



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.07.2018

Delivered on: 09.08.2019

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CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.584 of 2018

1.Chinnathamani
2.Manikandan
3.Abirami

... Appellants/Petitioner

Vs.

1. Amman Granites,
M.G.Colony,
Harur Town & Taluk,
Dharmapuri District.

2. National Insurance Company,
No.88-F, Bye-pass Road,
Dharmapuri,
Dharmapuri District.

... Respondents/Respondents

PRAYER :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, for enhancement of the award amount of Rs.3,56,671/- to Rs.65,70,261/- vide judgment and decree passed in M.C.O.P.No.48 of 2014 dated 23.03.2017 by the Motor Accident Claims Tribunal / Sub-Court, Harur.

For Appellants : Mr.P.Paramasiva Doss

For Respondents : Mr.R.Ravichandran for R2

J U D G M E N T

Krishnan Ramasamy,J.

Not content with the award passed by the Motor Accident Claims Tribunal, Sub-Court, Harur, in MCOP.No.48/2014, dated 23.03.2017, awarding compensation of Rs.3,56,671/- as against the claim of Rs.65,70,261/-, the appellants/claimants have preferred this Civil Miscellaneous Appeal.



2. The brief facts of the case are as follows:-

i) The appellants/claimants are the wife and children of the deceased Annamalai, aged about 48 years, who was working in Amman Granties as a Production Manager at the relevant time. On 06.10.2010 the deceased was returning back to Harur from Salem, after finishing his work, in his Company's Vehicle viz., Bajaj Boxer bearing Registration No.TN-29-M-0699. At about 6.00 pm., while he was nearing Valsaiyur, Sundharrajan Colony, very slowly and carefully by duly observing all traffic rules. At that time in order to avoid an accident from a vehicle, which was coming on the opposite direction, he took diversion on the left side of the Road, due to which, the vehicle hit to a stone on the road side and thereby the rider lost his control and dashed against a tamarind tree. Due to the said accident, the rider sustained head injuries and grievous injuries on his vital parts of the body. He was immediately taken to Government Hospital, Salem, but he died on the way. A case was also registered against the deceased Annamalai in Cr.No.297/2010, under Sections 279 and 304(A) IPC on the file of Veeranam Police Station. Therefore, the wife of the deceased along with the two children filed a claim petition claiming a sum of Rs.70,00,000/-. According to the claimants, the deceased was earning a salary of Rs.75,000/- per month. To substantiate the same, the claimant's have filed the Income Tax returns of the deceased Annamalai for the financial years 2008-09, 2009-10 and 2010-11 also.

3. The Tribunal examined PW1, wife of the deceased, who deposed that the deceased was working as a Production Manager in Amman Granites and earning a sum of Rs.75,000/- per month as salary. Therefore, according to PW1, the deceased was earning a sum of Rs.9,00,000/- per annum. To substantiate the income of the deceased, PW1 marked Ex.P8 Salary Certificate of the deceased, Ex.P9 PAN card of the deceased, Ex.P10 Income Tax Returns for the years 2008-10 and Ex.P11 Income Tax Return for the year 2010-11. Ex.P12 is the Bank Statement of the deceased and Ex.P13 is the M.Tech Certificate of the deceased. The Tribunal, after considering the pleadings and evidences, both oral and documentary, awarded a sum of Rs.3,56,671/- as compensation. The Tribunal also held that the claim statement was filed under Section 163 (A) of the Motor Vehicles Act, 1988, in short, "the Act". Therefore, the main points revolving around the present appeal and to be decided are as follows:-

1) Whether the Tribunal applied the cost of living as on the date of accident as per Section 163 A (3) of the Motor Vehicles Act, 1988, while determining the compensation under Section 163A?



appropriate to apply to Section 163 A of the Act while fixing the compensation under the structured formula provided in the Second Schedule and also whether the Consumer Price Index is in consonance with the prevailing cost of living to adequately compensate the victims of the Motor Accident Claims.

8. In this regard, let us see the meaning of Consumer Price Index, which is subject to changes in price level of consumer goods and services provided to household. The Consumer Price Index is a statistical estimate constructed by using the prices of sample of representative items, whose prices are collected periodically and sub indices are computed for different categories and sub categories of goods and services to produce the over all index with wages reflecting the share in the total of the Consumer expenditure covered by the index. The annual percentage change in Consumer Price Index, is used as a measure of an inflation. Consumer Price Index can be used to index (that is adjusted for the effect of inflation/notification) to determine the real default wages, salary, pensions, for regulating the price and for deflecting, and therefore, the Consumer Price Index is the appropriate index that can be used to determine the income of a person based on the income mentioned in the Second Schedule, which means, the income structured formula mentioned in the Second Schedule will be changed every year based on the Consumer Price Index. Therefore, in the present case also, it would be appropriate to apply the Consumer Price Index for the relevant year by taking the annual income mentioned as per the structured formula in the Second Schedule. Be that as it may, the Central Board of Direct Taxes (CBDT) has been issuing notification from time to time, every year, in which, the Cost Inflation Index is indicated for determining the capital gain index.

9. Now, let us see, what the Cost Inflation Index is. It is a measure of inflation that finds obligation in tax law, when computing long term capital gains on sale of assets. Section 48 of the Income Tax Act, defines the index as what is notified by the Central Government every year, as 75% of the Consumer Price Index for Urban non-salaried employees for the immediately preceding previous year. Therefore, if the Consumer Price Index is 100 last year, the Cost Inflation Index will be fixed for the current year at 75.

10. In the present case, the income of the deceased was Rs.9,00,000/- per annum. However, as per the structured formula, for the income during the year 1994, only maximum amount of Rs.40,000/- can be considered as income of the deceased. The said amount was Rs.40,000/- fixed in the year 1994 and the same cannot be applied in this case, as the accident occurred on 06.10.2010. Therefore, it would be



inappropriate to provide compensation for a person who sustained injury during the year 1994 at a sum of Rs.40,000/- and to apply the same amount of Rs.40,000/- for the victim, who sustained fatal accident, during the year 2010.

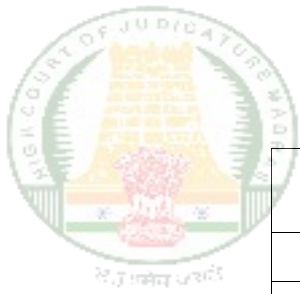
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11. It is the duty of the Central Government in terms of Section 163-A (3) to amend the Second Schedule from time to time according to the Consumer Price Index, which will vary due to inflation. But, the Central Government has not revised or amended the Schedule from time to time as per Section 163-A (3).

12. Under the circumstances, this Court takes Judicial notice of the the above facts and decides to give effect to sub-Section (3) of Section 163 (A) of the Act to increase the annual income mentioned in the Second Schedule, according to the Consumer Price Index issued by the Government of India from time to time.

13. Now, the question to be decided is, how to determine the Consumer Price Index in accordance with the income fixed by the Government of India. The Central Board of Direct Taxes has been issuing notifications every year, revising the Cost Inflation Index for the purpose of determining the capital gains. As stated above, the Cost Inflation Index is determined as 75% of the Consumer Price Index of the previous year. The Cost Inflation Index, as issued by the Central Board of Direct Taxes, since 1982 to 2018 is as follows:-

Sl.No.	Financial Year	Cost Inflation Index
1	1981-82	100
2	1982-83	109
3	1983-84	116
4	1984-85	125
5	1985-86	133
6	1986-87	140
7	1987-88	150
8	1988-89	161
9	1989-90	172
10	1990-91	182
11	1991-92	199
12	1992-93	223
13	1993-94	244



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Sl.No.	Financial Year	Cost Inflation Index
14	1994-95	259
15	1995-96	281
16	1996-97	305
17	1997-98	331
18	1998-99	351
19	1999-2000	389
20	2000-01	406
21	2001-02	426
22	2002-03	447
23	2003-04	463
24	2004-05	480
25	2005-06	497
26	2006-07	519
27	2007-08	551
28	2008-09	582
29	2009-10	632
30	2010-11	711
31	2011-12	785
32	2012-13	852
33	2013-14	939
34	2014-15	1024
35	2015-16	1084
36	2016-17	1125
37	2017-18	1158
38	2018-19	1191

14. In the above table, the Cost Inflation Index is mentioned from the year 1981-1982 to 2018-2019. It is pertinent to mention that the Central Government has notified the Consumer Price Index based on the Cost of living every year. The Central Board of Direct Taxes has also been issuing Cost Inflation Index by taking 75% of the Consumer Price Index of the previous year for the purpose of calculating capital gains on assets.

15. By adopting the Cost Inflation Index as notified by the Central Board of Direct Taxes which is 75% of the Consumer Price Index of the previous year, we can work out Consumer Price Index and apply the same to determine the annual income as per the Second Schedule as on the date of accident. For



Income as mentioned		Cost Inflation Index for the
		year 2017-2018/
in second schedule	X	Cost Inflation Index for the
		year 1994-1995 x 100/75

16. The maximum amount of income per annum for the purpose of determining the compensation is Rs.40,000/- as mentioned in the Second Schedule for the year 1994-1995. If the said amount is taken into consideration by applying the above mentioned formula the maximum income for the year 2017-2018 is as follows:-

$$\text{Rs. } 40,000/- \times \frac{1158}{259} \times \frac{100}{75} = 2,38,455/-$$

Rs.2,38,455/- is rounded off to Rs.2,40,000/-. Therefore, for the financial year 2017-2018, the sum of Rs.40,000/-, as shown in the Second Schedule for the year 1994-1995, should be revised to Rs.2,40,000/-.

17. Recently, the Ministry of Road Transport and Highways, Union of India, New Delhi has issued a notification, dated 22.05.2018, amending the Second Schedule, fixing a lump sum compensation of Rs.5,00,000/- in case of death, which will come with effect from 01.01.2019. We feel, it is not in accordance with the increase in cost of living and the same needs revision, by applying the Consumer Price Index.

18. Since the Central Government has failed to amend the Second Schedule as provided under Section 163-A (3), it would be appropriate for this Court to apply the above formula, after taking into consideration the cost of living and the Consumer Price Index concerned, while determining the income of the deceased. As long as the Government is not revising the Second Schedule, the Court can apply the Consumer Price Index and determine the income. As stated supra in the preceding paragraph, the Government has recently come out with an amendment of compensation of Rs.5,00,000/- which will be effected from 01.01.2019, concerning Second Schedule. By applying the Consumer Price Index, the income of the deceased will be much more than Rs.5,00,000/-. For example, if a person coming under this category earns Rs.2,40,000/- per annum and dies during the year 2018, due to the carelessness of driving in an accident, he will be entitled for compensation under Second Schedule by applying the Consumer Price Index, in the following manner:-



The deceased died at the age of 24. His loss of income being a sum of Rs.2,40,000/- + 50% future earnings which comes around a sum of Rs.1,20,000/- in total Rs.3,60,000/- X 18 = 64,80,000/-. If he died leaving behind his father, mother, wife and a child, then 1/4th share thereof i.e., Rs.16,20,000/- will be deducted, in which event, Rs.48,60,000/- will be the loss of income, apart from other compensation. The Government has fixed a lumpsum compensation of Rs.5,00,000/- which is very low. The said compensation cannot be fixed, considering the cost of living from 1994 to till date. Hence, the same should be revised. Accordingly, Point Nos.2 and 3 are answered.

19. Coming to the case on hand, the deceased person was earning a sum of Rs.9,00,000/- per annum. To substantiate the same, the appellants/claimants filed Income Tax Returns Ex.P10 and Ex.P11 and Salary Certificate Ex.P-8. By applying Section 163-A, as stated above, the maximum amount can be considered as Rs.2,40,000/- and it is not possible to take the entire amount of Rs.9,00,000/-. Instead, as per the relevant period of accident coupled with the Cost Inflation Index, the following income has to be arrived at :

$$\text{Rs.40,000/-} \times \frac{711}{259} \times \frac{100}{75} = \text{Rs.1,46,409/-},$$

which is rounded off to Rs.1,50,000/-.

20. Further, in order to calculate the personal expenses, the Hon'ble Apex Court, in the case of Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121, has observed that if the deceased is married and dependants are three, 1/3rd of the total income is to be deducted towards the personal expenses of the deceased. In the present case, the deceased is married and has two children. Therefore, we have to deduct 1/3rd of the total annual income towards 'personal expenses'.

21. Since the appellants/claimants have filed Income Tax Returns of the deceased, as per the Constitution Bench judgment of the Hon'ble Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), it is just and necessary that 30% is added towards future prospects. On adding 30%, the income of the deceased comes to Rs.1,95,000/- (Rs.150000 + 45000).

22. Accordingly, the annual income of the deceased would come to Rs.1,95,000/-. Deducting one third towards personal expenses, the loss of dependency per annum works out to Rs.1,30,000/- (Rs.165000 - 65000). Since the deceased was aged 48 years, as per the Second Schedule, the proper multiplier to be applied is '13', as per which, the total loss of dependency works out to Rs.16,90,000/- (Rs.130000 x 13).



23. The Tribunal awarded a sum of Rs.5,000/- towards Loss of Consortium. In this regard, as held by the Hon'ble Apex Court in the case of Pranay Sethi (cited supra), we re-fix the amount as Rs.40,000/- towards "Loss of Consortium" to wife. As no amount was awarded towards "loss of love and affection" by the Tribunal, we award a sum of Rs.50,000/- each under that caption to second and third appellants/claimants. Besides, since no amount was awarded by the Tribunal under the heads "Loss of Estate" and "Transportation", we award a sum of Rs.15,000/- and Rs.10,000/- respectively under those heads. The Tribunal awarded a sum of Rs.5,000/- towards "Funeral Expenses". As held in Pranay Sethi's case (cited supra) by the Hon'ble Supreme Court, this Court is inclined to increase the said amount to Rs.15,000/- from Rs.5,000/-.

24. Hence, the total compensation payable to the appellants/claimants is arrived at as under :

S. No	Heads	Amount awarded by the Tribunal	Amount Awarded by this Court
1	Loss of Dependency	Rs.3,46,671/-	Rs.16,90,000/-
2	Loss of Consortium	Rs. 5,000/-	Rs. 40,000/-
3	Loss of love and affection to second claimant/appellant	Rs. Nil	Rs. 50,000/-
4	Loss of love and affection to third appellant/claimant	Rs. Nil	Rs. 50,000/-
5	Loss of Estate	Rs. Nil	Rs. 15,000/-
6	Transportation	Rs. Nil	Rs. 10,000/-
7	Funeral Expenses	Rs. 5,000/-	Rs. 15,000/-
	TOTAL	Rs.3,56,671/-	Rs.18,70,000/-

Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.3,56,671/- to Rs.18,70,000/-. The total amount of compensation shall be shared by the appellants/claimants in the following manner :-

Wife of the deceased, who is the first appellant/claimant, shall receive a sum of Rs.10,00,000/- and the son and the daughter of the deceased, who are second and third appellants/claimants, shall receive a sum of Rs.4,35,000/- each.



25. The Insurance Company is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through NEFT or RTGS within a period of one week thereon. The appellants/claimants are directed to pay the requisite court fee, if any, within a period of two weeks from the date of receipt of a copy of this order.

26. Before parting with, we deem it imperative to mention here that the purpose of the Legislature in introducing Section 163-A of the Act is to enhance further the purpose of introducing Section 140 of the Act. On analogy, one may say how such a huge claim can be awarded without a full-fledged trial ? However, it appears that from a catena of decisions and, by experience, the Legislature has realised that in cases of pecuniary loss, what is required to be established before the Tribunal is, the income and age of the victim and the fact of motor vehicular accident, which is either fatal or has caused injury, with the name of owner and insurer of motor vehicle in an application under Section 166 of the Act, a full-fledged trial is held to collect such a data and on collecting such data, compensation is decided after applying multiplier, on determining liability and the extent thereof. The question of liability and extent thereof are not justiciable in application under Section 163-A of the Act. As soon as the data is provided, Tribunal can decide compensation on the basis of structured formula and that too instantly. The purpose of the Legislature is to see that victims or injured get instant relief so far as the pecuniary loss is concerned, because that loss suffered by them requires instant and immediate relief, may be, from the next day of the accident. Any delay in grant of such compensation will make their life miserable and may read therein mockery of justice and mockery of Claims Tribunal. It is a common experience that the claim applications are not heard expeditiously and it takes at least 4 to 5 years to decide the same although sincere attempts are made. It is found that in certain cases, it took about 7 years for the Tribunal to decide. It is with such an experience in the backdrop, the Legislature appears to have been tempted to introduce Section 163-A. Just to achieve the goal referred hereinabove, the Legislature has introduced predetermined structured formula to award compensation and the multipliers are arrived at and provided for, with a view to have consistency.

27. The Scheme is an alternative to the determination of compensation on fault basis under the Act. The object underlining the said amendment is to pay compensation without



there being any long drawn litigation on pre-determined formula, which is known as structured formula basis, which itself is based on relevant criteria for determining compensation and the procedure of paying compensation after determining the fault is done away. Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure, because of ever increasing motor vehicle accidents in a fast moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided under Section 140 for no fault liability and determination of compensation amount on fault liability was taking long time. That mischief was sought to be remedied by introducing Section 163-A and the disease of delay was sought to be cured to a large extent by affording benefit to the victims on structured formula basis. Further, if the question of determining compensation on fact liability was kept alive, it would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles.

28. Section 163-A was introduced in the year 1994. The executive authority of the Central Government has the requisite jurisdiction to amend the Second Schedule from time to time. Having regard to the inflation and fall in the rate of bank interest, it is desirable that the Central Government bestows serious consideration to this aspect of the matter. In other words, the Central Government has been bestowed with duties to amend the Second Schedule in view of Section 163-A (3), but, it failed to do so for the last 25 years. Therefore, the Central Government has to consider amendment of the Second Schedule to the Act to rectify the mistakes crept therein and rationalise the compensation payable thereunder.

29. Civil Miscellaneous Appeal is partly allowed, with the above observations and directions. No costs.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

dna/dpq/dixit

To

1. The Subordinate Judge,
The Motor Accident Claims Tribunal/
Harur.



2. The Deputy Legal Advisor Court of India,
Ministry of Law & Justice Department,
Branch Secretariat, 3rd Floor,
Shastri Bhavan, 26, Hoddows Road,
Chennai.

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Copy to

1. The Additional Solicitor General,
High Court, Madras.
2. The Section Officer,
V.R. Section, High Court,
Madras - 600 104.

+1cc to Mr.R.Ravichandran, Advocate, S.R.No.69455 (06/12/2021)

C.M.A.No.584 of 2018

AD(CO)
HS(05/08/2021)