IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM:

**THE HONOURABLE MR. JUSTICE K. RAJASEKAR**

C.M.A. No. 1975 of 2021

1. Dhakshnamoorthy
2. D. Dhanalakshmi
3. D. Narmatha
4. D. Nivedha ... Appellants / Petitioners

Vs.

The Managing Director,
Tamilnadu State Transport
Corporation (Villupuram -Div.I) Ltd.,
No.3/137, Salamedu, Vazhuthareddy Post,
Villupuram - 605602. ... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 21.01.2021 passed in M.C.O.P. No. 4375 of 2018 on the file of the 1st Additional District & Sessions Judge, Motor Accident Claims Tribunal, Cuddalore.

For Appellants : Mr. A.N. Viswanatha Roa

For Respondent : Mr. S.S. Santhosa Kumar

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No. 4375 of 2018, dated 21.01.2021 on the file of the I Additional District & Sessions Judge, Motor Accident Claims Tribunal, Cuddalore.

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

3. On 09.07.2018, at about 17:30 hours, the deceased Naveenraj was riding a Yamaha FZ Motor Cycle bearing Registration No.TN-40-L-9398 from north to south on the Cuddalore to Poondiyankuppam, while he reached near Uppanaru Bridge, the deceased overtook the Respondent's TNSTC bus bearing Registration No.TN-32-N-3880, which was driven by its driver in a rash and negligent manner, hit on the motor cycle of the deceased, thereby causing grievous injuries. Thereafter, the deceased succumbed to injuries in Jipmer Hospital, Puducherry on 14.07.2018. A criminal case was registered in Cr.No.455 of 2018 on the file of SHO Cuddalore OT Police Station. For the loss of deceased Naveenraj, the claimants, who are the parents and sisters filed this claim petition seeking

compensation for a sum of Rs.30,00,000/- along with interest @ 18% under section 166(1) of the Motor Vehicles Act.

4. The respondent - Transport Corporation filed a counter and denied the manner in which the accident was taken place and contended that the driver of the bus has driven with due care and caution and the accident was happened only due to the negligence on the part of the deceased, who invited the accident due to his rash driving, lost control over the motor cycle and fell down while over taking the respondent's bus. The Transport Corporation also denied the allegations stated in the claim petition, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 was examined and Exs.P.1 to P.7 were marked. On the side of the respondent, R.W.1 was examined and Ex.R.1 was 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 Respondent's bus bearing Registration No.TN-32-N-3880 is responsible for

the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.12,04,000/- 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 the claimants have come forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimants submitted that the notional income fixed by the Tribunal is not accordance with the Divisional Bench judgment of this Court in ***Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]*** and the compensation awarded under other heads are on the lower side, hence prays to enhance the compensation awarded by the Tribunal.

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.

11. Before the Tribunal, the claimants have stated that the deceased was a Contract Labour in Power Plant at Parangipettai and was earning Rs.15,000/- per month, but to prove the same the claimants have not adduced any oral or documentary evidence. Ex.P.6 - School Transfer Certificate shows that the deceased Naveenraj studied up to 9th Standard and discontinued his studies. Since no proof of income produced, Tribunal has fixed the notional income of the deceased as Rs.7,500 per month and awarded compensation under the head loss of dependency. This Court is of the view that considering the age and year of the accident 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 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:-*

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

*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 | = 09.07.2018 |
| Cost of Inflation index | = 280 (Financial Year 2018-2019) |
| Notional income of the deceased | = (6,500/- x 280) / (129) |
| | = Rs.14,108.52/- |
| | = **Rs. 14,108/- (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 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 '18' by considering the age of the deceased at the time of the accident. The Ex.P.6, the school transfer certificate of the deceased, shows that the deceased is aged about 22 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. Since the deceased herein is 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.14,108/- is assessed as follows:

| | |
|---|---|
| Annual income (Rs.14,108/- x 12) | = Rs.1,69,296/- |
| Future prospects @ 40% | = Rs.67,718.40 |
| Yearly income of the deceased | = Rs.2,37,014.40 |
| Yearly contribution to his family (deduction of 1/2) | = Rs.1,18,507.20 |
| Applicable Multiplier | = 18 |
| Total compensation (Rs.1,18,507.20 x 18) | = Rs.21,33,129.6 |
| | **= Rs. 21,33,130/-(round off)** |

14. The Tribunal has awarded Rs.10,000/- each towards loss of love and affection 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,*** all the claimants are entitled only for consortium. Hence, this Court is inclined to grant consortium of Rs.40,000/- each to the parents and sisters of the deceased Naveenraj as per the Apex Court Judgment stated supra. The Tribunal has not awarded compensation under the head loss of estate, hence this Court is inclined to grant Rs.15,000/- under the head loss of estate. The compensation awarded under the head funeral expenses includes transport expenses, hence the compensation awarded under the head transport

expenses is hereby cancelled and Rs.15,000/- awarded under the head funeral expenses is 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 dependency | 11,34,000/- | 21,33,130/- | Enhanced |
| 2. | Loss of love and affection/ modified to Loss of consortium | 40,000/- | 1,60,000/- | Enhanced |
| 3. | Transport expenses | 15,000/- | --- | Cancelled |
| 4. | Funeral expenses | 15,000/- | 15,000/- | Confirmed |
| 5. | Loss of Estate | --- | 15,000/- | Granted |
| | **Total Compensation** | 12,04,000/- | **23,23,130/-** | Enhanced |

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,04,000/- is hereby enhanced to **Rs.23,23,130/- [Rupees Twenty Three Lakh Twenty Three Thousand One Hundred and Thirty 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 respondent – Transport Corporation 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.4375 of 2018 on the file of the I Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Cuddalore. 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 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.

20.11.2023

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

To:

1. The I Additional District Sessions Judge,
   Motor Accident Claims Tribunal,
   Cuddalore.

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

**K. RAJASEKAR, J.**

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