REPORTABLE

2024 INSC 573

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2024
(Arising out of Petition for Special Leave to Appeal (Civil) Diary No. 39746 of 2018)

MEENAKSHI **....APPELLANT(S)**

VERSUS

THE ORIENTAL INSURANCE CO. LTD **....RESPONDENT(S)**

O R D E R

1. Delay condoned.

2. Leave granted.

3. This appeal arises from the judgment dated 2nd August, 2017 rendered by the learned Division Bench of the High Court of Karnataka, Kalaburagi Bench in M.F.A. No. 200311/2016 (MV) whereby, while partly accepting the appeal preferred by the respondent No. 1- Insurance Company[1], the High Court reduced the compensation awarded to the claimant i.e., Appellant herein *vide* award dated 25th November, 2015 passed by the Principal Senior Civil Judge and MACT[2] at Kalaburagi in a claim petition[3] filed by the appellant herein. The Accident Claims Tribunal had awarded compensation to the tune of ₹ 1,04,01,000/- with interest @

1 Respondent no. 2 was deleted vide order dated 28th August, 2023 by the Hon'ble Judge-in-Chamber
2 hereinafter being referred to as 'The Accident Claims Tribunal'
3 MVC No. 887 of 2013

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6% per annum to the claimant i.e., the appellant herein being the mother of Shri Suryakanth who expired in a road accident on 29th August, 2013. The Accident Claims Tribunal, assessed and quantified the compensation in the following manner:-

> "16. **Loss of Dependency:** The petitioner is the mother of deceased Suryakanth. Admittedly, the age of the deceased is shown as 26 years in the post mortem report as per Exh.P13, that is taken into account. Regarding the income of the deceased, PW.1 has stated that the deceased Suryakanth was doing as service consultant and drawing monthly gross salary of Rs.56,935/- per month and to prove the said fact she has produced Exh.P15 to Exh.P25 which are appointment letter, Salary review letter, Salary certificates, certificate issued by CISCO, PAN Card, Diploma Certificate, Income Tax Returns and Form No.16 respectively, but as per Exh.P17 Salary Certificate which is of the August 2013 of the deceased which shows the total earning of the deceased is Rs. 50,942/-, so the said fact is taken into consideration for awarding compensation amount, because as per the income tax returns which are produced by the petitioner it is seen the deceased was PAN cardholder and he was paying income tax which shown that he was capable of earning the amount which is shown in the Exh.P17 and even though the deceased was working in a private limited Company, the said salary amount is to be considered because he is Diploma Certificate Holder and basing on his efficiency the Company was paying the said amount to him. So for salary of Rs. 50,942/- Professional Tax of Rs. 200/- is deducted which comes to Rs. 50,742/- per month. Therefore, in my opinion, it is feasible to consider the income of the deceased @ 50,742/- and annual income comes to Rs.6,08,904/-. As the deceased was unmarried person, 50% of the said amount is to be deducted, it comes to Rs.3,04,452/-. As per the recent decision of the Hon'ble Apex Court reported in 2015 (3) TAC.1 (SC) and case law reported in Sarla Varma and others V/s Delhi Transport Corporation and another and Rajesh and others, the deceased is also entitled for loss of future prospects at 50% of his income. So, if 50% of the said Income is added Rs.3,04,452/- It would be Rs.6,08,904/- (3,04,452 + 3,04,452) per annum. Regarding the age of the deceased, In the post mortem report as per Exh.P13 the age of the deceased is shown as 26 years. So, the same is taken into consideration for applying multiplier as per the case law reported in Sarla Verma and others V/s Delhi Transport Corporation and another is "17". The calculation of the total loss of dependency is as under:
> Rs.6,08,904 x 17 multiplier = Rs.1,03,51,368/-. The petitioner is entitled for loss of dependency Rs.1,03,51,368/-.
>
> Therefore, the petitioner is entitled for total compensation under different heads as follows:

1. Loss of Love and Affection	₹ 25,000-00
2. Funeral Expenses	₹ 25,000-00
3. Loss of Dependency	₹ 1,03,51,368-00
Total Compensation Rounded off	₹ 1,04,01,368-00 ₹ 1,04,01,000-00

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> Therefore, the petitioner is entitled for total compensation of Rs.1,04,01,000/- along with interest @ 6% per annum from the date of petition till its realization."

4. The High Court, while considering the appeal preferred by respondent No. 1- Insurance Company, concluded that the Accident Claims Tribunal's approach while assessing the compensation under the head of 'loss of dependency' was erroneous on various grounds. It was held that the salary of the deceased, should be based on the Annual Salary Review for the year 2013, according to which his gross salary was ₹ 4,88,982/- (Rupees four lakh eighty eight thousand nine hundred and eighty two only). This figure realistically reflects what the deceased-Suryakanth would have received for the year 2013. The High Court took the basic salary of deceased-Suryakanth @ ₹ 2,30,652/- (Rupees two lakh thirty thousand six hundred and fifty two only) per annum for calculating the loss of income and only on the said figure, the future prospects @50% were applied, which worked out to ₹ 1,15,326/- (Rupees one lakh fifteen thousand three hundred and twenty six only). As per the High Court, the total loss of income, including the allowances worked out to ₹ 6,20,967/- (Rupees six lakh twenty thousand nine hundred and sixty seven only). From the said amount professional tax to the tune of ₹ 2,400/- (Rupees two thousand four hundred only) and Income Tax to the tune of @ ₹ 61,857/- (Rupees sixty one thousand eighty hundred and fifty seven only) was deducted and hence, the total annual income of the deceased-Suryakanth worked out to ₹ 5,56,710/- (Rupees five lakh fifty six thousand seven hundred and ten only) as per the High Court. The High Court in particular held that the components of house rent allowance, flexible benefit plan and contribution to provident fund etc.

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could not be accounted for the purpose of adding 50% to the gross income of the deceased on the principle of future prospects.

5. Multiplier of 17 was applied to the said figure and 50% from the total income calculated as above was deducted towards personal expenses considering the fact that the claimant, i.e., the appellant herein, being the mother of the deceased, was the sole dependent of the deceased. The net re-assessed compensation as calculated by the High Court came out to ₹ 49,57,035/- (Rupees forty nine lakh fifty seven thousand and thirty five only). Consequently, the compensation awarded by the Accident Claims Tribunal was reduced as above *vide* the impugned judgment dated 2nd August, 2017 which is subjected to challenge by the claimant-appellant by way of this appeal by special leave.

6. Having heard and considered the submissions advanced by learned counsel for the parties and after going through the impugned judgments and the record, we are of the opinion that the reasoning assigned by the High Court, that the perquisites/allowances in the nature of house rent, flexible benefit plan and Company contribution to provident fund would have to be excluded from the gross income for the purpose of applying future prospects, is erroneous on the face of record. There cannot be any two views on the aspect that these perquisites/allowances admissible to a salaried employee do not remain static and continue to rise generally proportionate to the length of the service of the employee. These allowances are generally fixed on a pro rata basis with reference to the basic salary.

7. As per the service conditions and pay scales of the Government officials, the house rent allowance is payable between 8% and 30% of the basic salary. Therefore, the house rent allowance is paid in a fixed ratio proportionate to the basic salary. With the increase in basic salary, the quantum of house rent allowance also increases proportionately. The flexible benefit plan and Company contribution admissible to a person employed in private service would also not remain static and are bound to increase with the length of service. The only bone of contention in this appeal is whether perquisites/allowances referred to above should also be taken into account while applying the future prospects. Therefore, entirely excluding these components from the salary of the employee for applying the principle of future prospects would be unjustified. Consequently, we have no hesitation in holding that these allowances cannot be ignored and have to be added to the salary when assessing the rise in income due to future prospects of a person employed in private service. This Court has carved out a rational formula to fix the percentage of rise of income by future prospects. In the case at hand, the said percentage has been fixed at 50% by both, the Accident Claims Tribunal as well as the Division Bench of the High Court. In view of the discussion made *supra*, the perquisites/allowances have to be added to the basic salary of the deceased before applying the rise by future prospects.

8. In ***Raghuvir Singh Matolya and Others v. Hari Singh Malviya and Others***[4], this Court held that the house rent allowance ought to be included for

4 (2009) 15 SCC 363

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determining the income of the deceased. The relevant paras are extracted hereinbelow for ready reference:-

> **"6.** Dearness allowance, in our opinion, should form a part of the income. House rent allowance is paid for the benefit of the family members and not for the employee alone. What would constitute an income, albeit in a different fact situation, came up for consideration before this Court in *National Insurance Co. Ltd.* v. *Indira Srivastava* [(2008) 2 SCC 763] wherein it was held:
> "*19*. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.
>
> *20*. The term 'income' in P. Ramanatha Aiyar's *Advanced Law Lexicon* (3rd Edn.) has been defined as under:
> '(*iii*) the value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture
> .'It has also been stated: ' "Income" signifies "what comes in" (per Selborne, C., *Jones* v. *Ogle* [(1861-73) All ER Rep 918]). "It is as large a word as can be used" to denote a person's receipts (per Jessel, M.R., *Huggins, ex p., Re* [51 LJ Ch 935]). Income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. *Secy. to the Board of Revenue, Income Tax v. Al. Ar. Rm. Arunachalam Chettiar & Bros.* [AIR 1921 Mad 427] Ref. *Vulcun Insurance Co. Ltd.* v. *Corpn. of Madras* [AIR 1930 Mad 626 (2)] .'
>
> *21*. If the dictionary meaning of the word 'income' is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income tax or professional tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.
>
> To the same effect is the decision of this Court in Oriental Insurance Company Limited v. Ram Prasad Varma and Others [(2009) 2 SCC 712 : (2009) 1 SCC (Cri) 853 : (2009) 1 Scale 598].

> **7.** We, therefore, are of the opinion that "dearness allowance" and "house rent allowance" payable to the deceased should have been included for determining the income of the deceased and consequently the amount of compensation.**"**
>
> (emphasis supplied)

9. Recently in a judgment dated 11th July, 2024 in ***National Insurance Company Ltd. v. Nalini and Ors. [Petition for Special Leave to Appeal (C) No. 4230/2019]***, this Court held that, allowances under the heads of transport allowance, house rent allowance, provident fund loan, provident fund and special allowance ought to be added while considering the basic salary of the victim/deceased to arrive at the dependency factor.

10. Therefore, components of house rent allowance, flexible benefit plan and company contribution to provident fund have to be included in the salary of the deceased while applying the component of rise in income by future prospects to determine the dependency factor. The Accident Claims Tribunal was justified in factoring these components into the salary of the deceased, before applying 50% rise by future prospects due to future prospects, while calculating the total compensation payable to the appellant.

11. Clearly, the High Court erred in accepting the appeal filed by the respondent No. 1- Insurance Company and reducing the compensation payable to the appellant from a sum of ₹ 1,04,01,000/- (Rupees One crore four lakh one thousand only) awarded by the Accident Claims Tribunal to ₹ 49,57,035/-(Rupees Forty nine lakh fifty seven thousand and thirty five only).

12. We, therefore, hold that the High Court has erred while omitting to add the components of house rent allowance, flexible benefit plan and Company contribution to provident fund to the basic salary of the deceased while applying the principle of rise in income by future prospects.

13. However, we are of the opinion that the High Court was justified in deducting Income Tax from the gross salary of the deceased-Suryakanth for calculating his gross income. This factor was overlooked by the Accident Claims Tribunal while quantifying the award.

14. As a result, the re-assessed compensation payable to the appellant after making deduction towards Income Tax is tabulated in the following manner: -

S. No.	Heads	Amount
1.	**Loss of Dependency**	
	Monthly Salary of the Deceased - ₹ 50,942/- (inclusive of house rent allowance, flexible benefit plan and contribution to provident fund).	-
	(Less) Professional Tax of ₹ 200/month to be deducted (₹ 50,942-₹ 200)	₹ 50,742/-
	(Less) Income Tax @ 10% as per 2013-2014 i.e., Rs. 5,074 (₹ 50,742 – ₹ 5,074)	₹ 45,668/-
	Annual Gross Income (₹ 45,668 x 12)	₹ 5,48,016/-
	(Less) 50% to be deducted towards dependency as the deceased was unmarried (₹ 5,48,016 – ₹ 2,74,008)	₹ 2,74,008/-
	(Add) 50% to be added towards rise in income by future prospects (₹ 5,48,016 + ₹ 2,74,008)	₹ 5,48,016/-

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	Total Loss of Dependency = ₹ 5,48,016 X 17 (Multiplier as the deceased age was 26)	₹ **93,16,272/-**
1.	**Funeral Expenses**	₹ 25,000/-
2.	**Loss of Love and Affection**	₹ 25,000/-
	Total Compensation	₹ **93,66,272**

15. The impugned judgment dated 2nd August, 2017 passed by the Division Bench of the High Court is thus, reversed. The appeal is partly allowed on the above terms. Costs made easy.

……J.
[HIMA KOHLI]

……J.
[SANDEEP MEHTA]

New Delhi;
July 23, 2024

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