IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2019

CORAM :

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

CMA.No.3408 of 2013

CMP.No. 1 of 2013 &
CMP.No. 1 of 2014 in CMA.No.3408 of 2013
and
Cross.Obj.No.69 of 2014

CMA.No.3408 of 2013

1.A Akbar
2.The Managing Director,
M/s.Tamil Nadu State Health Transport
Department, Guindy, Chennai 600 032
and also under the custody of the
R.M.O., Mettupalayam Government Hospital,
Mettupalayam, Coimbatore.

... Appellants/Respondents

Vs

1. Rajeswari
2. A.Deenadayalan
3. A.Saravanakumar

... Respondents/petitioners

Cross Objection No.69 of 2014

1. Rajeswari
2. A.Deenadayalan
3. A.Saravanakumar

... Cross objectors

Vs

1.A Akbar
2.The Managing Director,
M/s.Tamil Nadu State Health Transport
Department, Guindy, Chennai 600 032
and also under the custody of the
R.M.O., Mettupalayam Government Hospital,
Mettupalayam, Coimbatore.

... Respondents

COMMON PRAYER :

Civil Miscellaneous Appeal & Cross Objection filed against the judgment and decree dated 23.01.2007 made in M.C.O.P.No.1641 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District & Sessions Court, Presiding Officer for Special Court for E.C. Act Cases, Coimbatore.

For Appellants in C.MA.No.3408 of 2013
and for R-1 and R-2
in cross objection : Mr.A.Devnarendran
Government Advocate (CS)

For Cross Objectors
and for R-1 to R-3
in C.MA.No.3408 of 2013 : Mr.Ma.Pa.Thangavel

COMMON JUDGMENT

The present Civil Miscellaneous Appeal and Cross Objection have been directed against the judgment and decree passed by the Motor Accident Claims Tribunal cum Additional District & Sessions Court, Presiding Officer for Special Court for E.C. Act Cases, Coimbatore, dated 23.01.2007 in M.C.O.P.No.1641 of 2005.

2. The owner as well as the insurer of the offending vehicle have preferred the Appeal, in CMA.No.3408 of 2013, challenging the quantum of compensation awarded by the Tribunal as well as the liability fastened on them. Whereas, finding the compensation awarded by the Tribunal as insufficient, the claimants have filed Cross Objection No.69 of 2014.

3. On 23.06.2005, at about 12.00 noon, near Press Colony Bus Stop, when K.S.Aruchamy (deceased) was riding his bicycle from Coimbatore to Mettupalayam main road, and was crossing the road from east to west direction, an Ambulance, bearing Registration No. TN 09 G 1865 belonging to the State Health Transport Corporation, came from the opposite direction of the road in a rash and negligent manner, and dashed against the said K.S.Aruchamy, and thus, caused the accident. Immediately, the said K.S.Aruchamy was taken to Coimbatore Medical College and Hospital, and despite treatment, died there. Hence, the legal heirs of the deceased, who are wife and sons respectively have made a claim, in a sum of Rs.10,00,000/-.

4. Both the first respondent and the second respondent before the Tribunal have filed individual counter statement, denying their liability by contending that the deceased invited the accident, as he suddenly crossed the road without noticing the traffic rules. They further contended that the claim made is high, excessive and thus, prayed for dismissal of the Claim Petition.

5. Before the Tribunal, the first claimant examined herself as PW1 and marked eleven documents, marked as Exs.P1 to Ex.P.11. On behalf of the State Health Transport Department, two witnesses were examined as R.W.1 (Driver) and R.W.2 (Eye witness to the accident) and and one document was marked as Ex.R.1.

6. The Tribunal, on appreciation of both oral and documentary evidence came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the Ambulance, belonging to the State Health Transport Department and held that both the first respondent/owner of the vehicle and second respondent/State Health Transport Corporation are jointly and severally liable to pay the compensation. By arriving at such conclusion, the Tribunal directed the second appellant to pay a sum of Rs.8,54,500/- with interest at the rate of 7.5% per annum from the date of claim till the date of realisation as compensation to the claimants.

7. Aggrieved by the finding rendered by the Tribunal with regard to the liability fastened on the appellant as well as the quantum of compensation awarded by the Tribunal as excessive and exorbitant, the appellants, viz., owner of the offending Vechile as well as its insurer has filed the present Appeal. Being not satisfied with the quantum of the award, the claimants filed Cross Obj.No.69 of 2014.

8. The learned counsel appearing for the appellants submitted that the Tribunal was wrong in holding that the accident occurred only due to the rash and negligent act of the driver of the Van and not due to the negligence of the deceased. In this regard, the learned counsel drawn the attention of this Court to para No.8 of the counter statement filed by the second respondent and submitted that, the deceased was riding his bicycle in a hurried manner, and without hearing the siren of the Ambulance Van and observing the traffic rules, he suddenly crossed the road, which resulted in the accident. Therefore, the learned counsel submitted that due to the negligence on the part of the deceased, the accident had occurred, but, the Tribunal without taking note of the same, has wrongly fixed the negligence on the part of the driver of the Ambulance Van and held that both the first and second appellants are jointly or severally liable to pay the compensation.

9. Secondly, the learned counsel contended that the Tribunal, while determining the compensation under the head, Loss of Dependency, failed to make any deductions from the family pension received by the first claimant. He submitted that, after the demise of the deceased, the

wife is entitled to receive 50% of the family pension, but, the Tribunal failed to deduct any amount towards loss of dependency. Therefore, he submitted that 50% of the income has to be deducted from the total income of the deceased. Further, the learned counsel submitted that the compensation awarded by the Tribunal on the other heads are also excessive and exorbitant and thus prayed for appropriate reduction.

10. Per contra, the learned counsel appearing for the cross objectors submitted that the accident had occurred solely due to the negligence act of the driver of the offending Vehicle. He submitted that, in fact, the Investigating Officer, who conducted a full fledged investigation with regard to the accident, found that the accident was occurred due to the rash and negligent driving of the driver of the Ambulance and also filed a final report as against the first respondent, R.W.1/driver of the Ambulance van for the offence under Section 173(2) of Cr.P.C. Further, the learned counsel submitted that, the Tribunal taking into consideration the testimony of P.W.2, who deposed that the accident occurred while the deceased was riding the bicycle on the mud road and the Rough Sketch, marked as Ex.P.4, wherein, it was clearly mentioned that the accident occurred on the extreme end of the mud road, came to the conclusion that the accident had occurred due to the negligence on the part of the driver of the Van. Therefore, the learned counsel submitted no interference of this Court is warranted with regard to findings rendered by the Tribunal on the negligent aspect.

11. The learned counsel for the cross objectors vehemently opposed the contention of the learned counsel for the appellant that the Tribunal failed to make any deduction towards family pension while determining the compensation towards Loss of Dependency. The learned counsel for the cross objectors submitted that the deceased was aged about 52 years on the date of the accident, and the same was confirmed in the Post Mortem Certificate (Ex.P3) and Identity Card (Ex.P10) and he was working as a Compositer at Government of India and earning a sum of Rs.11,745/- per month. In order to prove the monthly income of the deceased, P.W.1/first claimant marked Ex.P.8/Salary certificate. Therefore, the Tribunal taking the monthly income at Rs.11,745/-, and after making 1/3rd deduction towards the personal income of the deceased and further deducting probable income tax arrived at a sum of Rs.75,000/- towards the Loss of Dependency. The learned counsel submitted that the Tribunal has infact failed to add any amount towards future prospects resulting in such inadequate compensation towards Loss of Dependency. The learned counsel further submitted that family pension paid to the

family cannot be deducted while calculating the compensation awarded to the claimants,, and in support of his contention that, referred to the following decisions and the relevant paras, referred to by the learned counsel in each of the judgments are extracted hereinebelow:-

i) Sebastiani Lakra Vs. National Insurance Company Limited, reported in 2018 SCC Online 1924:-

> "6. The traditional view was that while assessing compensation, the Court should assess the loss of income caused to the claimants by the death of the deceased and balance it with the benefits which may have accrued on account of the death of the deceased. However, even when this traditional view was being followed, it was a well settled position of law that the tort-feasor cannot not take benefit of the munificence or gratuity of others.
>
> 13. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the vehicle accident. The claimants/dependents are entitled to 'just compensation' under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.
>
> 15. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity

are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted."

ii) Lal Dei and others Vs. Himachal Road Transport reported in (2007) 8 SCC 31 ;-

"4.It i contended by the learned counsel for the appellant that while calculating the dependency, the Motor Accidents Claims Tribunal as well as the High Court committed an error in deducting the family pension amount. We find that the submission made by the counsel for the appellant is correct. The Motor Accidents Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In Helen C. Rebello V. Maharashtra SRTC this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accident death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants."

iii) Vimal Kanwar and others Vs. Kishore Dan and others reported in 2013 (1) TNMAC 641 (SC) :-

"19. The first issue is "whether Provident Fund, Pension and Insurance receivable by claimants come within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction."

The aforesaid issue fell for consideration before this Court in Helen C. Rebello and others v. Maharashtra State Road Transport Corporation & another, 1999 (1) SCC 90. In the said case, this Court held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court:

"35. Broadly, we may examine the receipt of the Provident Fund, which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, Life Insurance Policy is received either by the insured or the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the Life Insurance Policy is contractual."

12. Further, it is the contention of the learned counsel that the compensation awarded by the Tribunal towards i) Loss of Consortium, ii) Loss of Love and Affection, iii) Loss of Estate and iv) Funeral Expenses are also very meager and it warrants enhancement. Thus, he prayed for proper enhancement of compensation awarded by the Tribunal.

13. Heard the learned counsel appearing for the appellants and the learned counsel for the cross objectors/claimants and perused the materials on record.

14. On a perusal of the award passed by the Tribunal, it is seen that the Tribunal, while determining the aspect to who is the cause for the accident, has taken into consideration the statement made by P.W.2, whose deposition is that when the deceased K.Aruchamy was riding his bicycle on the Mettupalayam to Coimbatore Main Road, near Press Colony Bus Stop and while he was riding on the mud road towards west, the Ambulance Van came from north to south direction and dashed against the deceased. Though the Driver of the Van and the person, who witnessed the accident were examined as R.W.1 and R.W.2 and deposed that the accident had occurred while the deceased was crossing the road, what was transpired on perusal of Ex.P.4, Rough Sketch, is the fact that the accident had occurred due to the negligence on the part of the driver of the Van, as in Ex.P.4/Rough Sketch, it is clearly mentioned that the accident occurred on the extreme end of the mud road, on the western side, which was corroborated by P.W.2s' deposition. Since the occurrence took place on the western side of the Road that too, on the extreme end of mud portion, the Tribunal, rightly came to the conclusion that the accident had occurred due to the negligence on the part of the driver. Thus, the Tribunal by taking into consideration all the above evidence and documents, came to the right conclusion that it was only due to the negligent act of the first appellant, the accident had occurred and the deceased died. Therefore, the finding rendered by the Tribunal that the first appellant's Vehicle is the cause for the accident and that the second appellant, being the insurer of the Vehicle is liable to pay the compensation is correct. Accordingly, this Court uphold the negligence fixed by the Tribunal on the part of the driver of the Ambulance van.

15. As regards the contention of the learned counsel appearing for the appellants that the Tribunal failed to make any deductions from the family pension received by the first claimant, while determining the compensation under the head Loss of Dependency, this Court, in the light of the law laid down by the Hon'ble Supreme Courts in the above referred decisions, viz., i) Sebastiani Lakra Vs. National Insurance Company Limited, ii) Lal Dei and others Vs. Himachal Road Transport, and iii) Vimal Kanwar and others Vs. Kishore Dan and others (referred to supra), relied upon by the learned counsel for the claimants, this Court holds that no deduction can be made from the compensation awarded to the claimants while calculating the compensation under loss of dependency. Therefore, the contention of the learned counsel for the appellants is held to be unsustainable.

16. Now coming to the point regarding the future prospects, as rightly pointed out by the learned counsel

appearing for the claimants, the Tribunal has failed to add any amount towards future prospects, resulting in inadequate compensation towards Loss of Dependency. As held by the Hon'ble Supreme Court in the decision rendered in the case of National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC) for the age group of 52 years, 15% should be added towards future prospects. The Tribunal has applied the multiplier as 11, for the age group of 52 years and the same was also confirmed in the Post Mortem Report (Ex.P.3). Thus, by taking monthly notional income of the deceased as fixed by the Tribunal at Rs.11,745/-; adding 15% towards future prospects and deducting 1/3th towards the personal expenses of the deceased as did by the Tribunal, the Loss of dependency of the deceased works out to Rs.11,88,616/- in the following manner:
Calculation:

Notional Income = Rs.11,745/-
Add 15% Future Prospects = Rs.1,762/-
Total = Rs.11,745/- + Rs.1,762/-
= Rs.13,507/-

Loss of dependency
= Rs.13,507/- x 11 x 12 x 2/3
= Rs.11,88,616/-

17. As rightly pointed out by the learned counsel for the claimants, the compensation awarded by the Tribunal towards i) Loss of Consortium at Rs.5,000/-, ii) Loss of Estate at Rs.2,500/- and iii) Funeral Expenses at Rs.2,000/-were meager. In view of the settled law by the Hon'ble Supreme Court, in re National Insurance Co. Ltd. Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC), this Court is inclined to modify the compensation under the aforementioned three heads. Accordingly, the compensation awarded by the Tribunal under the heads of Loss of Consortium, ii) Loss of Estate and iii) Funeral Expenses is modified and enhanced to Rs.40,000/- towards Loss of Consortium and Rs.15,000/- toward Loss of Estate and Rs.15,000/- towards Funeral Expenses. Similarly, the Tribunal has awarded only a sum of Rs.10,000/- each towards love and affection to the claimants 2 and 3 and this Court is inclined to enhance the same to Rs.20,000/- each to the claimants 2 and 3.

18. As rightly pointed out by the learned counsel appearing for the appellants/claimants, the Tribunal has failed to award any amount towards Transportation. Therefore, this Court is inclined to award a sum of Rs.10,000/- towards 'Transportation'.

19. Thus, the revised compensation awarded by this Court under various heads is extracted hereunder:

S.No.	Head	Tribunal	Amount granted
1.	Loss of dependency	Rs.8,25,000/-	Rs. 11,88,616/-
2.	Loss of estate	Rs.2,500/-	Rs.15,000/-
3.	Loss of consortium	Rs.5,000/-	Rs.40,000/-
4.	Funeral expenses	Rs.2,000/-	Rs.15,000/-
5.	Loss of Love and affection to the each claimants 2 and 3	Rs.20,000/-	Rs.40,000/-
6.	Transportation	-	Rs.10,000/-
Total		Rs.8,54,500/-	Rs.13,08,616/-

Thus, the claimants are entitled to a sum of Rs.13,08,616/- together with interest at the rate of 7.5% per annum.

15. In the result,

(i) The Civil Miscellaneous Appeal is dismissed and the cross objection filed by the claimants is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.8,54,500/- to Rs.13,08,616/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The Tamil Nadu State Health Transport Department is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered.

(v) On such deposit being made, the claimants are at liberty to withdraw the same as per the apportionment given below after following due process of law.

(a) The 1st claimant is entitled to a sum of Rs.9,08,616/- together with accrued interests and costs.

(b) The 2nd claimant and 3rd claimant are entitled to a sum of Rs.2,00,000/- each.

Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
The Additional District & Sessions Court,
Presiding Officer for Special Court for E.C. Act Cases,
Coimbatore.

+1cc to Mr.Ma.P.Thangavel, Advocate Sr.30270
+1cc to the Government Pleader Sr.30160

CMA.No.3408 of 2013
and
Cross.Obj.No.69 of 2014

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