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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1970 of 2021

1. S. Mallika
2. R. Subramani
3. S. Anusuya ... Appellants / Petitioners

Vs.

1. A. Saravanan

2. M/s. United India Insurance Company Ltd.,
No.2, Bhuvaneswari Complex,
Sankaran Road,
Namakkal - 637 001. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 03.03.2020 passed in M.C.O.P. No. 179 of 2017 on the file of the Additional District Judge, Motor Accident Claims Tribunal, Additional District Court (FAC), Namakkal.

For Appellants	:	Mr. Ma. P. Thangavel
For R1	:	No Appearance
For R2	:	M/s. I. Malar

JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No. 179 of 2017, dated 03.03.2020 on the file of the Additional District Judge, 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 12.11.2016 at about 05:30PM, the deceased Ashok was riding a Yamaha two wheeler bearing Registration No.TN-88-B-0781 on A.S. Pettai to Karuppattypalaiyam Main road with due care and caution by observing traffic rules, while he reached near E.B. Colny cut road, a Maruthi Omni Van bearing Registration No.TN-28-AZ-9364 driven by its driver in a rash and negligent manner came in the opposite direction and hit against the two wheeler of the deceased, thereby causing serious injuries to the deceased and thereafter the deceased succumbed to injuries on the way to Government Hospital, Namakkal. A criminal case was also registered against the driver of the Maruthi Omni Van bearing Registration No.TN-28-AZ-9364 in Cr.No.1066/16 U/s.279, 304(a) I.P.C. on the file of Namakkal police station.

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For the loss of deceased Ashok, the claimants, who are the parents and sister of the deceased has come forward with a claim petition seeking compensation for a sum of Rs.30,00,000/- under section 166 of Motor Vehicles Act.

4. The first respondent is the owner of the Maruthi Omni Van bearing Registration No.TN-28-AZ-9364 has not contested the claim and remained ex-parte. The second respondent – insurance company, who is the insurer of the first respondent Maruthi Omni Van has filed a counter and denied the manner in which the accident has taken place and contended that the accident was taken place only due to the rash and negligence on the part of the deceased and stated that the driver of the first respondent has driven the Maruthi Omni van has no valid driving licence at the time of accident. The insurance company also disputed the age, occupation, 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, the first claimant was examined as P.W.1, the eye witness to the occurrence was

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examined as P.W.2 and P.W.3 namely one Saravanan, who is the administrative share holder of the finance company was examined and Exs.P.1. to P.8 were marked. On the side of the respondent, Motor Vehicle Inspector was examined as R.W.1 and Ex.R.1 was marked.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the accident was taken place only due to the rash and negligence on the part of the driver of the first respondent's Maruthi Omni Van bearing Registration No.TN-28-AZ-9364. In point no.2, the Tribunal has quantified and granted Rs.11,72,400/- as compensation to the claimants along with interest @ 7.5% per annum from the date of filing of petition till the date of realization. The Tribunal also held that there is a violation of policy condition on the part of the first respondent, hence directed the second respondent – insurance company to pay the compensation amount awarded to the claimants and recover the same from the first respondent.

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.

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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, fixed Rs.8,000/- as monthly notional income. The Tribunal has also not awarded compensation under the head consortium and also the compensation awarded under heads are on the lower side, hence prays to enhance the monthly income of the deceased fixed by the Tribunal and award just compensation under various other heads.

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

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the notional monthly income fixed on the deceased and quantum of compensation awarded by the Tribunal.

11. In this case, P.W.1 has categorically stated that the deceased was owning two lorries and was also an Assistant Administrator and Manager of M/s. Jayamurugan Finance and earning an income of Rs.15,000/- per month. To substantiate her evidence, Ex.P.5 - registration certificate of two lorries marked and examined P.W.3, who is the Administrator of the said finance company. The P.W.3 in his evidence has stated that the deceased Ashok was working as a Manager in the said finance company and was paid Rs.10,000/- per month as salary and to support his evidence, he submitted Ex.P.7 - Joint shareholders agreement and Ex.P.8, salary certificate. However, the Tribunal has not appreciated the same stating that no evidence were placed regarding the income from the said finance company and also income tax returns filed from the income of the deceased. Thereafter, Tribunal has fixed the monthly notional income of the deceased as Rs.8,000/- per month and awarded compensation under the head loss of income. On scrutiny of the documents produced shows that, as observed by the Tribunal, except oral evidence of witnesses and salary

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certificate issued by Finance Company, no supporting documents more particularly, income tax returns were produced. This Court is of the view that, the Tribunal has rightly rejected the evidence of P.W.3. However, considering the age and year of the accident, this Court is of the view 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*

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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

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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*

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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:-

$$\frac{\text{The notional income fixed by the Hon'ble Supreme Court of India (i.e., Rs.6,500/-)} \times \text{Cost of Inflation Index for the vegetable vendor for the year 2013-2014}}{129}$$

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	= 12.11.2016
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)**

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 40% as future

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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 '17' by considering the age of the deceased at the time of the accident. The Ex.P.6 - aadhaar card of the deceased, shows that the deceased is aged about 26 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 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	= 17
Total compensation (Rs.1,11,736.80 x 17)	= Rs.18,99,525.60
	= Rs.18,99,526/- (round off)

14. The Tribunal has not awarded compensation under the head loss of consortium, 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 Rs.40,000/-

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to each claimants, who are the parents and sister of the deceased Ashok, 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 income	11,42,400/-	18,99,526/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	---	1,20,000/-	Granted
	Total Compensation	11,72,400/-	**20,49,526/-**	Enhanced

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs. 11,72,400/- is hereby enhanced to **Rs.20,49,526/- [Rupees Twenty Lakh Forty Nine Thousand Five Hundred and Twenty Six 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

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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.179 of 2017 on the file of the Additional District Judge, Motor Accidents Claims Tribunal, Additional District Court (FAC), Namakkal 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 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 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.

20.11.2023

stn
Index:Yes/No
Speaking Order:Yes/No

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Neutral Citation Case: Yes/No

To:

1. The Additional District Judge,
   Motor Accident Claims Tribunal,
   Additional District Court (FAC),
   Namakkal.

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

K. RAJASEKAR, J.

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