IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1547 of 2021

1. S. Jothi
2. Minor Pannary @ Prasanth
3. S. Nagammai
4. S. Rangammal ... Appellants / Petitioners

Vs.

1. S. Senthilkumar

2. The Managing Director, Tamil Nadu
State Transport Corporation
(Salem Division) Limited,
12, Ramakrishna Road, Salem - 636 007.

3. The Managing Director, Tamil Nadu
State Transport Corporation
(Salem Division) Limited,
Karattupalayam, Anthiyru Post,
Bhavani Taluk, Erode District. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 11.01.2018 passed in M.C.O.P. No. 284 of 2017 on the file of the IV Additional District and Sessions Judge, Motor Accident Claims Tribunal, Erode.

For Appellant	:	Mr. C. Kulanthaivel
For RR 1 & 3	:	D/w
For R2	:	Mr. D. Raghu

****

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants challenging the Judgment and Decree passed in M.C.O.P. No. 284 of 2017, dated 11.01.2018 on the file of the IV Additional District and Sessions Judge, Motor Accident Claims Tribunal, Erode, wherein the Tribunal has dismissed the claim petition.

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

3. On 10.05.2013, at about 12:15 AM, the deceased Selvan was travelling in the TNSTC bus bearing Registration No.TN-32-N-0925 from Vazahapadi to Salem main road, which was driven by its driver in a rash and negligent manner and while the bus reached near Muthamppatti bye-pass road, the bus hit against the moped, due to which the deceased who travelled in the bus has sustained fatal injuries and succumbed to the injuries in the

Government Hospital Salem. A criminal case was registered in Cr.No.271/2013 U/s. 304(ii) of IPC on the file of Vazahapadi Police station. For the loss of the deceased Selvan, the claimants, who are the wife, minor son and sisters of the deceased has filed claim petition seeking compensation for a sum of Rs.20,00,000/- under section 163-A of the Motor Vehicles Act.

4. Before the Tribunal, on the side of the claimants, P.W.1 and P.W.2 were examined and Exs.P.1 to P.4 were marked and on the side of the respondents, no witnesses were examined and no exhibits were marked and the respondents remained ex-parte before the Tribunal.

5. Based on the evidence placed on record, the Tribunal in point nos1, has held that there is no rash and negligence on the part of the driver of the bus and the accident did not take place due to the use of the motor vehicle. Some miscreants pelted stones on the bus, which has hit the deceased, hence the claimants are not entitled to claim compensation from the respondents. In point no.2, the Tribunal has dismissed the claim petition on the ground that the claimants have stated that the deceased was earning Rs.10,000/- per month, hence his annual income is Rs.1,20,000/- but under

163(A) of the Motor Vehicles Act, the claimants are eligible to get compensation only if the annual income is Rs.40,000/- or below as per the Hon'ble Apex Court judgment in ***Deepal Ginsbai Soni and others vs. United India Insurance Company [AIR SC (2004)]***.

6. Aggrieved over the dismissal of claim petition, the claimants have filed this appeal.

7. The learned counsel appearing for the claimants submitted that the Tribunal has not properly appreciated the evidence placed on record and dismissed the claim petition. He also relied on the Division Bench judgment of this Court in ***Chinnathamani and others vs. Amman Granites and another [2019 (2) TN MAC 293 (DB)]*** for awarding compensation to the claimants for the claim petition filed under section 163(A) of the Motor Vehicles Act, hence prays to set aside the award of the Tribunal and to grant compensation.

8. Per contra, the learned counsel appearing for the second respondent - Transport Corporation submitted that the Tribunal by following

the Hon'ble Apex Court judgment in ***Deepal Ginsbai Soni and others vs. United India Insurance Company [AIR SC (2004)]*** has rightly rejected the claim petition, hence prays to confirm the award.

9. I have considered the submissions made on both sides and perused the materials placed on record.

10. Ex.P.1 - FIR shows that the claimant has sustained head injury, while he was travelling in the second respondent - Transport Corporation bus, since some miscreants pelted stones on the bus, which has hit the head of the deceased and the Ex.P.2- Post-mortem certificate of the deceased shows that the deceased was died due to the head injuries sustained by him. The charge sheet of the Inspector of Police, Valapady Police station has categorically stated that on 09.05.2013, at about 00:15 hours, near Muthampatty Bye pass road, the accused being a member of Pattali Makkal Katchi, due to arrest of their party founder Dr. Ramadass and to show their protest of such arrest against the Tamil Nadu Government with the common intention to cause damage to the bus bearing Registration No.TN-30-N-0925, which belongs to the TNSTC, which run between Chithambaram to

Salem, the accused pelted a stone on the right side of the bus and as a result of which one passenger, who was sitting on the sixth row from the driver seat sustained injuries on the forehead region and admitted at Palaniyandi Muthaliyar hospital and then admitted at Govt. Hospital at Salem and there he succumbed to injuries due to "effects of head injuries".

11. In view of the above facts, this Court is of the view that any untoward incident, which causes injuries to the passengers, without their own fault while plying in the bus, then the driver and owner of the passenger bus is liable to pay any compensation to the claimants, since the driver and conductor are responsible for the safety of their passengers. In this case, the deceased without any fault committed on his side has sustained fatal injuries due to some miscreants, who pelted stones on the TNSTC bus in order to protest against the Tamil Nadu Government, but the Tribunal has not considered these facts and held that the respondent - Transport Corporation is not liable to pay compensation to the claimants and this Court is of the view that the same is not proper and inclined to fix liability on the part of the second respondent - Transport Corporation to pay compensation to the claimants.

12. With respect to quantum of compensation, the Tribunal has dismissed the claim petition on the ground that the claimants have stated that the deceased was earning Rs.10,000/- per month, hence his annual income is Rs.1,20,000/- but under 163(A) of the Motor Vehicles Act, the claimants are eligible to get compensation only if the annual income is Rs.40,000/- or below as per the Hon'ble Apex Court judgment in ***Deepal Ginsbai Soni and others vs. United India Insurance Company [AIR SC (2004)]***. The Division Bench judgment of this Court in ***Chinnathamani and others vs. Amman Granites and another [2019 (2) TN MAC 293 (DB)]***, wherein it has laid down the dictum for assessing the maximum income limit for claiming compensation under section 163-A of the Motor Vehicles Act by adopting Cost of inflation index and Consumer Price Index announced by Central Government, fixed higher slab and held that the income mentioned in the second schedule of the act of Rs.40,000/- per annum has to be revised on the basis of Consumer Price Index fixed by the Central Board of Direct Taxes [CBDT] and accordingly, calculated the maximum income limit as Rs.2,40,000/- per annum as the maximum slab for claiming compensation under section 163-A of the Motor Vehicles Act for the Financial Year 2017-

2018. The relevant paragraphs are extracted hereunder for better appreciation.

> *7. Among other issues, it has to be examined as to what is the meaning of Consumer Price Index and whether it would be appropriate to apply to Section 163A of the Act while fixing the compensation under the structured formula provided in the Second Schedule and also whether the Consumer Price Index is in consonance with the prevailing cost of living to adequately compensate the victims of the Motor Accident Claims.*
>
> *8. In this regard, let us see the meaning of Consumer Price Index, which is subject to changes in price level of consumer goods and services provided to household. The Consumer Price Index is a statistical estimate constructed by using the prices of sample of representative items, whose prices are collected periodically and sub indices are computed for different categories and sub categories of goods and services to produce the overall index with wages reflecting the share in the total of the Consumer expenditure covered by the index. The annual percentage change in Consumer Price Index, is used as a measure of an inflation. Consumer Price Index can be used to index (that is adjusted for the effect of inflation/notification) to determine the real default wages, salary, pensions, for regulating the price and for deflecting, and therefore, the Consumer Price Index is the appropriate index that can be used to determine the income of a person based on the income mentioned in the Second Schedule, which means, the income structured formula mentioned in the Second Schedule will be changed every year based on the Consumer Price Index. Therefore, in the present case also, it would be appropriate to apply the Consumer Price Index for the relevant year by taking the annual income mentioned as per the structured formula in the Second Schedule. Be that as it may, the Central Board of Direct Taxes (CBDT) has been issuing notification from time to time, every year, in which, the Cost Inflation Index is indicated for determining the capital gain index.*

9. Now, let us see, what the Cost Inflation Index is. It is a measure of inflation that finds obligation in tax law, when computing long term capital gains on sale of assets. Section 48 of the Income Tax Act, defines the index as what is notified by the Central Government every year, as 75% of the Consumer Price Index for Urban non-salariedemployees for the immediately preceding previous year. Therefore, if the Consumer Price Index is 100 last year, the Cost Inflation Index will be fixed for the current year at 75.

10. In the present case, the income of the deceased was Rs. 9,00,000/- per annum. However, as per the structured formula, for the income during the year 1994, only maximum amount of Rs. 40,000/- can be considered as income of the deceased. The said amount was Rs. 40,000/- fixed in the year 1994 and the same cannot be applied in this case, as the accident has occurred on 06.10.2010. Therefore, it would be inappropriate to provide compensation for a person who sustained injury during the year 1994 at a sum of Rs. 40,000/- and to apply the same amount of Rs. 40,000/- for the victim, who sustained fatal accident, during the year 2010.

11. It is the duty of the Central Government in terms of Section 163-A (3) to amend the Second Schedule from time to time according to the Consumer Price Index, which will vary due to inflation. But, the Central Government has not revised or amended the Schedule from time to time as per Section 163-A (3).

12. Under the circumstances, this Court takes Judicial notice of the above facts and decides to give effect to sub-Section (3) of Section 163(A) of the Act to increase the annual income mentioned in the Second Schedule, according to the Consumer Price Index issued by the Government of India from time to time.

13. Now, the question to be decided is, how to determine the Consumer Price Index in accordance with the income fixed *by the Government of India. The Central Board of Direct Taxes has been issuing notifications every year, revising the Cost Inflation Index for the purpose of determining the capital gains. As stated above, the Cost Inflation Index is determined as 75% of the Consumer Price Index of the previous year. The Cost Inflation Index, as issued by the Central Board of Direct Taxes, since 1982 to 2018 is as follows:-*

S.No.	***Financial Year***	***Cost Inflation Index***
1	*1981-1982*	*100*
2	*1982-1983*	*109*
3	*1983-1984*	*116*
4	*1984-1985*	*125*
5	*1985-1986*	*133*
6	*1986-1987*	*140*
7	*1987-1988*	*150*
8	*1988-1989*	*161*
9	*1989-1990*	*172*
10	*1990-1991*	*182*
11	*1991-1992*	*199*
12	*1992-1993*	*223*
13	*1993-1994*	*244*
14	*1994-1995*	*259*
15	*1995-1996*	*281*
16	*1996-1997*	*305*
17	*1997-1998*	*331*
18	*1998-1999*	*351*
19	*1999-2000*	*389*
20	*2000-2001*	*406*
21	*2001-2002*	*426*
22	*2002-2003*	*447*
23	*2003-2004*	*463*
24	*2004-2005*	*480*

S.No.	*Financial Year*	*Cost Inflation Index*
25	*2005-2006*	*497*
26	*2006-2007*	*519*
27	*2007-2008*	*551*
28	*2008-2009*	*582*
29	*2009-2010*	*632*
30	*2010-2011*	*711*
31	*2011-2012*	*785*
32	*2012-2013*	*852*
33	*2013-2014*	*939*
34	*2014-2015*	*1024*
35	*2015-2016*	*1084*
36	*2016-2017*	*1125*
37	*2017-2018*	*1158*
38	*2018-2019*	*1191*

14. In the above table, the Cost Inflation Index is mentioned from the year 1981-1982 to 2018-2019. It is pertinent to mention that the Central Government has notified the Consumer Price Index based on the Cost of living every year. The Central Board of Direct Taxes has also been issuing Cost Inflation Index by taking 75% of the Consumer Price Index of the previous year for the purpose of calculating capital gains on assets.

15. By adopting the Cost Inflation Index as notified by the Central Board of Direct Taxes which is 75% of the Consumer Price Index of the previous year, we can work out Consumer Price Index and apply the same to determine the annual income as per the Second Schedule as on the date of accident. For example, by applying the formula as mentioned below, we can determine maximum income per annum for the year 2017-2018, as mentioned hereunder:-

$$\textit{Income as mentioned in Second Schedule} \times \frac{\textit{Cost of Inflation Index in the year 2017-2018}}{\textit{Cost of Inflation Index for the year 1994-1995}} \times \frac{100}{75}$$

16. The maximum amount of income per annum for the purpose of determining the compensation is Rs. 40,000/- as mentioned in the Second Schedule for the year 1994-1995. If the said amount is taken into consideration by applying the above mentioned formula the maximum income for the year 2017-2018 is as follows:-

$$\textit{Rs.40,000/-} \times \frac{1158}{259} \times \frac{100}{75} = \textbf{\textit{Rs.2,38,455/-}}$$

13. Considering the above, this Court is of the view that since the claimants claims that the income of the deceased is Rs.1,20,000/- and the same is within the maximum eligible income to avail benefit of filing claim petition under section 163-A of the Motor Vehicles Act. However, the claimants have not proved the income of the deceased by producing any acceptable evidence. Considering the age of the deceased as stated in Ex.P.2 – Post-mortem certificate and date of accident, the notional income of the deceased is hereby fixed as Rs.8,000/- per month. Therefore, the annual income of the deceased is hereby assessed as Rs.96,000/- (Rs.8,000/- X 12). As per ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and***

others [2009 ACJ 1298 SC : 2009 (6) SCC 121], the multiplier is fixed as '15' and depending upon the number of the claimants, one-third of his income is deducted towards his personal and living expenses. Accordingly, as per the II schedule of the Motor Vehicles Act, the loss of income is assessed as:

Total notional income per annum	=	Rs.96,000/-
Applicable Multiplier	=	15
As per compensation for fatal accident, vide Para 1 of Second Schedule to Motor Vehicles Act is	=	Rs.14,40,000/-
Deducting (1/3) total income	=	Rs.3,60,000/-
Total loss of income	**=**	**Rs.10,80,000/-**

15. Hon'ble Apex Court in ***Kurvan Ansari and others vs. Shyam Kishore Murmu and others [2022 ACJ 166]***, has taken a view for the claim petition filed under Section 163-A of the Motor Vehicles Act, since the II Schedule to M.V. Act was not amended inspite of repeated direction by the Hon'ble Apex Court in fixing of notional income more than the income as awarded Rs.40,000/- per annum, keeping in mind the present cost of living. It has also awarded filial consortium of Rs.40,000/- each to the parents of the deceased and Rs.15,000/- towards funeral expenses.

16. In this case, the claimants are the wife, minor son and sisters of the deceased, however, the claimants have not adduced any evidence to prove the dependency of the third and fourth claimants, who are the sisters of the deceased herein. This Court is of the view that without any proper evidence, they are not entitled to claim themselves as dependents of the deceased, hence they are not entitled to claim any compensation. Therefore, as per the judgments of the Hon'ble Apex Court in ***Kurvan Ansari and others vs. Shyam Kishore Murmu and others*** cited supra, the first and second claimants, who are the wife and minor son of the deceased are entitled to consortium of Rs.40,000/- each. This Court is also inclined to award Rs.15,000/- towards funeral expenses.

17. Accordingly, the compensation awarded by this Court under various heads are as follows:

S.No	**Description**	**Compensation Awarded (Rs)**
1.	Loss of dependency	10,80,000/-
2.	Loss of consortium	80,000/-

S.No	Description	Compensation Awarded (Rs)
3.	Funeral expenses	15,000/-
	Total Compensation	**11,75,000/-**

18. In the result, this Civil Miscellaneous Appeal is allowed and the award of dismissal of the claim petition by the Tribunal is set aside. This Court awarded compensation for a sum of **Rs.11,75,000/- [Rupees Eleven Lakhs and Seventy Five Thousands 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 - 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 the Savings Bank Account of the claimants. On such deposit, the first and second claimants, who are the wife and minor son of the deceased is entitled to 60% and 40%, respectively of the compensation awarded. Since, this Court has awarded compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the compensation awarded. There shall be no order as to costs in the present appeal.

22.12.2023

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

To:

1. The IV Additional District and Sessions Judge,
   Motor Accident Claims Tribunal,
   Erode.

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

<u>K. RAJASEKAR, J.</u>

stn

C.M.A. No. 1547 of 2021

22.12.2023