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**(2014) 04 SC CK 0099**

**In the Supreme Court Of India**

**Case No : Civil Appeal No. 3461 of 2003**

Kalpanaraj and Others

APPELLANT

Vs

Tamil Nadu State Transport Corpn.

RESPONDENT

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**Date of Decision : 22-04-2014**

**Acts Referred:**

**Citation :** (2014) 2 ACC 448 : (2014) ACJ 1388 : (2014) 3 AJR 250 : (2014) 4 ALLMR 896 : (2014) 105 ALR 261 : (2014) 2 AnWR 598 : (2014) 3 AWC 2753 : (2014) 3 CDR 746 : (2014) 3 JLJR 145 : (2014) 7 JT 226 : (2014) 3 PLJR 267 : (2014) 2 RCR(Civil) 876 : (2014) 5 SCALE

**Hon'ble Judges :** V. Gopala Gowda, J;Gyan Sudha Misra, J

**Bench :** Division Bench

**Final Decision :** Disposed Of

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## **Judgement**

V. Gopala Gowda, J.—This appeal is filed by the Appellants questioning the correctness of the judgment and final Order dated 30.01.2002 passed by the High Court of Judicature at Madras in Civil Misc. Appeal No. 1487 of 1999, urging various facts and legal contentions in justification of their claim.

2. Necessary relevant facts are stated hereunder to appreciate the case of the Appellants and also to find out whether the Appellants are entitled for the relief as prayed in this appeal.

3. The deceased, while going on his motorcycle from Vellore to Kannamangalam, collided with the bus of the Respondent-Corporation as a result of which he sustained fatal injuries and died on the spot. The legal representatives of the deceased viz., his wife and two minor children filed M.C.O.P. No. 539 of 1994 contending that the accident occurred solely because of the rash and negligent driving of the bus of the Respondent-Corporation. If the driver of the bus had driven the bus with carefulness, there might have been no possibility of dragging the deceased along with the motorcycle for a distant of 120 feet. The Appellants-claimants claimed an amount of Rs. 20 lakhs compensation for the death caused by the Respondent.

The Tribunal, after considering the material evidence on record of P.W. 1 and P.W. 2 and R.W.1 and the ten exhibits filed on behalf of the Appellant-claimants, found that the accident has occurred only due to rash and negligent driving of the driver of the bus of the Respondent-Corporation. Therefore, the learned judge, holding the monthly income at Rs. 15,000/- and adopting the multiplier of 18, determined a sum of Rs. 32,40,000/- as compensation. However, he restricted the sum of compensation to Rs. 20,90,000/-, since that was the amount claimed by the Appellants-claimants. The Tribunal further awarded interest @12% per annum on the said amount.

4. Aggrieved by the Award of the Tribunal, the Respondent-Corporation filed an appeal challenging the Order of the Tribunal. The High Court, however, only restricted itself to ascertain as to whether the compensation awarded by the Tribunal was excessive. And if so, then what is the amount to which the Appellants-claimants are entitled to.

5. The High Court opined that the Tribunal erred in relying upon the statement of evidence of the wife of the deceased to determine the monthly income of the deceased at Rs. 15,000/- instead of relying upon the income shown in the Income Tax return. Further, the High Court opined that the Tribunal erred in not deducting 1/3rd for personal expenses of the deceased. Further, according to the High Court, the Tribunal erred in determining the multiplier of 18 instead of 13 considering the age of the deceased which was 46 at the time of the accident.

6. Accordingly, the High Court held that the unsubstantiated oral evidence alone of P.W. 1 cannot be taken into consideration in the light of Exhs. A.8, A.9 and A.10. The monthly income of the deceased is therefore taken as Rs. 3,115/- per month for computation of the multiplicand on the basis of net average income of the deceased calculated as per the income tax return produced as evidence on record. Therefore, the compensation determined under the head of loss of income under the head of 'loss of income' of the deceased was determined by the High Court at 4,86,000/-. Further, the High Court has reduced compensation under the head of funeral expenses from Rs. 25,000/- to Rs. 10,000/-. The Tribunal awarded a consolidated amount for loss of love and affection by the children, loss of income and loss of consortium by the wife at Rs. 19,55,000/-. The High Court reduced the compensation under the head of 'loss of love and affection' by the minor children at Rs. 20,000/- each. Also, the amount awarded towards loss of consortium to the wife was reduced by the High Court to Rs. 30,000/-. Therefore, in total, the High Court awarded a total amount of Rs. 5,76,000/- as compensation to the Appellants-claimants. The interest rate was also reduced to 9% per annum by the High Court from 12% awarded by the Tribunal.

7. It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return. However, the High

Court erred in ascertaining the net income of the deceased as the amount to be taken into consideration for calculating compensation, in the light of the principle laid down by this Court in the case of National Insurance Company Ltd. Vs. Indira Srivastava and Others, . The relevant paragraphs of the case read as under:

14. The question came for consideration before a learned Single Judge of the Madras High Court in National Insurance Co. Ltd. v. Padmavathy and Ors. wherein it was held:

7 ...Income tax, Professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., Contribution are amounts paid specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lump sum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependency compensation, then the Legal Representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only statutory deductions such as Income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contribution made by the employee during his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation.

15. Similar view was expressed by a learned Single Judge of Andhra Pradesh High Court in S. Narayanamma and Ors. v. Secretary to Government of India, Ministry of Telecommunications and Ors. holding:

13 ...In this background, now we will examine the present deductions made by the tribunal from the salary of the deceased in fixing the monthly contribution of the deceased to his family. The tribunal has not even taken proper care while deducting the amounts from the salary of the deceased, at least the very nature of deductions from the salary of the deceased. My view is that the deductions made by the tribunal from the salary such as recovery of housing loan, vehicle loan, festival advance and other deductions, if any, to the benefit of the estate of the deceased cannot be deducted while computing the net monthly earnings of the deceased. These advances or loans are part of his salary. So far as House Rent Allowance is concerned, it is beneficial to the entire family of the deceased during his tenure, but for his untimely death the claimants are deprived of such

benefit which they would have enjoyed if the deceased is alive. On the other hand, allowances, like Travelling Allowance, allowance for newspapers/ periodicals, telephone, servant, club-fee, car maintenance etc., by virtue of his vocation need not be included in the salary while computing the net earnings of the deceased. The finding of the tribunal that the deceased was getting Rs. 1,401/- as net income every month is unsustainable as the deductions made towards vehicle loan and other deductions were also taken into consideration while fixing the monthly income of the deceased. The above finding of the tribunal is contrary to the principle of 'just compensation' enunciated by the Supreme Court in the judgment in Helen's case (1 supra). The Supreme Court in Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, held that determination of quantum must be liberal and not niggardly since law values life and limb in a free country 'in generous scales'.

(Emphasis laid down by this Court)

8. In the light of the principle of law laid down by this Court in the Indira Srivastava case mentioned supra, we are of the opinion that the High Court erred in making deductions under various heads to arrive at the net income instead of ascertaining the gross income of the deceased out of the annual income earned from his occupation mentioned in the income tax return submitted for the relevant financial year 1994-1995.

9. As per the Income Tax return of the financial year 1994-1995 produced on record, the deceased was earning Rs. 88,660/- per annum or Rs. 7330/- per month. Further, the deceased being 46 years of age at the time of death, he is entitled to 30% increase in the future prospects of income as per the legal principle laid down by this Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, .

10. Also, since the deceased was 46 years of age at the time of the accident, a multiplier of 13 seems appropriate for determining the quantum of compensation as per the principle laid down by this Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

11. Therefore, the total amount of compensation the Appellants-claimants are entitled to under the head of loss of income is:

$$[(Rs. 7330 + 30/100 \times Rs. 7330) \times 12 \times 13] = Rs. 14,86,524/-.]$$

12. Further, since the deceased has left behind his wife and two children, the amount to be deducted under the head of personal expenses is 1/3rd of the total income in the light of the principle laid down in Sarla Verma case (supra) which was reiterated in Santosh Devi case (supra). Therefore, the amount to be awarded as compensation to the Appellant is = ( Rs. 14,86,524/- - 1/3 x Rs. 14,86,524/- ) = Rs. 9,91,016/-.

13. The Appellant-claimants sought an amount of Rs. 10,000/- towards damage to the motorcycle. Since, the claim has neither been rebutted with evidence by

the Respondent, we grant compensation of Rs. 10,000/- towards the damage caused to the bike.

14. Further, the High Court awarded a sum of Rs. 30,000/- towards loss of consortium and Rs. 20,000/- each towards loss of love and affection by the minor children. This amount awarded by the High Court is on the lower side in the light of the principle laid down in *Rajesh and Others Vs. Rajbir Singh and Others*, wherein the Court awarded 1,00,000/- towards loss of consortium and 1,00,000/- towards loss of care and guidance to the minor children. Accordingly, we award a compensation of 1,00,000/- each towards loss of consortium and towards loss of love and affection.

15. Apart from this, we award Rs. 1,00,000/- towards loss of estate and Rs. 1,00,000/- towards loss of expectation of the life of the deceased. We also award a sum of Rs. 50,000/- for funeral expenses and cost of litigation. Therefore, a total sum of 14,51,016/- which is rounded off at Rs. 14,51,000/- is awarded to the Appellants-claimants.

16. Further, the High Court has awarded the compensation with interest @9% per annum. We concur with this holding of the High Court in the light of the decision of this Court in *Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphaar Tragedy and Others*, Accordingly, we award an interest @ 9% per annum on the compensation to be awarded to the Appellants-claimants. The compensation awarded shall be apportioned between the Appellants equally with proportionate interest. We direct the Insurance Company to deposit 50% of the awarded amount with proportionate interest in any of the Nationalized Bank of the choice of the Appellants for a period of 3 years. The rest of 50% amount awarded with proportionate interest shall be paid to the Appellants by way of a demand draft within six weeks from the date of receipt of a copy of this order after deducting the amount if already paid. During the said period, if they want to withdraw a portion or entire deposited amount for their personal or any other expenses, including development of their asset, then they are at liberty to file application before the Tribunal for release of the deposited amount, which may be considered by it and pass appropriate order in this regard. We set aside the impugned judgment and order of the High Court and modify the judgment in the aforesaid terms by allowing this appeal. In the facts and circumstances of the case, no order as to costs.