BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.532 of 2020

The Branch Manager,
M/s.New India Assurance Company Limited,
1419, Tenkasi Road,
Rajapalayam. ... Appellant/3rd Respondent

-vs-

1. Shengbagavalli

2. Minor M.Muralidharan

3. Minor M.Karthikeyan
(Minor respondents 2 and 3 are represented by their next friend and mother 1st respondent. Hence, notice is not necessary for respondents 2 and 3)

4. T.Mariyathangam
... Respondents1 to 4/Petitioners

5. R.Mamundi

6. R.Sundar ... Respondents 5 and 6/
Respondents 1 and 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 30.10.2019, passed in M.C.O.P.No.251 of 2018, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court) Virudhunagar District at Srivilliputhoor.

For Appellant	: Mr.G.Prabhu Rajadurai
For R1 to R3	: Mr.M.Solaisamy
For R-4	: died
For R5 and R6	: No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the non-deduction of Income Tax and TDS amount for the interest portion in M.C.O.P.No.251 of 2008, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court) Virudhunagar District at Srivilliputtur.

2. The deceased was a Secondary Grade Teacher and he was drawing a monthly income of Rs.58,610/-. The Tribunal without considering the deduction towards Income Tax has proceeded to fix the income of the deceased person taking into account the entire salary.

3. According to the learned counsel appearing for the appellant, the net amount, after deducting Income Tax, alone should be treated as the annual income, on which, the multiplier could be applied. He further contended that the interest on the TDS portion has also not been taken into account. Hence, the present appeal has been filed.

4. The learned counsel appearing for the appellant has submitted a calculation Memo, which is extracted below:

Financial Year 2017 – 2018 Award without deduction I.T	**Award with IT Deduction**
Rs.58,610/- + Rs.17,583/- (30% future prospects) = Rs.76,193/- 76193x12x13x3/4 = 89,14,581/- Other heads = 1,20,000/- Total = 90,34,581/-	Rs.76,193x12 = 9,14,316/- No Tax for - 2,50,000/- Taxable Income- 6,64,316/- 5% tax for - 2,50,000/- (12,500) **20%** Tax for - 4,14,316/- (82,863) Annual Income – 9,14,316/- Less IT (12510+82,863) - 95,363/- **Net Income - 8,19,013/-** 819013 x 13 x ¾ – 79,85,376/- Other heads - 1,20,000/- 81,05,376/-
Award amount without IT deduction Award amount with IT deduction	= Rs.90,34,581/- = Rs.81,05,376/-

5. In view of the above said calculation Memo, according to the learned counsel appearing for the appellant, the award amount after deducting the Income Tax would be at Rs.81,05,376/- (Rupees Eighty One Lakhs Five Thousand Three Hundred and Seventy Six only). However, the company has already deposited a sum of Rs.84,27,254/- as per the direction of this Court. Hence, he prayed for reducing the compensation to Rs.81,05,376/-.

6. As far as the prayer relating to TDS is concerned, the said issue is pending before the Larger Bench of Hon'ble Supreme Court. Two learned judges of this Court in the judgments reported in ***2020 (4) CTC 53 (Cholamandalam MS General Insurance Company Limited Vs. M.Ashok Kumar)*** and ***2023 (5) LW 653 (The Branch Manager, The New India Assurance Company Limited, Vs. K.Theivanai and others)*** have directed the Motor Accident Claim Tribunals to stay the execution proceedings relating to the issue of TDS under Section 194 – A of Income Tax Act, 1961. Therefore, this Court is not expressing any opinion with regard to the deduction of TDS for the interest portion of the award amount.

7. Per contra, the learned counsel appearing for the respondents 1 to 3 herein/claimants had contended that the allowances under part of the salary

cannot be taken into consideration for the purpose of income tax deduction. However, the nature of allowances that were received by the deceased person which were excluded for purview of income tax were not placed on record before the Tribunal or this Court.

8. Therefore, this Court is of the considered opinion that the calculation Memo submitted by the learned counsel appearing for the appellant/Insurance Company is correct. The award after deducting Income Tax deduction comes to Rs.81,05,376/- (Rupees Eighty One Lakhs Five Thousand Three Hundred and Seventy Six only).

9. In view of the above said deliberations, the award of the Tribunal is reduced from Rs.90,34,600/ to Rs.81,05,376/- (Rupees Eighty One Lakhs Five Thousand Three Hundred and Seventy Six only). The claimants are entitled to share the award amount as per the proportion laid down by the Tribunal. Excess amount, if any, deposited by the appellant/Insurance Company, shall be refunded to them along with accrued interest. In other respects, the award of the Tribunal is confirmed. The award amount shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition. In respect of the minor claimants/respondents 2 and 3, the

amount shall be deposited in a Nationalized Bank till they attain majority and the guardian of the minor claimants is permitted to withdraw the interest once in three months.

10. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs.

11.07.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate Court),
Virudhunagar District at Srivilliputhoor

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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