

C.M.A.No.1074 of 2022
and
C.M.P.No.7864 of 2022

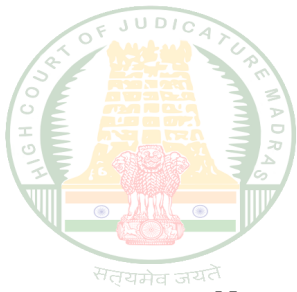
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P.T.ASHA, J.,

The anomalies in fixing the notional income and the consequent grant of compensation which varies on a case to case basis is once again highlighted in this case. Since there is a conflict between the orders of the two Division Benches, which is discussed herein below regarding the method to be adopted for calculating the notional income, there is a necessity for a judicial pronouncement by a Larger Bench to bring about an uniformity in the fixation of notional income.

2. In the case of ***Royal Sundaram Alliance General Insurance Company Limited -vs- Vennila [C.M.A.No.3273 of 2014 dated 13.10.2015]***, the question that engaged the Bench was whether the legal representatives of the deceased, a self-employed person can seek for determination of income by adding up certain percentage of income under the head of future prospects while computing the loss of contribution to the bereaved family. In the course of this discussion, the Division Bench has considered the line of judgments dealing with the determination of income and the addition of future prospects starting from the case of ***General Manager,***



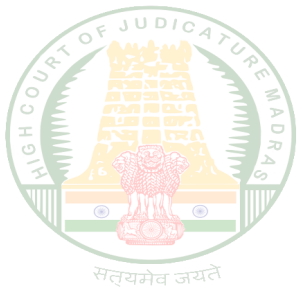
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Kerala State Road Transport Corporation Vs Susamma Thomas

1994 (2) SCC 176, the Bench analysed how the monthly income of the victim has to be determined for computing the loss of contribution to the family of the deceased or in the case of an injured where there is a loss of earning capacity on account of the disability suffered. The Bench had discussed the difference between the organised and unorganised sector as follows:-

“45. At this juncture, we wish to consider the difference between organised and unorganized sector. What is meant by "organised sector"? In common parlance, it would be service in Government, Government Undertaking, Companies owned and controlled by the Government, Corporation or Boards. The unorganized sector consists of all individuals or households engaged in production or sale of goods and services, operated as a proprietor or on partnership or self employed. They can be said to be unorganized sectors.

46. Who is there in the unorganized sector? Right from a roadside tea shop owner or tiffin vendor or a pushcart vendor, a vegetable vendor on road or in a market and many more home based self employment.



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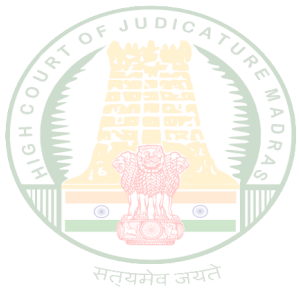


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Wages or earning of self-employed correlates the subsistence level to meet out the basic needs of living standards. At home or outside, there are thousands and thousands of self-employed persons, who do not have adequate employment opportunities in the organised sector.”

3. The Bench had further observed that wages are revised periodically by the Central Government and State government in respect of certain employees on the basis of Average Consumer Price Index. The Bench had discussed the proceedings adopted by the Chief Labour Commissioner (CLC), Ministry of Labour and Employment, Government of India in this regard. The Bench had given the general meaning of "Consumer Price Index" as

"48....Consumer Price Index (CPI) is a measure that examines the weighted average of prices of a basket of consumer goods and services, such as transportation, food and medical care. The CPI is calculated by taking price changes for each item in the predetermined basket of goods and averaging them; the goods are weighted according to their importance. Changes in CPI are used to assess price changes associated with the cost of living.



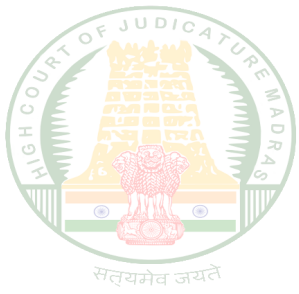
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49. Consumer Price Index is a measure of changes in the purchasing-power of currency and the rate of inflation. The consumer price index expresses the current prices of a basket of goods and services in terms of the prices during the same period in a previous year and indicate the effect of inflation on the purchasing power. It is determined on the expenditures of all the residents in urban or metropolitan areas, including the professionals, self-employed, poor, unemployed and retired persons, as well as urban wage earners and clerical workers. Consumer Price Index in common parlance is also called as cost-of-living index. A cost-of-living index would measure changes over a time, in the amount that consumers need to spend to reach a certain utility level or standard of living.

50. Consumer Price Index represents all the goods and services, purchased and consumed by the reference population in relation to food and beverages (milk, coffee and all the essential food items), housing (rent, furniture, etc.), clothing, transportation (vehicles, bus, train and other modes of transport fares), medical care (drugs and medicines, doctor services and hospital services), recreation, education and communication (school or college fee, telephone services, computer software) etc., beside there are other goods and services (personal services). Consumer Price Index also includes government-charged fees, such as, electricity, water



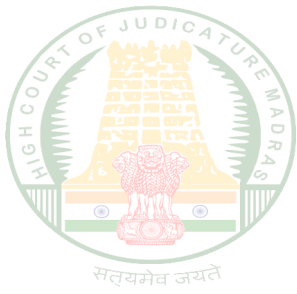
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and sewerage charges, etc. In addition, Consumer Price Index also includes taxes (such as sales tax and excise duty) that are directly associated with the prices of specific goods and services."

4. The Bench in paragraph No.61 had discussed how the Consumer Price Index has been fixed by the CLC and the same is extracted herein below.

"61. At this juncture, it should be borne in mind that Consumer Price Index is fixed, taking into consideration that the majority consumers are from unorganized sectors. Thus, with reference to Gross Domestic Product, Per Capita Income, Consumer Price Index and such other economic factors, determined on the basis of participation and contribution of both organised and unorganized sectors, the classification that those engaged in unorganized sectors, should be totally denied of any addition of income under the head, future prospects, would in our humble view, would affect Article 14 of the Constitution of India. When the majority of persons, in unorganized sectors, also decide the economic factors, stated supra, it would be unjust and unreasonable to contend that there would not any prospect or addition in the earning of those engaged in unorganized sector, forever. If there is addition of Variable Dearness



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Allowance to the basic wages, in the case of organised sector, depending upon the Consumer Price Index, applicable for a particular period, one would reasonably expect the same factor of variable Dearness Allowance, to be a relevant factor, for determining the variation in the wage in case of unorganized sector also, as Consumer Price Index is common to all, whether engaged in organised or unorganized sector.”

This detailed exercise had been undertaken by the learned Judges since the Act provides that compensation, which is just and reasonable, has to be granted to the victim and victim's family as the case may be. Therefore, the Honourable Division Bench had directed that the income fixation should be on the basis of the “Consumer Price Index” (CPI).

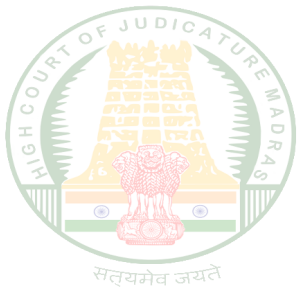
5. However, a later Division Bench of this Court in the case of ***Shriram General Insurance Company Ltd -vs- Kokila and others*** [C.M.A.No.1303 of 2018 dated 27.06.2018] held that to determine the notional income of the deceased “Cost Inflation Index” (CII) issued by the Central Board of Direct Taxes (CBDT) has to be taken. CII is an indice used for calculating capital gains. The Division Bench



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had relied upon the judgment in ***Syed Sadiq -vs- United India Insurance Company reported in (2014) 2 SCC 735***, where the monthly income of a vegetable vendor was fixed at Rs.6,500/- to be the base income from which the notional income to be calculated.

6. The very same Bench had once again in the judgment reported in ***(2019) 2 TNMAC 293 [Chinnathamani and others Vs Amman Granties and Another]***, followed their earlier judgment cited supra and in paragraph 13 had observed that in order to determine the Consumer Price Index in accordance with the income fixed by the Government of India, reference has to made to the notifications issued by the CBDT, which has been revising the Cost Inflation Index every year. The Bench had set out the table of the Cost Inflation Index starting from the financial year 1981-1982 to 2018-2019. The Bench observed that by adopting the Cost Inflation Index as notified by the CBDT, which is 75% of the Consumer Price Index of the previous year, the Consumer price index for the relevant period can be used to determine the annual income as per the second schedule.

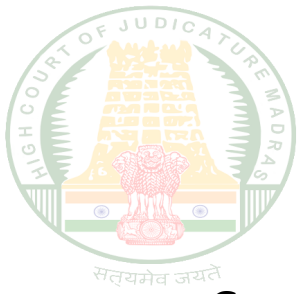


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7. Therefore, two different yardsticks have been fixed by two different Benches of this Court for arriving at the notional income. The later two judgments, where the Cost Inflation Index is used as the indice, comes with a lot of anomalies even with reference to fixation of base price, which the Bench had fixed at Rs.6,500/- adopting the judgment in ***Syed Sadiq -vs- United India Insurance Company reported in (2014) 2 SCC 735***, where the injured person was a vegetable vendor. The income earned by a vegetable vendor is different from that of a plumber or carpenter or mason. Therefore, adopting the sum of Rs.6,500/- as the base price is not an accurate basis for arriving at the notional income. That apart, the Cost Inflation Index is fixed in the case of capital gains, whereas the Cost Price Index is the one used by the Government to revise wages, which in my opinion appears to be a more pragmatic and realistic form of arriving at a notional income.

8. Since there is a conflict between the orders of the two Division Benches with regard to the basis on which the notional income has to be fixed and as the later two judgments have not referred to the earlier judgment in the case of ***Royal Sundaram Alliance***



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General Insurance Company Limited -vs- Vennila, cited supra
there is a need for a clarification in this regard.

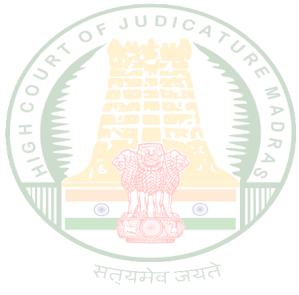
9. The Registry is therefore directed to place the papers before the Honourable Chief Justice with a request to constitute a Bench of appropriate strength to resolve the following:

- 1. Whether the Consumer Price Index adopted by the Central and State Government to revise wages or the Cost Inflation Index used to calculate capital gains should be used to fix the notional income in order to calculate the loss of income in the case of motor accident claims?*
- 2. How should the notional income be fixed in the case of the unorganised sector which forms a chunk of the claims that are filed before the Motor Accident Claims Tribunal?*

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