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.424 of 2022
and
C.M.P.(MD).No.3764 of 2022

The Branch Manager,
Iffco-Tokio General Insurance Company Limited,
Door No.128, IFFCO Bhavan,
Habibullah Road,
T.Nagar, Chennai-17. : Appellant / Respondent No.3

Vs.

1.Valarmathi
2.Kalaiselvi
3.Tamilselvam
4.Jeyaraman
5.Murugan
6.Sivajimurugan : Respondents /Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 10.04.2018 passed in M.C.O.P.No.63 of 2014 on the file of the Motor Accident Claims Tribunal Judge/Subordinate Judge of Devakottai.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.S.Vinayagam

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.63 of 2014, dated 10.04.2018, by the Motor Accident Claims Tribunal Judge/Subordinate Judge of Devakottai.

2.Facts of the case:

On 08-09-2013, when the deceased Kasinathan was standing near Karaikudi Cecri Medical Hospital Road chatting with his friend Ilangovan, the Scorpio Car bearing registration number TN-69 T-6474 insured with the appellant dashed against the deceased and he died. He was working as a Senior Technician in the CECRI and earned a salary of Rs. 41,128/- and hence the Respondents filed a petition in MCOP No.63 of 2014 before the the Motor Accident Claims Tribunal Judge/Subordinate Judge of Devakottai. 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 and 2 were examined and Ex.R1 to R8 were marked. On the side of the respondent, R.W.1 and 2 were examined and Ex.R1 to R3 were marked.

4.The learned tribunal judge after considering the evidence, fixed the negligence upon the appellant insured vehicle and granted the compensation of Rs. 49,55,980/- with the interest of 7.5% from the date of filing the petition. Challenging the same, the insurance company filed the present appeal.

5.Since the insurance company restricted their argument to the "calculation of the income of the deceased", this court is not inclined to go into the issue of the negligence and other aspects. The Learned counsel for the insurance Company submitted that the salary of the deceased as per the salary certificate is Rs.41,128/-. The salary certificate is marked as Ex.P7. In the salary certificate, the gross salary of the deceased is mentioned as including the "transport allowance". "*The* *transport allowance comes around Rs.800*". According to the learned counsel for Insurance Company, the transport allowance cannot 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. If the income tax is deducted, the amount would come around Rs.1,810/-. Hence, the income tax has to be detected. Therefore, he seeks for the reduction of the amount.

6.The learned counsel for respondents submitted that the transport allowance forms part of the salary of the deceased. Hence, the same could not be detected. 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 seeks that the "income" includes the "transport allowance". Further, as for as the reduction of income tax is concerned, he stated that the salary of the deceased does not come under the income tax slab and hence, there was no need to reduce the income tax. Further, he stated that the compensation amount granted by the Court below is not liable to be reduced. It is a well-settled principle that the compensation awarded under motor vehicle accident, including interest, is not liable to be deducted 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.

7.This court considered the rival submission and perused the records and also the impugned judgment under the relevant provision.

8.In this appeal, the following point for determination is 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 a 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***. In the first judgment of this court 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 to decide the issue whether conveyance allowance is to be included in determining the income of the deceased in the Motor Accident Claims case, 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 according to the Employee State Insurance Act, the Travel Allowance cannot be included. The said judgment is on interpretation of the Employee State Insurance Act, 1948, in which, there is a specific provision for the determination of the "wages". Under the said Act, the wages does not include the travel allowance. The said scheme of the Act is relating to receiving the contribution from the employer and employee, and from that contribution, the benefit would be given to the employees or his dependants. 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 each individual employee and the employers. 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 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 the 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 another form of elastic term to include the income ie., "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. ......

The above provision of the Income Tax Act, clearly demonstrated that the travelling allowance also comes 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, deals in its own way.

Therefore, the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. v. Indira Srivastava*, (2008) 2 SCC 763 at page 767 while determines compensation under MV Act,** has given a elastic meaning to "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:*

"Basic	63,400.00
Conveyance allowance	12,000.00
Rent CO lease	49,200.00
Bonus (35% of basic)	21,840.00

Total		1,45,440.00

In addition to above, his other entitlements were:

Contribution to PF — 10% basic	Rs	6240 (p.a.)
LTA reimbursement	Rs	7000 (p.a.)
Medical reimbursement	Rs	6000 (p.a.)
Superannuation 15% of basic	Rs	9360 (p.a.)
Gratuity contribution — 5.34% of basic	Rs	3332 (p.a.)
Medical policy — self and family	@ Rs	55,000 (p.a.)
Education scholarship @ Rs 500 payable to his two children directly	Rs	12,000 (p.a.

14. Nowadays, every employee either in the Government Department or in the Private Sector would have travelled through some mode of transport to reach their office. In jobs like Medical representatives, marketing executives, supervising work etc., employees have been incurring major transport expenditure. In the private sectors, for some nature of 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. The Division Bench of Allahabad High Court in the case of ***Krishna Kumar Asthana v. Satish Kumar***, reported in **2014 SCC OnLine All 11860 at page 712, has held as follows**

> ***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.The Division Bench of this Court gave liberal interpretation to "income" in the case of *New India Insurance Co. Ltd. v. Munian*, reported in (2010) 2 TN MAC 410at page 414

> ***Giving a liberal interpretation to "income",*** *we are of the view that* ***the gross salary of the deceased ought to be taken and not his take home salary****.*
> *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.*

14.3.*Managing Director, Tamil Nadu State Transport*

***Corporation Ltd., Kumbakonam v. Kunjunjamma Mathew*, (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.*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 are entirely different. In view of the personal deduction made under the Motor Vehicles Act under the head of the personal expenditure of the deceased, the 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 deducted amount. Therefore, it is the considered opinion of this Court, that if any amount is deducted, it amounts to double deduction which is not permissible. The travelling allowance forms part of the personal expenditure of the deceased and the same would be liable to be deducted while calculating the personal expenditure. 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 by including the travel allowance.

16. "Without incurring travelling allowance, he cannot earn the real 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***. Therefore, considering the above principles, this Court is inclined to hold that the travelling allowance of Rs.800/- of the deceased forms 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.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 of Devakottai, in M.C.O.P.No.63 of 2014, dated 10.04.2018 is hereby confirmed. The appellant/Insurance Company is directed to deposit the award amount with proportionate accrued interest and costs, after deducting the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order.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
vsg

To

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

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

V.BHAVANI SUBBAROYAN.J.,

and
K.K.RAMAKRISHNAN.J.,

vsg

Pre-delivery order made in
C.M.A(MD)No.424 of 2022

01.08.2024