IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.412 of 2013

D. Dhakshinamoorthy (Deceased)
rep.by L.R.s
1.D.Pushparani

2.D.Kishore Kumar

3.D.Kiruthiga (Minor) rep by her mother
and next friend, D.Pushparani

4.D.Lakshmiammal ...Appellants/Petitioners

Vs.

1.Mrs.M.Deepa
(set exparte in the trial court)

2.Reliance General Insurance Co. Ltd.,
Reliance House, 6th Floor,
Nungambakkam,
Chennai-600 006. ...Respondents/Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.08.2012 made in MACT.O.P.No.1512 of 2010 on the file of the II Judge, Motor Accidents Claims Tribunal (Small Causes Court),Chennai.

For Appellants : Mr.Arun Duttan
for M/S.C AND K Law Firm

Respondent -1 : Exparte

For Respondent-2 : Mr.S.Arun Kumar

JUDGMENT

The present Civil Miscellaneous Appeal has been preferred by the claimants against the Judgment and Decree dated 06.08.2012 made in MACT.O.P.No.1512 of 2010 on the file of the II Judge, Motor Accidents Claims Tribunal (Small Causes Court),Chennai.

2. The Claim Petition was filed under section 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T. Rules, claiming a compensation of Rs.32,00,000/- for the death of one Mr.D.Dhakshinamoorthy, aged 45 years, in a road accident.

3. The averments made in the Claim Petition in brief are as follows:-

3.1) On 28.12.2009 at 23.30 hours, when the said D.Dhakshinamoorthy, was walking along the extreme edge of G.S.T.Road, near Asharkana Bus stop, a van, bearing Regn.No.TN-22-BB-2819, belonging to the first respondent came from behind the said D.Dhakshinamoorthy, in a rash and negligent manner and dashed against him, thereby, he sustained grievous injuries and despite treatment, succumbed to the said injuries, and died on 21.04.2010. Hence, the legal heirs of the said D.Dhakshinamoorthy, viz., the claimants/appellants have filed the aforesaid claim petition as against the owner of the van as well as the insurer of the said vehicle.

3.2) The first respondent, the owner of the offending Van, remained exparte before the Tribunal.

3.3). The second respondent herein, Insurance Company filed a counter statement, inter alia contending that the accident had occurred owing to the fault of the deceased, and hence, they are not liable to pay the compensation amount. That apart, the compensation amount claimed by the claimants is high, and therefore, the Insurance Company prayed for dismissal of the claim petition.

3.4) Before the Tribunal, in order to prove the claim, the first claimant/wife of the deceased examined herself as P.W.1 besides examining one other witness as P.W.2 (Co-worker of the deceased) and marked twelve documents as Exs.P.1 to P.12. On behalf of the respondents, neither any witnesses were examined nor any documents were marked.

4. The Tribunal, on appreciation of both oral and documentary evidence, has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Van, insured with the second respondent. By coming to such a conclusion, the Tribunal has made the calculation under different heads and passed an award for a total sum of Rs.13,99,198.29, rounded off to Rs.14,00,000/-, and

the break up details of same are mentioned in the tabular column below:-

S.No.	Head	Award of the Tribunal
1	Loss of income for 4 months Rs.13,905x4	Rs. 55,820
2	Loss of Pecuniary benefits	Rs. 9,64,080
3	Funeral Expenses	Rs. 5,000
4	Loss of consortium	Rs. 5,000
5	Love and affection Rs.5,000x3	Rs. 15,000
6	Medical Expenses	Rs. 3,54,498.29
	Total	Rs.13,99,198.29p.

The said sum of Rs.14,00,000/- was directed to be paid together with interest at 7.5% per annum from the date of the Claim Petition till the date of deposit.

5. Aggrieved by the quantum of compensation awarded by the Tribunal, the present Appeal is preferred by the claimants, as stated supra and there is no appeal preferred by the second respondent/Insurance company.

6. The learned counsel appearing for the appellants/claimants submitted that the Tribunal, while determining the compensation towards Pecuniary Loss, has deducted 1/3rd towards his personal expenses instead of deducting 1/4th (as there are four dependents in this case) and based on the same, arrived at a compensation of Rs.9,64,080/- which is on the lower side. In support of his contention, the learned counsel placed reliance on the ratio laid down by the Hon'ble Apex Court, in the case of Sarla Varma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, wherein it is held that, deduction towards personal expenses has to be made depending upon the dependents in the family of the deceased, and since, in this case, the deceased had four dependents, 1/4th deduction have to be made. But, the Tribunal, without taking into consideration of the principle laid down by the Hon'ble Apex Court, in the aforesaid case, wrongly deducted 1/3 towards the personal expenses of the deceased. Further, he submitted that the Tribunal, while determining the income of the deceased committed an error in deducting the family pension benefits available to the deceased family, and in support of his

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

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."

7. The learned counsel appearing for the claimants further submitted that the Tribunal, despite taking note of the fact that the deceased completed 46 years at the time of the accident, wrongly fixed the age of the deceased as 45 years and applied the multiplier of '13', which is applicable to the age group of 46 to 50. Further, the learned counsel submitted that the Tribunal also failed to add amount towards future prospects, and as per the ratio laid down by the Hon'ble Apex Court, in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, it is necessary to add 30% to the future prospects, but the Tribunal failed to consider the same in this case, resulting in awarding an inadequate compensation towards Pecuniary Loss. It is the further contention of the learned counsel that the amount awarded by the Tribunal towards i) Loss of Consortium, ii) Loss of Love and Affection and iii) Funeral Expenses are also very meager and it warrants enhancement. It is further contended that the Tribunal failed to award any amount towards Loss of Estate. Thus, he prayed for proper enhancement of compensation awarded by the Tribunal.

8. The learned counsel for the second respondent/Insurance Company has fairly conceded that the ratio laid down by the Hon'ble Apex Court, in Sarla Varma's case (supra) with regard to the deduction of personal expenses of the deceased has not been followed by the Tribunal and the Tribunal has only deducted $1/3^{rd}$ towards the personal expenses of the deceased, instead of deducting $1/4^{th}$. Similarly, the proposition laid down by the Hon'ble Apex Court, in Pranay Sethi case (supra) with regard to the future prospects is also not followed. However, insofar as submission of the learned counsel for the claimants with regard to the age of the deceased and multiplier aspect adopted by the Tribunal is concerned, the learned counsel for the second respondent/Insurance company opposed the same and pointed out, in Ex.B.9, Pay Slip of the deceased, the date of birth of the deceased was mentioned as '04.04.1964', and the accident occurred on 28.12.2009, and the deceased passed away on 21.04.2010. Therefore, at the time of the deceased, the deceased had crossed 45 years. Hence, the Tribunal incorrectly fixed the age of the deceased as 45 years but rightly applied the appropriate multiplier of '13', which is applicable to the age group of 46 to 50 years, and therefore, no interference is warranted to the said aspect, except, correcting the age as 46. Therefore, he submitted that the award passed by the Tribunal requires modification only with regard to the aforesaid aspects.

9. Heard the learned counsel appearing for the appellants/claimants and the learned counsel for the second respondent/Insurance Company and perused the materials on record.

10. As rightly pointed out by the learned counsel appearing for the appellants/claimants, the Tribunal, while determining the pecuniary loss of the deceased, wrongly deducted the family pension, which is totally against the principles 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, wherein, it is held that no deductions can be made while determining the pecuniary benefits available to the dependents, due to the reason that the pensionary benefits are the benefits, which was earned by the deceased employee during the course of his employment and the same would accrue to the family members after the demise of the employee. Therefore, by following the said principle, this Court holds that the family pension cannot be deducted.

11. Coming to the contention of the learned counsel appearing for the claimants with regard to the age of the deceased fixed by the Tribunal and the multiplier adopted, as rightly pointed out by the learned counsel for the second respondent/Insurance company, in Ex.B.9, Pay slip of the deceased, the date of birth of the deceased was mentioned as 04.04.1964. The accident occurred on 28.12.2009 and the deceased passed away on 21.04.2010 and the Tribunal taking of the same, observed that the deceased had completed 45 years at the time of accident. Therefore, the multiplier adopted by the Tribunal cannot be said to be wrong and the same is confirmed.

12. So far as the contention of the learned counsel for the claimants with regard to the deduction made by the Tribunal towards personal expenses of the deceased is concerned, as held down by the Hon'ble Apex Court, in the case of Sarla Varma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, since, in this case, the deceased had four dependents [i) wife ii) Daughter, iii) Son and iv) mother] this Court holds that 1/4th deduction have to be made towards the personal income of the deceased.

13. Thus, by arriving upon such conclusion, the quantum of compensation awarded by the Tribunal towards Pecuniary Loss is determined in the following manner:-

Monthly Income	:	Rs.13,905/-
Annual Income (13,905 x 12)	:	Rs.1,66,860/-
(-) ¼ personal expenses	:	Rs.41,712/-
After deductions of expenses, Net annual Income is	:	Rs.1,25,145/-

14. Now coming to the point regarding the future aspects, as rightly pointed out by the learned counsel appearing for the claimants, the Tribunal has failed to add any amount towards future prospects and failure to do so has caused prejudice to the claimants/appellants. Since the deceased was an Head Constable and aged 45 years, 30% of the monthly income has to be added towards the future prospects of the deceased as held by the Hon'ble Apex Court, in Pranay Sethi's case (supra). Thus, by adding the future prospects, the total income is derived as follows:-

Net annual income	:	Rs.1,25,145/-
Add 30% Future Prospects	:	Rs.37543/-
Total income would be	:	Rs.1,25,145/- + Rs.37,543/- = Rs.1,62,688/-.
Applying the multiplier	:	Rs.1,62,688/-*13=Rs.21,14,944/-.

15. Further, the Tribunal has awarded only a sum of Rs.5,000/- each under the heads Funeral Expenses and Loss of Consortium, which appears to be very low. As held by the Hon'ble Supreme Court in Pranay Sethi's case (supra) wife of the deceased is entitled to a sum of Rs.40,000/- towards Loss of Consortium. Thus, the compensation awarded by the Tribunal towards Loss of Consortium is modified and enhanced to Rs.40,000/- So far as the compensation towards Funeral Expenses is concerned, this Court is inclined to fix a sum of Rs.15,000/- towards funeral expenses instead of Rs.5,000/ fixed by the tribunal. As rightly pointed out by the learned counsel for the claimants/appellants, the Tribunal ought to have awarded some amount towards the Loss of Estate. Therefore, this Court awards a sum of Rs.15,000/- towards Loss of Estate.

16. Similarly, the Tribunal has awarded only a sum of Rs.15,000/- towards Love and Affection, which deserves to be enhanced and this Court feel that a sum of Rs.1,15,000/- could be awarded towards Loss of Love and Affection to the claimants, which would meet the ends of justice. Therefore, the sum of Rs.1,15,000/- is awarded towards Love and affection, in the manner stated below:-

a) The second claimant is entitled to a sum of Rs.50,000/-,

b) The third claimant, being a minor, 19 years age boy, he is entitled to a sum of Rs.50,000/- and

c) The fourth claimant, mother of the deceased is entitled to Rs.15,000/-.

17. As far as the compensation awarded by the Tribunal towards Medical Expenses at Rs.3,54,498.29 and towards the Loss of Income for four months at Rs.55,820/- are concerned, the same are just and reasonable and this Court is not inclined to interfere with the same. Consequently, the total compensation amount of Rs.14,00,000/- awarded by the Tribunal is hereby modified and enhanced to Rs.27,10,262/-. The break up details of the modified compensation amount are as follows:-

1.Loss of income for four months	:	Rs. 55,820
2.Pecuniary Benefits	:	Rs.21,14,944
3.Funeral Expenses	:	Rs. 15,000.00
4.Loss of consortium to first claimant/wife	:	Rs. 40,000.00
5.Loss of love and affection to claimants 2 to 3	:	Rs.1,15,000.00
6. Medical Expenses	:	Rs. 3,54,498.29
7. Loss of Estate	:	Rs. 15,000.00
		Rs. 27,10,262.29/-
Rounded to		Rs.27,10,262/-

18. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.14,00,000/- to Rs. 27,10,262/-, 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 Insurance Company 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. On such deposit being made, the Tribunal shall transfer the amount to the claimants' bank account through RTGS within a period of two weeks thereon.

(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.15,00,000/- together with accrued interests and costs.

(b) The 2nd claimant is entitled to a sum of Rs.5,00,000/-.

(c) The 3rd claimant is entitled to a sum of Rs.5,00,000/- and

(d) The 4th claimant is entitled to a sum of Rs.2,10,262/-.

(d) So far the share in respect of the minor claimant is concerned, the same shall be deposited by the Tribunal in any of the Nationalized Bank, in an interest bearing FD Account till the minor attains majority and the first claimant/mother is permitted to withdraw accrued interest once in three months.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The II Judge, Motor Accidents Claims Tribunal
(Small Causes Court),Chennai.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.S.Arun Kumar,Advocate Sr.No. 38893

AKM/11.11.19/12P-4C /

C.M.A.No.412 of 2013