



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

and

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A(MD)No.1373 of 2013

WEB COPY

1.A.Mathumathi

2.Minor A.Dhurveshraj,
Rep. by his mother & natural
guardian 1st petitioner

3.G.Yamunadevi : Appellants / Petitioners

Vs.

1.K.Annamalai

2.The Divisional Manager,
Oriental Insurance Company Ltd.,
II - Floor, S.V.Complex,
No.179, Eswaran Koil Street,
Pondicherry - 605 001.

: Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 04.02.2013 made in M.C.O.P.No.1685 of 2010 on the file of the Motor Accident Claims Tribunal(V Additional District Judge), Madurai.

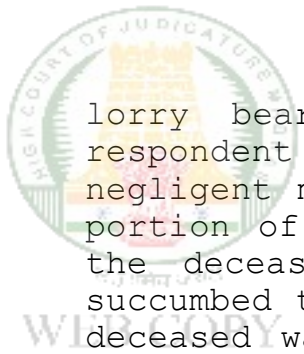
For Appellants	: Mr.S.Srinivasa Raghavan
For R-1	: No Appearance
For R-2	: Mr.K.Bhaskaran

JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

Being aggrieved by the award and decree dated 04.02.2013 passed by the Motor Accidents Claims Tribunal (V Additional District Judge), Madurai in M.C.O.P.No.1685 of 2010 in respect of the quantum of compensation awarded to the claimants for the death of one Arikrishnaraja in a road traffic accident occurred on 04.12.2009, the appellants/claimants, have preferred this Civil Miscellaneous Appeal.

2. Brief facts are that on 04.12.2009 at about 9.00 p.m., when the deceased Arikrishnaraja was travelling along with his driver in a Maruthi 800 car, bearing Registration No.TN-22-AS-5556 from Chennai to Madurai, near Vanchinagaram four way track, a



lorry bearing Registration No.TN-37-B-9597 owned by the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the car and ran over the front portion of the car and caused the accident. In the said accident, the deceased sustained grievous injuries all over the body and succumbed to the injuries sustained. At the time of accident, the deceased was aged 33 years and was the proprietor of Mechanic on Wheels, Pallavaram, Chennai and a Director of Alvis Agro Foods(P) Ltd., Pallavaram, Chennai. Regarding the accident, a Criminal Case was registered against the driver of the lorry and subsequently, charge sheet was also laid as against the driver of the lorry. Alleging that the accident was due to rash and negligent driving of the lorry, the Claimants, who are the wife, children and mother, have filed the claim petition claiming compensation of Rs.50,00,000/-.

3. Resisting the Claim Petition, the Insurance Company has filed counter contending that the accident occurred only due to the reckless act of the deceased and the quantum of compensation claimed by Claimants is highly excessive and without any basis.

4. Before the Tribunal, wife of the deceased - Madhumathi was examined herself as P.W.1 besides examining Eye-witness Rajkumar as P.W.2 and Exs.P1 to P12 were marked on the side of Claimants. On the side of the Insurance Company, two witnesses were examined as R.W.1 and R.W.2, Ex.R1-Advocate notice sent to R.W.1 and Ex.R.2-Expert opinion given by R.W.2 about the Income Tax Statement, were also marked.

5. Upon consideration of evidence of P.W.2 eye-witness and referring to Ex.P.1 - FIR registered against the driver of the lorry, the Tribunal held that the accident had occurred due to the rash and negligent driving of the lorry and the deceased subsequently died of the injuries sustained in the accident. The Tribunal further held that the second respondent Insurance Company is liable to pay compensation to the Claimants. Accordingly, the Tribunal had awarded a total compensation of Rs.8,93,272/- under various heads.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. The learned counsel appearing for the appellants/claimants placed reliance on the decision of a Division of this Court in **Andal and two others v. Avinav Kannan and another** reported in **2019 (1) TN MAC 54(DB)**, for the determination of notional income of a person, who died in a road accident, wherein as there was no evidence for the monthly income of the deceased, as per the decision of the Honourable Supreme Court in **Syed Sadiq v. United India Insurance Company Ltd.**, reported in **2014(1) TN MAC 459**, a sum of Rs.6,500/- per month was fixed and it was to be increased corresponding to the cost of living, prices of the essentials and inflation and the Division Bench had considered the said aspect and



evaluated the notional income for determining the notional income, which reads as follows:

"12. Therefore, it is just and necessary to increase the Notional Income of Rs.6,500/- fixed by the Hon'ble Apex Court during the year 2008 corresponding to the cost of living, prices of the essentials and inflation. Hence to determine the Notional Income of the deceased who was working as a Daily Wager in "The Ark Chicken Mutton Corner" in the year 2014. We decided to apply the Cost of Inflation Index as issued by the Central Board of Direct Tax (CBDT) for the purpose of determination of Notional Income of the deceased person.

13. The CBDT vide Notification No.370142(E) (No.26 of 2008(F.No.37042/3/2008-TPL), dated 13.06.2008 specifies the Cost of Inflation Index as mentioned in Column No.3 for the financial year mentioned in the corresponding entry in Column No.2 in the below said Tabular Column:

S.No	Financial Year	Cost Inflation Index
1.	2001-2002	100
2.	2002-2003	105
3.	2003-2004	109
4.	2004-2005	113
5.	2005-2006	117
6.	2006-2007	122
7.	2007-2008	129
8.	2008-2009	137
9.	2009-2010	148
10.	2010-2011	167
11.	2011-2012	184
12.	2012-2013	200
13.	2013-2014	220
14.	2014-2015	240
15.	2015-2016	254
16.	2016-2017	264
17.	2017-2018	272
18.	2018-2019	280



14. As per the above said index, the Cost of Inflation Index for the year as 2007-2008 is 129 and for the year 2013-2014 will be 220. Now we determine the Notional Income of the deceased in the manner stated below:

The Notional Income fixed by the
Hon'ble Supreme Court of India X Cost of Inflation Index for the
for the vegetable vendor i.e., year 2013-2014
Rs.6,500 during the year 2007-2008

Cost of Inflation Index for the year 2007-2008

Therefore, Income for the deceased is Rs.6,500 X 220
----- = Rs.11,085
129

The Notional Income of the deceased after applying Inflation Index, will be a sum of Rs.11,085. Hence, we re-fix the Notional Income of the deceased as Rs.11,000 from Rs.6,500. Therefore, we hold that the Tribunal committed error in fixing the Notional Income of the deceased as stated above.

8. In the instant case, as per the above calculation, taking the notional income of the deceased as Rs.6,500/- per month and after considering the Cost of Inflation Index, the monthly income, would be calculated as follows:

6,500 X 148
----- = Rs.7,457/-
129

9. By adding the future prospectus at 40% considering the age of the deceased, i.e., Rs.2,982/- monthly income would be Rs.7,457/- + Rs.2,982/- = Rs.10,439/-. From the above sum, 1/3rd amount has to be deducted towards personal expenses, the loss of income would be Rs.6,960/-(Rs.10,439 - Rs.3,479/-) per month and annually, it would be Rs.83,520/- (Rs.6,960/- x 12) and after applying multiplier '16', the total loss of income would be Rs.13,36,320/- (Rs.83,520 x 16). For transport expenses, the Tribunal had not awarded any amount and hence, a sum of Rs.10,000/- is awarded under the said head. Under all other heads also the Tribunal awarded a meagre sum and hence, the award passed by the Tribunal is modified as follows:

11. Accordingly, the Award of the Tribunal is modified as follows:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted



1.	Loss of income	8,64,272/- (longevity of life and expectation of future benefits)	13,36,320	enhanced
2.	Loss of consortium	25,000 (loss of consortium to the first appellant 10,000 + loss of love and affection to all the three claimants 15,000)	1,20,000/- (3 x 40,000)	enhanced
3.	Funeral expenses	2,000	18,000	enhanced
4.	Loss of Estate	2,000	15,000	enhanced
5.	Transport Expenses	-	10,000	awarded
	Total	Rs.8,93,272	Rs.14,99,320 (Rounded off to Rs.15,00,000)	Enhanced a sum of Rs.6,06,728/-

12. In the result, the Civil Miscellaneous Appeal is allowed in part as follows:-

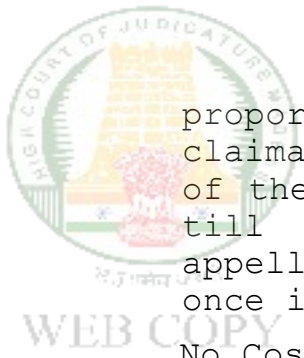
(i) The Award of the Tribunal is enhanced to Rs.15,00,000/- (Rupees Fifteen Lakhs Only) from Rs.8,93,272/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The Award amount is apportioned as per the award of the Tribunal.

(iv) The second respondent/Insurance Company is directed to deposit the entire modified award amount together with accrued interest and costs, less the amount already deposited, to the credit of M.C.O.P.No.1685 of 2010 on the file of the Motor Accident Claims Tribunal (V Additional District Judge, Madurai), within a period of eight weeks from the date of receipt of copy of this judgement.

(v) The appellants 1 and 3/claimants 1 and 3 are permitted to withdraw their respective share with



proportionate interest and cost. The share of the minor claimant/second appellant is permitted to be kept in any of the Nationalised Banks in an interest bearing deposit, till he attains majority and the guardian / first appellant is permitted to withdraw the interest amount once in three months.

No Costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

To

1.The Motor Accident Claims Tribunal
(V Additional District Judge), Madurai.

2.The Section Officer, (2 COPIES)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.S.SRINIVASA RAGHAVAN, Advocate (SR-6745[F] dated 23/02/2021)

+1 CC to MR.K.BHASKARAN, Advocate (SR-6894[F] dated 24/02/2021)

Judgment made in

C.M.A(MD)No.1373 of 2013

22.02.2021

VB (12.03.2021) 6P 6C