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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**
**and**
**THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.609 of 2022
and
C.M.P(MD)No.17022 of 2023

1.Janet Deborah

2.David Ravichandran

3.Jeevamala Mercy Janaki : Appellants/Petitioners

Vs.

1.M/s.Robert Bosch Engineering
and Business Solutions Ltd.,
CHL-SEZ,
Keeraantham Village,
Coimbatore-641 035.

2.Balaji Allianz General Insurance Company Ltd.,
Through its Branch Manager
Number Golden Heights,
4th Floor,
No.1/2/59th Cross,
4th M Block,
Rajaji Nagar,
Bangalore-650 010. : Respondents/Respondents



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**PRAYER:** Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 25.11.2021 passed in M.C.O.P.No.111 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court dealing with MCOP Cases, Tirunelveli.

| | |
|---|---|
| For Appellants | : Mr.M.Ajmalkhan<br>Senior Counsel for Mr.A.Arumugam |
| For R1 | : No appearance |
| For R2 | : Mr.V.Sakthivel |

## JUDGMENT

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

Being aggrieved over the award passed by the Motor Accident Claims Tribunal, Special Sub Court dealing with MCOP Cases, Tirunelveli in M.C.O.P.No.111 of 2016, dated 25.11.2021, the claimants have filed the present appeal for enhancement of compensation.



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2.The appellants/claimants filed claim petition in M.C.O.P.No.111 of 2016, on the file of the Motor Accident Claims Tribunal, Special Sub-Court dealing with MCOP Cases, Tirunelveli claiming a sum of Rs.2,00,00,000/- (Rupees Two Crores only) for the death of Dearyl Vioshvek Samjones, the husband of the first appellant and son of the appellants 2 & 3 in the accident that occurred on 20.07.2015. By the order, dated 25.11.2021, the Tribunal awarded a sum of Rs.83,54,576/- (Rupees Eighty Three Lakhs Fifty four Thousand Five Hundred and Seventy six only) as compensation.

**3.Facts of the Case:-**

According to the appellants, on 20.07.2015 at about 05.45 p.m., the deceased was travelling in the Maruti Swift Dzire Car bearing registration No.TN-38-BM-5974 belonging to the first respondent insured with the second respondent. The car was driven by Sajith. When the car reached near Keeranatham Poultry Farm just 8 KM south-east of Kovilpalayam Police Station on the Sunnambu Kalvai-Athipalayam main road its driver drove the same in high speed rashly negligently as a result of which the driver lost its control, left the road and veered into the eastern coconut



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grove after dashing against a stone bollard in the barbed wire fence and dashed against a coconut tree and thereafter came to a halt. Due to the impact, the deceased who was in the front seat got trapped inside the vehicle and sustained serious injuries and died on the spot. The accident had happened due to the rash and negligent driving of the driver of the 1st respondent. The deceased was aged about 29 at the time of accident and he was working as Assistant Project Manager in M/s.Robert Bosch Engineering & Business Solutions Ltd., and earned a sum of Rs. 76,124/- per month. A criminal case was registered in Cr.No.165/2015 under Sections 279, 337 & 304-A IPC., by Kovilpalayam Police Station against the driver of the first respondent, which is pending before the Judicial Magistrate No.II, Coimbatore. The accident occurred only due to the rash and negligent driving by the driver of the first respondent. Therefore, the appellants filed the claim petition, claiming a sum of Rs.2,00,00,000/- (Rupees Two Crore only) as compensation.

4.The first respondent filed the counter statement and denied all the averments made in the claim petition and contended that the car was insured with the second respondent Insurance Company under private car



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package policy including the coverage liability to occupants of the car and the driver who drove the vehicle had valid and effective driving license to drive the same on the date of accident. The second respondent, who is the father of the deceased is working as a Deputy Manager in National Insurance Company Ltd. Hence, the claimants 2 & 3 are not the dependants of the deceased. The claim is excessive and prayed for dismissal of the claim petition.

5. The second respondent filed counter statement and denied all the averments made in the claim petition and contended that the driver did not possess the valid driving license at the time of accident and it amounts to violation of policy conditions and therefore, the second respondent is not liable to pay the compensation and hence, prayed for dismissal of the claim petition.

6. Before the Tribunal, the second claimant examined himself as P.W.2 and another witness one Mariappan was examined as P.W.2 and marked 18 documents as Ex.P1 to Ex.P.18. The respondents examined the witnesses as R.W.1 and R.W.2 and marked Ex.R1 to Ex.R5.



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7.**Finding of the Tribunal:**

The Tribunal, considering the pleadings, oral and documentary evidence, policy and arguments of the counsel for the appellants and the respondents held that the accident occurred only due to the rash and negligent driving by the driver of the first respondent and directed the first respondent to pay a sum of Rs.83,54,576/- (Rupees Eighty Three Lakhs Fifty Four Thousand Five Hundred and Seventy Six only) as compensation and exonerated the Insurance Company and fixed the liability on the first respondent. The first respondent has not challenged the award amount. The appellants have filed the appeal for enhancement of compensation. Aggrieved over the same, the appellants filed this appeal for enhancement of compensation.

8.**Submission of the learned counsel for the appellant:**

(i)The learned Senior Counsel appearing for the appellants would submit that as per the salary certificate and the income tax return, the deceased earned a sum of Rs.76,124/- per month. The salary certificate was marked as Ex.P4 during the course of cross-examination and the



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same was not objected by the respondents. He further submitted that all the documents produced by the claimants clearly shows that the deceased was working as Associate Project Manager, but the tribunal without giving any reason has erroneously fixed the monthly income of the deceased as Rs.52,593/-. Hence, the appellants seeks for enhancement of compensation.

9.Even though notice was served on the first respondent, there is no representation on his side.

**10.Submission of the learned counsel for the second respondent:**

The learned counsel for the second respondent submitted that the tribunal has rightly taking the income of the deceased and awarded compensation and there is no interference required and prayed for dismissal of the appeal.

11.We have heard the learned Senior Counsel appearing for the appellants and the learned counsel appearing for the second respondent and also perused all the materials available on record.



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12. The following point arise for consideration of this appeal:

12.1.Whether the compensation granted is in accordance with law?

**13.Discussion on quantum**

The deceased was working as Associate Project Manager in the first respondent company and he is aged about 29 years and his salary certificate was marked as Ex.P4. As per Ex.P4, his salary is Rs.76,124/- and no contrary evidence was let in to disbelieve the above monthly income. The first respondent has not disputed the said fact. The learned trial Judge has not considered the said document in proper prospective and evidence adduced by the claimants and erroneously taken monthly salary of the deceased as Rs.52,593/- as against Ex.P.4. Therefore, this Court is unable to accept the finding of the learned Tribunal Judge in fixing the monthly income of the deceased as Rs.52,593/- and inclined to fix the monthly income of the deceased as Rs.76,124/-.



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14.The learned senior counsel also made a detailed submission that the learned Tribunal Judge also erred in making the income tax deduction and he submitted that the amount of compensation under the Motor Vehicle Act does not come within the definition of the income under the Income Tax Act. Apart from that, the compensation is awarded to recompense for the death caused due to the act of tortfeasor. Therefore, he submitted that the present practice of deducting the income tax from the deceased income while calculating the compensation is against law as laid down by the Hon'ble Supreme Court and various Division Bench of the various High Courts. He elaborated the above argument on the basis of the following judgment:

14.1.In the case of ***All India Reporter Ltd. v. Ramchandra D. Datar*****,** reported in AIR 1961 SC 943.

> *The Hon'ble Three Member Bench of the Supreme Court has not accepted the contention that there should be a deduction of the income tax while calculating the compensation payable to an employee by an employer for wrongful termination of the employment in the following*



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***3.*** *We are not concerned to decide in this appeal whether in the hands of the respondent the amount due to him under the decree, when paid, will be liable to tax; that question does not fall to be determined in this appeal. The question to be determined is whether as between the appellant company and the respondent the amount decreed is due as salary payment of which attracts the statutory liability imposed by Section 18. The claim decreed by the civil court was for compensation, for wrongful termination of employment, arrears of salary, salary due for the period of notice and interest and costs, less withdrawals on salary account. The amount for which execution was sought to be levied was the amount decreed against which was set off the claim under the cross-decree. A substantial part of the claim decreed represented compensation for wrongful termination of employment and it would be difficult to predicate of the claim sought to be enforced what part thereof if any represented salary due. Granting that compensation payable to an employee by an employer for wrongful termination of employment be regarded as in the nature of salary, when the claim is merged in the decree of the court, the claim*



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*assumes the character of a judgment-debt and to judgment-debts Section 18 has not been made applicable. The decree passed by the civil court must be executed subject to the deductions and adjustments permissible under the Code of Civil Procedure. The judgment-debtor may, if he has a cross-decree for money, claim to set off the amount due thereunder. If there be any adjustment of the decree, the decree may be executed for the amount due as a result of the adjustment. A third person who has obtained a decree against the judgment-creditor may apply for attachment of the decree and such decree may be executed subject to the claim of the third person : but the judgment-debtor cannot claim to satisfy, in the absence of a direction in the decree to that effect the claim of a third person against the judgment-creditor, and pay only the balance. The rule that the decree must be executed according to its tenor may be modified by a statutory provision. But there is nothing in the Income Tax Act which supports the plea that in respect of the amount payable under a judgment-debt of the nature sought to be enforced, the debtor is entitled to deduct income tax which may become due and payable by the judgment-creditor on the*



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*plea that the cause of action on which the decree was passed was the contract of employment and a part of the claim decreed represented amount due to the employee as salary or damages in lieu of salary.*

14.2.The Hon'ble Division Bench of the Allahabad in ***[2012] 211 TAXMAN 369(AII)*** in the case of ***Commissioner of Income tax Vs. The Oriental Insurance Co. Ltd.,*** has held that the amount of compensation under the Motor Vehicle Act does not come within the definition of income and has held as follows in Paragraph No.40:

*40. To our opinion, the award of compensation under motor accudents claims cannot be regarded as income. The award is in the form of compensation to the legal heirs for the loss of life of their bread earner.*

14.3.The Hon'ble Thiru. Justice J.B.Padriwala, (as he then was) leading the Division Bench of Gujarat High Court, after eloquent discussion has held as follows:



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> *73.The upshot of the aforesaid discussion is that the compensation received under the Motor Vehicle act is either on account of loss of earning capacity on account of death or injury or on account of pain and suffering and such receipt is not by way of earning or profit. The award of compensation is on the principle of restitution to place the claimant in the same position in which he would have been as the loss of life or injury would not have been suffered.*

14.4.From the above discussion, this Court accepts the argument of the learned counsel for the claimant and declines to deduct income tax as claimed by the learned counsel appearing for the insurance company and holds that the claimant is entitled to receive the entire compensation without any income tax deduction.

15.Further, the age of the deceased was 29 years at the time of accident and hence, 40% future prospects also was fixed as per the judgment in ***2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]***. 40% of the future prospects comes around Rs.76,124 X 40/100 = Rs.30,449/-. Hence, the total monthly income of the deceased is Rs.76,124/- + Rs.30,449/= Rs.1,06,573/-. There are three dependents.



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The first claimant is the wife of the deceased and the claimants 2 & 3 are the parents of the deceased, therefore, 1/3rd is deducted for personal expenses and applying the multiplier of "17". As such the loss of income is calculated as below:

Monthly income ( Rs.76,124/- + Rs.30,449/-) = Rs.1,06,573/-.

Deduction of 1/3 for his personal expenses = Rs. 71,049/-

Annual Loss of Income

(Rs.71,049/-X12X17) =Rs.1,44,93,996/-

15.1.The non pecuniary damages as per the ***Pranay sethi*** case is calculated as follows:

| ***heads*** | ***Amounts*** |
|---|---|
| Loss of consortium for the wife | Rs.40,000/- |
| Love and affection for the claimants 2 and 3 (Rs.40,000/- each ) | Rs.80,000/- |
| Funeral Expenses | Rs. 15,000/- |
| Loss of Estate | Rs. 15,000/- |

15.2. Loss of consortium for the wife of the deceased is calculated as Rs.40,000/- and the claimants 2 & 3 are entitled to Rs.40,000/- each for loss of love and affection. In all other aspects, the award of the Tribunal is confirmed.



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**16. Conclusion**

In the light of the above said discussion, claimants would be entitled to claim the following amounts as compensation under the various heads enumerated hereunder:

| *S.No.* | *Under the head* | *a) Calculation* | *b) Amount in Rupees* |
|---|---|---|---|
| 1 | Monthly income (monthly income + future prospects 40%) | (76,124+30,449) = Rs.1,06,573 | 1,06,573/- |
| 2. | Deduction of 1/3 for his personal expenses | (1,06,573 – 35,524 ) = Rs.71,049/- | 71,049/- |
| 3 | Annual Loss of Income | Rs.71,049 X 12 = Rs.8,52,588/- | 8,52,588/- |
| 4 | Loss of Income after applying the multiplier "17" | Rs.8,52,588 X 17= Rs.1,44,93,996/- | 1,44,93,996/- |
| *5* | ***Compensation*** | | ***Amount in Rupees*** |
| | a) Loss of Income | | 1,44,93,996/- |
| | b)Loss of Estate | | 15,000/- |
| | c)Funeral Expenses | | 15,000/- |
| | d)Loss of love and affection | | 80,000/- |
| | e)Loss of Consortium | | 40,000/- |
| ***Total*** | | | **1,46,43,996/-** |

17. Accordingly, this Civil Miscellaneous Appeal is partly allowed enhancing the compensation from **Rs.83,54,576/- to Rs.1,46,43,996/-**



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with interest at the rate of 7.5% p.a.from the date of claim petition till the date of realization. The first respondent is directed to deposit the enhanced award amount, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. The claimants are entitled to withdraw the enhanced award amount along with proportionate accrued interest and cost, less the amount already withdrawn, if any, as per the apportionment and order made by the tribunal. No costs. Consequently, connected miscellaneous petition is closed.

**(V.B.S.J.,) (K.K.R.K.J.,)**
**28.02.2024**

Index :Yes/No
Internet :Yes/No
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**To**

1.The Motor Accident Claims Tribunal,
Special Sub Court dealing with MCOP Cases,
Tirunelveli.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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**V.BHAVANI SUBBAROYAN.J.,**

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https://www.mhc.tn.gov.in/judis