IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On :13.09.2024

Pronounced On : 25.10.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.2529 of 2023

1. G.Ashok Kumar
2. Minor A.Amala
3. A.Aswini
4. A.Arthi ...Appellants

vs.

1. K. Subalakshmi

2. M/s.ICICI Lombard General Insurance Company Ltd.,
Legal Department, Arihant Plaza, First Floor,
Walltax Road, Chennai – 600 001 ...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 25.04.2023 made in M.C.O.P.No.1522 of 2020 on the file of the Motor Accident Claims Tribunal / Court of Small Causes, Chennai.

For Appellants : Ms.G.Balaji Prasad

For Respondents : Mr.A.Salomi for R2

: R1-Exparte

JUDGMENT

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

Not being satisfied by the Award dated 25.04.2023 made in M.C.O.P.No.1522 of 2022 on the file of Motor Accident Claims Tribunal / Chief Judge, Court of Small Causes, Chennai, claimants herein have preferred this appeal for enhancement of compensation.

2. Claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.95,00,000/- for the death of Tmt.R.Tamil Selvi in a road traffic accident that occurred on 19.05.2020.

3. The facts narrated in the claim petition is set out hereunder:

On 19.05.2020 at about 9.45 hours, while the 1st claimant's wife Tmt.Tamil Selvi was travelling as a pillion in Honda Activa motor cycle bearing Registration No. TN 11 L 8437 from Perungalathur to Kanchipuram along Vandalaur-Walajabad road, at the point of Palaniappa Chettinad Hotel, Banrutti village, the rider of said two wheeler drove the vehicle in a rash and negligent manner, and the deceased fell down and sustained serious injuries. She was taken to Sriperumbudur Government Hospital, then admitted in Chengalpet Medical College Hospital and thereafter shifted to SIMS Hospital, Vadapalani, Chennai, where she died on the same day. She was working as Revenue Officer at Kanchipuram and earning a sum of Rs.69,211/- per month and she was aged about 55 years. The first and second respondents are the owner and insurer of the said vehicle. Therefore, they are jointly and severally liable to pay compensation.

4. On behalf of the second respondent/Insurance Company, it was contended that the petitioners are put to strict proof of age, avocation and income of the deceased. As the deceased was not wearing helmet at the time of accident, 15% has to be fixed as contributory negligence on the deceased.

5. At trial, on the claimants' side, three witnesses were examined and 30 documents were marked. Copy of pay slips of the deceased for the month of February, March and April 2020 is Ex.P15. Copy of service particulars of the deceased is Ex.P30. On the second respondent side, neither any oral evidence was let in nor document was marked.

6. The Tribunal arrived at the compensation as given hereunder:

Sl. No.	***Description***	***Amount awarded by the Tribunal***
1	For Loss of Income	Rs.33,17,630/-
2	For loss of estate	Rs.15,000/-
3	For loss of consortium	Rs.1,60,000/-
4	For funeral expenses	Rs.15,000/-
	Total	Rs.35,07,630/-

7. The Tribunal fixed the annual income as given below:

Gross Salary	Rs.69,211/-
Net Income (after deducting statutory deductions)	Rs.58,971/-
Annual Income (Rs.58,971 x 12)	Rs.7,07,652/-
Actual annual income after deduction of Rs.8,284/- (Income Tax) (Rs.7,07,652 – Rs.8,284)	Rs.6,99,368/-

The Tribunal observed that after her demise, the legal heirs would receive family pension at 50% of the last pay drawn of the deceased. It was also observed that there is a chance of one of the family members to get appointment on compassionate ground. Therefore, 50% of the annual income towards family pension was deducted and the annual income was arrived at Rs.3,49,684/-. After adding 15% as future prospects and deducting 1/4th towards personal expenses of the deceased, the compensation towards loss of income was arrived at Rs.33,17,630/- [Rs.4,02,137/- (Annual Income Rs.3,49,684 + 15%) x 11 x 3/4].

8. As regards the fixation of monthly income, as per Ex.P15 - Salary slip for the month of April 2020, the gross salary of the deceased was Rs.69,211/-. As regards the allowances, she received conveyance allowance (Rs.776/-) which is beneficial to the employee.

9. 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.

10. 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.

11. 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."

12. 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 dependents 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."

13. 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."*

14. The deceased Tmt.R.Tamil Selvi was working as Revenue Officer in the Kancheepuram City Municipal Corporation and drawing gross salary of Rs.69,211/- per month. The salary slips of the deceased pertaining to the months of February, March, April, 2020 is Ex.P15. The salary details are given hereunder:

Salary Details in Rs.	
Basic Pay	55500.00
Grade Pay	0.00
Special Pay	0.00
Dearness Allowances	9435.00
House Rent Allowance	3200.00
CCA	0.00
Conveyance Allowance	776.00
Medical Allowance	300.00
Washing Allowance	0.00
Other Allowance	0.00
Hill Allowance	0.00
Winter Allowance	0.00
Gross Amount	**69,211.00**

15. Law is well settled that allowances which are granted to the employee for the personal benefits shall not be added while computing the monthly income for the purpose of granting compensation.

16. Reverting back to the present case, among the aforestated allowances, conveyance allowance of Rs.776/- is granted to the benefit of the employee. Dearness Allowance, House Rent Allowance, Medical Allowance are also benefited by the members of the family of the employee. Therefore, based on the aforesaid discussions and judgments, in our considered opinion, the amount given for conveyance allowance

has alone to be deducted from the gross salary (Rs.69,211/- – Rs.776/- = Rs.68,435/-).

17. As per Ex.P30 - Service particulars, date of birth of the deceased is 28.05.1964. Date of death of the deceased is 19.05.2020. Therefore, the deceased died at the age of 55 years. As held by the Apex Court in *Sarala Varma -vs- Delhi Transport Corporation and another, reported in 2009(2) TNMAC 1 (SC)*, as per the age of the deceased, the relevant multiplier to be adopted is 11m for the age group of persons between 51 to 55 years. As regards the deduction for personal and living expenses, the Apex Court has standardized the details in the abovesaid case and 1/4th has to be deducted if number of dependent family members is 4 to 6. The claimants are four in number, then 1/4th has to be deducted for the personal and living expenses of the deceased.

18. As regards the future prospects, as held in *National Insurance Co. Ltd., v. Pranay Sethi and others* reported in *2017 (2) TN MAC 609 (SC)*, for the age group of persons between 50 to 60 years, 15% has to be added.

19. As her gross salary was Rs.69,211/-, 10% has to be deducted

for income tax. Based on the aforesaid details, the income of the deceased and loss of income is computed, which is given hereunder:

A	Monthly Income	Rs.68,435/-
B	Future Prospects (15% of monthly income)	Rs.10,265/-
C	1/4th Deduction towards Personal Expenses	Rs.19,675/-
D	Total Dependency (A + B - C)	Rs.59,025/-
E	Annual Income (D x 12)	Rs.7,08,300/-
F	10% Income Tax	Rs.70,830/-
G	Age Multiplier	11
	Loss of Income [(E - F) x G]	Rs.70,12,170/-

20. We are of the considered view that with regard to other heads, the compensation granted by the Tribunal appears to be reasonable and we are not inclined to interfere in the same. After revisit, the compensation details is tabulated hereunder:

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.33,17,630/-	Rs.70,12,170/-	**Enhanced**
2	For loss of estate	Rs.15,000/-	Rs.15,000/-	**Confirmed**
3	For loss of consortium	Rs.1,60,000/-	Rs.1,60,000/-	**Confirmed**

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
4	For funeral expenses	Rs.15,000/-	Rs.15,000/-	**Confirmed**
	Total	**Rs.35,07,630/-**	**Rs.72,02,170/-**	**Enhanced**

21. Thus, the compensation awarded by the Tribunal is enhanced from Rs.35,07,630/- to Rs.72,02,170/- 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 Partly Allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.35,07,630/- to Rs.72,02,170/-.

(iii) The Insurance Company is directed to deposit the enhanced compensation amount now determined by this Court i.e., Rs.72,02,170/- (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.1522 of 2020 on the file of Motor Accidents

Claims Tribunal / Court of Small Causes, Chennai, within a period of six weeks from the date of receipt of a copy of this Judgment.

(iv) Out of the enhanced award amount, the 1st petitioner is entitled to a sum of Rs.27,02,170/- and petitioners no.2 to 4 are entitled to a sum of Rs.15,00,000/- each as compensation.

(v) 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.

(vi) The share of the minor/2nd petitioner shall be deposited in any one of the nationalized bank till the minor attains majority and the 1st appellant, father of the minor Mr.G.Ashok Kumar is permitted to withdraw interest once in three months from the said amount.

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

(viii) The Tribunal below shall disburse the 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.)
25.10.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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J.NISHA BANU, J.
and
R.KALAIMATHI, J.

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To

To

1. The Motor Accident Claims Tribunal,
Court of Small Cause, Chennai.

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

Pre-Delivery Judgment made in
C.M.A.No.2529 of 2023

25.10.2024