contribution to the family. There is no error in applying '13' multiplier. Revised computation of loss of contribution works out to Rs.13065 $(10050+3015) \times 12 \times 13 \times 3/4 = \text{Rs.}15,28,605/-$.

9. Perusal of the award further discloses that the Tribunal has awarded Rs.25,000/- as compensation under the head loss of

consortium. The same is less. In ***Rajesh & Others Vs. Rajbir Singh & Others*** reported in ***(2013) 9 SCC 54 = 2013 (2) TN MAC 55 (SC)***, for the loss of consortium, Apex Court has awarded Rs.1,00,000/- under the said head. Following the above decision, a sum of Rs.1,00,000/- is awarded to the first appellant under the said head. Loss of compensation of Rs.40,000/- awarded to three children and mother of the deceased including minor aged 10 years, at the rate of Rs.10,000/- is a pittance. Tribunal has committed a gross error. Following the very same judgment, we are inclined to award a sum of Rs.1,00,000/- to minor child/4th appellant and Rs.50,000/- each to the appellants 2 and 3.

10. Perusal of the award further discloses that the Tribunal has awarded compensation of Rs.300/- for funeral expenses, which is again a pittance. Tribunal has failed to consider the expenses incurred for funeral. Following the very same judgment, a sum of Rs.20,000/- is awarded under the head funeral expenses. The Tribunal has failed to award compensation under the head transportation and damages to clothes and articles. Therefore, we are inclined to award compensation of a sum of Rs.5,000/- and Rs.1,500/- respectively, under the above heads.

11. In view of the re-working, as stated supra, compensation due and payable to the legal representatives of the deceased/appellants works out to Rs. with interest at the rate of 7.5% per annum from the date of claim till realisation, and costs, as here under:

Loss of contribution to the family	: Rs.15,28,605/-
Loss of consortium	: Rs. 1,00,000/-
Loss of love and affection (Rs.1.00 Lakh to the minor daughter and Rs.50,000/- each to the other daughters and mother)	: Rs. 2,50,000/-
Funeral Expenses	: Rs. 20,000/-
Transportation	: Rs. 5,000/-
Damages to clothes	: Rs. 1,500/-

	Rs.19,05,105/-

Rounded off to Rs.19,05,000/-

Compensation already determined by the Tribunal is Rs.9,31,100/-
On appeal, compensation determined by this court is Rs.19,05,000/-. Therefore, compensation is enhanced by Rs.9,73,900/- with interest at the rate of 7.5% per annum from the date of claim till deposit. No interest is awarded for the the dismissal for default period from 15.06.2005 to 01.06.2006 and

from 06.11.2007 to 16.11.2010 respectively. As insurer of the 1st respondent's vehicle, the 2nd respondent is directed to deposit the enhanced amount within a period of six weeks from the date of receipt of a copy of this judgment.

12. Mr.R.Ramesh, learned counsel for the appellants, conceded that the enhanced compensation of Rs.19,05,000/- can be apportioned as follows:

Mother of the deceased	: Rs.1,05,000/-
Wife of the deceased	: Rs.6,00,000/-
Daughters 3 in Number @ Rs.4,00,000/ each	: Rs.12,00,000/-

with proportionate interest. Submission of the learned counsel for the appellants is placed on record. On such deposit, appellants are permitted to withdraw the share apportioned to them with proportionate interest and costs.

Civil Miscellaneous Appeal is allowed in the above terms. No costs.

(S.M.K., J.) (M.G.R., J.)
08.03.2017

Index : Yes/No
Internet : Yes/No
asr

To

The Motor Accident Claims Tribunal
(VI Judge, Small Causes Court), Chennai

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

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