IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1338 of 2021

1. Malarvizhi
2. S. Kaviya ... Appellants / Petitioners

Vs.

1. R. Revathi

2. M/s. United India Insurance
Company Limited,
Divisional Office,
No.9/1/2, Ramakrishnapuram North
Karur 639001

3. I.R. Jegadeesan ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 05.03.2020 passed in M.C.O.P. No.778 of 2016 on the file of the Motor Accident Claims Tribunal / Additional District Court (FAC), Namakkal.

For Appellant : Mr. C. Thangaraju

For RR1 & 3 : No Appearance

For R2 : Mr. J. Chandran

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No.778 of 2016, dated 05.03.2020 on the file of the Motor Accident Claims Tribunal / Additional District Court (FAC), Namakkal.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 25.02.2016 at about 02:30PM, the deceased Sellappan was riding a Unicorn motor cycle bearing Registration No.TN-12-A-5333 on the Namakkal to Mohanur Road, while he reached near Parali Pirivu road, an Indica Car bearing Registration No.TN-47-J-0777 belongs to the first respondent, driven by its driver in a rash and negligent manner has hit against the motor cycle of the deceased, thereby causing serious injuries to the deceased. Thereafter, the deceased was given first aid at Government Hospital, Namakkal and then shifted to Neuro Foundation, Salem, where he succumbed to injuries on 22.03.2016. A criminal case was also registered

against the driver of the first respondent's Indica Car bearing Registration No.TN-47-J-0777 in Cr. No.54/2016 U/s.279, 338 & alter 304(A) of I.P.C. on the file of Mohanur Police station. For the loss of the deceased Sellappan, the claimants, who are the wife and daughter of the deceased has come forward with a claim petition seeking compensation for a sum of Rs.50,00,000/- under section 166 of the Motor Vehicles Act.

4. The first respondent is the owner of the Indica Car bearing Registration No.TN-47-J-0777 has not contested the claim and remained ex-parte. The second respondent- insurance company, who is the insurer of the Indica car has filed a counter denying the manner in which the accident was taken place and contended that the accident was only taken place due to the rash and negligence on the part of the deceased, who has not wore helmet at the time of accident and suddenly turned his two wheeler towards the right hand side of the road, thereby dashed against the first respondent car and invited the accident. The insurance company also disputed the age, occupation, income of the deceased and dependency of the claimants and further contended that the compensation claimed under the various heads is on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, the first claimant was examined as P.W.1 and the eye witness to the occurrence was examined as P.W.2 and Exs.P.1 to P.21 were marked. On the side of the second respondent, no witnesses were examined and Ex.R.1 was marked.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the driver of the first respondent's Indica Car bearing Registration No.TN-47-J-0777 alone is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.15,46,568/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization to the claimants. The Tribunal also fixed the liability on the part of the second respondent – insurance company to indemnify the first respondent and to pay the compensation to the claimants.

7. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have filed this appeal seeking enhancement of compensation for their deceased son.

8. The learned counsel appearing for the claimants has submitted that the Tribunal has not properly appreciated the evidence placed on record regarding the employment and monthly earnings of the deceased and fixed Rs.8,000/- as notional monthly income and awarded compensation, which is on the lower side. The learned counsel has further submitted that the compensation awarded under other heads is on the lower side, hence prays to enhance the same.

9. Per contra, the learned counsel appearing for the respondent – insurance company has submitted that based on the evidences placed on record, the Tribunal has rightly fixed the notional income of the deceased and also awarded just compensation, hence prays to confirm the award of the Tribunal.

10. Heard the submissions made on both sides and perused the materials available on record, I am of the view that the major contention raised by the learned counsel appearing for the claimants is with regard to the notional monthly income fixed on the deceased and quantum of compensation awarded by the Tribunal and the insurance company has not

preferred any appeal regarding the quantum of compensation or liability fixed on them.

11. In this case, P.W.1 has categorically stated that the deceased Sellappan was working as a Manager in ACD promoters and earning Rs.25,000/- per month. However, the Tribunal has not appreciated the same stating that no evidences were placed regarding the income earned, salary slip or pay bills and also income tax returns filed by the deceased, hence the Tribunal has fixed the monthly notional income of the deceased as Rs.8,000/- per month and awarded compensation under the head loss of dependency. However, this Court considering the age and year of the accident finds that the notional income fixed on the deceased by the Tribunal is on the lower side. The Division Bench judgment of this Court in ***Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]*** has laid down guidelines for fixing the notional income of various categories of persons whose income has not been proved and based on cost of index filed by CBDT, the notional income was permitted to be fixed, based on Apex Court judgement of ***Syed Sadiq Vs. United India Insurance Company [2014 (1) TNMAC 459],*** held in paragraph nos.11, 12, 13 and 14

as follows:

"11. However, the Tribunal had accepted the views, principles and the method of income arrived by the Apex Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459 case. In the said case the Hon'ble Apex Court fixed the monthly notional income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. The Tribunal also took the same figure of Rs.6,500/- for the deceased who met with accident and died during the year 2014. However, the Tribunal failed to consider that the accident occurred during the year 2014 and other factors as mentioned below before fixing the monthly salary of the deceased.

(i) The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.

(ii) The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees

one lakh.

(iii) Although, the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhacement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour.

"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.26/2008) (F.No.370/42/3/2008-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 of 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 (i.e., Rs.6,500/-)	*X*	*Cost of Inflation Index for the vegetable vendor for the year 2013-2014*

129

i.e., (Rs.6,500/- X 220)/ 129 = Rs.11,085/-(notional *income of the deceased)"*

12. Hence, this Court is inclined to modify the notional income fixed by the Tribunal based on the dictum laid down in the Hon'ble Apex Court judgment cited supra and the same is calculated as follows:

Date of accident	= 25.02.2016
Cost of Inflation index	= 254 (Financial Year 2015-2016)
Notional income of the deceased	= (6,500/- x 254) / (129)
	= Rs.12,798.45/-
	= **Rs. 12,800/- (Round off)**

13. The Tribunal has rightly followed the dictum as laid down in ***National Insurance Co. Ltd., vs. Pranay Sethi and other*** reported in ***[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]*** and fixed 10% as future prospectus and as per ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and others*** reported in ***[2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the multiplier is fixed as '11' by considering the age of the deceased at the time of the accident. The Ex.P.15, the driving licence of the deceased, shows that the deceased is aged about 51 years at the time of accident, hence, this Court finds no infirmity in the above fixing of future prospectus and multiplier adopted by the Tribunal and hence, confirms the same. After deducting one- third (1/3) of his monthly income towards his personal and

living expenses, the compensation under loss of dependency with modified monthly notional income of Rs.12,800/- is assessed as follows:

Annual income (Rs.12,800/- x 12)	= Rs.1,53,600/-
Future prospects @ 10%	= Rs.15,360/-
Yearly income of the deceased	= Rs.1,68,960/-
Yearly contribution to his family (deduction of 1/3)	= Rs.1,12,640/-
Applicable Multiplier	= 11
Total compensation (Rs.1,12,640/- X 11)	= Rs.12,39,040/-

14. The Tribunal has awarded compensation under the head loss of spouse consortium of Rs.40,000/- to the first claimant, however, as per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram*** reported in ***2018 ACJ 2018,*** all the claimants herein are entitled for consortium. Hence, this Court is inclined to grant spouse consortium and parental consortium of Rs.40,000/- each to the wife and daughter of the deceased Sellappan, respectively as per the Apex Court Judgment stated supra. Whereas the other heads are concerned, the compensation awarded by the Tribunal are just and the same are hereby confirmed.

15. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	7,74,444/-	12,39,040/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	45,000/-	80,000/-	Enhanced
5.	Medical expenses	6,97,124/-	6,97,124/-	Confirmed
6.	Transport expenses	5,000/-	5,000/-	Confirmed
	Total Compensation	15,46,568/-	**20,51,164/-**	**Enhanced**

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs. 15,46,568/-is hereby enhanced to **Rs.20,51,164/- [Rupees Twenty Lakh Fifty One Thousand One Hundred and Sixty Four only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.778 of 2016 on the file of the

Additional District Judge (FAC), Motor Accidents Claims Tribunal, Namakkal. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

21.11.2023

stn
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Special Subordinate Judge,
 Motor Accident Claims Tribunal,
 Coimbatore.

2. The Section Officer,
 V.R.Section,
 High Court, Chennai.

K. RAJASEKAR, J.

stn

C.M.A. No. 1338 of 2021

21.11.2023