IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1344 of 2021

1. Poongodi
2. Minor Dharishini
3. Arukkani ... Appellants / Petitioners

Vs.

1. Arthanari

2. The United India Insurance Co. Ltd.,
104-A, Ranga Building,
Peramanur Main Road,
Near Four Roads, Salem - 636 007. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 16.02.2021 passed in M.C.O.P. No.998 of 2018 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem.

For Appellant	:	Mr. C. Paraneedharan
For R1	:	No Appearance
For R2	:	Mr. C. Paranthaman

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation and challenging the liability of contributory negligence fixed on the deceased-Muthusamy, as per the Judgment and Decree passed in M.C.O.P. No.998 of 2018, dated 16.02.2021 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem.

2. For the sake of convenience, the parties are referred to herein according to their litigative status and rank before the Tribunal. The case in brief is as follows.

3. On 04.03.2018, at about 04:00PM, the deceased Muthusamy was riding a two wheeler bearing Registration No. TN-30-P-4678 on Salem to Tiruchengode main road, while he reached near Kozhikkalnatham branch road, a car bearing Registration No.TN-30-P-9997 came behind him in high speed and negligent manner, hit on the backside of the two wheeler of the deceased, which resulted in instant death of the deceased. A criminal case

was also registered against the driver of the car bearing Registration No.TN-30-P-9997 in Cr.No.94/2018 on the file Mallasamudram Police station. The deceased Muthusamy was aged about 53 years at the time of accident and he was working as a daily wager, earning Rs.15,000/- per month. Due to loss of deceased Muthusamy, the claimants, who are the wife, daughter and mother of the deceased has come forward with a claim petition seeking compensation for a sum of Rs.25,00,000/- under section 166 of Motor Vehicles Act.

4. The first respondent, who is the owner of the car bearing Registration No.TN-30-P-9997 has not contested the claim and remained ex-parte. The second respondent - insurance company, who is the insurer of the first respondent's car has filed a counter and contested the claim by stating that the accident has taken place only due to the negligent act on the part of the deceased who has, all of a sudden, tried to over take a car on the main road without following the traffic rules, hit on the front side of the car, fell down in front of the vehicle and invited the accident. The insurance company also contended that the deceased was not holding a valid driving licence to drive the two wheeler and did not wear helmet at the time of

occurrence. The insurance company also disputed the age, occupation and income of the deceased and contended that the compensation claimed under various heads is on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.13 were marked. On the side of the respondents, no witnesses were examined and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in point Nos.1 and 2, has held that the driver of the first respondent car bearing Registration No.TN-30-P-9997 as well as the deceased, who was not holding a valid driving licence and did not wear a helmet at the time of occurrence are responsible for the accident, hence fixed contributory negligence of 20% on the part of the deceased. In point no.3, the Tribunal has held that the 2nd petitioner/ claimant is not a legal heir or a dependent of the deceased. In point no.4, the Tribunal has quantified and granted compensation for a sum of Rs.7,66,960/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the quantum of compensation and the liability of contributory negligence fixed on the part of the deceased by the Tribunal, the claimants have come forward with this appeal.

8. The learned counsel appearing for the claimants has submitted that the Tribunal without any evidence held that the deceased has also contributed to the accident and fixed 20% on the ground that he was not holding a valid driving licence and not wearing helmet at the time of accident. He has also contended that the compensation awarded under various heads is on the lower side, hence prays to set aside the award of contributory negligence fixed on the deceased and to enhance the compensation award by the Tribunal.

9. Per contra, the learned counsel appearing for the insurance company has submitted that based on the evidences placed on record, the Tribunal has rightly held that the deceased was not holding a valid driving licence to ride the two wheeler and not wore a helmet at the time of occurrence. Further, submitted that that the compensation awarded under

various heads are just, and prays to confirm the award of the Tribunal.

10. Heard submissions made on both sides and perused the materials placed on record:

11. Award of Tribunal shows that based on the post-mortem certificate-Ex.P.2, has held that the head injuries sustained by the deceased at the time of occurrence has resulted in his instantaneous death.

12. Evidence of the eye witness-P.W.2 shows that while the deceased was trying to cross, from North to South direction, Tiruchengode to Salem main road, the offending car bearing Registration No.TN-30-P-9997, which came opposite side had hit against the two wheeler thereby the accident has taken place. The Tribunal has held that the accident was taken place in the branch road, where the deceased was heading towards Kozhikkalnatham. If the deceased was wearing headgear/helmet, he would not have succumbed to head injuries. Before the Tribunal, the claimants have failed to produce a valid driving licence of the deceased. Based on the above facts, the Tribunal has fixed contributory negligence of 20% on the part of the deceased.

13. This Court in ***C.M.A.(MD). No. 987 of 2014, Branch Manager (Oriental Insurance Company Limited) vs. Indirani and others*** has held that, driving a two wheeler without protective headgear is violation of Motor Vehicle Act, hence, it amounts to negligence act. This Court has observed as follows:

> *"11. Without wearing a helmet, no rider can drive the two wheeler and as per Section 129 of the Motor Vehicles Act, 1988, it is mandatory. Section 129 of the Motor Vehicles Act, 1988, is usefully extracted hereunder:*
>
> ***"129. Wearing of protective headgear.-*** *Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear [protective headgear conforming to the standards of Bureau of Indian Standards]:*
>
> *Provide that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:*
>
> *Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.*
>
> *Explantion.- "Protective headgear"means a helmet which,-*
> *(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the even of an accident; and*

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

14. In this case, the claimants have not produced driving licence of deceased and based on the specific plea made by the Insurance Company, Tribunal has held that, there is contributory negligence and this factual aspects have not been disputed in this appeal.

15. In view of the above aspects, the contributory negligence of 20% fixed on the part of the deceased by the Tribunal is permissible and this Court is not inclined to modify the award and the same is hereby confirmed.

16. With regard to quantum of compensation, the Tribunal has fixed monthly notional income of Rs.9,000/- to the deceased, which this Court finds the same is on the lower side, since the accident was taken place in the year 2018 and as per the Division Bench judgment of this Court in ***Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]*** which provides guidelines for fixing notional income as per the Cost

of Index issued by the ***CBDT vide Notification No.370142(E)(No.26/2008) (F.No.370/42/3/2008-TPL), dated 13.06.2008,*** 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)"

17. 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	= 04.03.2018
Cost of Inflation index	= 272 (Financial Year 2017-2018)
Notional income of the deceased	= (6,500/- x 272) / (129) = Rs.13,705.426/- = Rounded to **Rs.13,700/-**

18. 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. On perusal of the evidence placed on record, the

deceased is aged about 53 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 income with modified monthly notional income of Rs.13,700/-is assessed as follows:

Annual income (Rs.13,700/- x 12)	= Rs.1,64,400/-
Future prospects @ 10%	= Rs.16,400/-
Yearly income of the deceased	= Rs.1,80,800/-
Yearly contribution to his family	= Rs.1,20,534/-
Applicable Multiplier	= 11
Total compensation (Rs.1,20,534/- x 11)	= Rs.13,25,874/-

19. The Tribunal has awarded Rs.40,000/- towards loss of spouse consortium but as per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram*** reported in ***2018 ACJ 2018,*** all the claimants are entitled for consortium.

20. In this case, the Tribunal in its award has held that there is no evidence to substantiate that second claimant is adopted daughter, but evidence placed on record shows that she is also dependant of the deceased. When there is an unimpeaching evidence placed on record, the rejection of

the dependency of the 2nd claimant, who is a minor, is not proper. The evidence of P.W.1, who is the adopted mother has to be accepted. The reason stated by the Tribunal that adopted daughter is not legal heir is also legally not sustainable and adopted daughter is entitled for compensation for the death of her adopted father. Accordingly, this Court is inclined to modify the loss of consortium to Rs.40,000/- each to the wife, adopted daughter and mother of the deceased. Whereas the other heads are concerned, the compensation awarded by the Tribunal are just and the same are hereby confirmed.

21. 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	6,96,960/- (after deducting 20% contributory negligence)	13,25,874/-	Enhanced
2.	loss of consortium	40,000/-	1,20,000/-	Enhanced
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	7,66,960/-	14,75,874/-	Enhanced
	Deduction with respect to 20% Contributory	---	2,95,175/-	

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
	negligence			
	Total Compensation	7,66,960/-	**11,80,699/-**	**Enhanced**

22. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,66,960/- is hereby enhanced to **Rs.11,80,699/- [Rupees Eleven Lakhs Eighty Thousand Six Hundred and Ninety Nine 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 first appellant/ Poongodi is entitled for Rs.7,00,000/- alongwith interest and cost. The second appellant/ Minor Dharishini is entitled for Rs.3,00,000/- alongwith interest and cost. The third appellant/ Arukkani is entitled for Rs.1,80,699/- alongwith interest and cost. 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.998 of 2018 on the file of the Special District Judge, Motor Accidents Claims Tribunal, Salem. On such deposit, the appellants/claimants 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 this Court. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Accounts 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.

22.11.2023

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

To:

1. The Special District Judge,
   Motor Accident Claims Tribunal,
   Salem.

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

K. RAJASEKAR, J.

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C.M.A. No. 1344 of 2021

22.11.2023