



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN
C.M.A. (MD) .No.1286 of 2015
and
M.P. (MD) .No.1 of 2015

National Insurance Company Limited,
63, Rasi Plaza,
West Melapraathakshinam Road,
Karur.

... Appellant/2nd Respondent

Vs.

1.S.Chinna Revathi
2.Minor S.Swetha
3.Minor S.Prasath

(Minor petitioners 2 & 3 are represented
by their mother & Natural Guardian
1st respondent/ S.Chinna Revathi)

4.Dhanalakshmi
5.Nalla Sivan
6.Sundari
7.Siva Sakthi
8.K.Ramesh

... Respondents 1 to 7/Petitioners
... 8th Respondent/1st Respondent

(R8 exparte in Tribunal : Notice dispensed with)

PRAYER : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the Judgment and decree in M.C.O.P No.472 of 2013, dated 12.08.2014 on the file of the Motor Accident Claims Tribunal/ Special District Court, Thiruchirappalli District.

For Appellant : Mr.J.S.Murali
For R.1 to R.7 : Mr.C.Deepak

JUDGMENT

The insurance company has filed this appeal questioning the award passed by the Tribunal based on the quantum.

2. The deceased was working as a teacher in Government Training School and earning sum of Rs.19,523/-. He met with an accident on 07.08.2010. The tipper lorry insured with the appellant caused the accident in question. The Tribunal awarded a sum of Rs.32,38,092/- as compensation. The quantum was fixed by

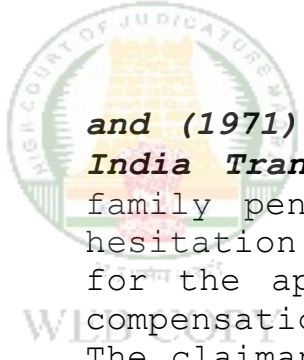
applying a multiplier 14, but the deceased was aged about 45 year 1 month and 3 days. Since his age exceeded 45 years, the correct multiplier will have to be 13. If multiplier is taken as 13, the compensation payable to the claimant will be Rs.29,32,514/-. Therefore, the compensation payable will have to be reworked as accordingly.

S.No	Description	Amount awarded by this Court (Rs.)
1.	Pecuniary loss (Rs.2,25,578 x 13)	Rs.29,32,514
2.	loss of consortium for the wife	Rs.40,000
3.	Love and affection for the remaining three claimants	Rs.50,000
4.	For funeral expenses	Rs.15,000
	Total	Rs.30,37,514

3. The learned counsel appearing for the appellant has contended that the claimants are receiving a family pension on account of death of S.Sivamani. He, therefore, would contend that the said amount should also be deducted.

4. Per contra the learned counsel for the claimants would place reliance on the decision of three Judges Bench of the Hon'ble Supreme Court reported in **(2016) 9 Supreme Court Cases 627- Reliance General Insurance Company Ltd., v. Shashi Sharma & others.** The ratio laid down in **Helan C.Rebello v. Maharashtra SRTC** and **United India Insurance Co. Ltd v. Patricia Jean Mahajan** has been approved in the said decision. A mere look at the aforesaid decisions would show that what can be deducted is only the "pecuniary advantage" receivable by the legal heirs on account of one's death which have a direct correlation with the accidental death. If the benefit is receivable by the claimant not merely on account of any accidental death but otherwise on the death of insured, the said amount cannot be deducted. It has been held by the Hon'ble Supreme Court as well as this Court that the family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in the terms of service conditions and the same is receivable by the heirs after his death. The heirs receive family pension even otherwise than on account of the accidental death. There is no correlation between two. Therefore, family pension received by the claimant on account of death of the insured cannot be deducted.

5. In view of the decision of the Hon'ble Supreme Court reported in **(1999) 1 SCC 90:1999 SCC (1) 197** in the case of **Helan C.Rebello v. Maharashtra SRTC, (2002) 6 SCC 281: 2002 SCC (Cri) 1294, United India Insurance Co. Ltd., v. Patricia Jean Mahajan**



and (1971) 1 SCC 785, *Sheskhupura Transport Co. Ltd., v. Northern India Transport Insurance Co.*, the issue regarding deduction of family pension is no longer *res integra*. I, therefore, have no hesitation to reject the contention raised by the learned counsel for the appellant. Only on account of the wrong multiplier, the compensation award of the Tribunal has to be modified as above. The claimants are entitled a sum of Rs.30,37,514/-.

6. Therefore, the order dated 12.08.2014 in M.C.O.P No.472 of 2013, on the file of the Motor Accident Claims Tribunal/ Special District Court, Thiruchirappalli District is accordingly modified.

7. The appellant is directed to deposit the sum of Rs.30,37,514/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimants are entitled to withdraw the same as apportioned by the Tribunal, less the amount already withdrawn by them, if any, by filing proper application before the Tribunal.

8. The Civil Miscellaneous Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(w)

/True Copy/

Sub Assistant Registrar

To

The Special District Judge,
Motor Accident Claims Tribunal,
Thiruchirappalli District.

+1cc to Mr.J.S.Murali, Advocate Sr.No.85218

+1cc to Mr.C.Deepak, Advocate Sr.No.85497

KMI

VB/KP/SAR3/20/12/2017/3P/4C

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