IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. Nos. 2079 and 2529 of 2021

(a). C.M.A. No.2079 of 2021

1. Sudha
2. Minor Pooja
3. Minor Kanisha
4. Thanigachalam ... Appellants / Petitioners

Vs.

1. Rajendran

2. M/s. Shriram General Insurance Co. Ltd.,
No.5-F, Sachin Plaza,
Reddiyur, Block No.1,
Shriram Nagar,
Alagapuram, Salem - 16. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 09.02.2021 passed in M.C.O.P. No.1580 of 2018 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem.

For Appellant : Mr. M. Guruprasad
For R1 : D/W
For R2 : Mr. S. Dhakshnamoorthy

(b). C.M.A. No.2529 of 2021

Sathish ... Appellant / Petitioner

Vs.

1. Rajendran

2. M/s. Shriram General Insurance Co. Ltd.,
No.5-F, Sachin Plaza,
Reddiyur, Block No.1,
Shriram Nagar,
Alagapuram, Salem - 16. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 09.02.2021 passed in M.C.O.P. No.06 of 2019 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem.

For Appellant	:	Mr. M. Guruprasad
For R1	:	D/w
For R2	:	M/s. V. Pushpa

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JUDGMENT

These Civil Miscellaneous appeals arising out of the common award passed in M.C.O.P. Nos.1580 of 2018 and 06 of 2019 on the file of the Special District Judge, M.C.O.P. Tribunal, Salem, dated 09.02.2021. As far as M.C.O.P. No. 1580 of 2019 is concerned, the claim petition is filed for seeking compensation for a sum of Rs.50,00,000/- for the death of Gopinath, who died in a motor accident occurred on 10.09.2018. The M.C.O.P. No.06

of 2019 is filed for seeking compensation for a sum of Rs.13,00,000/- for the injuries sustained by the claimant namely Sathish in the above same accident.

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

3. The case of the both the claim petitions is that on 10.09.2018, the deceased Gopinath was riding a two wheeler bearing Registration No.TN-34-K-6264 along with injured Sathish, who was a pillion rider on Pallipalaym - Tiruchengode main road. While, they reached near selvam Powerloom Factory, Aalampalayam, a Mahindra Maximo Vehicle bearing Registration No.TN-37-BP-4937 came in the opposite direction driven by its driver in rash and negligent manner, dashed against the two wheeler of the deceased, causing instantaneous death to the rider Gopinath in M.C.O.P. No.1580 of 2018 and serious injuries to the claimant Sathish in M.C.O.P. No. 06 of 2019. A criminal case was also registered against the driver of the goods vehicle bearing Registration No.TN-37-BP-4937 in Cr.No.549 of 2018 U/s. 279,304-A and 337 of I.P.C on the file of the Pallipalayam Police

Station. Due to loss of deceased Gopinath, the claimants, who are the mother, children and father of the deceased has come forward with a claim petition in M.C.O.P. No. 1580 of 2018 seeking compensation for a sum of Rs.50,00,000/- along with interest and the claim petition in M.C.O.P. No. 06 of 2019 has been filed by the injured seeking compensation for a sum of Rs.13,00,000/- along with interest and both these petitions have been filed U/s. 166 of Motor Vehicles Act.

4. The first respondent is the owner of the Mahindra Maximo goods vehicle bearing Registration No.TN-37-BP-4937 has not contested the claim and remained ex-parte. The second respondent - insurance company has filed a counter and disputed the manner in which the accident has taken place and also contended that the accident was taken place only due to the rash and negligent riding of the deceased, who suddenly moved to right side in the busy road without noticing the first respondent's vehicle, which resulted in accident. The insurance company also disputed the age, occupation, income of the deceased and the claimant in both the petitions. The insurance company also submitted that both the deceased and claimant was not wearing helmet at the time of accident and further contended that

the compensation claimed under various heads is on the higher side, hence prays to dismiss the claim petitions.

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.30 and Ex.C.1 were marked. On the side of the respondents, R.W.1 was examined and Exs.R1 and R.2 were marked.

6. Based on the evidence placed on record, the Tribunal in point Nos.1 and 2, has held that driver of the Mahindra Maximo goods vehicle bearing Registration No.TN-37-BP-4937 is responsible for the accident and held that he is a tortfeasor and contributory negligence of 15% is fixed on the part of the deceased Gopinath, who rode the two wheeler without wearing a helmet at the time of accident. In point no.3, the Tribunal has held that the driver of the offending goods vehicle has not possess a valid batch, which is mandate to drive a transport vehicle, hence directed the second respondent - insurance company to pay the compensation to the claimants in both the claim petitions and recover the same from the first respondent, who is the owner of the offending vehicle. In point no.4, the

Tribunal has quantified and granted compensation for a sum of Rs.13,55,200/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization for the claim made under M.C.O.P. No.1580 of 2018 and granted compensation for a sum of Rs.3,24,898/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization for the claim made under M.C.O.P. No.06 of 2019.

7. Aggrieved over the award of compensation, the claimants in both the claim petitions have come forward with separate appeals seeking enhancement of compensation.

8. The learned counsel appearing for the claimants have submitted that the Tribunal without proper appreciation of the evidence placed on record, has fixed notional income of Rs.9,000/- per month, which is not proper, hence prays to modify the same based on the evidence placed on record more particularly, the evidence relating to the avocation of the deceased and also contended that the compensation awarded under various heads is on the lower side, hence prays to modify and enhance the compensation.

9. Per contra, the learned counsel for the insurance company has submitted that the Tribunal based on the evidence placed on record has granted a just compensation and there is no need of modifications and as far as the deceased is concerned, the Tribunal has not properly deducted towards the personal expenses, hence prays to confirm the same.

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

11. The case in M.C.O.P. No.1850 of 2021, it is stated that the deceased Gopinath was a tourist taxi driver and to prove his avocation, the claimants have examined P.W.3, who is the employer of the deceased and Ex.P.27, the payments made to the deceased was also marked. The P.W.3 has stated that he was running a travels by engaging various drivers and the deceased received Rs.18,000/- per month but there is no appropriate documents to show that the payment of salary to the deceased by the P.W.3. Hence, the Tribunal has rejected the evidence of P.W.3 and fixed monthly notional income of Rs.9,000/-.

12. On perusal of evidence of P.W.3 the employer of the deceased shows that, even though, the avocation of the deceased could be accepted, but evidence of payment of Rs.20,165/- is not supported by acceptable documentary evidence. However, this Court finds the notional income fixed on the deceased who is a driver, 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*

S.No.	*Financial Year*	*Cost of Inflation Index*
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*

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

13. 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	= 10.09.2018
Cost of Inflation index	= 280 (Financial Year 2018-2019)
Notional income of the deceased	= (6,500/- x 280) / (129)
	= Rs.14,108.52/-
	= **Rs. 14,109/- (Round off)**

14. 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 40% 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 '15' by considering the age of the deceased at the time of the accident. The Ex.P.7, the driving licence of the deceased, in which the date of birth of the deceased is mentioned as 20.04.1980, hence, the deceased is aged about 38 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.14,109/- is assessed as follows:

Annual income (Rs.14,109/- x 12)	= Rs.1,69,308/-
Future prospects @ 40%	= Rs.67,723.20
Yearly income of the deceased	= Rs.2,37,031.20
Yearly contribution to his family (deduction of 1/3)	= Rs.1,58,020.80
Applicable Multiplier	= 15
Total compensation (Rs.1,58,020.80 x 15)	= Rs.23,70,312/-

15. The Tribunal in its award has held that the deceased was also

contributed to the accident to the extent of 15% by not wearing helmet at the time of accident. The Ex.P.2, the postmortem certificate shows that the deceased has sustained grievous head injuries during the accident and succumbed to injuries. This Court judgment in ***C.M.A.(MD). No. 987 of 2014, Branch Manager (Oriental Insurance Company Limited) vs. Indirani and others*** has held 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."

16. In view of the above, this Court is inclined to confirm the contributory negligence of 15% fixed on the part of the deceased by the Tribunal.

17. 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. In this case, the claimants are the wife, children and father of the claimant, hence, this Court is inclined to grant the claimants spouse consortium, parental consortium and filial consortium to the wife, children and father of the deceased Gopinath, respectively as per the Apex Court Judgment stated supra, accordingly, this Court is inclined to modify the loss of consortium to Rs.40,000/- to each of the wife, children and father of the deceased. Whereas the other heads are concerned, the compensation awarded by the Tribunal are just and the same are hereby confirmed.

18. Accordingly, the award passed by the Tribunal in M.C.O.P. No. 1580 of 2018 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	12,85,200/- (after deducting 15% contributory negligence)	23,70,312/-	Enhanced
2.	loss of consortium	40,000/-	1,60,000/-	Enhanced
3.	Loss of estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	13,55,200/-	25,60,312/-	Enhanced
	Deduction with respect to 15% Contributory negligence	---	3,84,046.80	
	Total Compensation	13,55,200/-	**21,76,265/-** (Round off)	**Enhanced**

19. The injured Sathish, who is the claimant in M.C.O.P. No.06 of 2019 has sustained fracture injuries on the tibia of right leg and in thumb finger of his right arm. The learned counsel for the claimant has made his submission that the claimant was driver by profession and due to the injuries sustained by him, he could not continue his earlier avocation and the disability has drastically reduced his earning capacity, hence prays to grant compensation by adopting multiplier method instead of percentage method

as awarded by the Tribunal. The Ex.C.1, disability certificate of the claimant issued by the medical board states the claimant has sustained 30% permanent disability. On perusal of the disability certificate, the fracture sustained by the claimant is subsequently cured, hence the nature of injury could not be treated as functional permanent disability, so, the Tribunal has rightly awarded compensation by awarding Rs.5,000/- per percentage of disability, as per the norms followed by this Court, hence, this Court is inclined to confirm the same.

20. The Tribunal has not awarded compensation under the head pain and suffering. The Ex.P.18, discharge summary of the injured Sathish shows that he was hospitalized from 10.09.2018 to 15.09.2018 and 18.11.2020 to 21.11.2020, hence the Tribunal treated that the claimant would be unemployed for atleast three months, hence awarded compensation for a sum of Rs.27,000/- (Rs.9,000/- per month) as loss of income during his treatment period. Considering the nature of injury and period of disablement, this Court is inclined to award compensation of Rs.50,000/- under the head pain and suffering. The Tribunal has also awarded Rs.10,000/- each towards extra nourishment and for attender charges and

based on the Ex.P.22, medical bills, the Tribunal has awarded Rs.1,27,898/- towards medical expenses. This Court finds the award of the Tribunal under other heads are just and the same is hereby confirmed.

21. Accordingly, the award passed by the Tribunal in M.C.O.P. No. 06 of 2019 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 income	27,000/-	27,000/-	Confirmed
2.	Permanent Disability	1,50,000/-	1,60,000/-	Confirmed
3.	Nourishment	15,000/-	15,000/-	Confirmed
4.	Attender charges	15,000/-	15,000/-	Confirmed
5.	Medical bills	1,27,898/-	1,27,898/-	Confirmed
6.	Pain and Suffering	---	50,000/-	Granted
	Total Compensation	3,24,898/-	**3,74,898/-**	**Enhanced**

22. In the result, these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal in M.C.O.P. No.1580 of 2018 at Rs.13,55,200/- is hereby enhanced to **Rs.21,76,265/- [Rupees Twenty One Lakh Seventy Six Thousand Two Hundred and Sixty Five only]** and in M.C.O.P. No.06 of 2019 at Rs.3,24,898/- is hereby

enhanced to **Rs.3,74,898/- [Rupees Three Lakh Seventy Four Thousand Eight Hundred and Ninety Eight 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.Nos.1580 of 2018 and 06 of 2019 on the file of the Special District Judge, Motor Accidents Claims Tribunal, Salem and to recover the same from the first respondent thereafter. 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. The claimants in M.C.O.P. No.1580 of 2018 are entitled for compensation 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. The claimants are not entitled for interest to the compensation for the default period if any. Consequently, connected civil miscellaneous petition is closed. There shall be no order as to costs in the present appeal.

29.11.2023

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

To:

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

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

K. RAJASEKAR, J.

stn

C.M.A. Nos. 2079 and 2529 of 2021

29.11.2023