BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2024

CORAM
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A(MD)No.411 of 2019
and
C.M.P.(MD).No.4911 of 2019

M/s.Royal Sundaram General Insurance Co.Ltd.,
Door No.2/319, Visranthi Melaram Towers,
Rajiv Gandhi Road (OMR),
Karapakkam,
Chennai
Rep, by its Branch Manager ... Appellant /Respondent No.3

Vs.

1.Veeralakshmi

2.Minor.A.Jenifer

3.Minor.A.Aaron Raj

4.Gomathi

5.Aarokkiyasamy ...Respondents

(2nd and 3rd respondents represented through their Mother and the next guardian the 1st respondent herein)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 26.02.2018 made in M.C.O.P.No.852 of 2016, on the file of the Motor Vehicles Accident Claims Tribunal, Subordinate Judge, Tirunelveli and allow this Appeal.

For Appellant : Mr.M.E.Ilango

For Respondents : Mr.M.P.Senthil,
for R1, R2 & R3

J U D G M E N T

[Judgment of the Court was made **by K.K. RAMAKRISHNAN .J.]**

The Insurance company filed this appeal challenging the quantum of the award passed in M.C.O.P.No.852 of 2016, dated 26.02.2018, by the Motor Accident Claims Tribunal Judge/Subordinate Judge of Tirunelveli.

2.Facts of the case:

On 09.08.2018 at about 03.15.pm., the deceased was travelling in a Maruthi Swift Car bearing Registration No.TN-01-AJ-7476 belonging to the first respondent insured with the second respondent. When the car reached near Saveriyarpuram on Trichy-Dindigul National Highway, as its driver drove the same in a rash and negligent manner, the rear side tyre burst and the vehicle lost its control and gone to the right side and dashed against an Indica Car bearing Registration No.TN-01-AK-6773. As a result, the deceased along with other inmates in the Maruthi Car sustained injuries and the deceased sustained serious injuries and immediately, he was taken to Sugam Hospital at Manaparai, where he succumbed to his injuries. The deceased was working as a Executive Services in Venus Home Appliances at Chennai and earned a salary of Rs.32,000/- and hence the defendants filed a petition in MCOP No.852 of 2016 before the the Motor Accident Claims Tribunal Judge/Subordinate Judge, Tirunelveli. The insurance company filed the counter denying the allegation and also liability. They also disputed the income of the deceased.

3.To prove the case, on the side of the claimant, P.Ws.1 to 3 were examined and Ex.P1 to P17 were marked.

4.The learned tribunal judge after considering the evidence fixed the negligence upon the appellant insured vehicle and granted compensation of Rs. 54,54,730/- with the interest of 7.5% from the date of filing the petition. Challenging the same, the insurance company filed the present appeal.

5.The learned counsel for the appellant confined his argument only relating to the inclusion of the travel allowance in the monthly income of the deceased while calculating the compensation. The Learned counsel for the insurance Company submitted that the salary of the deceased as per the salary certificate is Rs.32,000/-. The salary certificate is marked as Ex.P12. In the salary certificate, the gross salary of the deceased is mentioned including the "transport allowance". The transport allowance comes around Rs.800. According to the learned counsel for Insurance Company, the transport allowance can not be taken into consideration, while calculating the income of the deceased. For which, he relied the judgment of Division Bench of this court reported in ***2001 (1) LLN 943, 2004 (1) LLN 630 and C.M.A.(MD)No.169 of 2019***. He also submitted that the learned Tribunal Judge failed to deduct the income tax.

Therefore, he seeks for the reduction of the amount.

6.The learned counsel for the claimants submitted that the said judgment of the Division Bench of this Court reported in ***2001 (1) LLN 943, 2004 (1) LLN 630 and C.M.A.(MD)No.169 of 2019*** is arising out the interpretation of the meaning of the salary under the ESI Act, to disburse the compensation under the ESI Act. Therefore, the said principle is not applicable to the present case. The learned counsel for respondents submitted that the transport allowance forms part of the salary of the deceased. Hence, the same could not be deducted. The learned counsel further submitted that the judgment relied by the counsel is against the law laid down by the the Honourable Supreme Court judgment in the case of ***National Insurance Co.Ltd vs. Indira Srivastava and others*** reported in ***(2008) 2 SCC 763***. Hence, he pleads that the “income” includes the “transport allowance”. Further, the reduction of income tax is concerned, he stated that the deceased salary does not come under the purview of the income tax slab and hence, there is no need to reduce the income tax. Further, he stated that the compensation amount granted by the Court below is not liable to be deducted. It is a well-settled principle that the compensation awarded under motor vehicle accident, including interest, will not cover under Income Tax Act. The income tax Act is not applicable in the case of compensation and it is not treated as a revenue receipt on the part of the deceased. He also relied the judgment of the Hon'ble Supreme Court reported in ***2008 (2) SCC 763*** and submitted that the travelling allowance has to be included. He further submitted that as per the ***Pranay Sethi Case***, the claimants 2 to 5 are entitled to loss of love and affection at the rate of Rs.40,000/- each and the same was not awarded and hence, he seeks to confirm the award and also enhance the award amount.

7. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

8.In this appeal, the following points for determination are needed to be addressed.

> *1.Whether the transport allowance forms part of the income of the deceased to be*

calculated for the compensation under Section 166 of the Motor Vehicles Act?

9.The transport allowance, according to the learned counsel for the insurance company, does not form part of the salary. For which he relied the Hon'ble Division Bench judgment of this Court reported in 2001 (1) LLN 943, 2004 (1) LLN 630 and C.M.A.(MD)No.169 of 2019. The first judgment of this Court was reported in 2001 (1) LLN 943. The Hon'ble Division Bench of this Court considered the relevant provision of the Employee State Insurance Act, 1948 (herein after called as ESI Act) and has held that conveyance allowance does not form part of wages and declined ESI compensation with conveyance allowance. Now it is to be decided whether the conveyance allowance is to be included in determining the income of the deceased in the Motor Accident Claims case and it is relevant to extract the definition of "wages" stated in the ESI Act . The definition in the Employee State Insurance Act is as follows:-

Definitions In this Act, unless there is anything repugnant in the subject or context,-

(22) "wages" means all remuneration paid

> *or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes 11[any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay -off and] other additional remuneration, if any, 22[paid at intervals not exceeding two months],* ***but does not include****- (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act; (b)* ***any travelling allowance or the value of any travelling concession;*** *(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (d) any gratuity payable on discharge.*

10.On perusal of the said definition, there is a statutory prohibition to include the travel allowance. From the scheme of the Act, the Hon'ble Division Bench of this Court held that in the Employee State Insurance Act, the Travel Allowance can not be included. The said judgment is relating to the interpretation of the Employee State Insurance Act, 1948, in which, there is a specific provision for the determination of the "wages". The wages does not include the travel allowance. The said scheme of the Act is relating to receiving the contribution from the employers and employee and from that contribution the benefit is given to the employees or his defendants. In the said circumstances, there was no determination of the compensation under the employee scheme. They only determined the benefits under the scheme, on the basis of the recovered contribution from the each individual employee and employer. So, the said scheme is entirely different from the determination of the compensation under the Motor Vehicles Act. The same was not brought to the consideration of the subsequent Division Bench of this Court in ***C.M.A(MD).No.169 of 2019*** and ***C.M.A.No.1228 of 2017.*** The subsequent development of law in determining the compensation also was not brought to the deep consideration of the subsequent Division Bench. After the Division Bench judgment reported in 2001 (1) LLN 943, the Hon'ble Supreme Court in the case of ***National Insurance Co.Ltd vs. Indira Srivastava and others*** reported in ***(2008) 2 SCC 763*** has applied the principle of purposive interpretation to the term income by giving elastic meaning.

11.There is no definition for income incorporated in the Motor Vehicle Act, 1988. Therefore, to determine income of the deceased or injured claimant, the Hon'ble Supreme Court has repeatedly guided the Courts to make some guesswork and determine the just compensation. In the said circumstances, the Court would have to cumulatively consider the definition of the income in various types of cases. In the Prevention of Corruption Act, the Hon'ble Supreme Court has given the meaning for income with limited inclusion of the lawful source, in the case *of* ***State of M.P. v. Awadh Kishore Gupta*****,** reported in **(2004) 1 SCC 691** at page 697

> *6. ... The term "income" by itself, is elastic and has a wide connotation. Whatever comes in or is received, is income. But, however wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and having further a source which may or may not yield a regular revenue...*

12. The Income Tax Act, provides an elastic term of "income" to include the income from whatever source.

12.1. Section 2(24)(iiib) of the Income Tax Act, 1961 defines "***income***"

> *any allowance granted to assessee either to meet his personal expenditure at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living.*
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The above provision of the Income Tax Act, clearly demonstrated that the travelling allowance also come under the purview of income.

13. Upon reading the relevant provision of the Income Tax Act and the interpretation given to the word income in the Prevention of Corruption Act, it is clear that each Act, travels on its own way. Therefore, the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. v. Indira Srivastava,*** reported in **(2008) 2 SCC 763** at page 767 has given elastic meaning to the income by applying purposive interpretation in the following terms:

***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 take 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. For the aforementioned purpose, we may notice the elements of pay, paid to the deceased:*

14. Nowadays, every servant either in the Government Service or in the Private Sector would travel through some mode of transportation to reach their office. In some nature of the jobs like Medical representatives, marketing executives, supervising duties have been incurring major transport expenditure. In the private sectors, for some nature of the job, the transport allowances has been provided to the extent of more than ¼ of the salary. Therefore, the travelling allowance becomes part of the income. Without the transport allowance, they would not have discharged their duties. Every worker has to reach their work place and attend their duties by mode of some transportation.

14.1. In the case of ***Krishna Kumar Asthana v. Satish Kumar*****,** reported in **2014 SCC OnLine All 11860** at page 712

> ***6....*** *As per the provisions of the Motor Vehicles Act, the Total Income has to be taken into consideration for awarding the Compensation and no such deduction like Conveyance Expenses should have been deducted.*

14.2. In the case of ***New India Insurance Co. Ltd. v. Munian***, reported in **(2010) 2 TN MAC 410 at page 414**

> ***13.*** *Section 168 of the Motor Vehicles Act used the word "just compensation", which in our opinion, should be assigned a broad meaning so as to compensate the Claimants. The deductions towards G.P.F., G.P.F. Loan Refund, Family Benefit Fund and other deductions cannot be taken as the deductions.* ***Giving a liberal interpretation of "income",*** *we are of the view that* ***the gross salary of the deceased ought to be taken and not his take home salary****.*
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> ***14.*** *Holding that income is not confined to pay-packet only in National Insurance Company Limited v. Indira Srivatsava and others, 2008 (1) TN MAC 166 (SC) : 2008 (2) SCC 763, Supreme Court has held as under:*
>
> *"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 take 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. ....

19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the *family as contra distinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted."*

14.3. In the case of ***Managing Director, Tamil Nadu State Transport Corporation Ltd., Kumbakonam v. Kunjunjamma Mathew,*** reported in **(2010) 2 TN MAC 518** at page 521

> ***9.**. It is fairly well settled that while calculating the multiplicand, the Courts and Tribunal should take into account only the gross salary and not the net salary...*

14.4. In the case of ***National Insurance Co. Ltd. v. Abhaysing Pratapsing Waghela***, reported in **(2008) 9 SCC 133** at page 138

> ***18.** It is in the aforementioned situation, we are of the opinion, that the judgment of the High Court cannot be faulted. No doubt, a contract of insurance is to be governed by the terms thereof, but a distinction must be borne in mind between a contract of insurance which has been entered into for the purpose of giving effect to the object and purport of the statute and one which provides for reimbursement of the liability of the owner of the vehicle strictly*

> *in terms thereof. In that limited sense, a contract of insurance entered into for the purpose of covering a third-party risk would not be purely contractual. We may place on record that an ordinary contract of insurance does not have a statutory flavour. The Act merely imposes an obligation on the part of the insurance company to reimburse the claimant both in terms of the Act as also the contract. So far as the liability of the insurance company which comes within the purview of Sections 146 and 147 is concerned, the same subserves a constitutional goal, namely, social justice. A contract of insurance covering the third-party risk must, therefore, be viewed differently vis-à-vis a contract of insurance qua contract.*

15. While determining the compensation in the case of the Motor Vehicle Accident, there must be a deduction for the personal expenditure of the deceased to arrive at the total compensation. Similar deduction is not made in the course of the determination of the amount under the Employee State Insurance Act. Therefore, the scheme of the both Acts is entirely different. In view of the personal deduction made under the Motor Vehicles Act under the head of the personal expenditure of the

deceased, strict interpretation of the income is not permissible. During the course of determination of the compensation, the Courts usually make the deduction for his personal expenditure and thereafter, the monthly income is calculated with the remaining amount. Therefore, in the considered opinion of this Court, if any travelling allowance is deducted, it amounts to double deduction, which is not permissible or when already personal expenditure is deducted. In view of above two situation, the interpretation which is beneficial to the claimant is to be taken into consideration to calculate the monthly income of the deceased under the Motor Vehicle Act for the purpose of the determination of the compensation of the deceased with the inclusion of the travel allowance in income.

16. Without the travelling allowance, he cannot earn the main part of the income. Apart from that, the travelling allowance forms part of the gross salary. Therefore, the same cannot be deducted on the principle that the ***Tribunal should take into account only the gross salary and not the net salary***. The deceased was working as a *Assistant Manager Service* in the Venus Home Appliances at Chennai. To prove his monthly salary

Exs.P.12, 13 and 15 are marked. In Ex.P.13, it is noted that he had received Rs.4,620/- as a travel allowance and the total salary comes around Rs.33,000/-. Since he had been discharging the duty of the service manager, by applying the above principle, this Court inclines to hold that the travelling allowance of Rs.4,620/- is form part of the monthly income of the deceased. Hence, in all aspects, the question framed is answered against the appellant and therefore, the compensation granted by the Court below is sustained.

17.The learned counsel appearing for the claimants rightly submitted that the respondent Nos.2 to 5 are entitled to the compensation under the head of love and affection as per the law laid down by the Hon'ble Supreme Court in ***Pranay Sethi case*** followed by the Hon'ble Supreme Court ***2018 (18) SCC 130***. Even though they did not file any cross appeal to enhance the compensation, this Court is exercising the power under order 41 Rule 3 CPC to grant the statutory compensation and in the interest of justice and to reach goal just compensation under the head of love and affection in the absence of the appeal and hold that the respondent Nos.2 to 5 are entitled each Rs.40,000/- under the head of love and affection.

18.Accordingly, this Civil Miscellaneous Appeal filed by the insurance company is dismissed and the judgment and award passed by the Motor Accident Claims Tribunal Judge/Subordinate Judge, Tirunelveli, in M.C.O.P.No.852 of 2016, dated 26.02.2018 is hereby enhanced from Rs.54,54,730/- to Rs.56,14,730/- with the following breakup details:

S. No	*Description*	*Amount awarded by the Tribunal (Rs)*	*Amount Awarded by this Court (Rs)*	*Award Confirmed or enhanced or granted*
1	Loss of Income	53,84,730/-	53,84,730/-	Confirmed
2	For Funeral Charges	15,000/-	15,000/-	Confirmed
3	Loss of Estate	15,000/-	15,000/-	Confirmed
4	Loss of Consortium	40,000/-	40,000/-	Confirmed
5	Loss of Love and Affection (Respondent Nos. 2 to 5 each) [4 X 40,000/-]	--------	1,60,000/-	Granted
Total		54,54,730/- Which was rounded of as 54,55,000/-	56,15,000/-	Enhanced

The appellant/Insurance Company is directed to deposit the award amount with proportionate accrued interest and costs, deducting the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. The claimants are entitled to receive the following compensation amount:

Sl. No.	***Claimants***	***Amount in Rs.***
1	Veeralakshmi/ Wife of the deceased	20,00,000/-
2	Minor.A.Jenifer/Daughter of the deceased	15,40,000/-
3	Minor.A.Aaron Raj/Son of the deceased	15,40,000/-
4	Gomathi/Mother of the deceased	2,95,000/-
5	Aarokkiyasamy/Father of the deceased	2,40,000/-

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.,) (K.K.R.K.J.,)
01.08.2024

NCC : Yes/No
Index : Yes/No
sbn

To

1.The Sub Court,
Motor Accident Claims Tribunal,
Tirunelveli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

V.BHAVANI SUBBAROYAN.J.,

and
K.K.RAMAKRISHNAN.J.,

sbn

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