IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2023

PRONOUNCED ON : 24.07.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.4441 of 2019

1.Chenupalli Madhavai
2.Hrushikesh Vadan (Minor)
3.Bhanukesh Vadan (Minor)
(Minors rep.by M.N.F.Chenupalli Madhavai),
4.Penchalamma (deceased)
(Cause title accepted vide Court
Order dated 5/9/2019 made in
C.M.P.No.19238 of 2019 in
C.M.A.SR.No.98066 of 2019) ... Appellants/Claimants

vs.

1.Srinivasa Transport,
7-74/A/4, Huda Lorry Parking,Kukatpally, Hyderabad.
(The First Respondent was set exparte in Trial Court).

2. The Oriental Insurance Company Ltd.,
Motor Third Party Hub,
No.115, Broadway, II Floor,
Chennai-600 001. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 21.08.2018 passed in M.C.O.P.No.2894 of 2014 by the III Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai-104.

For Appellants : Mr.C.Richard Sureshkumar

For Respondents : R1 - Exparte
Mr.N.Sampath [R2]

JUDGMENT

The appellants/claimants have preferred this appeal challenging the award dated 21.08.2018 passed by the Motor Accident Claims Tribunal, Chennai/III Court of Small Causes, Chennai in M.C.O.P.No.2894 of 2014, whereby the Tribunal has granted compensation of Rs.38,50,200/-.

2. The claimants who are the wife, minor children and mother of the deceased filed an application under Section 166 of the Motor Vehicles Act before the Tribunal seeking compensation of Rs.1,00,00,000/-.

3. Despite the receipt of notice, the 1st respondent neither appeared in person nor through Counsel.

4. The facts relevant for disposal of this appeal in brief that on 10.01.2014, at about 9.30 Hours, while the deceased was riding his motor cycle from Nellore to Muthukuru Road, near Thattugollapaem, Nellore District, a lorry bearing Registration No.AP-28-V-5414 came in a rash and negligent manner from opposite direction hit the motor cyclist and he was thrown out whereby the motor cyclist sustained fatal injuries and succumbed to the injuries on the way to the hospital.

5. On behalf of the 2nd respondent, it has been stated in the counter that the petitioners are put to strict proof of age, occupation and monthly income of the deceased and the manner in which the accident taken place and it has been further stated that it is the deceased who rode the vehicle in a rash and negligent manner in a high speed without wearing helmet came on the wrong side and contributed to the accident and prayed for dismissal of the claim petition.

6. The learned counsel for the appellant would contend that 1/4th of the salary should have been deducted for personal expenses instead of 1/3rd amount. As per Ex.P11-salary certificate of the deceased, gross salary to be taken into account and future prospects to be added when the annual income is worked out.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company would contend that only net salary has to be taken into account and not the gross salary. He would also further state that the award passed by the Tribunal is in order and prayed to confirm the same.

8. Heard both the learned counsels for the appellants and the Insurance Company and perused the materials available on record.

9. Before considering both sides contentions, it is useful to refer to the judgments relating to Income to be fixed in case of motor accident claims.

(i) In ***Mrs.Helen C.Rebello and Ors. v. Maharashtra State Road Transport Corporation*** reported in ***II (1998) ACC 512 (SC),*** the question arose whether the life insurance money of the deceased is to be deducted from the claimants compensation receivable under the Motor Vehicles Act, 1939 and it was positively answered that insurance amount payable on the death of the deceased cannot be deducted. It has been held that the insurance amount payable to the legal representatives of the deceased has no nexus whatsoever with the statutory compensation payable under the Motor Vehicles Act, since the policy under the Insurance Act is a contractual one and the compensation payable under the Motor Vehicles Act is a statutory one. It has been further held that :

> *"So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the 'pecuniary advantage which from whatever source*

comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that this Act delivers compensation to the claimant only on account of accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, co-relating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident., through train, air flight not involving motor vehicle. would not be covered under the Motor Vehicles Act.

Thus, the application of general principle under the common law of loss and gain for the computation of compensation under this Act must co-relate to this type of injury or deaths, viz, accidental. If the words "pecuniary advantage' from whatever source are to be interpreted to mean any form of death under this Act it would dilute all possible benefits conferred on the claimant and would be contrary of the spirit of the *law. If the 'pecuniary advantage' resulting from death means pecuniary advantage coming under all forms of death then it will include all the assets movable, immovable, shares, bank accounts, case and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By such an interpretation the tortfeasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meagre liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accident death. Thus, under the present Act whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other form of death. The constitution of the Motor Accidents Claims Tribunal itself under Section 110 is, as the Section states:*

"....for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, ..."

(ii) Following the law laid down by the Hon'ble Supreme Court in ***Mrs.Helen C.Rebello's case,*** it was followed in ***United India Insurance Co. Ltd., v. Patricia Jean Mahajan and Ors.,*** reported in ***[2002] 3 SCR 1176, the Hon'ble Supreme Court has held as follows:***

> ***"****We are in full agreement with the observation made in the case of Mrs.Helen C.Rebello MANU/SC/0621/1998 : AIR 1998 SC 3191, that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but, what is more important is that such receipts by the claimants must have some co-relation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this Judgment, it is clear that amount on account of social security as may have been received must have nexus or relation*

with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some co-relation between the amount received and the accidental death or it may be in the same sphere, in absence the amount received shall not be deducted from the amount of compensation. Thus the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to pre-mature death of the insured. So far other items in respect of which learned counsel for the Insurance Company has vehemently urged, for example, some allowance paid to the children, and Mrs. Patricia Mahajan under the social security system no co-relation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which, payment on account of social security system is made one of the constituents of fund is tax which is deducted from *income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the Insurance Policy and other receipts under social security system which the claimant would have also other wise entitled to receive irrespective of accidental death of Dr.Mahajan. If the proposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains may be on account of savings or other investments etc., made by the deceased would not go to the benefit of wrongdoer and the claimant should not be left worse of, if he had never taken an Insurance Policy or had not made investments for future returns.*

We, therefore, do not allow any deduction as pressed by the Insurance Company on account of receipts of insurance policy and social security benefits received by the claimants."

(iii) The High Court of Andhra Pradesh at Hyderabad in ***A.Lakshmi v. Arjun Associated Pvt. Ltd.,*** reported in 2005 ACJ 704, it was held that GPF, GIS and LI Contributions made by the deceased shall not be deducted while computing the income of the deceased.

(iv) The above said law was followed by the Bombay High Court in ***Bishansing Thakursing v. Nasira Kadar Shaikh*** reported in ***I (2005) ACC 676,*** the Bombay High Court held that there cannot be any deductions of amount received towards life insurance, provident fund and ex-gratia payment.

10. The manner in which the accident taken place is not in dispute. Salary is the regular payments made by the employer to the employee for the work performed by them. The gross salary is however inclusive of Bonus, Over time pay and holidays pay and other benefits and some of the benefits includes basic salary, H.R.A., Special Allowance among others.

11. Whereas the net salary or otherwise called as take home salary is the income that an employee actually takes home after deducting

Income Tax, P.F., and other deductions subtracted from it. Net salary is usually lower than the gross salary. Therefore, what is the amount under the caption of salary has to be taken into account is the prime issue.

12. As regards the monthly income of the deceased, it is stated by PW1, the wife of the deceased that the deceased was working as a teacher at Z.P.P. High School, Brahmadevam, Nellore District and was drawing Rs.31,626/- p.m. To prove the said factum, Mr.Sai Prasanth, Head Master of the said School was examined as PW3. As regards salary of the deceased Ex.P11 - copy of the salary certificate, Ex.P21 - copy of the Bank statement of accounts of the deceased, Ex.P23 - copy of the appointment order issued by the Head Master, Ex.P24 - copy of Service Register of the deceased and Ex.P25 copy of salary particulars of the deceased have been marked. The Tribunal has taken into consideration the net salary mentioned in Ex.P11-Salary Certificate and fixed his monthly income as Rs.21,400/-.

13. Ex.P25 is the salary drawn particulars of the deceased issued by the Head Master of Z.P.P. High School, Brahmadevam, Nellore District for the period from 11.08.2009 to 10.01.2014. The deceased died on 10.01.2014. Therefore, the salary drawn by the deceased for the month of

December 2013 is given hereunder:

EARNINGS		**DEDUCTIONS**	
Pay :	Rs.16,150/-	GPF/ZPPF :	Rs.3,000/-
D.A :	Rs.10,230/-	APGLI :	Rs. 600/-
H.R.A. :	Rs. 1,938/-	GIS :	Rs. 60/-
		P.Tax :	Rs. 200/-
		APGLI Loan :	Rs. 700/-
		ZPPF Loan :	Rs. 2,350/-
Gross Salary :	**Rs.28,318/-**	**TOTAL :**	**Rs.6,910/-**

14. After deducting GPF/ZPPF, ZPPF Loan, Andhra Pradesh General Life Insurance, Andhra Pradesh General Life Insurance Loan, Group Insurance Scheme and Professional Tax for a sum of Rs.6,910/-, Net Salary was fixed by the Tribunal at Rs.21,408/-. It is not in dispute that the age of the deceased was 41 years at the time of accident.

15. Based on the aforesaid observations, I am of the considered view that the amounts deducted under various social security schemes shall not be deducted while arriving at the income of the deceased person.

16. In this case, salary details of the deceased was duly proved by examining the concerned school Head Master and the salary certificate for the month of December 2013 was marked as Ex.P11, wherein, his gross salary is Rs.28,318/- and the deduction is shown as Rs.6,910/-.

17. Taxes namely, Income tax, Professional tax and other taxes which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. On the other hand, Provident Fund like General Provident Fund, Special Provident Fund, Postal Life Insurance, Contribution made to the Life Insurance Company are specific amounts paid and it is repayable to the employee or to his legal representatives as the case may be. They are contractual in nature.

18. A careful perusal of deduction details, would show that the deceased has contributed to the Provident Fund, General Life Insurance, General Insurance Scheme etc. An amount of Rs. 200/- has been deducted for Professional Tax. Therefore, after deducting the said sum of Rs.200/- his income for the purpose of pecuniary loss is worked out as Rs.28,118/-.

19. As regards future prospects, the Tribunal has added 50% while

computing the monthly income of the deceased. But, as per the law laid down by the Hon'ble Supreme Court in ***National Insurance Co. Ltd., V.Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC),*** for the persons who are in permanent job between the age group of 40 to 50 years, 30% has to be added.

20. As per the law laid down by the Apex Court in ***Smt.Sarla Verma & Others v. Delhi Transport Corporation & Another*** reported in ***2009 (2) TN MAC 1 (SC)*** as the family members of the deceased are 3 in number, 1/3rd of the income has to be deducted for personal and living expenses. The monthly income for the purpose of computing the loss of dependency is worked out as follows:

Age of the deceased	:	41 years
Monthly Income fixed	:	Rs.28,118/-
Future Prospects	:	30 %
		Rs.28,118/- + 30%
	:	Rs.36,553/-
1/3rd to be Deducted for Personal Expenses	:	Rs.36,553/- - Rs.12,184/-
	:	Rs.24,369/-
Multiplier to be adopted	:	14
For Loss of Dependency	:	Rs.24,369/- X 12 X 14
	:	**Rs.40,93,992/-.**

21. In all other aspects, the award of the Tribunal appears to be reasonable and I see no reason to interfere with the same. Therefore, the Compensation awarded by the Tribunal is reworked and tabulated as follows:

S.No.	***Description***	***Amount awarded by Tribunal***	***Amount awarded by this Court***	***Award confirmed or enhanced or granted or reduced***
1	Loss of Dependency	Rs.35,95,200/-	**Rs.40,93,992/-**	**Enhanced**
2	Loss of Consortium	Rs. 40,000/-	Rs. 40,000/-	Confirmed
3	Loss of Love and Affection	Rs. 2,00,000/-	Rs. 2,00,000/-	Confirmed
4	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
5	Loss of Estate	NIL	**Rs. 15,000/-**	**Granted**
	Total	Rs.38,50,200/-	Rs.43,63,992/-	
	Rounded off		**Rs.43,64,000/-**	

22. Thus, the compensation awarded by the Tribunal is enhanced from Rs.38,50,200/- to Rs.43,64,000/- which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

23. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.38,50,200/- to Rs.43,64,000/-.

(iii) The 2nd Respondent / Insurance Company is directed to deposit the enhanced compensation amount now determined by this Court i.e., Rs.43,64,000/- (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.2894 of 2014 on the file of III Judge, MCOP Tribunal, Court of Small Causes, Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment. The claimants are not entitled interest for the delay period, if any.

(iv) On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, as apportioned by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. The share of the minors shall be deposited in any one of the nationalized bank till they attain majority and the 1st appellant, mother of the minors Chenupalli Madhavai shall be permitted to withdraw quarterly interest from the said amount. The claimants are directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

24.07.2023

Index : Yes/No
Speaking / Non-speaking order
Neutral Citation : Yes/No
ssn

To:

1. The Motor Accident Claims Tribunal,
   III Judge, MCOP Tribunal,
   Court of Small Causes,

Chennai-104.

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

R.KALAIMATHI, J.,

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**Pre-delivery Judgment in
C.M.A.No.4441 of 2019**

24.07.2023