IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.2518 of 2024
and
C.M.P.No.19968 of 2024

The Manager,
M/s.United India Insurance Co. Ltd.,
24, Whites Road, Chennai-600 014.
Having Divisional Office at
The Divisional Manager,
United India Insurance Co. Ltd.,
Motor Third Party Claim Office,
No.147/58 C, Kamarajar Street,
Kancheepuram. ... Appellant /2nd respondent

Vs.

1.B.Chitra
2.Minor B.Kavisri
Minor rep.by her Natural Guardian,
Mother B.Chitra
3. Andal
4.Annamalai ... Respondents/Petitioners
5.A.Govindarajan ... 1st Respondent/5th Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 20.01.2023 made in M.C.O.P.No.126 of 2021 on the file of the Motor Accident Claims Tribunal, District and Sessions Court, No.2, Kancheepuram.

For Appellant : Mr.S.Arunkumar

For Respondents 1 to 4 : Mr.C.Prabakaran
For 5th Respondent : No Appearance

JUDGMENT

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

This Civil Miscellaneous Appeal is preferred by the Insurance Company against the Order dated 20.01.2023 made in M.C.O.P.No.126 of 2021 on the file of the Motor Accident Claims Tribunal / District and Sessions Court, No.2, Kancheepuram, as regards quantum.

2. Claim petition was filed by the legal heirs of the deceased Balasubramanian claiming compensation of Rs.1,00,00,000/-, who died due to the injuries sustained by him in the road traffic accident which occurred on 19.12.2020.

3. Upon consideration, the Tribunal passed an award for an amount of Rs.1,05,26,470/- and the break up details are given hereunder:

Sl. No.	*Description*	*Amount awarded by Tribunal*
1	For Loss of income	Rs.1,04,56,470/-
2	For Funeral Expenses	Rs. 15,000/-

Sl. No.	***Description***	***Amount awarded by Tribunal***
3	For Loss of Consortium	Rs. 40,000/-
4	For Loss of Estate	Rs. 15,000/-
	Total	Rs.1,05,26,470/-

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

On 19.12.2020, at about 19.15 hours, while the deceased Balasubramanian was riding his motor cycle (Splendor Pro) bearing Reg.No.TN-10-AM-4952 along with pillion riders (his wife and daughter) along the GST Road from north to south on the extreme left side of the road in a normal speed, lorry driver of the 1st respondent bearing Reg.No.TN-93-C-3193 came in a rash and negligent manner in the same direction without following traffic rules hit behind the motor cycle. Due to the said impact, all the above said persons fell down from the motor cycle and the deceased was ran over by the 1st respondent's lorry and his minor daughter and the rider of the motor cycle succumbed to the injuries on the spot itself. Due to the negligent driving of the 1st respondent's lorry driver the accident occurred. The 1st respondent being the owner of the lorry and the 2nd respondent being the insurer of the 1st respondent's vehicle, both the respondents are vicariously and statutorily liable to pay compensation to the claimants. The deceased was 40 years old at the relevant point of time and he has working as a Technical Engineer in a Private Company at Ekattuthangal and earning a sum of Rs.50,000/- p.m.

5. The claim was resisted by the Insurance Company with the following details mentioned in the counter which is stated in brief:

Accident occurred only due to the negligence on the part of the deceased namely rider of the two wheeler due to overload of persons travelled in the two wheeler and therefore, the lorry driver was not responsible for the accident and the Insurance Company is not liable to pay compensation.

6. Heard Mr.S.Arun Kumar, learned counsel appearing for the appellant / Insurance Company and Mr.C.Prabakaran, learned counsel appearing for the claimants.

7. Both the learned counsels argued in respect of fixation of monthly income.

8. At trial, wife of the deceased has examined herself as PW1. Legal Manager of the Company where the deceased worked is PW2. 21 documents were marked by the claimants' side. Copy of the appointment order of the deceased is Ex.P10. Copy of the salary certificate of the deceased for the month of October, November and December 2020 are Exs.P12 to P14. On the 2nd respondent side no evidence was let in.

9. The issue is only with regard to the fixation of monthly income of the deceased. The deceased Balasubramanian was stated to be working as Technical Engineer in a Private Company at Ekattuthangal and he drawing a salary of Rs.48,886/-. The salary slip of the deceased pertaining to the months of October to December 2020 are Exs.P12 to P14 were marked through the Legal Manager of Indus Towers Ltd., Ekattuthangal. As per the pay slip, the deceased was drawing a sum of Rs.48,886/- and the break-up details are given hereunder:

BASIC PAY	:	Rs.16,140/-
H.R.A.,	:	Rs. 8,370/-
ORGANISATION ALLOWANCE	:	Rs.20,676/-
FUEL ALLOWANCE	:	Rs. 2,100/-
MOBILE ALLOWANCE	:	Rs. 1,000/-

GROSS SALARY : Rs.48,886/-
=========

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. While computing the income of the deceased, the components that can be taken into account have been discussed 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. It is also beneficial to refer to the observations made 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 facts of this case, the deceased was earning a monthly income of Rs.48,886/- at the relevant point of time. He was getting Basic Pay: Rs.16,140/-, H.R.A.:Rs.8,370/-, Organisation Allowance : Rs.20,676/-, Fuel Allowance : Rs.2,100/- and Mobile Allowance : Rs.1,000/-. The first three Heads are beneficial to both the officer as well as his family members. Whereas, Fuel and Mobile allowances are benefits that were given to the Officer. The law is well settled that the allowances which are exclusively extended to the officer alone cannot be added with the income of the deceased. Therefore, the amounts granted for Fuel and Mobile allowances will not form part of the monthly salary of the deceased for the purpose of compensation of loss of income.

19. As regards the age of the deceased, in the claim petition, it is mentioned as 40 years. He was working as a Technical Engineer. As per Ex.P16, he has completed Diploma Course in Electronics and Communication Engineering in April 2000. Except Post-Mortem Certificate, no other document is available to fix the age of the deceased.

20. As regards the age of the deceased, as per Post-Mortem Certificate(Ex.P7) of the deceased, his age is 40 years. In so far as the Future Prospects is concerned, the Hon'be Supreme Court has standardised the details 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).* For the age group of persons between 40 to 50 years, 25% is to be added as future prospects while computing the monthly income of the deceased. As held in ***Smt.Sarla Verma & Others v. Delhi Transport Corporation & Another*** reported in *2009 (2) TN MAC* (1) SC, the relevant multiplier to be adopted is 15m. 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 four 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. Therefore, loss of income is computed as mentioned below:

Age of the deceased : 40 years

Monthly income of the deceased : Rs.45,786/- p.m.

Future Prospects to be added : 25%

Multiplier to be adopted : 15

<u>Calculation:</u>

Monthly Income = Rs.48,886/- - [Rs.2100/- + Rs.1,000/-]
= Rs.45,786/-
Future Prospects
25% to be added = Rs.45,786/- + 25%
= Rs.57,233/-
Deducting 1/4th towards
personal and living expenses
(Rs.57,233/- - 1/4th)
Rs.57,233/- - 14,308/- = Rs.42,925/-

Annual Income = Rs.42,925/- X 12

= Rs.5,15,100/-

Less: Income Tax@ 10%= Rs. 51,510/-

Rs.4,63,590/-

Multiplier to be adopted = Rs.4,63,590/- x 15

Loss of Income = Rs.69,53,850/-

21. 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	Rs.1,04,56,470/-	**Rs.69,53,850/-**	**Reduced**
2	For Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
3	For Loss of Consortium	Rs. 40,000/-	Rs. 40,000/-	Confirmed
4	For Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
	Total	Rs.1,05,26,470/-	Rs.70,23,850/- rounded off to **Rs.70,24,000/-**	

22. Thus, the compensation awarded by the Tribunal is reduced from Rs.1,05,26,470/- to **Rs.70,24,000/-** 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 stands allowed. No costs.

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

Rs.1,05,26,470/- to **Rs.70,24,000/-**.

(iii) The Appellant / Insurance Company is directed to deposit the modified compensation amount i.e., **Rs.70,24,000/-** (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 realisation to the credit of M.C.O.P.No.126 of 2021 on the file of the Motor Accident Claims Tribunal, District and Sessions Court, No.2, Kancheepuram, 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 entitled for an amount of Rs.28,24,000/- and the 2nd petitioner / minor daughter of the deceased is entitled to Rs.30,00,000/- and the petitioners 3 and 4 / claimants 3 and 4, parents of the deceased are entitled to Rs.6,00,000/- each. The compensation amount awarded to the minor petitioner/2nd claimant has to be deposited in a Nationalised Bank till she attains majority. The 1st petitioner/wife of the deceased is permitted to receive the interest once in three months for the welfare of the minor children. 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 compensation amount, if required.

(vi) The Tribunal below shall disburse the compensation 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.,)
09.09.2024

Index: Yes/No
Speaking Order/Non Speaking order
Neutral Citation Case:Yes / No
ssn

J.NISHA BANU, J.,
and
R.KALAIMATHI.J.,

ssn

To

1. The Motor Accidents Claims Tribunal,
   District and Sessions Court, No.2,
   Kancheepuram

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

C.M.A.No.2518 of 2024
and

C.M.P.No.19968 of 2024

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