BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **26.02.2024**

CORAM:

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

C.M.A(MD)No.555 of 2019
and
C.M.P.(MD)No.6640 of 2019

The New India Assurance Company Limited,

Represented through its Branch Manager,

Theni. ...Appellant

Vs.

1.Indira

2.Minor Deva Prakash

3.Minor Devadharsini

(minors R2 & R3 are represented through their natural guardian and mother, 1st respondent Indira)

4.Karunanithi

5.Rajeswari

6.M/s.Thirumal Alagu Travels,
Rep. Through is Proprietor,
274, K.R.R.Nagar,
Theni District. ...Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 25.10.2018 passed in M.C.O.P.No.30 of 2018 on the file of the Motor Accident Claims Tribunal / Additional District Court, Theni and allow the appeal with costs.

For Appellant	: Mr.J.S.Murali
For R1 to R5	: Mr.A.K.Manikam
For R6	: No appearance

JUDGMENT

[Judgment was made by **MR.K.K. RAMAKRISHNAN, J.]**

Being aggrieved over the award passed by the Motor Accident Claims Tribunal / Additional District Court, Theni in M.C.O.P.No.30 of 2018, dated 25.10.2018, the Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the second respondent in M.C.O.P.No.30 of 2018 on the file of the Motor Accident Claims Tribunal / Additional District Court, Theni. The respondents 1 to 5 herein are the claimants. They filed the claim petition in M.C.O.P.No.30 of 2018, claiming a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as compensation for the death of the husband of the first respondent. By the award, dated 25.10.2018, the Tribunal awarded a sum of Rs.41,07,000/- (Rupees Fourty one Lakhs and Seven Thousand only) as compensation along with 7.5% interest from the date of filing of the claim petition.

3.Facts of the Case:-

According to the respondents 1 to 5, on 25.05.2016 at about 22.05 hours, when the deceased was about to board into TNSTC bus in the Bus Stand, a private bus namely TAT bus bearing Reg.No.60-L-7399 came on the reverse from the bus bay of the bus stand in a rash and negligent manner and hit against the deceased, due to which, he sustained injuries and died on spot. FIR was also registered against the driver of the TAT bus. The accident occurred only due to the rash and negligent driving of the driver of the TAT bus belonging to the sixth respondent herein. Therefore, the respondents 1 to 5 filed the claim petition, claiming a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as compensation.

4.The appellant insurance company filed the counter statement and denied all the averments made in the claim petition. The appellant insurance company contended that the accident occurred due to the negligent act of the deceased and hence, he prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and 9 documents were marked as Ex.P1 to P9. On the side of the insurance company, R.W.1 was examined and 2 documents were marked as Ex.R1 and R2.

6.Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellant and claimants held that the accident occurred only due to the rash and negligent driving by the driver of the TAT bus belonging to the sixth respondent herein and directed the appellant Insurance Company, to pay a sum of Rs.41,07,000/- (Rupees Forty one Lakhs and Seven Thousand only) as compensation along with 7.5% interest from the date of filing of the claim petition under the following heads:-

Sl.No.	Heads	Amount in Rupees
1	Transportation for taking the body	Rs. 5,000/-
2	Funeral expenses	Rs. 15,000/-
3	Loss of consortium of the first respondent	Rs. 40,000/-
4	Loss of Estate	Rs. 15,000/-
5	Loss of Dependancy	Rs.40,32,000/-
	Total	**Rs.41,07,000/-**

7.Aggrieved against the said award dated 25.10.2018, the appellant Insurance Company has filed the present appeal.

8.Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant insurance company filed this appeal only relating to the quantum. He submits that as per Ex.P8, Salary Certificate, fixation of the monthly income of the deceased as Rs.20,000/- per month is not in accordance with law, unless the document showed that he has been receiving Rs.20,000/- per month. He further states that 10% of the income tax was not deducted in the amount calculated by the Tribunal.

9.Submission of the learned counsel for the Respondents:

Per contra, the learned counsel appearing for the respondents 1 to 5 submits that Ex.P8 is the certificate issued by P.W.3. P.W.3 deposed that the deceased was drawing a salary of Rs.20,000/- per month and EPF amount was also deducted. He further states that as far as income tax is concerned, the salary of the petitioner on the date of the accident does not come under the bracket of the taxable income and no document was produced by the insurance company to prove the taxable income in this aspect. Hence, he seeks for dismissal of this appeal.

10.We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 5 and also perused all the materials available on record.

11.Since the appellant insurance company filed this appeal challenging only quantum, this Court need not go into the issue of negligence as the appellant insurance company admitted the negligence.

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 age of the deceased was 33 at the time of accident and was working as Printing Quality Controller in Glenmargon Global Company and salary certificate is marked as as Ex.P.8 through P.W.3. According to the document, the deceased was working under P.W.3 company. P.W.3 clearly deposed that the deceased was drawing a sum of Rs.20,000/- per month. In such circumstances, there is no reason to disbelieve the evidence of P.W.3. Hence, the contention of the learned counsel for the appellant insurance company that without any evidence, the monthly income of Rs.20,000/- was fixed cannot be accepted. Therefore, this Court concurs with the finding of the Tribunal that the deceased was drawing a sum of Rs.20,000/- per month as per Ex.P8 and from the evidence of P.W.3.

13.1. So far as the income tax is concerned, as per Ex.P8, annual income comes to Rs.2,40,000/- and further, no document was produced by the appellant insurance company to prove that 10% of the income tax is to be deducted as per the statutory provision. Hence, this Court does not accept the said contention of the learned counsel appearing for the appellant insurance company.

14.The learned counsel for the claimant opposed to deduct the income tax and he specifically submitted 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 deceased income while calculating the compensation is against the law as laid down by the Hon'ble Supreme Court and the various Division Benches 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

***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 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 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(All)*** 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:

> *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 claimants and declines to deduct 10% of the amount 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. As per the ***Pranay Sethi case,*** adding 40% for future prospects is to be made and there are five family members as dependants, hence 1/4 is to be deducted for personal and living expenses and applying multiplier 16 the loss of income comes around as follows:-

15.1.1.Calculation of the amount:

20000 + 8000 (40%) = Rs. 28,000/-

28000 – 7000 (¼) = Rs. 21,000/-

21000 X 12 X 16 = Rs.40,32,000/-

Loss of Income = Rs.40,32,000/-

15.2. The non pecuniary damages as per the ***Pranay Sethi case,*** is calculated as follows:

Heads	***Amount in Rupees***
Transportation for taking the body	Rs. 5,000/-
Funeral expenses	Rs.15,000/-
Loss of consortium of the first respondent	Rs.40,000/-
Loss of Estate	Rs.15,000/-

15.3. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference.

16.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants under various heads are as follows:-

Sl.No.	***Heads***	***Amount awarded by the Tribunal***
1	Transportation for taking the body	Rs. 5,000/-
2	Funeral expenses	Rs. 15,000/-
3	Loss of consortium of the first respondent	Rs. 40,000/-
4	Loss of Estate	Rs. 15,000/-
5	Loss of Dependancy	Rs.40,32,000/-
	Total	**Rs.41,07,000/-**

In view of the above, this Court finds no merit in the contentions of the learned counsel appearing for the appellant insurance company.

17. Accordingly, this Civil Miscellaneous Appeal is dismissed. The compensation awarded in M.C.O.P.No.30 of 2018, on the file of the Motor Accident Claims Tribunal / Additional District Court, Theni in dated 25.10.2018 is hereby confirmed. The appellant Insurance Company

is directed to deposit the award amount with proportionate accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the major claimants are permitted to withdraw the award amount as apportioned by the Tribunal, less the amount, if any already withdrawn, by making necessary application before the Tribunal. The Tribunal shall deposit the shares of the minor claimants in a Fixed Deposit under the cumulative deposit scheme in any one of the Nationalized Banks, till they attain majority. The mother / guardian of the minors is permitted to withdraw the interest accrued thereon once in three months directly from the bank. The minor claimants on attaining majority are permitted to withdraw their share. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.,) (K.K.R.K.J.,)
26.02.2024

Index:Yes/No
Internet:Yes/No
sm/sbn

To

1.The Motor Accident Claims Tribunal /
Additional District Court, Theni

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

V.BHAVANI SUBBAROYAN, J.
and
K.K. RAMAKRISHNAN, J.

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