BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.02.2022
CORAM:
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
C.M.A(MD)No.1201 of 2014

1.R.Jeyalakshmi

2.K.P.Rajalakshmi ... Appellants/Claimants

Vs

1.Srinivasan

2.The National Insurance Company Ltd.,
Through its Branch Manager,
Bodi. ... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 04.08.2014 passed in M.C.O.P.No.153 of 2013, on the file of Motor Accident Claims Tribunal (Principal District and Sessions Judge), Theni.

For Appellants :Mr.D.Srinivasaraghavan

For R1 :No appearance

For R2 :Ms.P.Malini

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the fair and decreetal order dated 04.08.2014 passed in M.C.O.P.No.153 of 2013, on the file of Motor Accident Claims Tribunal (Principal District and Sessions Judge), Theni.

2.The claim petitioners are the daughters of the deceased and the wife of the deceased had pre-deceased him, therefore, question of family pension being payable to the claimants does not arise.

3. The case of the claimants is that on 15.07.2013 at about 5.30 a.m, when the first petitioner and her father, namely, Paulchami returned after purchasing tea from tea shop in Theni to Andipatti main Road, a Maruthi Suzuki Ecco Car owned by the first respondent came in a rash and negligent manner, without following traffic rules dashed against the petitioners' father, due to which, he sustained injuries all over the body. Immediately after the accident, he was taken to the K.Vilakku Government Hospital, wherein, he died. Alleging that the accident had taken place due to the rash and negligent driving of the first respondent, who is the

owner of the vehicle, the claim petition has been filed by the daughters of the deceased Paulchami, claiming compensation of Rs.10,00,000/-.

4. Before the Tribunal, the first respondent was not present and he was set exparte. The second respondent/Insurance Company contested the claim petition on the ground that though horn warning has been given by the first respondent, the deceased was not able to hear the same, due to which, the accident had happened. It is also stated that the offending vehicle was not registered as per the Motor Vehicles Act. Hence, the second respondent is not liable to pay the compensation to the claimants. Hence, the claim petition has to be dismissed.

5. To prove the case, on the side of the claimants, the first claimant was examined as P.W.1, and Ex.P1 to Ex.P10 were marked. On the side of the second respondent, two witnesses have been examined and Ex.D1 to Ex.D7 were marked.

6. The Tribunal, after considering the evidence and materials placed on record, has held that the accident had taken place due to the rash and negligent driving of the first respondent, who is the owner of the vehicle. Though, the Officer observed that the vehicle was not registered as per the Motor Vehicles Act, he has fixed the liability on the Insurance company and ordered to recover the compensation amount from the first respondent/the owner of the vehicle.

7. Insofar as the quantum of compensation is concerned, considering the materials available on record, the Tribunal had fixed the monthly income of the deceased at Rs.4,500/-, considering the age of the deceased ie., 69 years at the time of accident, applied multiplier '5', deducted 1/3rd amount towards his personal expenses and awarded Rs.1,80,000/- as loss of income. Apart from that, the Tribunal has awarded Rs.10,000/- each towards loss and affection and awarded Rs.5,000/- towards funeral expenses along with interest at the rate of 7.5% per annum. Challenging the quantum of compensation, the claimants are before this Court.

8. The learned counsel for the appellants/claimants submits that though the deceased was a pensioner receiving a sum of Rs.18,567/- as pension amount and in order to prove the same, the relevant documents have been produced, the tribunal has erroneously fixed the monthly income of the deceased as Rs.4,500/ only, which needs to be enhanced. The compensation amount awarded under other heads also have to be enhanced substantially.

9.The learned counsel for the second respondent/Insurance Company submits that since the offending vehicle was not registered as per the Motor Vehicles Act, the liability cannot be fixed on them.

10.Heard the learned counsel appearing for the appellants/claimants and the learned counsel appearing for the second respondent/Insurance company and perused the materials placed on record.

11. On perusal, it is seen that the offending vehicle is not registered as per the Motor Vehicles Act. Hence the Tribunal has rightly fixed the liability on the owner of the vehicle, however, directed the insurance company to pay and recover the compensation amount from the owner of the vehicle, who is the first respondent herein.

11(a). On the point of quantum of compensation, learned counsel appearing for the appellant/claim petitioner would contend that the deceased was a pensioner and retired as a Headmaster was receiving a sum of Rs.18,567/- as pension. The Tribunal has fixed the income of the deceased as Rs.4,500/- only and awarded the compensation of Rs.1,80,000/- towards loss of income.

11(b). The learned counsel for the appellant would contend that the pension amount is the income and therefore, the same has to be treated as income for the purpose of pecuniary loss sustained by the family, namely, the legal representatives of the deceased. This Court given its anxious consideration for the said contention of the learned counsel for the claim petitioner.

12. In the decision reported in **2016(2) TNMAC 721 (SC) [Reliance General Insurance Company Ltd., v. Sasi Sharma]** the Hon'ble Supreme Court has held that the Life Insurance Corporation amount, Provident Fund and Pension amount “are not arising out of accidental death” but otherwise on the insured's death. The Court 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. 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. Within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction.

13. 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 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 it is said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual.'

14.Thus Life Insurance Corporation policy amount, provident fund amount, pension amount, family pension amount are not deductable while computing the compensation payable under the Motor Vehicles Act. The said decision has been further considered by the Hon'ble Apex Court in **2020 (1) TNMAC 182(SC) [National Insurance Company v. Birender and others']** wherein their Lordships have held that major and married earning son being the elders of the deceased entitled to compensation held petition is maintainable and further held at Para No.17 the Hon'ble Apex Court held that “in that context, in paragraph 24 of the reported decision, the Court clearly noted that the amount towards Family Pension cannot be deducted from the claim amount for determination of a Just Compensation under the Act” and at para 21 held that the reason assigned by the Tribunal for excluding the amount received by the deceased as family pension due to demise of her husband had noted in paragraph 26, as under:-

> *“26. Learned counsel for the claimants further requested that about to family pension being drawn by the deceased also be calculated for the purpose of assessing the compensation. This contention and assertion of learned counsel for the claimants does not carry any conviction with the Tribunal because the deceased was getting family pension in her own right as the widow of the deceased and cannot be termed as her income for the purpose of computing the amount of compensation.” The High Court, without reversing the said finding, proceeded to include the amount of Rs.7,000/ per month received by the deceased as pension amount after demise of her husband. We are in agreement with the view taken by the Tribunal and for the same reason, have to reverse the conclusion recorded by the High Court to include the said amount as loss of dependency. That could not have been taken into account, as the same was payable only to the deceased being widow and not her income as such for the purpose of computing the amount of compensation.”*

15. In the decision reported **2020 (1) TNMAC 182(SC) [National Insurance Company v. Birender and others']**, the Hon'ble Apex Court has considered the multiplier to be adopted when a person who is about to retire or has few years to service before retirement in

that context, the Hon'ble Apex Court has held that multiplier as prescribed in **Sarla Verma's case** has to be applied in toto and separate multiplier cannot be adopted and further it is held therein that the pension amount which is likely to fall on his retirement after few months or few years as the case may be, not a criteria after the constitutional decision of the Hon'ble Apex Court in **Pranay Sethi's** case and hence in view of the law laid down by the Hon'ble Apex Court in the above three decisions, 'the LIC amount', 'PF amount', 'Pension' amount, “Family Pension” receivable on the death 'will not be treated as an income' since even otherwise they are entitled to while the period is over or on natural death.

16. The 'death' is only a step or contingency, in terms, of contract to receive the amount. In the Motor Vehicles Act to term an amount as a compensation as pecuniary advantage liable for deduction, it should be 'an income'. The legal heirs will receive the family pension even otherwise than an accidental death and therefore, 'receipt of family pension has no relationship with the accidental death', it is related to death alone. When an amount is secured and is certain to be received, such amount will not be taken as a deduction within the ambit of the Motor Vehicles Act. Since the amount awarded under the Motor Vehicles Act is uncertain and receivable only on the happening of the event, namely, accident, which may take place at all. Therefore, the trial Court has rightly excluded the pension amount by not treating the same as an income and taken the notional income at Rs.4,500/- for the age group of 69 years, who is said to have been working as a watchman and also doing a job and therefore, I am inclined to enhance the notional income from Rs.4,500/- to Rs.6,500/-.

17. As per **Pranay Sethi's** case 10% future prospects should be taken and as per **Sarala Verma's** case proper multiplier to be adopted for the age group of 69 is '5' and deduction is taken as 1/3 . Hence pecuniary loss sustained by the claim petitioners are re-assessed as follows:

Rs.6500+10% = 6500+650 = Rs.7150/-

Rs.7150 x 12 x 7 x 2/3 = Rs.4,00,400/-

18. Since the claim petitioners are two in number, each of them are entitled for 40% towards filial consortium, ie., 2 x Rs.40,000/- = Rs.80,000/-. Further, the claimants are entitled to Rs.15,000/- towards transportation, Rs.15,000/- for funeral expenses and another Rs.15,000/- towards loss of estate. In total, the claimants are entitled to a sum of Rs. 5,25,400/- with interest at the rate of 7.5% p.a. Accordingly, the award of compensation is enhanced from Rs.2,05,000/- to Rs.5,25,400/-.

19. In fine,

(i) this Civil Miscellaneous Appeal is allowed in part enhancing the award of compensation is enhanced from Rs.2,05,000/- to Rs.5,25,400/-. No Costs.

(ii) At the time of the accident though the vehicle is insured with the second respondent insurance company, however, was running on the road without registration, it amounts to violation of the policy condition. Therefore, the 2nd respondent insurance company cannot be mulcted with liability and hence the 2nd respondent/insurance is exonerated from the liability. However, in view of the several judicial pronouncements, the second respondent insurance company is directed to pay the amount and recover the same from the owner of the vehicle.

(iii) the second respondent insurance company is directed to deposit the enhanced award amount at rate of 7.5% per annum, from the date of petition till the date of realisation, to the credit of M.C.O.P.No.153 of 2013 on the file of the Motor Accidents Claims Tribunal/Principal District and Sessions Judge, Theni, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iv) On such deposit being made, the claimants are permitted to withdraw their share in the award amount with proportionate accrued interest and costs, as per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(v) The appellants/claimants are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PJL

To

1.The Motor Accident Claims Tribunal/
Principal District and Sessions Judge, Theni.

Copy to

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.MALINI, Advocate (SR-6392[F] dated 16/02/2022)

+1 CC to M/s.D.SRINIVASARAGAVAN, Advocate (SR-6580[F] dated 16/02/2022)

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