IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.09.2024

Pronounced on : 15.10.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.2481 of 2023

and C.M.P.No.23108 of 2023

The Divisional Manager,
The New India Assurance Co. Ltd.
No.1, CSI, Complex, Officers Line,
Vellore ...Appellant

vs.

1. I.Mary Vinsala
2. M.Sachin
3. Minor.M.Lidison Sham
4.A.C.Velmani ...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Decree and Judgment dated 22.09.2022 passed in M.C.O.P.No.7 of 2018 by the Motor Accident Claims Tribunal/Ist Additional District and Sessions Court, Vellore.

For Appellant : Mr.S.Dhaksnamoorthy

For Respondents : Mr.T.V.Sai Srujan for R1 to R3

: No Appearance for R4

JUDGMENT

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

This Civil Revision Petition has been preferred by the Insurance Company against the Award dated 22.09.2022 made in M.C.O.P.No.7 of 2018 on the file of Motor Accident Claims Tribunal / Ist Additional District and Sessions Court, Vellore as regards the quantum of compensation.

2. Claim petition was filed by Ms.I.Mary Vinsala, wife of late S.Mathiyalagan along with her sons and mother-in-law under Section 166 of Motor Vehicles Act, 1988, claiming compensation of Rs.2,00,00,000/- for the death of S.Mathiyalagan in a road traffic accident that occurred on 27.08.2017.

3. The Tribunal upon consideration of the oral and documentary evidence has granted compensation under various heads, the details are

extracted hereunder:-

Sl. No.	Description	Amount awarded by Tribunal
1	For Loss of Income	Rs.92,40,179/-
2	Towards spouse consortium for the 1st petitioner/wife	Rs.44,000/-
3	Toward filial consortium for the sons of the deceased	Rs.88,000/-
4	For Funeral Expenses	Rs.16,500/-
5	For Transport expenses	Rs.5,000/-
6	For Loss of Estates	Rs.16,500/-
	Total	Rs.94,10,179/- rounded off to Rs.94,10,000/-

4. Heard Mr.S.Dhaksnamoorthy, learned counsel appearing for the appellant/Insurance Company and Mr.T.V.Sai Srujan, learned counsel appearing for the respondents no.1 to 3/claimants herein.

5. Mr.S.Dhaksnamoorthy, learned counsel appearing for the appellant/Insurance Company would strenuously argue that the income tax is wrongly calculated at Rs.33,292/-. With regard to deduction towards personal expenses, though the claim petition was filed by four persons who are the legal heirs of the deceased S.Mathiyalagan, during the pendency of

O.P., the 4th petitioner died. Therefore, as the claimants are three in number, 1/3rd has to be deducted as per the law laid down by the Apex Court in *Sarla Varma and others Vs. Delhi Transport Corporation and others reported in 2009 (2) TN MAC 1 (SC).*

6. Per contra, Mr.T.V.Sai Srujan, learned counsel appearing for the respondents no.1 to 3 would vehemently argue that, as per the pay certificate of the deceased, monthly income of the deceased was fixed and the loss of income was calculated by deducting 1/4 towards personal expenses as the claim petition was filed by four persons.

7. This appeal focuses only in respect of loss of income. As per the pay certificate of the deceased S.Mathiyalagan, his gross salary is Rs.65,955/- per month. The pay certificate details are given below:

Sl. No.	***Pay.***	
1.	Pay	Rs.56,500/-
2.	PP	Rs.2,000/-
3.	GP	-
4.	DA	Rs.3,955/-
5.	HRA	Rs.3,200/-
6.	MA	Rs.300/-

Sl. No.	***Pay.***	
7.	OA	-
Gross		Rs.65,955/-

8. On a careful perusal of the pay certificate, the perks as mentioned are beneficial both to the deceased as well as the family. Therefore, as such, the gross salary of Rs.65,955/- has to be taken into account for the purpose of computing loss of income.

9. With regard to the future prospects, as per the law laid down by the Apex Court in *National Insurance Company Limited Vs. Pranay Sethi* and others reported in *2017 (16) SCC 680*, the deceased who was working as a Teacher in Panchayat Union Middle School, was aged about 47 years at the relevant point of time, 30% has to be added as future prospects. As far as the deduction towards personal expenses is concerned, as per the law laid down by the Apex Court in *Sarla Varma and others Vs. Delhi Transport Corporation and others reported in 2009 (2) TN MAC 1 (SC),* if the number of family members/dependents are 2 to 3, then 1/3 has to be deducted. There is no dispute with regard to the multiplier adopted (Multiplier '13'). Based on the said details, the loss of income is computed

hereunder:

Age of the deceased	:	47 years
Monthly income	:	Rs.65,955/-
Annual Income	:	Rs.65,955 x 12
		= Rs.7,91,460/-

10. Ex.P.9 is the Income Certificate issued by the Block Development Officer which reflects that the deceased has paid income tax of Rs.11,311/- for the Assessment year 2017-2018. If this document is to be relied upon, Form-16 should have been filed. In the absence of the same, Ex.P.9 is of no use.

11. The computation of income tax is given hereunder:

Income Tax Slab Applicable	Percentage of Tax payable	Tax amount
Income upto Rs.2,50,000	Nill	-
Rs.2,50,000 to Rs.5,00,000	10%	Rs.25,000/-
For balance Rs.2,91,460	20%	Rs.58,292/-
Total Income Tax payable		Rs.83,292/-

Annual Income	- Rs.7,91,460
Less: Income Tax	- Rs. 83,292

	Rs.7,08,168
Add 30% towards Future prospects (Rs.7,08,168 x 30%)	- Rs.2,12,450

	Rs.9,20,618
Deducting 1/3 towards personal expenses (Rs.9,20,618 x 1/3)	- Rs.3,06,872

Income after deducting IT and Personal expenses	Rs.6,13,746

Multiplier applicable	: 13
Pecuniary loss of income (Rs.6,13,746 x 13)	: Rs.79,78,698/-

12. Therefore, loss of dependency is arrived at Rs.79,78,698/-. 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 and 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 Income	Rs.92,40,179/-	Rs.79,78,698 /-	Reduced
2	Towards spouse consortium for the 1st petitioner/wife	Rs.44,000/-	Rs.44,000/-	Confirmed
3	Toward filial consortium for the sons of the	Rs.88,000/-	Rs.88,000/-	Confirmed

Sl. No.	***Description***	***Amount awarded by Tribunal***	***Amount awarded by this Court***	***Award confirmed or enhanced or granted or reduced***
	deceased			
4	For Funeral Expenses	Rs.16,500/-	Rs.16,500/-	Confirmed
5	For Transport expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
6	For Loss of Estates	Rs.16,500/-	Rs.16,500/-	Confirmed
	Total	Rs.94,10,179/- rounded off to Rs.94,10,000/-	Rs.81,48,698/- rounded off to Rs.81,48,700/-	**Reduced**

13. Thus, the compensation awarded by the Tribunal is reduced from Rs. 94,10,000/- to Rs.81,48,700/- which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The 1st petitioner is entitled for an amount of Rs.31,48,700/- and the 2nd petitioner and 3rd petitioner/minor are entitled to each Rs.25,00,000/-.

14. In the result,

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

(ii) The compensation awarded by the Tribunal is reduced from

Rs.94,10,000/- to Rs.81,48,700/-.

(iii) The Insurance Company is directed to deposit the reduced compensation amount now determined by this Court i.e., Rs.81,48,700/- (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.7 of 2018 on the file of Motor Accidents Claims Tribunal, Vellore within a period of six weeks from the date of receipt of a copy of this Judgment.

(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.

(v) The share of the minor shall be deposited in any one of the nationalized bank till the minor attains majority and the 1st respondent herein, mother of the minor Ms.I.Mary Vinsala is permitted to withdraw quarterly interest from the said amount.

(vi) The Tribunal below shall disburse the 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.)

15.10.2024

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

To

1. The Motor Accident Claims Tribunal,
   Ist Additional District and Sessions Judge, Vellore

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

J.NISHA BANU, J.

and

R.KALAIMATHI, J.

mac

C.M.A.No.2481 of 2023

and C.M.P.No.23108 of 2023

15.10.2024