IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 06 / 12 / 2024

JUDGMENT DELIVERED ON : 28 / 01 / 2025

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA NO.1799 OF 2022

1.P.T.Saroja
2.P.T.Ponnarasi
3.P.T.Gnanaroja
4.P.T.Vasantharajan
5.Saroja ... Appellants / Petitioners

Vs.

1.S.Prabu
2.A.Nanjappan
3.Magma HDI General Insurance Co. Ltd.,
Policy Service Office
Situated at 2nd Floor, Sri Complex,
No.1510, Trichy Road,
Coimbatore – 641 018. ... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying for enhancement of the compensation awarded vide Award dated April 22, 2022 made in M.C.O.P.No.608 of 2018 on the file of the Motor Accident Claims Tribunal / Special District Court at Erode.

For Appellants	:	Mr.Ma.P.Thangavel
For Respondents 1 & 2	:	*Ex-parte*
For Respondent - 3	:	Mrs.R.Sreevidhya

JUDGMENT

R.SAKTHIVEL, J.

Dissatisfied with the Award dated April 22, 2022 passed by the 'Motor Accident Claims Tribunal / Special District Court, Erode' ['Tribunal' for short] in M.C.O.P.No.608 of 2018, the petitioners therein have filed this Civil Miscellaneous Appeal seeking enhancement of compensation.

2. For the sake of convenience, henceforth, the parties will be referred to as per their array in the Original Petition.

PETITIONERS' CASE

3. On January 20, 2018 at about 02.50 p.m., when the deceased - P.Thilagan was riding a TVS Super XL (Heavy Duty) on Sathyamangalam to Coimbatore Main Road, in front of Sathyamangalam Union Office, the second respondent's Lorry bearing Registration No.TN-38-Z-5871, driven in a rash and negligent manner by the first respondent, dashed against the said TVS Super XL. Consequently, the deceased fell down, the back wheel of the Lorry ran over him, and the deceased passed away on the spot. Immediately, he was taken to Government Hospital, Sathyamangalam where he was declared as brought dead. The deceased was aged 52 years at the time of accident and working as a Special Sub-Inspector at Tamil Nadu Police Department at Puliyampatty, Erode District. The first respondent / driver of the Lorry alone is responsible for the accident. The 2nd respondent, being the owner of the Lorry and the 3rd respondent being its insurer, are liable to pay compensation to the petitioners. Hence, the petitioners filed the Original Petition seeking a compensation of Rs.1,00,00,000/- (Rupees One Crore only) from the respondents.

FIRST AND SECOND RESPONDENTS

4. The first respondent is the driver and the second respondent is the owner of the Lorry bearing Registration No.TN-38-Z-5871. They did not appear before the Tribunal and contest the Original Petition. Hence, they were called absent and set *ex-parte* by the Tribunal.

THIRD RESPONDENT'S CASE

5. The third respondent – Insurance Company filed a counter, which is nothing more than a formal denial of all the petition averments, seeking dismissal of the Claim Petition.

TRIBUNAL

6. Before the Tribunal, the 1st petitioner was examined as P.W.1, two other witnesses were examined as P.W.2 and P.W.3, and Ex-P.1 to Ex-P.18 were marked on the side of the petitioners. Ex-X.1 was marked by official witness, namely P.W.2. On the side of the respondents, 1st respondent – Prabhu was examined as R.W.1 and no document was marked.

7. The Tribunal, upon hearing either side and perusing the evidence available on record, relied on Ex-P.1 – First Information Report (FIR), Ex-P.5 - Charge Sheet and the evidence of P.W.3 (ocular witness) to conclude that the accident occurred due to the rash and negligent driving of the 1st respondent / driver of the lorry. Since the 2nd respondent is the owner of the Lorry and the third respondent is its insurer, and since the insurance policy was in force on the date of accident, the Tribunal held the third respondent liable to pay compensation to the petitioners and accordingly, awarded a compensation of Rs.20,99,472/- (Rupees Twenty Lakhs Ninety Nine Thousand Four Hundred and Seventy Two only) as tabulated hereunder:

S.No.	Head	Amount in Rs.
1)	Loss of Income	18,69,472.00
2)	Funeral Expenses	15,000.00
3)	Loss of Estate	15,000.00
4)	Loss of Spousal Consortium	40,000.00
5)	Loss of Parental Consortium	1,20,000.00
6)	Loss of Filial Consortium	40,000.00
Total		**20,99,472.00**

8. Dissatisfied with the quantum of compensation awarded by the Tribunal, the petitioners have filed this Civil Miscellaneous Appeal seeking enhancement of compensation.

ARGUMENTS:

9. Mr.Ma.P.Thangavel, learned Counsel for the appellants / petitioners would argue that the Tribunal failed to consider the fact that the Basic Pay of the deceased has been enhanced from Rs.49,500/- to Rs.51,000/- with retrospective effect even before his date of death i.e., January 20, 2018, which has been proved vide Ex-P.18 – Certificate issued by Office of Superintendent of Police. He would further argue that the deduction of a sum of Rs.2,500/- towards professional tax is unwarranted since the deceased was a Government employee / Police official and hence, the said deduction is liable to be set aside. Further, the Tribunal erred in deducting the family pension of Rs.25,500/- per month, which is totally a sum of Rs.3,06,000/- per annum. Further, the deceased left behind his wife, two daughters, one son and mother, totally five persons, as his legal heirs. Hence, the Tribunal ought to have deducted 1/4th amount instead of 1/3rd as his personal expenses. Accordingly, the learned Counsel would pray to enhance the Award amount by allowing the Civil Miscellaneous Appeal.

9.1. In support of his submissions, learned Counsel for the appellants / petitioners would rely on the following Judgments:

(i) Judgment of this Court in ***Divisional Manager, Oriental Insurance Co. Ltd., Vs. Radha Saiprasad and Others,*** reported in ***2012 (1) TN MAC 414 (DB)***

(ii) Judgment of this Court in ***M/s.Oriental Insurance Company Ltd., Vs. S.Venkateswari and Others,*** reported in ***2016 SCC OnLine Mad 10232***

(iii) Judgment of the Hon'ble Supreme Court in ***R.Valli and Others Vs. Tamil Nadu State Transport Corporation Limited,*** reported in ***(2022) 5 SCC 107***

(iv) Judgment of the Hon'ble Supreme Court in ***Lal Dei and Others Vs. Himachal Road Transport,*** reported in ***(2007) 8 SCC 319***

(v) Judgment of the Hon'ble Supreme Court in ***Vimal Kanwar and Others Vs. Kishore Dan and Others,*** reported in ***(2013) 7 SCC 476***

(vi) Judgment of the Hon'ble Supreme Court in ***Sebastiani Lakra and Others Vs. National Insurance Company Limited and Another,*** reported in ***(2019) 17 SCC 465***

(vii) Judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Birender and Others,*** reported in ***(2020) 11 SCC 356***

(viii) Judgment of this Court in ***R.Rajan and Another Vs. G.Rajkumar and Another,*** reported in ***(2017) SCC OnLine Mad 15565***

10. Per contra, Mrs.R.Sreevidhya, learned Counsel for the third respondent – Insurance Company would contend that the deceased was a 52 years old Government employee at the time of accident. He was serving as a Special Sub-Inspector and thereby earned a sum of

Rs.58,365/- per month. After his demise, the first petitioner – wife of the deceased is receiving 50% of his income *i.e.,* Rs.25,500/- per month as pension. The said fact has been admitted by P.W.2 – employer of the deceased. Hence, the Tribunal is correct in deducting the family pension received by the first petitioner. Further the retirement age of the deceased is 58 years. The actual multiplier is 11. Hence, the doctrine of split multiplier has to be applied in this case. The Tribunal failed to apply the split multiplier method. On that score also, the Award impugned in this case is liable to be set aside. She would further argue that the Petitioner Nos.2 and 3 are married daughters of the deceased who are living separately while fourth petitioner is his son who is a major having his own income and not financially dependent on the deceased. Hence, 1/3rd deduction taken by the Tribunal is correct. Accordingly, she prayed to dismiss the Civil Miscellaneous Appeal.

DISCUSSION

11. This Court has considered both side submissions and perused the materials available on record.

Monthly Income

12. Ex-P.17 is the Pay Certificate issued on February 18, 2021 by the Administrative Officer (Accounts), District Police Office, Erode stating that the deceased earned a basic pay of Rs.49,500/- and a gross salary of Rs.58,365/-. Ex-P.18 is the Certificate issued on February 16, 2021 by the Office of Superintendent of Police, Erode stating that basic pay of deceased was enhanced from Rs.49,500/- to Rs.51,000/- with retrospective effect from January 20, 2018. There is in indeed a discrepancy with regard to the basic pay of the deceased, as it is shown as Rs. Rs.49,500/- only, in the subsequent document *viz.,* Ex-P.17. However, perusal of Ex-P.16 - Admissibility Report for Family Pension from the Office of Accountant General, Tamil Nadu dated June 20, 2018 would show that the deceased's basic pay was Rs.51,000/- and that his wife is eligible for 50% of it as pension *i.e.,* Rs.25,500/-. It is an admitted fact that his wife is receiving Rs.25,500/- as pension. In these circumstances, this Court is not inclined to accept Ex-P.17. Hence, this Court is of the view that the Tribunal failed to consider the fact that the basic pay of the deceased was enhanced from Rs. 49,500/- to Rs. 51,000/-, as proved by Ex-P.16 and Ex-P.18 as well as the evidence of P.W.2, who is the employer of the deceased. Therefore, this Court is of the considered view that the deceased earned a sum of Rs. 59,865/- as gross salary, with the basic pay being Rs.51,000/-.

Deduction of family pension

13. The Tribunal has deducted 50% of the deceased's monthly income on the ground that his wife is receiving the same as pension. It is apposite to cite here the decision of the Hon'ble Supreme Court in ***Lal Dei -vs- Himachal Road Transport,*** reported in ***(2007) 8 SCC 319***, wherein the Hon'ble Supreme Court, following its decision in ***Helen C. Rebello -vs- Maharashtra SRTC,*** reported in ***(1999) 1 SCC 90,*** held as follows:

> *'4. ...The Motor Accidents Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In Helen C. Rebello v. Maharashtra SRTC AIR 1998 SC 3191: (1999) 1 SCC 90 this Court has specifically dealt with this question and said that the 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 than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be*

deducted while calculating the compensation awarded to the claimants. In view of this, the appeal is allowed. The order of deduction of the family pension is set aside. Accordingly, the Appellants would be entitled for an amount of Rs. 10,27,000 as compensation with interest at the rate of 9% from the date of the filing of the petition.'

14. Further, the Hon'ble Supreme Court in ***Vimal Kanwar -vs- Kishore Dan***, reported in ***(2013) 7 SCC 476***, relying on ***Helen's Case*** (cited *supra*), held as follows:

> *'19. ...The aforesaid issue fell for consideration before this Court in Helen C. Rebello (Mrs) and others vs. Maharashtra State Road Transport Corporation & Anr. reported in (1999) 1 SCC 90. In the said case, this Court held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court:*
>
> > *"35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled*

to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also 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 than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the *periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual." '*

15. The Hon'ble Supreme Court in ***Sebastiani Lakra -vs- National Insurance Company Limited***, reported in ***(2019) 17 SCC 465*** has held as follows:

'14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle

of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.'

16. From the above, it is clear that the law is well settled that the family pension amount cannot be deducted while computing the compensation to the dependants of the deceased. The Tribunal grossly erred in deducting the family pension in this case. However, the deduction of the sum of Rs.2,500/- towards professional tax by the Tribunal while computing his income is appropriate as Police Officials are also liable to pay professional tax.

Multiplier Method

17. As far as the doctrine of split multiplier is concerned, after the authoritative pronouncement of the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi,*** reported in ***(2017) 16 SCC 680***, adopting split multiplier method is erroneous. Hence, the plea of the third respondent – Insurance Company in this regard deserves to be rejected.

Deduction towards personal expenses

18. The Tribunal deducted 1/3rd of salary towards the personal expenses of the deceased. The first petitioner is the wife of the deceased, and the fifth petitioner is his mother. The petitioners 2 and 3 are his married daughters while fourth petitioner is his major son. Hence, the petitioners 2 to 4 are not fully financially dependent on the deceased. The first petitioner, who is the wife of the deceased and the fifth petitioner, who is his mother, are alone fully dependant on the deceased financially. This does not mean that the petitioners 2 to 4 are not entitled to compensation for loss of parental consortium. This is because, though they are not monetarily dependant on the deceased, they would have still been dependent on their father for love, affection, care, guidance, parental advise, emotional support *etc.* Hence, the Tribunal is correct in deducting 1/3 as his personal expenses. The appellant's argument that the Tribunal ought to have deducted ¼ share deserves to be rejected.

19. Accordingly, the Award of the Tribunal is modified, and the following table sums up the modified compensation awarded by this Court:

S.No.	***Head***	***Amount Rs.***
1	Loss of dependency*	54,51,017.00
2	Consortium (5 X 44,000/-)	2,20,000.00
3	Loss of Estate	16,500.00
4	Funeral expenses	16,500.00
	Total	**57,04,017.00**

***Note:** Loss of annual dependency is calculated as per the following table:

S.No.	***Description***	***Deductions, if any, Rs.***	***Amount Rs.***
1	Revised monthly income of deceased (Rs.58,365/- + 1,500)		59,865.00
2	Annual income		7,18,380.00
3	Future prospects (15%)		1,07,757.00
4	Annual income	8,26,137.00	
	Less Professional tax	2,500.00	
	Total Annual income		8,23,637.00
5	Income Tax **		80,317.00
6	Net annual income	7,43,320.00	
	Less 1/3rd deduction for personal expenses	2,47,773.00	
	Loss of annual dependency		4,95,547.00
8	Multiplier 11 (Rs.4,95,547.00 /- X 11)		54,51,017.00
	Loss of dependency		**54,51,017.00**

****Note:** Income Tax Slab for the Financial Year 2017-2018 (AY 2018-2019)

Upto Rs.2,50,000/-	Nil
Rs.2,50,001/- to 5,00,000/- (5%)	Rs.12,500.00
Rs.5,00,001/- to 10,00,000/- (20%)	Rs.64,727.00
Total	Rs.77,227.00
Add: Cess 4%	Rs. 3,089.00
Total Income Tax	Rs.80,317.00

20. Therefore, the third respondent / Insurance company is directed to deposit the enhanced award amount of **Rs.57,04,017/- (Rupees Fifty Seven Lakh Four Thousand and Seventeen Only)** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P. No.608 of 2018 on the file of Motor Accidents Claims Tribunal / Special District Court, Erode, Chennai, less the amount if any already deposited, within a period of two months from the date of receipt of copy of this Judgment. On such deposit being made, the petitioners are entitled to withdraw the same by filing proper application. The share apportioned by the Tribunal is unaltered. Further, the petitioners are entitled to proportionate costs and Advocate fees as per Rules. The appellants are directed to pay necessary Court fee for the enhanced compensation, if any.

CONCLUSION:

21. Resultantly, the Civil Miscellaneous Appeal filed by the petitioners/claimants is allowed in part by awarding an enhanced compensation of **Rs.57,04,017/- (Rupees Fifty Seven Lakh Four Thousand and Seventeen Only)** with proportionate costs and a modified Award is passed as detailed above.

[J.N.B., J.] **[R.S.V., J.]**

28 / 01 / 2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
TK

To

The Motor Accident Claims Tribunal
Special District Court
Erode.

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN CMA NO.1799 OF 2022

28 / 01 / 2025