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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.02.2025

Delivered on : 19.02.2025

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**
and
THE HONOURABLE MS.JUSTICE **R.POORNIMA**

C.M.A.(MD)No.192 of 2023

1.B.Muthulakshmi

2.T.Lakshmanan Pillai

3.T.Parameswaran Pillai

4.T.Uma ... Appellants/Petitioners/ Claimants

-vs-

1.The Managing Director,
Tamilnadu State Transport Corporation,
Branch Office,
Ranithottam,
Nesamony Nagar,
Nagercoil,
Kanyakumari District ... 1st Respondent/1st Respondent

2.G.Natesan ... 2nd Respondent/2nd Respondent

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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 15.10.2022 made in M.C.O.P.No.156 of 2018 on the file of the II-Additional Subordinate Court cum Motor Accident Claims Tribunal, Nagercoil.

For Appellants : Mr.P.Balasubramanian

For Respondents : Mr.S.Micheal Heldon Kumar for R1

: No appearance for R2.

JUDGMENT

[Judgment of the Court was made by **DR.G.JAYACHANDRAN, J.]**

The Civil Miscellaneous Appeal is directed against the award passed in MCOP.No.156 of 2018 on 15.10.2022 by the Motor Accident Claims Tribunal at Nagercoil. The appellants herein are the claimants before the Tribunal. The Appeal is filed for enhancement of compensation, primarily on the ground that the motor accident victim was drawing a pension of Rs.33,092/- per month and same is substantiated through Ex.P-14. Despite admitting it, the Tribunal erroneously declined to compensate the loss of income stating that the first

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claimant who is wife of the deceased getting family pension, hence, there is no loss of income.

2. The brief facts leading to the Appeal :

On 09.01.2017, while the deceased Thiruvambalam Pillai was riding his two wheeler bearing registration No:TN 74 AJ 2289 leading to his Village along the Nagercoil to Kanniyakumari Highways, he was hit behind by the passenger bus bearing registration No:TN 74 N 1280 owned by the first respondent Transport Corporation driven by the second respondent near Ashram Railway Overbridge. The rider of the vehicle Thiruvambalam Pillai was thrown down and sustained head injury. He was admitted in a private hospital at Nagercoil and later shifted to another hospital at Thiruvanthapuram, however succumbed to the injuries on 19.03.2017.

2.1. On the complaint given by the daughter-in-law of the victim, case was registered by the Susindram Police in Crime No.9 of 2017 initially under Sections 279 and 337 of IPC, but later altered to Section 304(A) IPC as against the driver of the bus for rash and negligence driving and causing death.

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2.2. For loss of income, dependency, consortium, medical and other incidental expenses, the claimants who are the wife and 3 children (two sons and one daughter) of the accident victim had claimed a sum of Rs.38 lakhs as compensation. To substantiate the claim, the first claimant Muthulakshmi, W/o Thiruvambalam Pillai had graced the witness box as PW-1. To prove the negligence of the second respondent/bus driver one Mr.Vinayagam who witnessed the accident was examined as PW-2. Ex.P-1 to Ex.P-23 are the documents relied by the claimants. On the side of the respondents, no evidence adduced.

2.3. The tribunal after holding that the accident occurred due to the negligence of the bus driver, has applied the guideline framed by the Hon'ble Supreme Court in **Pranay Sethi's** case for awarding Rs.15,000/- for loss of personal belonging, Rs.15,000/- for funeral expenses and Rs.40,000/- towards loss of consortium for each of the dependants. That apart based on the bills, medical expenses and transport charges were added and has awarded totally a sum of Rs.12,72,402/- with 7.5% interest from 27.04.2018 till the date of realisation (excluding the period, if in case, the claim petition was dismissed for

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default and restored later).

3. The learned Counsel for the appellants submitted that the pension drawn by the victim is an income of the victim which is lost due to the accident. The Family pension paid to the first claimant is not a substitute for the pension drawn by the accident victim. In so far as loss of income, the accident victim was earning pension of Rs.33,092/- besides income of Rs.5000/- from his agricultural activities. After meeting out his personal expenses, he was contributing it to his family members who are the claimants. Hence compensation for the said loss with multiplier ought to have been awarded.

4. Relying on the Judgements of this Court the learned Counsel submitted that the tribunal failed to consider Ex.P-14 (pension paper). It erred in not awarding compensation for the loss of pension income and agricultural income of the deceased which is about Rs.38,092/- [(Rs.33,092/-(pension) + Rs.5,000/-(income from agricultural activity)]. He further submitted that the tribunal also not taken into account some of the medical bills produced by the claimants.

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5. Per contra, the learned Counsel appearing for the Respondent/ transport corporation submitted that the claimants are not entitled for any loss of income. The Tribunal declined to take the pension received by the victim for loss of income since the first claimant P.W-1 admitted in the cross examination that she, after the death of her husband/the accident victim, getting his pension. Further, the claimants have not produced any proof that the deceased was engaged in agricultural activities and earning income. Ex.P-14 does not prove that the deceased was earning Rs.33,092/- p.m. as pension.

6. Heard both sides. Exhibits and the impugned award perused.

7. The issue whether loss of pension earned by the accident victim be taken as loss of income/dependency was considered and settled long back by the Hon'ble Supreme 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, the Hon'ble Supreme Court held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc., are all

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a "pecuniary advantage" received 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 findings:

> "*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*

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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."

This dictum is followed and reiterated in ***Vimal Kanwar and others -vs- Kishore Dan and others,*** reported in **2013(1) TNMAC 641(SC) = CDJ 2013 SC 395.**

8. Following these judgements a Division Bench of this Court in ***Managing Director, Tamil Nadu State Transport Corporation Ltd, Vellore –vs-Chandrika,*** reported in **2014(1) TN MAC 234 (DB)** has held that,

"It is made clear that by the dictum laid in the above judgement (Vimal Kanwar case) that the pension amount is a pecuniary advantage received on account of one's death and same has no correlation to the Compensation computed as against the tort-feasor for his negligence on account of the accident. Hence, the pension amount is not liable to be deducted from the Compensation amount. Therefore, we are not inclined to deduct the pension amount presently the wife of the deceased is receiving, from the Compensation amount awarded under the head of Loss of Income."

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9. Recently, In ***Bajaj General Insurance Co., Ltd –vs- Venkatesh Ramanathan*** **–2024 (2) TN MAC 380(DB)** when the Insurance Company relying upon the Judgement of the Supreme Court rendered in **National Insurance Company Ltd –vs- Binrender and others [2020 (1) TNMAC 182 (SC)]** and contended that the pension received by the accident victim is not a loss to the dependants since the wife is paid family pension, the Division Bench of this court distinguished the decision of the Apex Court in ***National Insurance Company Ltd –vs- Binrender and others*** **[2020 (1) TNMAC 182 (SC)]** and held as follows:-

> *"8. Against the award passed by the Tribunal, cross appeals were preferred being F.A.O. No. 1341 of 2016 (O&M) filed by the appellant and F.A.O. No. 4023 of 2016 (O&M) filed by the respondent Nos. 1 and 2. The appellant (insurance company) primarily contended that the respondent Nos. 1 and 2 are not entitled to compensation for loss of dependency as they are major and earning and also because the family of the deceased was entitled to receive financial assistance under the Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (in short, 'the 2006 Rules'). The respondent Nos. 1 and 2 contended that being major and also earning by itself cannot be regarded as ineligibility to claim compensation. Further, the Tribunal has wrongly assessed loss of dependency on takehome salary instead of the drawing salary and without considering the family pension received by the deceased had she been alive. They further claimed that the deduction of personal expenses should be onethird (1/3rd) instead of 50%.*
>
> *9. The High Court by considering the monthly salary for computing compensation as Rs.23,123/, benefits of future prospects at 30%, applying a*

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multiplier of '13' and deduction for personal expenses at 50% held that the respondent Nos. 1 and 2 were entitled to loss of dependency qua loss of income at Rs.23,44,672/. The High Court, in addition, while considering the loss of dependency qua loss of pension by taking monthly pension at Rs.7,000/, applying a multiplier of '13' and deduction for personal expenses at 50%, held that Rs.5,46,000/ would be payable towards this head. The compensation under conventional heads was also increased from Rs.25,000/ to Rs.30,000/. Therefore, the total compensation payable was determined as Rs.29,20,672/. The High Court further noted that financial assistance available to the family of the deceased, under the 2006 Rules would be Rs.33,29,712/ and deducted 50% of the said amount from compensation whilst relying upon a judgment of the same High Court in New India Assurance Co. Ltd. v. Ajmero and others1. The High Court then deducted that amount of Rs.16,64,856/ from the compensation amount of Rs.29,20,672/ determined by it. Resultantly, the High Court reduced the compensation awarded by the Tribunal to the extent of Rs. 4,84,716/ and gave liberty to the appellant to recover the excess amount, if already paid.

10. The former appeal is preferred by the appellant on the ground that the High Court ought to have deducted the entire amount of financial assistance under the 2006 Rules, instead of deducting only 1 F.A.O. No. 2648 of 2016, decided on 31.07.2017 50% thereof. Reliance was placed on the judgment of this Court in Reliance General Insurance Co. Ltd. v. Shashi Sharma and Ors.2. It is urged that claim for loss of dependency is unavailable to the respondent Nos. 1 and 2 in the facts of the present case, they being major sons of the deceased who were married and also gainfully employed. Reliance is placed on Manjuri Bera (Smt) v. Oriental Insurance Co. Ltd. & Anr.3. It is urged that the respondent Nos. 1 & 2 may be entitled only to compensation under conventional heads as held in National Insurance Company Limited v. Pranay Sethi & Ors.4"

10. Thus from the dictum of the judgements rendered by the Hon'ble Supreme Court and the Division Bench of this Court cited supra, it is amply clear that the pension income of a person is lost on his death and his dependants have to be compensated for the said loss by the tortfeasor in the motor accident claim.

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Family pension paid to the dependant is not the same amount as that of the pension received by the deceased. Further, family pension is the legal entitlement irrespective of the fact whether the death of the pensioner is natural or accidental. It is improper and against the spirit of the Act to deny compensation for the loss of pension income on the ground that the wife of the deceased is paid family pension or to say, pension is not an income earned. More particularly, in the case in hand the Tribunal has grossly erred in rejecting the claim of compensation under the head loss of income by observing that the wife is getting the pension of the deceased husband. This observation is factually wrong since it means that there was no monetary loss and the wife was getting the same amount. Whereas Ex.P-14 reveals that the wife is getting family pension of Rs.7,290/- p.m only. It is also relevant to note that after the death of her husband/pensioner as a statutory right, family pension is paid as per the statute. Tortfeasor cannot take advantage of it to mitigate his liability. Looked from another angle, the receipt of family pension by wife who is one among the four dependants, cannot be a bar to deprive the other three dependants claiming compensation for their dependency on the income of their father.

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11. Therefore, we hold that the tribunal erred in not considering the pension income of the deceased while awarding compensation. In so far as the claim of agricultural income of the deceased, we find no evidence to prove that the deceased was involved in agricultural activities and deriving income out of it. Likewise though the learned counsel for the appellant/claimants argued that not all the medical bills produced were considered by the tribunal, we find no force in the said arguments. The Tribunal, based on the medical bills Ex.P-11 and Ex.P-12, had awarded a sum of Rs.28,202/- and Rs.9,11,200/-.

12. In the light of the above discussion, the portion of the compensation in respect of loss of income for the dependants/claimants is fixed as below:-

(i) Monthly pension income of the deceased as per Ex.P-14: Rs.27,846/-

(ii) For his personal expenses 1/3rd deducted : Rs.9,282/-

(iii) Contribution to the family: 2/3rd Rs.18,564/-

(iv) The victim at the time of his death was 74 years. Hence multiplier 5 is applied. Considering the age and the source of income, no addition is made towards future prospects. Thus for loss of dependency, the tortfeasor is liable to

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pay Rs:18564 x 12 x 5 = Rs.11,13,840/-

13. As a result, the award of the tribunal passed in MCOP.No.156 of 2018 is modified as below:-

Head	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.
Loss of income / dependency	----	11,13,840/-
Loss of love and affection	1,20,000/-	----
Loss of Consortium: (40,000x4)	1,60,000/-	1,60,000/-
Medical Expenses: as per Ex.P11 and Ex.P12	9,39,402/-	9,39,402/-
Funeral Expenses:	15,000/-	15,000/-
Loss of Estate	15,000/-	15,000/-
Transport (Ex.P9 and Ex.P10)	23,000/-	23,000/-
Total	12,72,402/-	22,66,242/-

14. Totally Rs.22,66,242/- (Rupees Twenty two lakhs sixty six thousand two hundred and forty two only). The first Respondent being the owner of the bus is directed to pay the said amount with 7.5% interest from the date of institution of the claim petition till the date of payment.

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15. The award amount to be apportioned between the wife and the children of the deceased as under:-

(i) First claimant/wife: Rs.12,00,000/- with interest;

(ii) Second to fourth claimants each Rs.3,55,414/- with interest;

(iii) The award amount with accrued interest to be deposited in MCOP.No.156 of 2018 within 30 days from the date of receipt of the order. Any amount already deposited or paid to be defrayed.

16. With the above direction, this Civil Miscellaneous Appeal is allowed. No Costs.

[G.J, J.] [R.P., J.]
19.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PJL

To

1. The II-Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Nagercoil.

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

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DR.G.JAYACHANDRAN, J.
and
R.POORNIMA, J.

PJL

Pre-delivery Judgment made in
C.M.A.(MD)No.192 of 2023

19.02.2025

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