IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2493 of 2021

1. Raja
2. Poonsolai ... Appellants / Petitioners

Vs.

1. N. Mahindran

2. K. Dhanalaxmi

3. The Divisional Manager,
New India Assurance Co. Ltd.,
Divisional Office III, 11-19-20,
II Floor, Peoples Park Building,
Govt. Arts College Road,
Coimbatore - 641018. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 02.02.2021 passed in M.C.O.P. No.679 of 2019 on the file of the Motor Accident Claims Tribunal and Special District Court for MACT Cases, Krishnagiri.

For Appellant : Mr. S.P. Yuvaraj
For RR 1 & 2 : Mr. R. Darshan
For R3 : Mr. J. Chandran

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No.679 of 2019, dated 02.02.2021 on the file of the Motor Accident Claims Tribunal and Special District Court for MACT Cases, Krishnagiri.

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

3. On 04.10.2018 at about 8:30AM, the deceased Vignesh S/o Raja has driven a Yamaha Motor cycle bearing Registration No.PY-01-AW-5058 along with another Vignesh S/o Selvam on Dharmapuri to Krishnagiri NH road and while they reached near Sri Vasavi Tiles Mart at Avathanapatti, a TATA HEXA car bearing Registration No.TN-38-CJ-3729 belongs to the second respondent, driven by first respondent in rash and negligent manner, came behind and dashed on the Yamaha motor cycle of the deceased, due to which the deceased has lost the control over his Yamaha motor cycle and hit on the on going Splendor motor cycle bearing Registration No.TN-24-AA-3719, which resulted in fall over of riders and

pillion riders of both the two wheelers on the road. At that time, the driver of the TATA HEXA car ran over the said Vignesh S/o Raja and Vignesh S/o Selvam, thereby causing instantaneous death to them. A criminal case was also registered against the driver TATA HEXA car bearing Registration No.TN-38-CJ-3729, who is the first respondent herein in Cr.No.343/2018 U/s. 279, 337, 304-A of I.P.C. However, according to the claimants, the F.I.R. was wrongly recorded as that the deceased Yamaha bike rider had hit on the on-going Splendor motor cycle and fallen down, hence, the offending car has ran over them and caused the accident. For the loss of deceased Vignesh S/o Raja, the claimants, who are the parents have filed this claim petition seeking compensation for a sum of Rs.50,00,000/- along with interest U/s. 166 of the Motor Vehicles Act, 1988.

4. The first and second respondents are the driver and owner of the TATA HEXA car bearing Registration No.TN-38-CJ-3729 respectively have filed a counter and disputed the manner in which the accident has taken place and further contended that the accident was taken place only due to the rash and negligence on the part of the deceased Vignesh herein, who hit on the ongoing Splendor motor cycle and fell down on the right side of

the road, due to this, the first respondent, who driven the car could not stop the car immediately and ran over the deceased. The second respondent, who is the owner of the car, stated that her car was insured with the third respondent – insurance company at the time of accident, hence if any compensation is imposed, the third respondent – insurance company is only liable to pay the compensation to the claimants.

5. The third respondent – insurance company filed a counter and contended the accident was taken place only due to the rash and negligence on the part of the deceased Vignesh, who hit on the on-going Splendor vehicle and fell down on the right side of the road, and the car ran over the rider and pillion rider of the Yamaha motor cycle. The insurance company also relied on the F.I.R. for their case and contended that the first respondent herein has no valid driving licence at the time of accident. The age, occupation, income of the deceased and the compensation claimed under various heads also been disputed and prayed to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimants, P.W.1 – first claimant, who is the father of the deceased and P.W.2 – eye witness to the

occurrence were examined and Exs.P.1 to P.11 were marked. On the side of the first and second respondents, R.W.1- first respondent as well as the driver of the second respondent was examined and Exs.R.1 to R.3 were marked. On the side of the third respondent – insurance company, no witnesses were examined and no exhibits were marked.

7. Based on the evidence placed on record, the Tribunal in point nos.1 and 2, has held that the accident was only happened due to the rash and negligence on the part of the first respondent, who is the driver of the second respondent's TATA HEXA car bearing Registration No.TN-38-CJ-3729 and there is no negligence on the part of the deceased. In point nos.3 and 4, the Tribunal has quantified and granted compensation for a sum of Rs.14,70,800/- along with interest @ 7.5% from the date of filing of petition till the date of realization to the claimants and fixed the liability on the third respondent – insurance company to indemnify the second respondent and to pay the compensation.

8. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimants have filed this appeal seeking enhancement of

compensation. The respondents have not filed any appeal against the award.

9. The learned counsel appearing for the claimants, 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, which is on the lower side and prays to enhance the monthly income of the deceased fixed by the Tribunal and award to award 'Just compensation'.

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. 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 the notional monthly income fixed by the Tribunal.

12. In this case, Ex.P.11, the employee identity card of the deceased issued by the Amman Cars India Private Limited, shows that the deceased was an employee in the said Maruti Car showroom, but no authorized person from the Maruti Car showroom was examined to prove the employment of the deceased and also no documents or evidence adduced to prove the salary of the deceased. 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*

S.No.	*Financial Year*	*Cost of Inflation Index*
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:-

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

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

13. Based on the above observations, this Court is inclined to modify the notional income fixed by the Tribunal in this case and the same

is assessed as Rs.14,109/-.

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 '18' by considering the age of the deceased at the time of the accident. The Ex.P.10, the driving licence of the deceased, shows that the deceased is aged about 21 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.14,109/- is assessed as follows:

Annual income (Rs.14,109/- x 12)	= Rs.1,69,308/-
Future prospects @ 40%	= Rs.67,723.20
Yearly income of the deceased	= Rs.2,37,031.20
Yearly contribution to his family (deduction of 1/2)	= Rs.1,18,515.60

Applicable Multiplier = 18
Total compensation (Rs. 1,18,515.60 x 18) = Rs.21,33,280.80/-
= Rs. 21,33,281/- (round off)

15. Whereas the compensation awarded under other heads are concerned, the Tribunal has rightly awarded just compensation and this Court is inclined to confirm the same. 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	13,60,800/-	21,33,281/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	80,000/-	80,000/-	Confirmed
	Total Compensation	14,70,800/-	**22,43,281/-**	Enhanced

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,70,800/- is hereby enhanced to **Rs.22,43,281/- [Rupees Twenty Two Lakhs Forty Three Thousand Two Hundred and Eighty One 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 third 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.679 of 2019 on the file of the Special District Judge, Motor Accidents Claims Tribunal, Krishnagiri. 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.

21.11.2023

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

K. RAJASEKAR, J.

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To:

1. The Special Subordinate Judge,
   Motor Accident Claims Tribunal,
   Coimbatore.

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

C.M.A. No. 2493 of 2021

21.11.2023