IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
AND

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.829 of 2024

ICICI Lombard General Insurance Company Limited,
Door No.1095, 1st Floor, Vigneswara Crysta,
Avinashi Road, Panayakan Palayam,
Coimbatore Town and Taluk,
Coimbatore- 641037 …Appellant/3rd respondent

Vs.

1.Rajamma
2.Diwakar
3.Divya
4.Kaveri
5.A.Boopathy
6.S.Gunasundari …Respondents
(5th respondent and 6th respondent, herein remained ex-parte. Hence, notice may be dispensed with)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgement and decree dated 14.02.2023 made in M.C.O.P.No.509 of 2018 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Gobichettypalayam.

For Appellant : Mr.Siva Kollapan B

For RR1 to R4 : Mr.J.Kalai Selvan
for Ms. S.Kiruthika

JUDGMENT

(Judgment of the Court was made by K.GOVINDARAJAN THILAKAVADI, J.,)

This Civil Miscellaneous Appeal is preferred by the appellant/Insurance Company, challenging the judgment and decree dated 14.02.2023 made in M.C.O.P.No.509 of 2018 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Gobichettypalayam.

For the sake of convenience, the parties are referred as described before the Tribunal.

2.Shortly stated, On 23.11.2018 at about 11.00 hours, the deceased

Manoharan along with his friend Shamsudeen as pillion rider was riding his motorcycle bearing Registration No.TN 36 S 7296 to his office at Gobichettypalayam. While crossing the Thalavadi-Asanur road, the offending vehicle, namely, Bolero pick up van bearing Registration No. TN 36 AF 3814 driven by its driver in a rash and negligent manner dashed against the deceased vehicle. Due to the said accident, the deceased suffered grievous injuries. Immediately, he was taken to the hospital for treatment. Matter was reported to the Asanur Police Station and FIR was registered in Crime No.37 of 2018 under Sections 279 & 337 of IPC and on 01.12.2018, the said Manoharan succumbed to the injuries suffered by him. At the time of the accident, the deceased was 48 years old and he was working as fore man in Tamil Nadu Electricity Board at Thalavadi and was earning a sum of Rs.75,000/- per month. Accordingly, claim for compensation has been made by the legal heirs.

3. The 3rd respondent/Insurance Company resisted the above claim petition on the ground that the deceased was responsible for the said accident. The deceased was not wearing the helmet at the time of the accident and was not following the Traffic Rules and Regulations. Hence, the Insurance

Company is not liable to pay any compensation to the claimants.

4.Accordingly, the claims Tribunal framed two points for consideration. It came to the conclusion that the accident took place as alleged and claimants are entitled to claim compensation from the 3rd respondent/Insurance Company. Compensation of Rs.1,01,62,517/- has been awarded carrying interest at the rate of 7.5% per annum.

5.Through this appeal, award has been challenged by the appellant/Insurance Company on the ground that the income of the deceased has not been correctly calculated by the Tribunal. There is no dispute with regard to taking place of accident as alleged by the claimants, but for rash and negligent driving of the vehicle by the driver of the offending vehicle, it would not have taken place. Findings recorded by the learned Claims Tribunal in this regard is, therefore, sustained.

6. Reiterating the memorandum of grounds, filed in support of the appeal, Mr.Siva Kollapan B, learned counsel appearing for the appellant/Insurance Company submitted that the claims Tribunal grossly erred

in fixing the monthly income of the deceased as Rs.65,271/- per month relying on the evidence of P.W.2, the Assistant Administrative Officer of Sathyamangalam Electricity Office. He further contended that the claims Tribunal ought to have deducted Income Tax from the annual income of the deceased while computing compensation under the head loss of dependency. The learned counsel further contended that while considering the monthly income of the deceased as Rs.65,271/- per month and adding 30% as future prospects, the monthly income of the deceased would be Rs.84,852/- and then the annual income would be Rs.10,18,224/- which falls within the Income Tax Slab. Therefore, the findings of the Tribunal in awarding Rs.99,27,684/- under the head loss of dependency are not in accordance with the principle laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited V. Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680*** and therefore, the impugned award passed by the learned Tribunal is liable to be set aside.

7.With regard to the employment and the gross salary at Rs.65,271/- per month received by the deceased, is not in dispute. The claimants have also produced Ex.C.3 and Ex.C.5 to establish the same. The only contention of the appellant is that the Tribunal ought to have deducted Income Tax from the annual income of the deceased while computing compensation under the head loss of dependency. On perusal of the impugned order dated 14.02.2023, it is found that the Tribunal after adding 30% as future prospects, fixed the monthly income of the deceased as Rs.84,852/- and has calculated the annual income of the deceased as Rs.10,18,224/-. As per the judgement of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Prenai Sethi and Others*** reported in ***(2017) 16 SCC 680***, deduction is to be made on account of Income Tax.

8.Heard, records perused.

9.The issue is "whether the Income Tax is liable to be deducted for determination of compensation under the Motor Vehicles Act".

10. In ***Sarla Varma and other vs. Delhi Transport Corporation and Another*** reported in ***(2009) 6 SCC 121*** the Hon'ble Supreme Court held as follows:

> *"20.Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation."*

11.The Hon'ble Supreme Court further observed as follows:

> *"24. ... Where the annual income is in taxable range, the words 'actual salary' should be read as 'actual salary less tax'."*

12.Therefore, it is clear that if the annual income comes within the taxable range, income tax is required to be deducted for determination of the actual salary. But while deducting income tax from the salary, it is necessary to notice the nature of the income of the victim. If the victim is receiving income chargeable under the head "Salaries" one should keep in mind that under Section 192 (1) of the Income Tax Act, 1961 any person responsible for paying any income chargeable under the head "Salaries" shall at the time of payment, deduct income tax on estimated income of the employee from "Salaries" for the financial year. Such deduction is commonly known as tax deducted at source ("TDS", for short). When the employer fails in default to deduct the TDS from the employee's salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under Section 201 (1-A) of the Income Tax Act, 1961. Therefore, in case the income of the victim is only from "Salary", the presumption would be that the employer under Section 192 (1) of the Income Tax Act, 1961 has deducted the tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence that the employer failed to deduct the TDS from the salary of the employee.

13.In the present case, the appellant/Insurance Company failed to establish that the income tax payable by the deceased was not deducted at source by the employer TNEB. It is also not the case of the appellant/Insurance Company that P.W.2, the Assistant Administrative Officer of Sathyamangalam, TNEB who placed on record the pay certificate (Ex.C.3) and proof of employment (Ex.C.5) of the deceased, made such statement that the income tax was not deducted at source by the employer TNEB. In the absence of such evidence, it is presumed that the salary paid to the deceased Manoharan as per pay certificate was paid in accordance with law i.e., by deducting the income tax on the estimated income of the deceased Manoharan for that month or the financial year.

14.For the aforementioned reasons, we hold that the salary as shown in the pay certificate marked as Ex.C.3 as Rs.65,271/- should be accepted for calculating the compensation payable to the claimants. We do not find any justification to interfere with the impugned order of the learned Tribunal.

15.In the result, the Appeal is dismissed at the stage of admission.

[M.S.,J] [K.G.T.,J]

04.04.2024

vsn

Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

To
1. The Motor Accident Claims Tribunal,
   III Additional District and Sessions Judge, Gobichettypalayam.
2. The Section Officer,
   VR Section, High Court, Madras.

M.SUNDAR,J.

and

K.GOVINDARAJAN THILAKAVADI, J.

vsn

C.M.A.No.829 of 2024

04.04.2024