

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on **:27.04.2016**

Pronounced on :02.06.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP (PD) No.1343 of 2012
and
M.P.No.1 of 2012

The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Bharathipuram,
Dharmapuri – 05.

.. Petitioner

Versus

Chinnadurai

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying against the order dated 07.03.2012, made in R.E.P.No.146/2010 in M.C.O.P.No.879/2006, on the file of Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri.

For Petitioner

...Ms.D.Venkatachalam
for Mr.V.Raghavachari

For Respondent

...Mr.T.Pappaiah Dharmarajan
for R1

ORDER

'Life' does not mean a mere animal existence and this term occurring in Article 21 of the Constitution of India has been expounded and expanded by the Hon'ble Supreme Court of India and this Court in a long line of decisions and we have travelled a long way from Gopalan to Gandhi (A.K.Gopalan's case AIR 1950 SC 27) to (Menaka Gandhi's case AIR 1978 SC 597).

2. Motor Vehicle Accidents are on the rise everyday due to numerous reasons and loss of life and bodily injury in accident case is ever increasing and the victim can never be restored back to his original shape and live his life normally after he suffers an accident. For this kind of a suffering, the only solace the law can offer to him is payment of compensation.

3. The Courts are also cautious in matters of grant of compensation in Motor Accident cases and generally do not adopt a narrow, pedantic or hyper-technical approach. It is an unwritten norm that in cases of grant of compensation, the Courts have to be liberal and understand the difficulties of the victim and compensate him

appropriately so that he or his family could limp their way back to a normal life, though not entirely possible.

4. The term 'Compensation' has been explained in R.Ramanatha Aiyar law dictionary refering to Blacks Law dictionary as:

"An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

5. The scope of this term has been construed differently in various enactments to convey the meaning that compensation is offered as a solace for a loss suffered by the individual. The purpose of granting compensation in Motor Accident cases as it is already been

stated previously is to ensure that the victim or his family is restituted for the great suffering on account of the accident.

6. Whether it would be appropriate to insist the victim who is awarded compensation to part with it or the interest that accrued on it towards payment as Tax Deduction at Source (TDS) as under the Income Tax Act 1961?. This is a crucial and important question that arises for consideration and this Court intends to clarify on this matter further as the same would have serious implications.

7. Before doing so, it is necessary to look into the facts of the present case on hand. The Respondent in the instant Revision Petition has filed an Execution Petition R.E.P.No.146 of 2010 before the Motor Accident Claims Tribunal, Dharmapuri in M.C.O.P.No.879 of 2006 wherein the amount that they are entitled to Rs.4,23,271/- and in the memo filed before the Motor Accident Claims Tribunal, Rs.24,017/- has been deducted for TDS. R.E.P.No.146 of 2010 that has been filed was allowed by the Court below and accordingly, the bus belonging to the Revision Petitioner Corporation was attached and the Corporation was directed to deposit the balance amount of Rs.30,774. Aggrieved by this order, the Petitioner has approached this Court and when the

matter came up on an earlier occasion before this Court an Order dated 20.04.2012, was passed and wherein it has been directed as follows:

"The petitioner – Transport Corporation shall deposit the amount, which was not earlier deposited, to the credit of M.C.O.P.No.879 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri, without prejudice to their contention and the Tribunal is directed not to release that much portion of the disputed amount, pending C.R.P. The remaining amount can be released in favour of the judgment holder, as per law. However, on such deposit, the vehicle, namely the bus, shall be released".

8. Mr.Venkatachalam, learned counsel for the Petitioner would submit that as per Sections 194-A and 156 of the Income Tax Act, 1961, the interest portion awarded by the Motor Accident Claims Tribunal should be subject to TDS and accordingly stated that the deduction was justified and to canvass his case, he relied upon two judgments of different High Courts and a judgment of this Court.

9. The first judgment that was relied is that of a Single Judge of the High Court of Chattisgarh reported in **CDJ 2015 Ch HC 110** and the second was that of a Single Judge of the High Court of Karnataka reported in **CDJ 2015 Kar HC 532** and thirdly, a decision of a Single Judge of this Court in **CDJ 2004 NHC 1575**. In all of the above three judgments, it has been held by the Courts that whenever the compensation amount earns interest by reason of delayed payment or otherwise, it is liable to TDS and the exemption could be claimed only by way of filing the necessary returns before the assessing authority. Hence, on the basis of the above said judgments, the Counsel for the Petitioner prayed that the Revision be allowed.

10. On the contrary, learned counsel for the respondent, Mr. Pappaiah Dharmarajan would submit that order of the Court below is well reasoned and justified and accordingly prayed that the instant revision petition be dismissed.

11. Therefore, reverting to the legal issue involved in the present matter, it has to be answered as to whether the deduction of TDS on interest accrued on deposits in terms of Orders passed by the

Courts in Motor Accident cases is legally sustainable or not?. To simply say yes to the above question, I could very well follow the judgments cited by the Revision Petitioner and conclude the matter.

12. But, this Court does not choose to do the same, since the issue at hand is of larger public interest and have far reaching implications. As stated earlier, if the law has to be interpreted so technically and rigidly whereby which a family of an individual who could have possibly lost his life or limbs in an accident has to pay TDS on the interest that has accrued on the compensation amount, will the law be doing a service or disservice to the victims?. With all due respect, I find that the three decisions cited by the Petitioner does not deal with this issue at all.

13. The question is whether the provisions of the Income Tax Act 1961, and more specifically, whether the compensation awarded by the Motor Accident Claims Tribunal to the victim can be classified as a taxable income under the Income Tax law?. The answer to this question in the opinion of this Court is in the negative. Compensation cannot be categorized or even described as income as it has already been stated that the intention of the legislature in awarding

compensation to the victims of Motor Accident cases is to restitute them and rehabilitate them.

14. The Income Tax Department appears to have issued a circular dated 14.10.2011 whereby deduction of Income Tax has been ordered on the award amount and the interest accrued on the deposits made under the order of the Court in Motor Accident Cases. Taking serious view of this circular, the Division Bench of the Himachal Pradesh High Court took Suo-Moto cognizance of the matter and considered the same as a Public Interest Litigation in the judgment reported in ***Court on its Motion Vs. H.P.State Co-operative Bank Ltd & Ors 2014 SCC Online HP 4273*** and has quashed the circular and in an elaborate and well considered judgment, His Lordship the Hon'ble Chief Justice Mansoor Ahmed Mir has held that:

“13.While going through the said provisions of law, one comes to the inescapable conclusion that the mandate of the said provisions does not apply to the accident claim cases and the compensation awarded under the Motor Vehicles Act cannot be said to be taxable income. The compensation is awarded in lieu of death of a person or bodily injury suffered in

a vehicular accident, which is damage and not income.

14. Chapters X and XI of the Motor Vehicles Act, 1988 provides for grant of compensation to the victims of a vehicular accident. The Motor Vehicles Act has undergone a sea change and the purpose of granting compensation under the Motor Vehicles Act is to ameliorate the sufferings of the victims so that they may be saved from social evils and starvation, and that the victims get some sort of help as early as possible. It is just to save them from sufferings, agony and to rehabilitate them. We wonder how and under what provisions of law the Income Tax Authorities have treated the amount awarded or interest accrued on term deposits made in Motor Accident Claims Cases as income. Therefore, the said Circular is against the concept and provisions referred to hereinabove and runs contrary to the mandate of granting compensation.

...23. Having said so, the Circular, dated 14.10.2011, issued by the Income Tax Authorities, whereby deduction of income Tax has been ordered on the award amount and interest accrued on the deposits made under the orders of the

Court in Motor Accident Claims Cases, is quashed and in case any such deduction has been made by respondents, they are directed to refund the same, with interest at the rate of 12% from the date of deduction till payment, within six weeks from today”.

15. Following the Division Bench Judgment, a learned Single Judge of the Punjab and Haryana High Court, in a recent decision, in ***New India Assurance Company Ltd. Vs. Sudesh Chawla and others, CR.No.430 of 2015 (O&M)***, reiterating the reasoning given by the Division Bench of Himachal Pradesh High Court, has opined that award of compensation is on the principle of restitution to place the claimant in the same position in which he would have been loss of life or injury has not been suffered and accordingly held that the orders calling upon the Insurance Company to pay TDS/deduct Tds on the interest part are not sustainable.

16. If we look at other jurisdictions like Australia, United States and United Kingdom, even there, the matters where a person has suffered an injury or there has been a loss of life and a compensation has been paid in lieu of that, then it has been held by the Courts that

there cannot be any Tax deduction on such compensation. The underlying basis behind this is that a person who suffers a loss cannot be asked to part with the solatium he receives since it is the only remedy he has been provided with by the law.

17. If there is a conflict between a social welfare legislation and a taxation legislation, then, this Court is of the view that a social welfare legislation should prevail since it subserves larger public interest. The Motor Vehicle Act is one such legislation which has been passed with a benevolent intention for compensating the accident victims who have suffered bodily disablement or loss of life and the Income Tax Act which is primarily intended for Tax collection by the State cannot put spokes in the effective and efficacious enforcement of the Motor Vehicles Act. In fact, if one might deeply analyse, it could be seen that there is no direct conflict between any provisions of the Income Tax Act and the Motor Vehicles Act and it is only by the interpretation of the provisions the concept of compulsory payment of TDS has crept into the realm of compensation payment in Motor Vehicle Accident cases.

18. Hence, with due respect I am unable to concur with the findings of the Karnataka High Court, the Chattisgarh High Court and this Court cited by the Revision Petitioner. This Court is of the view that the Division Bench judgment of the Himachal Pradesh high Court and the judgment of the Single Judge of the Punjab and Haryana High Court lay down the right law and hence, this Court arrives at the conclusion that the compensation awarded or the interest accruing therein from the compensation that has been awarded by the Motor Accident Claims Tribunal cannot be subjected to TDS and the same cannot be insisted to be paid to the Tax Authorities since the compensation and the interest awarded therein does not fall under the term 'income' as defined under the Income Tax Act, 1961.

19. Therefore, this Court directs that the Petitioner Corporation cannot deduct any amount towards TDS and the same shall also be deposited in addition to the amount that has already been deposited to the credit of M.C.O.P.No.879 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri, within a period of four weeks from the date of receipt of a copy of this order and the Respondent is entitled to take appropriate steps in a manner known to law to withdraw the amount.

20. Accordingly, the above Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

02.06.2016

Index:Yes/No
Internet:Yes/No
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To
The Additional District Judge,
Fast Track Court,
Dharmapuri.

M.V.MURALIDARAN, J.
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**PRE-DELIVERY ORDER MADE IN
C.R.P(PD)No.1343 of 2012**

02.06.2016