IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.Nos.758 and 868 of 2023
and C.M.P.No.14245 of 2023

C.M.A.No.758 of 2023

The Reliance General Insurance Co. Ltd.,
No.6, 4th Floor, Hadas Road, Nungambakkam,
Chennai – 600 034 ...Appellant

vs.

1. T.Chitradevi
2. T.Abhilash Gowrishankar
3. Minor T.Poornima
represented by Mother Mrs.Chitradevi
4. M.Govindaraj ...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Decree and Judgment dated 08.09.2022 passed in M.C.O.P.No.296 of 2019 by the Motor Accident Claims Tribunal/IInd Additional District and Sessions Judge, Thiruvallur at Poonamallee.

For Appellant : Ms.C.Bhuvanasundari

For Respondents : Mr.K.Varadhakamaraj

C.M.A.No.868 of 2023

1. T.Chitradevi
2. T.Abhilash Gowrishankar
3. Minor T.Poornima

represented by her mother Mrs.Chitradevi … Appellants

vs.

1. M.Govindaraj

2.The Reliance General Insurance Co. Ltd.,
Having its office at
No.6, 4th Floor, Hadas Road, Nungambakkam,
Chennai – 600 034 … Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the amount awarded in M.C.O.P.No.296 of 2019 dated 08.09.2022 on the file of Motor Accident Claims Tribunal/IInd Additional District and Sessions Judge, Tiruvallur at Poonamallee.

For Appellants : Mr.K.Varadhakamaraj

For 2nd Respondent : Ms.C.Bhuvanasundari

JUDGMENT

(Judgment of the Court was made by Mrs.R.Kalaimathi, J.)

Not being satisfied by the order dated 08.09.2022 passed in M.C.O.P.No.296 of 2019 by the Motor Accident Claims Tribunal/IInd Additional District and Sessions Court, Thiruvallur at Poonamallee, the claimants herein have preferred this Civil Miscellaneous Appeal.

2. Claim petition was filed by the legal heirs of deceased K.Thandapadi son of Kandhasamy under Section 166 of Motor Vehicles Act and Rule 3 of M.A.C.T Rules, claiming compensation of Rs.2,00,00,000/- for the death of K.Thandapani in a road traffic accident that occurred on 11.04.2019.

3. The Insurance Company also preferred appeal C.M.A.No.758 of 2023 disputing the quantum of compensation, more specifically in fixation of notional income.

4. Case of the claimants is set out hereunder in brief:

On 11.04.2019 about 7.30 a.m while the deceased K.Thandapani was riding a Suzuki Access motorcycle bearing registration No.TN 12 Q 9843 towards western direction along Avadi Vasantham Nagar, Nehru Street, at the point of Sivaguru Street Junction, Avadi, the first respondent's

Royal Enfield Bullet motorcycle bearing registration No.TN 12 U 2374 came from North to South, driven in a rash and negligent manner, dashed against the motorcycle of the deceased. Due to the said impact, the deceased sustained multiple grievous injuries. He was admitted into S.R.M.C. Hospital, Porur and succumbed to the injuries on 18.04.2019. The accident occurred only due to the rash and negligent driving of the first respondent motorcycle driver. He is the owner of the said motorcycle. He had taken an insurance policy in the second respondent insurance company. Therefore, both the respondents are vicariously and statutorily liable to compensate the petitioners. The deceased was 52 years old at the relevant point of time and he was working as Senior Site Electrical Manager in Va Tech Wabag Limited, Thoraipakkam [Old Mahabalipuram Road] in a private company and earning a sum of Rs.1,03,000/- per month.

5. The second respondent/Insurance Company resisted the claim petition by filing counter which is stated in brief:

It was only because of the negligence of the deceased K. Thandapani the accident happened. There was no policy existing on the date of the accident in respect of the first respondent vehicle and the second respondent insurance company is not liable to pay compensation to the petitioners.

6. Heard Mr.K.Varadhakamaraj, learned counsel appearing for the claimants and Ms.C.Bhuvanasundari, learned counsel appearing for the Insurance Company.

7. Upon consideration, the tribunal has granted a compensation of Rs.69,57,100/- and the break up details are given hereunder:

Sl. No.	*Heads*	Calculation
1	For loss of Income	Rs.77,810/- per month Add:Future Prospects 15% of 77,810/- = Rs.89,481 (Rs.77,810/-+15% of 77,810/- = Rs.11,671.50/-) Annual Income Rs.89,481x12 = 10,73,784.00 Less: Deducted Income Tax Slab= 1,34,633.40 ----------------- 9,39,150.60 ----------------- Rounded off to Rs.9,39,145/- Monthly income is Rs.78,262/-
2	Deduction of personal expenses	Rs.78,262/- - 26,087 (1/3 deduction for personal expenses) = Rs.52,175/- The annual income is Rs.52,175/-x12= Rs.6,26,100/- per annum.
3	For Loss of Income computed by the Tribunal ('11' Multiplier)	Rs.6,26,100/- x 11 = Rs.68,87,100/-

Sl. No.	Heads	Calculation
4	Conventional Heads	1.Loss of Estate : Rs.15,000/- 2.Funeral Expenses : Rs.15,000/- 3.Loss of Consortium : Rs.40,000/- ---------------- Rs.70,000/- ----------------
	Total	Rs.68,57,100/- (Rs.68,87,100/- + Rs.70,000/-)

8. Both the learned counsels argued only in respect of the quantum.

9. At trial, wife of the deceased has examined herself as P.W.1. Eye witness to the occurrence K.C.Balaji was examined as P.W.2. P.W.3 is the Manager of Va Tech Wabag Limited, where the deceased was stated to be working as Senior Site Electrical Manager. 23 documents were marked by the claimants side. Ex.P.8 is copy of the appointment letter of the deceased. Ex.P.9 is the pay slip of the deceased for the month of January 2019. On the respondents side, neither oral nor documentary evidence was let in.

10. The deceased K.Thandapani is stated to be working as a Senior Manager in the private company (Va Tech Wabag Limited) and drawing salary of Rs.96,980/- per month. The salary slip of the deceased pertaining

to the months of January and February, 2019 is Ex.P.22 were marked through the said company manager/ P.W.3. As per the pay slip for the the month of February 2019, the deceased drew an amount of Rs.96,980/- and the following allowances were given to the deceased:

Conveyance Allowances	: Rs.1,600/-
Additional Allowances	: Rs. 5,320/-
Medical Allowances	: Rs.1,250/-
Site Allowances	: Rs. 8,500/-
Uniform Allowances	: Rs. 2,500/-

Total Allowances	: Rs.19,170/-

Gross salary is Rs.96,980/-

11. Salary is the regular payment made by the employer to the employee for the work performed by him. Whereas, gross salary is inclusive of bonus, overtime pay, holiday pay and other benefits. Some of the benefits includes basic salary, house rent allowance, conveyance allowance, medical allowance, uniform allowance, newspaper allowance, etc. Net salary is the income that an employee actually takes home after

deducting income tax, provident fund and other deductions subtracted from it. The moot question in this appeal is that, what is the amount under the caption of salary has to be taken into account for the purpose of computing the loss of income.

12. It is relevant to refer to the observations made in *A.Lakshimi Vs. Arjun Associated Pvt. Ltd., reported in 2005 ACJ 704* in respect of the deductions. It was observed that General Provident Fund, General Insurance Scheme and Life Insurance Contributions made by the deceased shall not be deducted while computing the income of the deceased. Because, the incomes are beneficial to the employee as well as his family.

13. The above stated law was followed by the Bombay High Court in *Bishansing Thakursing Vs. Nasira Kadar Shaikh* reported in *1 (2005) ACC 676.* It was concluded that there cannot be any deductions of amount received towards life insurance, provident fund and extra ex-gratia payment.

14. Useful reference may be made to the observations made by the Apex Court in *National Insurance Co. Ltd., Vs. Indira Srivastava & Others*, reported in *2008 (2) SCC 763*. The Apex Court observed that:

"9. 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. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

10. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined."

15. While calculating the compensation, the imponderables namely

the income that the deceased would have earned in toto, the amount he would have contributed to the family, the chances either the deceased or the dependesnts may not have lived, the deceased might have moved to a better employment, he would have lost his employment. However, we are reminded of the observations of the Hon'ble Supreme Court in R.D.Hattangadi Vs. M/s.Pest Control (India) Pvt. Ltd., reported in AIR 1995 SC 755 wherein it was opined that:

> *"In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused. But all the aforesaid elements have to be viewed with objective standards."*

16. In yet another decision in Divisonal Controller, KSRTC v. Mahadeva Shetty and another reported in (2003) 7 SCC 197, it was observed that:

> *"Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal*

consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness, and non-arbitrariness. If it is not so, it cannot be just."

17. Therefore, a straight jacket formula cannot be adopted in the matters of computation of monthly income, especially in the cases of private employment. Because, more often, the calculation has to be done hypothetically. Pivotal consideration should be given in granting of just compensation, which has to be done with judicious approach.

18. It is a common knowledge that the some of allowances which are granted to the employee which is personal in nature. For example, uniform allowance, conveyance allowance shall not be added with the monthly income for the purpose of granting of compensation.

19. Reverting back to this case, the deceased was getting conveyance allowance of Rs.1,600/- per month and Uniform allowance of Rs.2,500/-. As mentioned supra, these allowances are benefits given to the employee. Therefore, such allowances have to be deducted. Then,

the deceased was given additional allowance of Rs.5,320/-, what is the nature of allowance is not known. Unless the nature of allowance is known, then it has to be deducted from the income. That apart, he was given medical allowance and site allowances, whereby the employee as well as the family members would have benefited. Therefore, based on the elaborate discussions and judgements as mentioned supra, in our considered opinion, the amount given for conveyance allowance, additional allowance, uniform allowance have to be deducted from the gross salary for the purpose of computation of total income. Therefore, monthly income is computed at Rs.87,560/-.

20. As regards the age of the deceased, there is no dispute that at the age of 52 years he died on account of accident. He was holding a permanent post. Therefore, as per the law laid down by the Hon'be Supreme Court in *National Insurance Company Ltd vs. Pranay Sethi and Others* reported in *2017 (2) TNMAC 609 (SC) a*s regards the future prospects, the percentage of salary to be added with the income while computing the compensation has been standardised. For the deceased, 10% to be added as future prospects.

23. It is the testimony of P.W.3 that the deceased was holding a permanent post. However, it cannot be denied that at the age of 58, he would have retired from the service. Therefore, as per the law laid down by the Apex Court in *Smt.Sarla verma and others vs Delhi Corporation and others,* the relevant multiplier to be adopted is "11" for the period of remaining service. Of course, he was in private employment, he would not get any pension. As regards the deduction for personal and living expenses, as the deceased has left behind three persons, 1/3rd has to be deducted. Therefore, loss of income is computed as mentioned below:

Computation of loss of income		
A	Monthly Income fixed	Rs.87,560/-
B	Future Prospects (10% of monthly income)	Rs.8,756/-
C	1/3rd Deduction towards Personal Expenses [(A+B) x 1/3]	Rs.32,105/-
D	Total Dependency (A + B - C)	Rs.64,211/-
E	Annual Income (D x 12)	Rs.7,70,532/-
F	Less 10% Income Tax	Rs.77,053/-
G	Multiplier	11
	Loss of Income [(E – F) x G]	Rs.76,28,269/-

24. Therefore, loss of dependency is arrived at Rs.76,28,236/-. For loss of consortium, each legal heir is entitled to Rs.40,000/- as per the law

laid down by the Hon'be Supreme Court in *National Insurance Company Ltd vs. Pranay Sethi and Others* reported in *2017 (2) TNMAC 609 (SC).* In all other aspects, the award of the Tribunal appears to be reasonable and we see no reason to interfere with the same. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	***Description***	***Amount awarded by Tribunal***	***Amount awarded by this Court***	***Award confirmed or enhanced or granted or reduced***
1	For Loss of dependency	Rs. 68,87,100/-	Rs. 76,28,269/-	Enhanced
2	For Loss of Consortium (Rs.40,000 X 3)	Rs.40,000/-	Rs.1,20,000/-	Enhanced
3	For Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
4	For Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
	Total	Rs.69,57,100/-	Rs.77,78,269/- rounded off to Rs.77,78,270/-	**Enhanced**

25. Thus, the compensation awarded by the Tribunal is enhanced from Rs.69,57,100 /- to Rs.77,78,270**/-** which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

26. In the result,

(i) The Civil Miscellaneous Appeal No.868 of 2023 filed by the claimants is Partly Allowed. No costs.

(ii) The Civil Miscellaneous Appeal No.758 of 2023 filed by the Insurance Company stands dismissed. No costs.

(iii) The compensation awarded by the Tribunal is enhanced from Rs.69,57,100/- to Rs.77,78,270/-.

(iv) The Insurance Company is directed to deposit the enhanced compensation amount now determined by this Court i.e., Rs.77,78,270/- (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.296 of 2019 on the file of Motor Accidents Claims Tribunal, Tiruvallur within a period of six weeks from the date of receipt of a copy of this Judgment.

(v) The 1st petitioner is entitled for an amount of Rs.43,78,270/- and the 2nd petitioner and 3rd petitioner/minor are entitled to each Rs.17,00,000/-.

(vi) On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.

(vii) The share of the minor shall be deposited in any one of the nationalized bank till they attain majority and the 1st appellant, mother of the minor Ms.T.Chitradevi shall be permitted to withdraw quarterly interest from the said amount.

(viii) The claimants are directed to pay the Court fee for the enhanced compensation amount, if required.

(ix) The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants. Consequently, connected Civil Miscellaneous Petition stands closed.

(J.N.B.,J.) (R.K.M.,J.)
27.08.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Motor Accident Claims Tribunal,
   IInd Additional District and Sessions Judge, Thiruvallur

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

J.NISHA BANU, J.

and

R.KALAIMATHI, J.

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C.M.A.Nos.758 and 868 of 2023

and C.M.P.No.14245 of 2023

27.08.2024