IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4665 of 2019

1.M.Poosam
2.M.Jagadeesan
3.M.Arul Prakasam ..Appellants/Claimants

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Villupuram. ..Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.07.2012 made in M.C.O.P.No.1990 of 2009 on the file of the Motor Accidents Claims Tribunal, I Additional District & Sessions Court, Cuddalore.

For Appellants : Mr.S.Udhayakumar
For Respondent : Mr.K.J.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 26.07.2012 made in M.C.O.P.No.1990 of 2009 on the file of Motor Accidents Claims Tribunal, I Additional District & Sessions Court, Caddalore.

2.The appellants are the claimants in M.C.O.P.No.1990 of 2009 on the file of the Motor Accidents Claims Tribunal,I Additional District & Sessions Court, Caddalore. They filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the death of one Murugesan, who died in the accident that took place on 06.06.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent/ Transport Corporation and directed the respondent to pay a sum of Rs.2,70,250/- as compensation to the appellants.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeal seeking enhancement of compensation.

5.The learned counsel for the appellant contended that at the time of accident the deceased was working as a special grade medical worker in Government Head Quarters Hospital, Cuddalore and was earning a sum of Rs.20,000/- per month. The Tribunal fixed a meagre amount of Rs.12,863/- as the monthly income of the deceased. The deceased was aged 55 years at the time of accident and the Tribunal has not granted any enhancement towards future prospects. The family pension cannot be taken as income of the appellants. The Tribunal ought to have adopted proper multiplier for awarding compensation. The total compensation granted by the Tribunal under other heads are also meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the respondent-Transport Corporation contended that the amounts awarded by the Tribunal under different heads are excessive. Hence, the appellants are not entitled for any enhancement and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the respondent-Transport Corporation and perused the entire materials on record.

8.It is seen that the appellants have contended that the deceased was aged about 55 years at the time of the accident and was working as a Special Grade medical worker in Government Head Quarters Hospital, Cuddalore and was earning a sum of Rs.20,000/- per month. The Tribunal considering Ex.P3/Postmortem Certificate, fixed the age of the deceased as 55 years and the correct multiplier applicable is 9. The salary of the deceased was Rs.13,362/- as on 30.11.2009. At the time of the accident i.e., as on 06.06.2009, the salary of the deceased was Rs.12,863/- per month. The appellants have marked Exs.P6(Pay Certificate) and P7 (Last Pay Certificate) of the deceased. In Ex.P6/ Pay Certificate, it is mentioned that the total gross salary was Rs.10,425/- and after deducting Rs.3,295/-, the net salary of the deceased was Rs.7,130/- for the month of May 2009. As per Ex.P7, the last pay certificate of the deceased it is mentioned as follows:

Monthly salary	: Rs.12,863/-
Probable Salary 5 months salary(due to retirement) (Rs.12,863/- x 5)	: Rs.64,315/-
Retirement Salary (as per probable pay certificate at the time of retirement)	: Rs.13,362/-
His pay + GP + DA comes to	: Rs.12,662/-
Half of pension Rs.12,662/-	: Rs.6,331/-
Loss of dependency for 12 months (Rs.6,331/- x 12 x multiplier '9')	: Rs.6,83,748/-
Family pension Rs.12,662/- x 30%	: Rs.3,798/-
for 12 months (Rs.3,798/- x 12 x 9)	: Rs.4,10,184/-
Total	: Rs.6,83,748/-
Less	: Rs.4,10,185/-
Remaining	: Rs.2,73,563/-

9. The Tribunal has adopted split multiplier and after deducting the family pension of Rs.4,10,184/- on the said amount has arrived the annual income of the deceased at Rs.2,73,563/-. After deduction of 1/3rd towards personal expenses, the Tribunal has arrived at a sum of Rs.2,25,250/- as loss of dependency. The said methodology adopted by the Tribunal while arriving at the loss of dependency is not correct. The said finding is contrary to the judgments reported in 2015 ACJ 1000 and 2013 ACJ 1441. In the said decisions, it has been held as follows:

(i) 2013 ACJ 1441 [Vimal Kanwar and others Vs. Kishore Dan and others]

> 19. The first issue fell for consideration before this Court in Helen C.Rebello Vs. Maharashtra State Road Transport Corporation 1999 ACJ 10 (SC). 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:

"(37) 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 receivable only on the happening of the event, viz., accident, which may not take 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 amount is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which 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 all are 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."

(ii) The judgment of this Court reported in 2015 ACJ 1000 [Managing Director, TNSTCL Vs. Chandirika and another]

11.Per contra, it is the submission of learned counsel appearing for the claimant-respondent No.1 that the pension amount is not liable to be deducted from the monthly income of the deceased while calculating the loss of income. In this regard, the learned counsel has also placed reliance upon the very same decision reported in Vimal Kanwar and others Vs. Kishore Dan, 2013 ACJ 1441 (SC), wherein the Hon'ble Supreme Court has held as follows:

"(19)...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 receivable only on the happening of the event, viz., accident, which may not take 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 amount is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which 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 all are 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."

It is made clear by the dictum laid down in the above judgment that the pension amount is a pecuniary advantage received on account of one's death and the same has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. Hence, the pension amount is not liable to be deducted from the compensation amount. Therefore, we are not inclined to deduct the pension amount presently the wife of the deceased is receiving from the compensation amount awarded under the head of loss of income."

10. The ratio in the above judgments are squarelly applicable to the facts of the case on hand. The Tribunal erred in deducting Rs.4,10,185/- from the compensation payable to the appellant. Hence, the loss of dependency is modified as follows:

Monthly salary	: Rs.12,863/-
Probable Salary 5 months salary(due to retirement) (Rs.12,863/- x 5)	: Rs.64,315/-
Retirement Salary (as per probable pay certificate at the time of retirement)	: Rs.13,362/-
His pay + GP + DA comes to	: Rs.12,662/-
Half of pension Rs.12,662/-	: Rs.6,331/-
Loss of dependency for 12 months (Rs.6,331/- x 12 x multiplier '9')	: Rs.6,83,748/-

The amount awarded by the Tribunal under other heads are just and reasonable and hence they are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	2,25,250/-	6,83,748/-	Enhanced
2.	Love and affection	30,000/-	30,000/-	Confirmed
3.	Funeral expenses	5,000/-	5,000/-	Confirmed
4.	Loss of consortium	10,000/-	10,000/-	Confirmed
	Total	Rs.2,70,250/-	Rs.7,28,748/-	enhanced by Rs.4,58,498/

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,70,250/- is hereby enhanced to Rs.7,28,748/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellants are directed to pay the Court fee if any, on the enhanced award amount now determined by this Court. The respondent-Transport Corporation is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1990 of 2009 on the file of the Motor Accident Claims Tribunal, I Additional District & Sessions Court, Cuddalore. On such deposit, the appellants are permitted to withdraw their respective shares of the award amount along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, after adjusting the amount, if any, already withdrawn, by filling necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vkr

To

1.The Motor Accidents Claims Tribunal,
The I Additional Subordinate Judge,
Coimbatore.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.S.Udayakumar, Advocate, S.R.No.293
+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.472

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VBA(CO)
KKV/31/12/2020