IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.2366 of 2023

1.S.Rajeswari

2.S.Karthi Kumar

3.S.Kayalvizhi

4.S.Kanimozhi

5.N.Thanganachiya

...Appellants/Petitioners

vs.

1.T.Muthulakshmi

2.The United India Insurance Co. Ltd.,
No.48, Arcot Road, Saligramam,
Chennai-600 093. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 02.11.2022 made in M.C.O.P.No.4576 of 2018 on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondents : Mr.M.B.Raghavan [R2]

# JUDGMENT

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

Not being satisfied by the Award dated 02.11.2022 made in M.C.O.P.No.4576 of 2018 on the file of Motor Accident Claims Tribunal/ Chief Judge, Court of Small Causes, Chennai, the legal heirs of the deceased N.Sarath Chandran have preferred this Civil Miscellaneous Appeal for enhancement of compensation.

2. Claim petition was filed under Section 166 of Motor Vehicles Act and Rule 3 of M.A.C.T Rules, claiming compensation of Rs.1,20,00,000/- for the death of N.Sarath Chandran who died in a road traffic accident that occurred on 22.06.2018.

3. The case of the claimants is set out hereunder in brief:

On 22.06.2018 at about 14.30 hours, while the husband of the 1st claimant was riding a motor cycle bearing Reg.No.TN-65-V-8893 along the main road from Kamuthi to Abiramam, at the point of Angusamy Kalavasal, the driver of the 1st respondent's tipper lorry bearing Reg.No.TN-65-V-4141 came from the opposite direction in a rash and negligent manner and dashed against the motor cycle. Due to the said impact, the 1st petitioner's husband N.Sarath Chandran succumbed to the injuries on the spot itself. At the relevant point of time, the deceased was working as Health Inspector at Abiramam Natham Health Office and earning Rs.54,180/- p.m. He was aged about 51 years. The 1st respondent is the owner of the erred vehicle and the 2nd respondent is the insurer of tipper lorry are vicariously and statutorily liable to pay compensation to the claimants.

4. Per contra, on behalf of the 2nd respondent/Insurance Company, it was stated that the driver of the tipper lorry did not have valid and effective driving licence at the time of accident and the deceased also had no valid and effective driving licence. The claimants should put strict proof of age, qualification, avocation and income of the deceased.

5. Heard Mr.K.Varadharajan, learned counsel appearing for the appellants/claimants and Mr.M.B.Raghavan, learned counsel appearing for the 2nd respondent / Insurance Company.

6. Upon consideration, the Tribunal passed an award for an amount of Rs.30,76,250/-.

| *Sl. No.* | *Heads* | Calculation |
|---|---|---|
| 1 | For loss of Income | Rs.25,000/- per month<br><br>Add:Future Prospects 15% of 25,000/- = Rs.28,750/-<br>(Rs.25,000/-+15% of 25,000/- = Rs.3,750/-)<br><br>Rs.28,750/- X 12 X 11 X 3/4<br><br>Rs.28,46,250/- |
| 2 | Loss of Estate | Rs. 15,000/- |
| 3 | Loss of Consortium (Rs.40,000/- X 5) | Rs.2,00,000/- |
| 4 | Funeral Expenses | Rs. 15,000/- |
| | Total | Rs.30,76,250/- |

7. At trial, son of the deceased S.Karthi Kumar was examined as PW1. Eye witness Santhakumar is PW2.Administation Officer of the office of Deputy Director, Department of Health, Paramakudi is PW3 through whom the service particulars and the income details of the deceased have been marked (Exs.P15 to P17). Ex.P17 is the pay drawn particulars from March to June 2018. On the 2nd respondent's side, one witness/E.S.Venkatesan insurance claim investigator has been examined as RW1. His report (Inspection Report) is Ex.R2.

8. It is the evidence of PW1, son of the deceased that his father was aged about 51 years at the relevant point of time, and he was working as Health Inspector at Abiramam Natham Health Office and earning a sum of Rs.51,180/- per month. An officer of the deceased office Mr.K.Ramkumar(PW3) would also state that the deceased Sarath Chandran was working as Health Inspector and his last drawn pay is Rs.54,180/- per month.

9. As per the service particulars of the deceased, the date of birth of the deceased is 13.03.1967. Therefore, at the relevant point of time, the age of the deceased was 51 years. As per Ex.P17 pay drawn particulars of the deceased Sarath Chandran, for the month of March to June 2018, the deceased gross pay for the month of May is Rs.54,180/- and the break-up particulars are given hereunder:

**Pay for the month of May 2018:**

| | | |
|---|---|---|
| Basic Pay | : | Rs.49,000/- |
| Dearness Allowance | : | Rs. 3,430/- |
| H.R.A., | : | Rs. 650/- |
| Medical Allowance | : | Rs. 300/- |

| | | |
|---|---|---|
| Fixed Travel Allowance | : | Rs. 800/- |
| | | --------------- |
| Gross Salary | : | Rs.54,180/- |
| | | --------------- |

10. 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.

11. 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.

12. 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.

13. 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."*

14. While calculating the compensation, 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 dependants may not have lived, the deceased might have moved to a better employment, he would have lost his employment are uncertain. 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."*

15. 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."*

16. 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. The pivotal consideration should be given in granting of just

compensation, which has to be done with judicious approach.

17. 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.

18. Reverting back to the pay particulars of the deceased, except travel allowance all other allowances are beneficial both to the officer and the family members. Travel allowance is exclusively benefits extended to the officer alone. Therefore, an amount of Rs.800/- alone has to be deducted from the gross salary for computing monthly income of the deceased. For the purpose of computing the loss of income, the income of the deceased would be Rs.54,180/- - Rs.800/- = Rs.53,380/-.

19. As regards Future Prospects, the Hon'be Supreme Court has standardised the application of future prospects depending upon the nature of job in *National Insurance Company Ltd vs. Pranay Sethi and Others* reported in *2017 (2) TNMAC 609 (SC) the deceased had been working as* Health Inspector in the Department of Health. In respect of a person who

was in permanent job, for the age group of persons 50 to 60 years, 15 % has to be added as Future Prospects to arrive at the monthly income. There is no dispute with regard to the application of multiplicand. As regards deduction towards personal and living expenses, law is settled in ***Smt.Sarla Verma & Others v. Delhi Transport Corporation & Another*** reported in *2009 (2) TN MAC* (1) SC, wherein, the deceased died left behind five persons, therefore, if the number of dependent family members is 4 to 6, then 1/4th is to be deducted for the personal and living expenses of the deceased.

loss of income is computed as follows:

Monthly income of the deceased (May'2018) : Rs.54,180/- p.m.
Less (Travel Allowance) Rs.800/- : Rs.53,380/-

Age of the deceased : 51 years

Future Prospects to be added : 15%

Multiplier to be adopted : 11

**Calculation:**

Notional Income = Rs.53,380/-

Future Prospects
15% to be added = Rs.53,380/- + 15% = Rs.61,387/-
Annual Income = Rs.61,387/- X 12 = Rs.7,36,644/-

Less: Income Tax@ 10% - Rs. 73,664/-

--------------------
Rs.6,62,980/-

Deducting 1/4th towards personal and living expenses (Rs.6,62,980 - 1/4th) - Rs.1,65,745/-

--------------------

Income after deducting IT and Personal expenses Rs.4,97,235/-

--------------------

Multiplier to be adopted = Rs.4,97,235/- x 11

**Loss of Dependency = Rs.54,69,585/-**

20. Based on the aforestated discussions, 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 / dependency | Rs.28,46,250/- | Rs.54,69,585/- | Enhanced |
| 2 | For Loss of Estate | Rs. 15,000/- | Rs. 15,000/- | Confirmed |
| 3 | For Loss of Consortium | Rs. 2,00,000/- | Rs. 2,00,000/- | Confirmed |
| 4 | For Funeral Expenses | Rs. 15,000/- | Rs. 15,000/- | Confirmed |
| | **Total** | Rs.30,76,250/- | Rs.56,99,585/- rounded off to **Rs.57,00,000/-** | |

21. Thus, the compensation awarded by the Tribunal is enhanced from Rs.30,76,250 /- to **Rs.57,00,000/-** which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

22. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.30,76,250 /- to **Rs.57,00,000/-**.

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount now determined by this Court i.e., **Rs.57,00,000/-** (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.4576 of 2018 on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes),Chennai within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the 1st petitioner/1st claimant is permitted to withdraw for an amount of Rs.30,00,000/- and the petitioners 2, 3 and 4 / claimants 2, 3 and 4 are permitted to withdraw Rs.8,00,000/-

each and the 5th petitioner / 5th claimant is permitted to withdraw Rs.3,00,000/-. 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.

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

(vi) The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

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

06.09.2024

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

ssn
To

The Motor Accident Claims Tribunal,
Chief Judge,
Court of Small Causes),
Chennai.

J.NISHA BANU, J.,

and

R.KALAIMATHI, J.,

ssn

C.M.A.No.2366 of 2023

06.09.2024