

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

C O R A M

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE R. PONGIAPPAN

CMA No.2680 of 2019

1. N.Logeswari
2. M.L.Yashwant (Minor)
3. M.L.Thrithika (Minor) ... Appellants/Petitioners
[Minors 2 and 3 are represented by
their mother and next friend/1st appellant]

-vs-

1.SIP.Jeyam
2. The New India Assurance Co. Ltd.,
No.45, Moore Street, 5th Floor,
Chennai - 600 001. ... Respondents/Respondents
[R1-set exparte before the claims tribunal]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 09.11.2018 made in M.C.O.P.No.6213 of 2013 on the file of the Motor Accident Claims Tribunal [V Court of Small Causes], Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mr.M.Krishnamoorthy [for R2]

J U D G M E N T

R.PONGIAPPAN, J.

Aggrieved over the award passed by the Motor Accidents Claims Tribunal, Chennai in M.C.O.P.No.6213 of 2013 the appellants herein, who are the claimants in the claim petition, have filed this appeal, seeking enhancement of compensation.

2. Before the Claims Tribunal, the appellants 1 to 3 have filed a Claim Petition under Section 166 of the Motor Vehicles Act read with Rule 3 of M.A.C.T., claiming compensation of Rs.1,60,00,000/- [One Crore and Sixty Lakhs), for the death of one Murugan, who is the husband of 1st appellant and father to

the 2nd and 3rd appellants. After elaborate enquiry, the Claims Tribunal awarded compensation of Rs.58,65,600/- with interest at the rate of 7.5% per annum, against which, the present appeal has been preferred.

3. In the Claims Tribunal, the case of the claimants/appellants 1 to 3 is as follows:

3.1. On 15.05.2013, at about 08.15 hours, when at the time the deceased Murugan was riding his two wheeler bearing Regn.No.TN20-AT-6925, from East to West Direction, on the left side of CTH Road, Mannurpet, near to Ganesh Prasad Hotel, a lorry bearing Regn.No.TN04-E-8652 was driven by its driver in a rash and negligent manner and dashed against the motorcycle in which the deceased was travelling. Due to the accident, the deceased Murugan fell down and thereafter, the left back wheel of the lorry ran over him and thereby the deceased sustained grievous injury. As a result of which he died on the spot itself. For the said occurrence, a case has been registered by Poonammallee Traffic Investigation, Chennai, under Sections 279 and 304 (A) IPC.

3.2 Before his death, the deceased was working as a Project Leader in William Hare (India) Pvt. Ltd., Chennai and earned a sum of Rs.60,583/- per month. He is the only bread winner of the claimants' family. 1st respondent herein is the owner of the offending vehicle and the 2nd respondent is its insurer. Since the accident occurred due to the negligent act of the driver of the 1st respondent vehicle, both respondents are jointly and severally liable to pay the compensation.

4. Before the Claims Tribunal, the 1st respondent remained exparte.

5. Opposing the claim made by the claimants, the 2nd respondent herein filed counter affidavit and states that the accident has not occurred due to the rash and negligent act of the lorry driver. The accident had occurred due to the negligence of the deceased only. At the time when the deceased attempted to overtake the lorry on its right side after violating the traffic rules, the occurrence had happened. According to the 2nd respondent, the deceased had equally contributed negligence to the accident. The age, occupation and income of the deceased are disputed. The relationship of the petitioners with the deceased, is denied. The amount of compensation claimed is excessive.

6. Before the claims tribunal, the 1st claimant/1st appellant examined herself as PW1. One Swaminathan, who is the Eye Witness to the occurrence was examined as PW2. Further on behalf of the employer of the deceased, one Vanaja was examined

as PW3. Apart from that, 25 documents were exhibited on the side of the claimants as Exs.P1 to P25.

7. On the other hand, on the side of the respondents, none have been examined and no documents were marked as Exhibits.

8. Having considered the materials placed before him, the Presiding Officer of the Claims Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the 1st respondent. Further, holding that both the respondents are jointly and severally liable to pay compensation, awarded the compensation as stated in the earlier paragraph of this judgment.

9. Now, with the prayer to enhance the same, the claimants are before this Court with the present Civil Miscellaneous Appeal.

10. Today, when the appeal is taken up for hearing, Mr.K.Varadha Kamaraj, learned Counsel for the claimants/appellants and Mr.M.Krishnamoorthy, learned counsel for the 2nd respondent-Insurance company, made their respective submissions.

11. Challenge in this appeal is only in respect of the quantum of compensation arrived at by the claims tribunal. In this regard, the learned counsel for the appellants would contend that while at the time of calculating the income of the deceased, the Claims Tribunal took the net income, received by the deceased for computing the dependency. Legally, for assessing the just compensation, the gross income of the deceased should have been taken by the claims tribunal. Further, without including the perks which were received by the deceased, the Claims Tribunal calculated the compensation, which is erroneous in law.

12. In support of his contention, the learned counsel appearing for the claimants/appellants, relied on the judgment of our Hon'ble Apex Court in National Insurance Company Ltd., Vs. Indira Srivastava & Others, reported in 2008 (1) TN MAC 166 (SC), wherein our Hon'ble Apex Court has held as follows:

"18. The term 'income' in P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Ed.) has been defined as under :

"The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment

would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture."

It has also been stated :

'INCOME' signifies 'what comes in' (per Selborne, C., Jones v. Ogle, 42 LJ Ch.336). 'It is as large a word as can be used' to denote a person's receipts '(per Jessel, M.R. Re Huggins, 51 LJ Ch.938.) income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. AIR 1921 Mad 427 (SB). Ref. 124 IC 511 : 1930 MWN 29 : 31 MLW 438 AIR 1930 Mad 626 : 58 MLJ 337."

19. If the dictionary meaning of the word 'income' is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income-tax or profession tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.

20. In N. Sivammal & Ors. v. Managing Director, Pandian Roadways Corporation & Ors. [(1985) 1 SCC 18], this Court took into consideration the pay packet of the deceased."

13. Therefore, applying the principles set out by our Hon'ble Apex Court in the above referred judgment, in this case also the nature of employment having by the deceased was not disputed on the side of the respondents. In fact, the appointment order issued by William Hare (India) Pvt. Ltd., was marked as Ex.P17 and the confirmation order issued by the same company was marked as Ex.P18. It is evident from those documents that the deceased was a permanent employee in William Hare (India) Pvt. Ltd., Chennai. The evidence given by PW3, who is the Manager (HR) in the said company reveals the fact that the deceased would have a better future and he is having the capability to go up to the level of Manager and earn Rs.1.5 Lakhs per month.

14. However, in order to determine the monthly income of the deceased, on the side of the claimants/appellants, the pay slip for the months of March 2013, April 2013 and May 2013, were exhibited as Ex.P20 to P22. Based on the particulars available in the payslips, the Claims Tribunal took the net income of the deceased as the monthly income and calculated the compensation. The said proposition adopted by the claims tribunal is not within the ambit of the above referred judgment. As per the

judgment of our Hon'ble Apex Court referred to above, it is necessary to take the gross income of the deceased employee for calculating the compensation. Accordingly, the monthly income of the deceased as per the salary slips excluding OT was fixed as Rs.42,982/-.

15. Now, on going through the aspect of 'future prospects', it is necessary to see the case of National Insurance Company Ltd Vs. Pranay Sethi and Ors, reported in 2017 ACJ 2700 (SC) in which our Hon'ble Apex Court has given guidelines for calculating the future prospects.

16. In this case, at the time of accident, the deceased was aged about 37 years. Since the deceased was a permanent employee, according to the guidelines given in the above referred case, 40% of the income should be added for calculating the total monthly income. Accordingly, total monthly income is calculated as Rs.60,175/-. [Rs.42,982/- + Rs.17,193/-]

17. From the above it is necessary to deduct 10% towards income tax, which is payable by the employer, which comes around Rs.6,017/-. So monthly income after deduction of income tax is Rs.54,158/-.

18. Secondly, in respect of deduction towards the personal expenses of the deceased, it is necessary to following the judgment of our Hon'ble Apex Court in Sarla Verma vs. Delhi Transport Corporation reported in (2009) 6 SCC 121, wherein it was held that when the family members of the deceased is 2 to 3, 1/3 of the monthly income has to be deducted, after deduction, of the income tax. So, Rs.18,053/- has to be deducted from the total monthly income of the deceased, which comes around Rs.36,105/-. [Rs.54,158/-Rs.18,053/- = Rs.36,105/-.]

19. With regard to the multiplier, in Sarla Verma's case, our Hon'ble Apex Court has held that if the age of the deceased was between 36 and 40, the appropriate multiplier is 15. In this case as already discussed that the age of the deceased at the time of accident was 37 years, hence the appropriate multiplier for calculating the loss of dependency is 15. Accordingly, the pecuniary loss for the family of the deceased, is calculated as follows:

Loss of dependency : Rs.36,105/- x 12 x 15
: Rs.64,98,900/-

20. In respect to compensation awarded by the Claims Tribunal under other heads, i.e., Rs.40,000/- towards consortium, Rs.40,000/- each to two minor children, Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.5,000/- towards transport charges, we are of the considered

opinion that the compensation awarded by the Claims Tribunal, is just and reasonable. Hence, the compensation awarded by the Claims Tribunal, under the abovesaid heads, remains unaltered.

21. Accordingly, the claimants / appellants 1 to 3 are entitled to the compensation as follows:

Head	Award of the Tribunal Rs.	Enhanced Award Rs.
Loss of Dependency	57,10,521.60	64,98,900.00
Loss of consortium	40,000.00	40,000.00
Loss of love and affection for two minor children	80,000.00	80,000.00
Funeral expenses	15,000.00	15,000.00
Loss of estate	15,000.00	15,000.00
Transport charges	5,000.00	5,000.00
Total	58,65,521.60	66,53,900.00
Total (Rounded off)	58,65,600/-	Rs.66,53,900.00

22. Hence, the compensation arrived at by the Claims Tribunal is modified to the extent of Rs.66,53,900/- and is ordered as follows:

(i) The award of the Tribunal (i.e.,) Rs.58,65,600/- is enhanced to Rs.66,53,900/-,

(ii) The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered.

(iii) The total compensation is apportioned among the claimants 1 to 3, in the ratio of 50:25:25, respectively.

(iv) The 2nd respondent-Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this judgment.

(v) On such deposit being made, after collecting the Court fee for the enhanced compensation, if any, the Tribunal is directed to transfer the share apportioned to the 1st appellant to her Bank Account through RTGS/NEFT within a period of one week.

(vi) At the time of accident i.e. in the year 2011, appellants 2 and 3 were minors. There are aged 4 years and 6 months respectively. Therefore, the share of the minors/appellants 2 and 3, shall be deposited in any one of the Nationalised Banks in fixed deposit under the reinvestment scheme initially for a period of three years. The interest accruing on the share of the minors/appellants 2 and 3, shall be paid to the 1st appellant/mother of the minors, once in three months, till they attain majority.

23. In the result, the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal
[V Judge, Court of Small Causes],
Chennai.

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

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.19801

+1cc to Mr.A.Varadha Kamaraj, Advocate Sr.19822

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srg 28/09/2020

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