BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2024

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CMA(MD)No.1138 of 2021
and
CMP(MD)No.10986 of 2021

The Branch Manager,
Reliance General Insurance Company Ltd.,
H.I.G.No.55, 80 Feet Road,
Sri Meenakshi Plaza,
Anna Nagar, Madurai District. ... Appellant

vs.

1. Revathi
2. Minor Nanthini
3. Minor Naveenkumar
   [2nd & 3rd respondents are represented through their sister, guardian Miss Revathi]
4. Seenivasan ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 15.04.2021 passed in MCOP.No.1828 of 2019 on the file of the Motor Accident Claims Tribunal/6th Additional District Judge of Madurai in so far as quantum of compensation awarded is concerned.

For Appellant : Mr.V.Sakthivel

For R1 to R3 : Mr.C.Kannan

For R4 : No appearance

J U D G M E N T

(Order of the Court was made by K.K.RAMAKRISHNAN, J.)

The insurance company has filed this appeal challenging the quantum of compensation awarded in M.C.O.P.No.1828 of 2019 on the file of the Motor Accident Claims Tribunal/6th Additional District Judge, Madurai. Hence, this Court is not going into issue of negligence and liability.

2. Learned counsel for the appellant insurance company submitted that though the claimants claimed that the deceased was working as a Security Personnel at Antila Marine Management DMCC, Dubai (Main Branch), Sri Lanka, and received salary of Rs.41,480/- per month and marked Ex.P19-Bank Account Statement of the deceased, the said document discloses credit of Rs.41,480/- into the deceased's bank account on 17.01.2018 only. The accident occurred on 21.06.2019.

Absolutely, no document was produced by the claimants to prove that at the time of accident, the deceased was receiving a salary of Rs.41,480/- by working as a Security. However, without considering the said aspects, the Tribunal proceeded to rely upon Exs.P15 to 19 which were of the years 2014, 2015 and 2018 and has fixed the notional income of the deceased as Rs.20,000/- per month by observing that had the deceased been working as a Security Personnel, he would have earned Rs.20,000/- per month. The said approach of the Tribunal, according to the learned counsel for the appellant, is erroneous when there is no document indicating the actual income of the deceased at the time of accident.

3.Learned counsel further submitted that the Tribunal has erred in taking the military pension @ Rs.18,857/- per month received by the deceased for calculating the loss of dependency, since after the death of the deceased, his legal heirs will receive the same, and therefore, the Tribunal ought not to have added the military pension received by the deceased for computing his income. Hence, the learned counsel seeks interference in the award passed by the Tribunal. Except the above submission, the award under other heads are not under dispute.

4. Per contra, learned counsel for the respondents 1 to 3/ claimants submitted that the Tribunal considered Ex.P15-certificate issued by Marine Department relating to marine science course done by the deceased, Exs.P16 & P17- are the agreements entered into between the deceased and Maine Department in the years 2014 & 2015, Ex.P18 is the Bank account statement of the deceased is relating to receipt of military pension, Ex.P19-Bank account statement of the deceased is relating to receipt of salary as Security, Ex.P22-is the driving licence of the deceased and Ex.P23-is the Passport of the deceased, and found that the deceased was receiving salary by working as a Security Personnel apart from receiving military pension. Therefore, the learned counsel contended that it cannot be said that fixation of monthly income of the deceased by the Tribunal is baseless, whereas it is amply proved by the aforesaid documentary evidence apart from the oral evidence of PW1- daughter of the deceased. As regards the contention relating to deduction of military pension, learned counsel submitted that it is an income provided under the beneficial legislation, as such, it is not liable for deduction. Thus, the learned counsel submitted that the award of the Tribunal does not require any interference by this Court.

5. We have considered the rival submissions and also perused the documentary evidence marked before the Tribunal and also perused the impugned judgment of the Tribunal.

5.1. Whether the appellant insurance company made out the case for reduction for compensation granted by the impugned award?

6. The deceased was an Ex-service man and he received Military pension at the rate of Rs.18,857/- per month. After his retirement from the Military service, he worked as a security in DMCC Dubai and earned a sum of Rs.41,488/- per month. To prove the same, the statement of bank account was marked under Ex.P19. Upon perusal of Ex.P.19, there were some stray entries relating to the receipt of the amount on 18.06.2018 around Rs.31,571/-. But there was no continuous entry. The accident took place on 21.06.2019. Therefore, there was no contemporaneous document to prove the monthly income of the deceased on the date of the accident. There was no nexus between Ex.P19 and the date of accident. There is no material to take the monthly income of the deceased as Rs.20,000/-. Therefore, this Court declines to accept the

monthly income of the deceased as Rs.20,000/- fixed by the learned Tribunal Judge. In the absence of the evidence, following the ratio laid down by the Hon'ble Supreme Court in the following paragraph in the case of ***Chandra v. Mukesh Kumar Yadav*****, reported in (2022) 1 SCC 198 at page 200,** applying some guess work, the monthly income of the deceased is fixed as Rs.15,000/-.

> ***9.*** *It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs 15,000 per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW 1 that her husband Shivpal was earning Rs 15,000 per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record*

some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because the claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs. 15,000 per month.

After adding the above monthly income of Rs.15,000/- with military pension of Rs.18,857/-, the monthly income of the deceased comes to Rs.33,857/-. After deducting 1/3rd of income towards the personal expenses of the deceased at Rs.11,285/-, the monthly income comes to Rs.22,572/-. After addition of 25% towards future prospects at Rs.5,644/-, the monthly income comes to Rs.28,216/-. After computing annual income and applying '13' multiplier, the loss of dependency works out to Rs.44,01,696/- [Rs.28216 X 12 X 13] , in which, 10% has to be deducted towards income tax. After doing so, the compensation towards loss of dependency is computed at Rs.39,61,526/-. Thus, the respondents/claimants are entitled to compensation of Rs.39,61,526/-

towards loss of dependency as against Rs.45,46,269/- awarded by the Tribunal.

7. The contention of the appellant that the military pension received by the deceased, on his death, will be given to his legal heirs/claimants, as such, the Tribunal ought to have deducted it from the income of the deceased, cannot be accepted. As time and again, the Apex Court has held that the amounts received by the heirs by way of provident fund, pension and insurance cannot be termed as 'pecuniary advantage' liable for deduction. Family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise. What is important is that such receipt of pension by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. It is not so. Since it is a beneficial legislation, receipt of pension cannot be termed as pecuniary advantage obtained by the family of the deceased only due to the death of the deceased. The family already have the benefits of that pension. So, it is not liable to be

deducted from the income of the deceased.

8. Perusal of the impugned judgment shows that the respondents 1 to 3 are claimants and they were aged 20, 17 and 17 years respectively, at the time of accident. Out of them, two were minors and one adolescent at the time of accident. In the unfortunate accident, they lost both their father and mother. Certainly, the agony of losing their parents at their young age will linger in their mind in the rest of their life time. They lost love and affection, care, guidance and advice of their parents in their adolescent age which cannot be measured in terms of money. However, the Tribunal has not awarded any sum for the loss of love and affection. Therefore we award a sum of Rs.1,20,000/- towards loss of love and affection to the respondents 1 to 3/ claimants [Rs.40,000/- each]. Except the above, the award under the other heads, which are not in dispute, are confirmed.

9.Accordingly, the total compensation is modified and apportioned as hereunder:-

Dependency compensation	=	Rs.39,61,526/-
Loss of love and affection	=	Rs. 1,20,000/-
Transportation	=	Rs. 5,000/-
Damage to clothes	=	Rs. 2,000/-
Funeral expenses	=	Rs. 15,000/-
Loss of estate	=	Rs. 15,000/-
Medical expenses	=	Rs. 17,858/-

Total	=	Rs.41,36,384/-
(Less) Award of the Tribunal	=	Rs.46,01,127/-

Reduction in quantum	=	Rs. 4,64,743/-

10.In the result, there shall be a reduction of Rs.4,64,743/- on the quantum. The respondents/claimants are entitled to modified compensation of Rs.41,36,384/- with 7.5% interest per annum from the date of claim petition till the date of deposit. Already, this Court vide order dated 23.12.2021 in CMP(MD)No.10986 of 2021 has directed the appellant insurance company to deposit the entire award amount with interest and costs to the credit of the claim petition within a period of four weeks as a condition precedent for granting interim stay. In view of the reduction in the quantum, the appellant is directed to deposit the modified compensation of Rs.41,36,384/- with 7.5% interest per annum from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment, if not deposited earlier.

11. The respondents 1 to 3/claimants are entitled to withdraw the modified compensation in the following ratio of the apportionment with the proportionate interest:

Sl. Nos	***Name of the Claimant***	***Amount in Rs.***
1	First claimant /Revathi	12,40,916/-
2	Second claimant/Minor Nandhini	14,47,734/-
3	Third claimant/Minor Naveenkumar	14,47,734/-

The respondents 2 and 3/claimants were minors both aged 17 years at the time of accident and now they would have attained majority. Therefore, they are permitted to withdraw their respective shares with proportionate accrued interest by making appropriate application before the Tribunal discharging guardianship. If the appellant has already deposited the entire award amount with interest, the amount deposited more than that of the modified compensation now fixed by this Court, shall be refunded to the appellant along with proportionate accrued interest.

12.With the above direction, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S., J.) (K.K.R.K., J.)
04.03.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. The 6th Additional District Judge
Motor Accident Claims Tribunal,
Madurai.

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

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

bala/sbn

JUDGMENT MADE IN
CMA(MD)No.1138 of 2021

DATED : 04.03.2024