IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.2717 of 2021
and
M.C.O.P.No.876 of 2019

1. K. Devi Kumari

2. K.Venkatakrishnan ... Appellants/Petitioners

Vs.

1. P. Panchamalar

2. IFFCO TOKIO General Insurance Company Limited,
No. 128, 4th Floor, Iffco Bhavan, Habibullah Road,
T.Nagar,
Chennai – 600 017. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in M.C.O.P. No. 876 of 2019 dated 05.01.2021 on the file of Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai.

For Appellant : Mr. S. Ravikumar

For Respondents : No appearance

Mrs. R. Rathna Thara (for R2)

JUDGMENT

The appeal is filed by the claimants against the judgment and decree dated 05.01.2021 made in M.C.O.P. No. 876 of 2019 on the file of Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes), Chennai.

2. The Appeal is filed seeking enhancement of compensation awarded in M.C.O.P. No. 876 of 2019 on the file of Motor Accident Claims Tribunal, (Chief Judge, Court of Small Causes) Chennai, dated 05.01.2021. The claimants are the parents of the deceased K.Vijayalakshmi who died in the road accident that had taken place on 31.10.2018. The deceased K.Vijayalakshmi while walking on the platform near E.B.Post 174 East Colony, ICF, Konnur High Road, Chennai -38 around 15.30 hours on 31.10.2018, the driver of the car belongs to the first respondent herein had negligently driven the car and dashed against the deceased, which resulted in causing multiple injuries. Subsequently, she succumbed to the injuries on the next day. She was working in an Eye Clinic, as Patient Co-ordinator and for the loss of the deceased, her parents have filed this claim petition seeking compensation of Rs. 25,00,000/-, invoking Section

166 of Motor Vehicle Act, 1988.

3. The First Respondent is the owner of the car vehicle. He has not contested the claim and remained ex-parte. The Second Respondent is the insurer of the car contested the claim, disputing the manner of the accident as claimed by the claimants. They also disputed the income, age, avocation and prayed for dismissal of the application. After considering the evidence placed on record, the Tribunal has held in Point No. 1 and 2 that the driver of the car has negligently acted, which resulted in the death of the deceased and the Respondents are liable to pay compensation.

4. In Point No. 3, the Tribunal quantified the compensation and awarded a sum of Rs. 15,67,000/- with interest at the rate of 7.5% per annum from the date of filing of the Petition till the date of realization. The appeal has been filed by the claimants seeking enhancement on the ground that compensation awarded is on the lower side.

5. The learned Counsel for the Claimants submitted that the Tribunal has not properly fixed the notional income of the deceased herein. Even though, there is ample evidence placed on record, the Tribunal has

fixed the notional income of Rs. 10,000/- per month, which is on the lower side and prays to enhance the monthly income fixed by the Tribunal. He has also relied on the judgment of the Division Bench of the Court in ***Andal vs. Avinav Kannan***, reported in 2019 (1) TN MAC 54(DB) the income of the deceased should be enhanced.

7. The learned Counsel for the Insurance Company submits that based on the evidence placed on record, the Tribunal has fixed notional income of the deceased. The claimants have not proved the avocation and the income, considering the age of the deceased and the nature of work, notional income has been properly fixed by the Tribunal and that there is no need for enhancing the compensation.

8. I have considered the submissions made on both sides and perused the material. The deceased is a young lady aged about 22 years and was working in Eye Cline as Patient Co-ordinator. Avocation of the deceased has been accepted by the Tribunal based on the identity card, Ex.P6 that she was working in eye clinic. But Tribunal has not accepted the income since no salary slip was produced to substantiate her income.

The Division Bench of this Court by following the Judgment of the Apex Court in ***Syed Sadiq*** vs. ***United India Insurance Company Limited, 2014(1) TN MAC 459*** case has held that as per the cost of inflation index, the notional income of the persons who have not proved their income. It is observed as follows:-

> *"11. However, the Tribunal had accepted the views, principles and the method of income arrived by the Apex Court in* ***Syed Sadiq v. United India Insurance Co. Ltd.,*** *2014 (1) TN MAC 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 provision 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 13.6.2008 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

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

The Notional income fixed by the Hon'ble Supreme Court of India for the vegetable vendor i.e., Rs. 6,500 during the year 2007-2008	***x***	*Cost of Inflation index for the year 2013-2014*

Cost of Inflation Index for the year 2007-2008

Therefore, Income of the deceased is Rs. 6,500 X 220
-------------- = Rs.11,085.

The Notional Income of the deceased after applying inflation Index, will be a sum of Rs.11,085. Hence, we re-fix the Notional Income of the deceased as Rs. 11,000 from Rs.6,500. Therefore, we hold that the Tribunal committed error in fixing the Notional Income of the deceased as stated above."

9. The Division Bench has further held that this cost inflation index would have to be followed for the self employed, vegetable vendors, daily wagers etc. By following the above judgment, this Court inclined notionally fixed annual income of the deceased herein fixed as Rs. 14,000/- per month. Accordingly, the annual income is Rs.1,68,000/- out of which since she is a bachelor 50% of her income shall be deducted for her personal expenses. Further, she is entitled for future prospects up to 40% (which is Rs.5,600/-). The multiplier applicable for the deceased herein is 18. Accordingly, the loss of dependency is arrived as follows:-

Rs. 19,600/- (14,000 + 5600) x 12 x 18 x 1/2 = Rs. 21,16,800/-

10. The Tribunal has not awarded loss of consortium to the parents. Instead, it has awarded compensation under the head loss of love and affection. **As per the Hon'ble Apex Court in *National Insurance Co.***

Ltd. v. Pranay Sethi 2017 ACJ 2700 SC **and** ***Magma General Insurance Co. Ltd., vs Nanu Ram*** **reported in** ***2018 ACJ 2018*** claimants are entitled for Rs.40,000/- each under the head loss of parental consortium. The Tribunal has not awarded any amount toward loss of estate as per the judgment of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. v. Pranay Sethi***, 2017 (2) TN MAC 609 (SC): 2017 (6) CTC 493 (SC) : 2017 (13) Scale 12, in which the Hon'ble Apex Court has held that the compensation under the loss of estate has to be awarded and accordingly Rs. 15,000/- is awarded under the said head. The Tribunal has granted funeral expenses of Rs.15,000/- which is confirmed.

11. Thus, the compensation awarded by the Tribunal is enhanced from Rs.15,67,000/- to Rs.22,26,800/-, break-up as follows -

Sl. No	**Description**	**Amount awarded by Tribunal (Rs)**	**Amount awarded by this Court (Rs)**	**Award confirmed or enhanced or granted**
1.	Loss of dependency	15,67,000/-	21,16,800/-	Enhanced
2.	Loss of estate	-	15,000/-	Confirmed
3.	Loss of love and affection	40,000/-	80,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000	Confirmed
	Total	**15,67,000/-**	**22,26,800/-**	**Enhanced**

				by Rs.6,59,800/-

12. The Insurance Company is directed to deposit to enhanced compensation ordered by this Court within a period of six weeks from the date of receipt of copy of this Order along with interest and cost. On such deposit, the claimants herein are entitle to withdraw the same. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

12.12.2023

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

To

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

2. The Section Officer,
   VR Section, High Court, Madras.

K.RAJASEKAR.J
nsl

C.M.A.No.2717 of 2021

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