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C.M.A. No. 2625 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2625 of 2021

1. A. Veerammal
2. S. Arjunan ... Appellants / Petitioners

Vs.

1. Devanathan
2. The National Insurance Co. Ltd.,
Represented by its Branch Manager,
Office at Vilanur Business Centre,
1st Floor, D4, Bye pass Main Road,
Kuddabakkam Road,
Vilanur - 605 110,
Branch Office at, LRN Building,
Saradha College Road,
Salem-7. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 11.02.2019 made in M.C.O.P. No. 634 of 2017 on the file of the II Additional District Judge, Motor Accident Claims Tribunal, Salem.



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For Appellant : Mr. C. Prabakaran

For R1 : No Appearance

For R2 : M/s. N.B. Surekha

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No. 634 of 2017, dated 11.02.2019 on the file of the II Additional District Judge, Motor Accident Claims Tribunal, Salem.

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

3. On 06.01.2017, at about 10:00 hours, the deceased Mahesh was riding his Splender Plus motorcycle bearing Registration No.PY-01-BA-1559 on Pondicherry to Madagadipet road, while he reached Pallithenal Dhanabakiyam vegetable shop, a Tractor bearing Registration No.TN-31-K-5683 came behind in a rash and negligent manner, hit on the two wheeler of the deceased, causing grievous injuries and the deceased succumbed to injuries in the Government Hospital, Pondicherry. A criminal case was



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registered in Cr.No.10/2017 U/s.279, 337 and 304(A) of IPC against the first respondent on the file of Kandamangalam Police Station, Villupuram District. For the loss of deceased Mahesh, the claimants, who are the parents of the deceased has filed claim petition seeking compensation for a sum of Rs.30,00,000/- under section 166 of the Motor Vehicles Act.

4. The first respondent, who is the driver-cum-owner of the said tractor has filed a counter and stated that the tractor was insured with the second respondent herein and he also possessed a valid driving licence at the time of occurrence, hence contended that he is not liable to pay any compensation awarded.

5. The second respondent - insurance company has filed a counter, disputed the age, occupation and income of the deceased and contended that the accident was taken place only due to the rash and negligence on the part of the deceased. The insurance company further stated that the first respondent was not having a valid driving licence at the time of occurrence and disputed that the said tractor was attached with tipper and plied on the road, which is meant to be used only for agricultural purposes and the



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

6. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.12 were marked. On the side of the respondents, R.W.1 to R.W.3 were examined and Exs.R.1 to R.13 were marked.

7. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the driver of the tractor is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.16,42,800/- along with interest @ 7.5% per annum from the date of filing of claim petition till the date of realization and fixed the liability on the part of the second respondent - insurance company to pay compensation to the claimant and recover the same from the first respondent.

8. Aggrieved over the award, the claimants have filed this appeal seeking enhancement of compensation.



9. 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. The Tribunal has also not awarded compensation under the head consortium, hence prays to enhance the monthly income of the deceased fixed by the Tribunal and award just compensation under various other heads.

10. 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.

11. I have considered the submissions made on both sides and perused the materials available on record.

12. The claimants have categorically stated that the deceased was working as a Civil Supervisor in Amalorpavam Higher Secondary School and



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earning Rs.30,000/- per month. Ex.P.2 to P.4 - letter from the Principal of Amalorpavam School and salary certificates, states that the claimant was working as a Supervisor and getting consolidated pay of Rs.17,000/- however, it shows that the deceased was a temporary employee of the said institution, considering the above discrepancies, Tribunal has rejected the claim of income, and notionally fixed the monthly income of the deceased as Rs.12,000/- and awarded compensation under the head loss of dependency. On consideration of the age and year of the accident this Court 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



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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



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denied that there has been incremental enhancement 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



S.No.	Financial Year	Cost of Inflation Index
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/-)	Cost of Inflation Index for the vegetable vendor for the year 2013-2014
--	---

129

i.e., $(Rs.6,500/- \times 220) / 129 = Rs.11,085/-$ (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



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Court judgment cited supra and the same is calculated as follows:

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Date of accident	= 06.01.2017
Cost of Inflation index	= 264 (Financial Year 2016-2017)
Notional income of the deceased	= (6,500/- x 264) / (129)
	= Rs.13,302.32/-
	= Rs.13,302/- (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 '16' by considering the age of the deceased at the time of the accident. Based on the claim petition and Ex.P.2 - postmortem certificate of the deceased, shows that the deceased is aged about 31 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. The deceased is a bachelor, hence after deducting half (1/2) of his monthly income towards his personal and living expenses, the



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compensation under loss of dependency with modified monthly notional

income of Rs.13,302/- is assessed as follows:

Annual income (Rs.13,302/- x 12)	= Rs.1,59,624/-
Future prospects @ 40%	= Rs.63,849.60
Yearly income of the deceased	= Rs.2,23,473.60
Yearly contribution to his family (deduction of 1/2)	= Rs.1,11,736.80
Applicable Multiplier	= 16
Total compensation (Rs.1,11,736.80 x 16)	= Rs.17,87,788.80
	= Rs.17,87,789/- (round off)

15. The Tribunal has not awarded compensation under the head loss of consortium, hence 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 the claimants filial consortium of Rs.40,000/- each to the parents of the deceased Mahesh, 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.

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



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of dependency	16,12,800/-	17,87,789/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	---	80,000/-	Granted
	Total Compensation	16,42,800/-	18,97,789/-	Enhanced

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,42,800/- is hereby enhanced to **Rs.18,97,789/- [Rupees Eighteen Lakh Ninety Seven Thousand Seven Hundred and Eighty 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 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.634 of 2017 on the file of the II Additional District Judge, Motor Accidents Claims Tribunal, Salem and recover the same from the first respondent. On such deposit, the appellants are permitted to withdraw the award amount now determined by this Court



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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.

13.12.2023

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The II Additional District Judge,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R. Section,
High Court, Chennai.

K. RAJASEKAR, J.



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