IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. Nos. 1912 and 2455 of 2021
and C.M.P. No. 14022 of 2021

(a). C.M.A. No.1912 of 2021

1. Sanmuga Vadivu
2. Narayanan ... Appellants / Petitioners

Vs.

1. Manivannan C.

2. HDFC ERGO General Insurance Co. Ltd.,
New No.528, Old No.559,
2nd Floor, Anna Salai,
Teynampet, Chennai-600 018. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 30.10.2019 passed in M.C.O.P. No.3348 of 2016 on the file of the II Judge, Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant	:	Mr. K. Varadha Kamaraj
For R1	:	Not Ready
For R2	:	Mr. N. Somasundaar

(b). C.M.A. No.2455 of 2021

HDFC ERGO General Insurance Co. Ltd.,
New No.528, Old No.559,
2nd Floor, Anna Salai,
Teynampet, Chennai-600 018. ... Appellant / 2nd Respondent

Vs.

1. Shanmuga Vadivu
2. Narayanan ... Respondents / Petitioners

3. C. Manivannan ... Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 30.10.2019 passed in M.C.O.P. No.3348 of 2016 on the file of the II Judge, Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant	:	Mr. K. Varadha Kamaraj
For RR 1 & 2	:	Mr. N. Somasundar
For R3	:	Not Ready

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JUDGMENT

These Civil Miscellaneous appeals have been arising out of the award passed in M.C.O.P. No.3348 of 2016, dated 30.10.2019 on the file of the II Judge, Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. The C.M.A. No.1912 of 2021 filed by the claimants for enhancement of compensation and C.M.A. No.2455 of 2021 filed by the insurance company questioning the quantum of compensation.

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

3. On 15.02.2016, at about 22:00 hours, the deceased Ponraj, son of the claimants was walking on the East Beach Road, Tiruvanmiyur and while he reached opposite to Rowther Briyani shop, South Mada Street, a lorry belongs to the first respondent bearing Registration No.TN-20-AD-1555, driven by its driver in a rash and negligent manner, dashed against the deceased causing fatal injuries and the deceased succumbed to same on the spot. A criminal case was registered against the driver of the lorry in Cr.No.124/AM2/2016 on the file of the Inspector of Police, J2, Adayar Traffic Investigation Police. For the loss of deceased Ponraj, the claimants have filed claim petition seeking compensation for a sum of Rs.50,00,000/- under section 166 of the Motor Vehicles Act, 1988.

4. The first respondent is the owner of the offending lorry has not contested the claim and remained ex-parte. The second respondent - insurance company, who is the insurer of the offending lorry has filed a counter and contended that the accident was taken place only due to the negligence on the part of the deceased, who has failed to exercise caution on the road and violated the basic traffic rules, thereby invited the accident. The insurance company also disputed the age, income and occupation of the deceased, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 to P.9 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 no.1, has held that the rash and negligence on the part of the driver of the first respondent's lorry is responsible for the accident. In point nos.2 and 3, the Tribunal has quantified and granted compensation for a sum of Rs.25,10,000 along with interest @ 7.5% per annum from the date of filing of claim petition till the date of realization to the claimants. In point no.4,

the Tribunal has fixed the liability on the part of the second respondent - insurance company to indemnify the first respondent and to pay compensation to the claimants.

7. Aggrieved over the award, the claimants have filed an appeal seeking enhancement of compensation and the insurance company has filed an appeal challenging the quantum of compensation awarded by the Tribunal.

8. The learned counsel appearing for the claimants submitted that the claimants herein are the appellants, who have lost their only son in the road accident. The deceased was a driver by profession and was earning Rs.20,000/- per month, even though the driving licence of the deceased was marked as an evidence, the Tribunal has not appreciated the same and fixed the monthly notional income of the deceased as Rs.15,000/-, which is on the lower side. The learned counsel also relied on the Apex Court judgment in ***Neela and others Vs. Manager Bharatii AXA General Insurance Co. Ltd., and Others in Civil Appeal No.405 of 2023, dated 18.01.2023***, wherein it is categorically held that the person, who is driver by profession is eligible for

a notional income of Rs.16,000/- per month, hence prays to enhance the compensation.

9. Per contra, the learned counsel appearing for the Insurance Company submitted that the Hon'ble Apex Court in ***Syed Sadiq Vs. United India Insurance Company [2014 (1) TNMAC 459]***, the Minimum Wages Act was taken into consideration for fixing applicable notional income of the deceased. The deceased is aged about 27 years and even though, there was no evidence to prove the income of the deceased, the Tribunal has notionally fixed it as Rs.15,000/- per month, hence prays to modify the award of the Tribunal.

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

11. In this case, the major contention raised on both sides is with regard to the monthly notional income fixed for the deceased by the Tribunal. The Hon'ble Apex Court in ***Syed Sadiq Vs. United India Insurance Company [2014 (1) TNMAC 459]***, has followed, minimum wage

rule fixed by the State Government and fixed notional income has held in paragraph 22 and 23 as follows:

> *"22. Further, the Appellant/Claimant has claimed that he has been earning Rs.5,000/- p.m. By working as a cleaner of the Lorry. The Tribunal assessed his monthly income at Rs.3,000/-. The High Court, considering his age and his profession as a cleaner, assessed his income at Rs.3,500/-. However, based on the Karnataka State Minimum Wages Rule 2012-2013, the Appellant/Claimant is entitled to Rs.4,246/- per month. Since, no written record of his income could be produced before the Court, we take his income, as per Revised Minimum Wages Rule at Rs.4,246/- rounding it off as Rs.4,300/- per month. Further, an amount of Rs.700/- can be added as daily barter charges. Therefore, his monthly income amounts to Rs.5,000/-.*
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> *23. Further, considering that the Appellant/ Claimant was 22 years of age, the Multiplier applicable to his age group is 18 and also based on the legal principle laid down by this Court in various cases, we hold that he is entitled to 50% increment in Future Loss of income. Therefore, he is entitled to an amount at Rs.13,77,000/- [(Rs.5,000 X 85/100 + 50/100 X 85/100 X Rs.5,000/-) X 12 X 18]."*

12. Based on the above judgment, the Division Bench 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 monthly notional income for a daily wager, who is a Meat chopper, by following the Cost of

inflation index issued by CBDT, for assessing the income of the deceased therein and fixed the notional income of the deceased as Rs.11,085/- for the death of the person in the year 2013-2014, 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.*
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> *(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 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
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:-

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

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

13. Hon'ble Apex Court in ***Neela and others Vs. Manager Bharatii AXA General Insurance Co. Ltd., and Others*** cited supra has also re-iterated the Minimum Wages fixed by the State Government is the deciding factor and the same would be proper for fixing the notional income as per the Minimum Wages prescribed by the Minimum Wages Rules of the Karnataka state.

14. This Court of the view that the above principle laid down in ***Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]*** cited supra, is applicable for fixing the notional income of the deceased in this case.

15. The Tribunal without any proper evidence has fixed the

monthly notional income of the deceased as Rs.15,000/-. By following the ***Andal and others vs. Avinav Kannan and others,*** cited supra, this Court is inclined to modify the monthly notional income of the deceased as **Rs.12,800/-**

16. Even though, 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],*** but erred in fixing future prospectus of 50%, since the deceased herein is not a permanent job holder, fixing 40% future prospectus is proper and the same is hereby fixed for assessing the loss of dependency. The Tribunal 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. Since the deceased herein is a bachelor, after deducting 50% 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 @ 40%	= Rs.61,440/-
Yearly income of the deceased	= Rs.2,15,040/-
Yearly contribution to his family (deduction of 1/2)	= Rs.1,07,520/-
Applicable Multiplier	= 17
Total compensation (Rs.1,07,520 x 17)	= **Rs.18,27,840/-**

17. The Tribunal has awarded Rs.1,00,000/- each under the head loss of love and affection and loss of consortium to the claimants, but as per the Hon'ble Apex Court in***United India Insurance Co. Limited v. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780]*** and ***Magma General Insurance Co. Ltd., vs Nanu Ram*** reported in ***2018 ACJ 2018,*** the claimants are entitled for consortium, and the grant of consortium includes loss of love and affection. Hence, this Court is inclined to grant the claimants, parental consortium of Rs.40,000/- each to the parents of the deceased Ponraj, as per the Apex Court Judgment stated supra and the compensation awarded under the head loss of love and affection, is hereby cancelled.

18. The Tribunal has not awarded compensation under the head loss of estate, hence this Court is inclined to award Rs.15,000/- under the head loss of estate. The Tribunal has awarded Rs.15,000/- under the head

funeral expenses, this Court is inclined to confirm the same.

19. 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	22,95,000/-	18,27,840/-	Reduced
2.	Loss of Love and Affection	1,00,000/-	---	Cancelled
3.	Parental consortium	1,00,000/-	80,000/-	Reduced
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
5.	Loss of Estate	---	15,000/-	Granted
	Total Compensation	25,10,000/-	**19,37,840/-**	**Reduced**

20. In the result, the Civil Miscellaneous Appeal (C.M.A. No.1912 of 2021) filed by the claimants is dismissed and the Civil Miscellaneous Appeal (C.M.A. No.2455 of 2021) filed by the Insurance Company is partly allowed and the compensation awarded by the Tribunal at Rs.25,10,000/- is hereby reduced to **Rs.19,37,840/- [Rupees Nineteen Lakh Thirty Seven Thousand Eight Hundred and Forty 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. The appellant -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.3348 of 2016 on the file of the II Judge, Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai. On such deposit, the 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 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. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in both appeals.

29.11.2023

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

To:

1. The II Judge,
   Motor Accidents Claims Tribunal,
   II Court of Small Causes, Chennai.

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

K. RAJASEKAR, J.

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C.M.A. Nos. 1912 and 2455 of 2021

29.11.2023