IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.766 of 2020

United India Insurance Company Ltd.,
No.134, Greams Road,
T.P.Cell, IV Floor, Chennai – 6. ... Appellants

vs.

1.D.Rajendran
2.Shanthi
3.R.Anandan ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.1644 of 2016 dated 02.07.2019 on the file of the Motor Accident Claims Tribunal, (III Court of Small Causes) Chennai.

For Appellant : Mr.D.Bhaskaran
For R1 and R2 : Mr.S.Angamuthu

JUDGMENT

Challenging the award passed by the (III Court of Small Causes) Chennai in M.C.O.P.No.1644 of 2016 dated 02.07.2019, the 2nd respondent/Insurance Company has preferred this Civil Miscellaneous Appeal on the ground of quantum.

2. The claim petition was filed under Section 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T Rules claiming compensation of Rs.2,00,00,000/- for the death of Pravin Kumar caused in a road accident that occurred on 07.11.2015.

3. The Tribunal having taken into consideration of the oral and documentary evidence, and upon hearing both sides arguments, has passed an award a sum of Rs.61,51,400/- with interest at the rate of 7.5% p.a. from the date of numbering of the petition till the date of realisation and with costs.

4. Reiterating the grounds putforth in the Appeal, Mr.D.Baskaran,

learned counsel appearing for the appellant would contend that the variables in the salaries were not properly dealt with taking into account of entire salary without deductions of variables in the salary is not correct. Only 40% to be taken towards future prospects. Granting of Rs.1,00,000/- for loss of love and affection and further a sum of Rs.1,00,000/- for filial consortium are unsustainable in view of Constitution Bench Judgment reported in 2017(2) TN MAC 609 (SC). Finally, he would contend that the total award of Rs.61,51,400/- is on the higher side.

5. The learned counsel for the appellant would further contend that the Tribunal has fixed the monthly income of the deceased at Rs.38,800/-, but failed to deduct any amount for income tax and therefore, the award passed by the Tribunal is excessive.

6. The learned counsel appearing for the respondents/claimants would rather contend that in order to substantiate the income of the deceased, salary slip- Ex.P.19, Ex.P.20-Form-16(Assessment Year 2016-17), Ex.P.21- Service Certificate, Ex.P.22 – Bank Statement, Ex.P.23-Authorization Letter, have been produced in addition to the above said

documents. P.W.3 was working as H.R.Manager from TCS, Chennai. He would also further stressed upon fact that the deceased was continuously working for three years. Future prospects which was taken as 50% by the Tribunal is correct. Hence, he prays for confirming the order of the Tribunal.

7. Heard the rival submissions of the learned counsel for both sides and perused the materials available on record.

8. To substantiate the case of the claimants, Thiru.Rajendran, father of the deceased Pravinkumar, an eye-witness namely, Somasundaram, Malolan, H.R.Manager from T.C.S. Chennai were examined as P.W.1 to P.W.3 respectively and 23 documents were marked on the claimants' side. Salary slip, Form-16 (Assessment Year 2016-17), service certificate, bank statement have been marked as Ex.P.19 to P.22. On behalf of Insurance Company, neither any oral evidence was let in nor any document was marked.

9. Main focus of the arguments of the learned counsel for the

appellant is pertaining the fixing of monthly income, Ex.P.19 is the salary slip wherein the pay slip for the month of August 2015, Pay Slip pertaining for the month of October 2015 have been marked. Date of accident is 07.11.2015.

10. With regard to the term "income" the Hon'ble Supreme Court has made observations in ***National Insurance Co., Ltd., vs. Indira Srivastava and Others,*** (2008) 2 SCC 763, wherein it has been held that the term " income" has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay-packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Relevant portion of the said Judgment, reads as under:-

> **20.** The term "income" in P. Ramanatha Aiyar's *Advanced Law Lexicon* (3rd Edn.) 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.”

11. In ***T.N.State Transport Corpn. Ltd., vs. Rajapriya*** reported in ***(2005) 6 SCC 236****,* the Hon'ble Supreme Court has held that:

“*8*. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependents, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have lived or the dependents may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.

9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependents, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependents. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.

10. Much of the calculation necessarily remains in the realm of hypothesis 'and in that region arithmetic is a good servant but a bad master' since there are so often many imponderables. In every case 'it is the overall picture that matters', and the court must try to assess as best as it can the loss suffered."

12. Similar view has been expressed by a learned Single Judge of the ***Andhra Pradesh High Court in S. Narayanamma v.Secy. to Govt. of India, Ministry of Telecommunications*** [2002 ACC 582 : (2002) 1 APLJ 473] holding: (APLJ pp. 478-79, para 13)

"*13*. The Tribunal has not even taken proper care while deducting the amounts from the salary of the deceased, at least the very nature of deductions from the salary of the deceased. My view is that the deductions made by the Tribunal from the salary such as recovery of housing loan, vehicle loan, festival advance and other deductions, if any, to the benefit of the estate of the deceased cannot be deducted while computing the net monthly earnings of the deceased. These advances or loans are part of his salary. So far as house rent allowance is concerned, it is beneficial to the entire family of the deceased during his tenure, but for his untimely death the claimants are deprived of such benefit which they would have enjoyed if the deceased were alive. On the other hand, allowances, like travelling allowance, allowance for newspapers/periodicals, telephone, servant, club fee, car maintenance, etc., by virtue of his vocation need not be included in the salary while computing the net earnings of the deceased. The finding of the Tribunal that the deceased was getting Rs 1401 as net income every month is unsustainable as the deductions made towards vehicle loan and other deductions were also taken into consideration while fixing the monthly income of the deceased. The above finding of the Tribunal is contrary to the principle of 'just compensation' enunciated by the Supreme Court in the judgment in ***Helen case [Helen C. Rebello v. Maharashtra SRTC,*** (1999) 1 SCC 90 : 1999 SCC (Cri) 197] . The Supreme Court in ***Concord of India Insurance Co. Ltd. v. Nirmala Devi*** [(1979) 4 SCC 365 : 1979 SCC (Cri) 996 : 1980 ACJ 55] held that determination of quantum must be liberal and not niggardly since law values life and limb in a free country 'in generous scales'."

13. The following points are to be borne in mind while fixing the income of a person for the purpose of granting compensation in accident cases.

Amounts contributed to :

- The General Provident Fund,(GPF) Special Provident Fund,(SPF) Contributory Pension Scheme(CPS), insurance companies, LIC contribution for the amounts which are paid by the employee and on certain contingency its repayable to him - at the time of retirement, death or for any other reasons. On certain contingency is payable to either the employee or to his legal representatives. Therefore, no deductions to be made from the income while calculating the compensation as its badged the contractual liability.

- An employee would pay different taxes namely, Income Tax, professional tax payable to the Government are to be deducted from the total income.
- The perks which are ultimately beneficial to the entire family of the deceased during his employment shall not be deducted.
- The allowances such us dress allowance, travelling allowance news paper allowance, telephone allowance, vehicle maintenance allowance are meant for the employee by virtue of his nature of avocation are granted. Therefore, these allowances need not to be included in the monthly salary while computing the net earnings of deceased.

14. It should not be lost sight of that any type of compensation which is awarded in the judicial proceedings are to be just and fair. As observed by the Hon'ble Supreme Court in ***Divisional Controller, KSRTC v. Mahadeva Shetty*,** (2003) 7 SCC 197, it has been held as follows:-

> “12. .... The object of providing compensation is to place the claimant as far as

> possible in the same position financially as he was before the accident. Broadly speaking, in the case of death the basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses etc. and loss to the estate. The object is to mitigate hardship that has been caused to the legal representatives due to the sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring the value of human life and the measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor should it be a source of profit for the person in whose favour it is awarded ."

Therefore, fixing of the just compensation is the essential. Practically though it is invariably difficult to compensate in terms of money for the loss of life.

15. A close perusal of the award passed by the Tribunal reveals the fact that the income of the deceased was fixed as Rs.38,800/- per month by relying upon the oral evidence of P.W.1 and also documentary evidence but the Tribunal failed to deduct any amount for income tax from the income of the deceased, as rightly contended by the learned counsel appearing for the

appellant and therefore 10% towards income tax is to be deducted from the income of the deceased.

16. In Ex.P.19 – Pay slip for the month of August 2015, it reads that net pay of the deceased is mentioned as R.39,089/- wherein the pay slip for the month of September and October, 2015, Net pay is mentioned as Rs.36,963/- various components of salary of the deceased as found in the pay slip is extracted hereunder:-

Earnings	***Current(Rs.)***	***Deductions***	***Amount***
Basic Salary	11,600.00	Provident Fund	1,392.00
Conveyance Non Taxable	1,600.00	Professional Tax	1.095.00
House Rent Allowance	5,800.00	Income Tax	1,279.00
Sundry Medical	1,250.00	Health Insurance Scheme Premium	4.045.00
Leave Travel Allowance	967.00		
Personal Allowance	5.083.00		
Miscellaneous	8,100.00		
City Allowance	1,200.00		
Performance Pay	11,300.00		

17. Conveyance allowance is meant for the employee, hence it need not be included. It is pertinent to note that net pay for three months, it is not uniform. The net pay for the month of October 2015 is Rs.36,963/-.

Every month, the deceased was being paid conveyance allowance of Rs.1,600/-. As its meant for the benefit for the employee, it need not be included in compulsory monthly income. It is calculated as follows:-

Rs.36,963 /- - Rs.1,600/- = Rs.35,363/-.

Therefore, annual income of the deceased is calculated as follows:-

Rs.35,363 x 12 = Rs.4,24,356/-

18. The learned counsel for the appellant would contend that 50% was added as future prospects is incorrect.

19. Whereas, the learned counsel for the respondents 1 and 2 would argue that the deceased was permanent job and the Tribunal had taken future prospects as 50%. The Hon'ble Supreme Court has standardized in respect of future prospects while calculating the income. There are two categories namely, i) self employed or on fixed salary 2) persons in permanent job.

20. In order to enlighten the details of employment of the deceased, the Human Resources, Manager of TCS, was examined as P.W.3. Either in

chief or in the cross examination, he has not stated whether the deceased was in a permanent job or not. Therefore, in the absence of the above said details, the deceased falls in the first category. For the persons age below 40 years, 40% of the salary to be added as future prospects. Based on the aforesaid observation, in order to calculate the loss of income, the following formula emerges:-

Age of the deceased : 26

Monthly income of the deceased : Rs.35,363 + 40% = Rs.49,508

21. The learned counsel for the appellant/Insurance Company pointed out that the Tribunal has granted Rs.50,000/- each to the claimants under filial consortium. So also for the loss of love and affection both the father and mother were granted Rs.1,00,000/- is totally incorrect. Right to consortium is explained by the Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd. v. Nanu Ram*,** (2018) 18 SCC 130 , wherein it has been held that the right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family.

22. This Court is of the view that the Tribunal has granted the compensation under the head of filial consortium as the respondents/claimants have lost their son. Loss of consortium is different from loss of love and affection both the heads would come under the conventional heads. Therefore, the contention of the learned counsel for the appellant/Insurance Company to the effect that amounts granted under both heads are incorrect is untenable and it obviously stands rejected. However, the amounts granted under Loss of Love and Affection is reduced to Rs.40,000/-and for filial consortium restricted to Rs.80,000/-.

Heads and Calculation		Re-quantified Amount by this Court (Rs.)
<u>Loss of dependency</u>	(Rs.)	
i) Income of the deceased	35,363	
ii) Add 40 % future prospects (35,363 x 40%)	14,145	

	49,508	
iii) Monthly contribution to the family after deducting 50% towards personal expenses of the deceased(Rs.49,508 -50%)	24,754	

	24,754	
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iv) Annual Income (Rs.24,754/- x12)	2,97,048	
v) Less 10% income tax (Rs.2,97,048 x 10%)	29,704	

Heads and Calculation	Re-quantified Amount by this Court (Rs.)
------------ 2,67,344 ------------- v)Multiplier 17 (Rs.2,67,344 x17) 45,44,848	Rs.45,44,848/-
For filial consortium to the respondents 1 & 2	Rs. 80,000/-
Loss of Love and affection to the respondents (Rs.20,000 x 2)	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs.46,79,848/-

23. Thus, the compensation awarded by the Tribunal is reduced from Rs.61,51,400/- to Rs.46,79,848/- which would carry interest at the rate of 7.5% per annum.

24. In the result,

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

(ii)The compensation awarded by the Tribunal is reduced from Rs.61,51,400/- to Rs.46,79,848/-.

(iii)The Appellant / Insurance Company is directed to deposit the modified compensation amount i.e., Rs.46,79,848/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.1644 of 2016 on the file of the Motor Accident Claims Tribunal, (III Court of Small Causes) Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment.

(v) On such deposit being made, the respondents / claimants 1 and 2 are at liberty to withdraw the same as per the Orders passed by the Tribunal after following due process of law. The ratio of apportionment made by the Tribunal shall be kept intact.

28.06.2023

Index : Yes/No
Speaking / Non-speaking order
kkd/ssn

To:

1. The Motor Accident Claims Tribunal,
   (III Court of Small Causes) Chennai

2. The Section Officer,
   V.R.Section,
   High Court of Madras,
   Chennai.

R.KALAIMATHI, J.,

kkd/ssn

C.M.A.No.766 of 2020

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