BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.(MD)Nos.130 of 2022
and
C.M.P(MD)No.1322 of 2022
and
C.M.A(MD)No.611 of 2023

C.M.A(MD)No.130 of 2022:

The Branch Manager,
M/s.National Insurance Company Limited,
Branch Office, 1st Floor,
No.1631-1/9, Salem Bhavani Main Road,
Sankagiri. ... Appellant/2nd respondent

Vs.

1.Selvi
2.Minor.Sowmia
3.Minor.Harini
4.Chinnu
5.Pitchaiammal

(Minor respondents 2 & 3 are represented though their
mother and next friend, the 1st respondent , Selvi)

... 1st to 5th respondents/Petitioners

6.N.Ramalingam ... 6th respondent/1st respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, fair and decreetal order in M.C.O.P.No.24 of 2016 dated 19.04.2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli.

For Appellant :Mr.J.S.Murali
For R-1 to R-5 :Mr.N.Sudhagar Nagaraj

C.M.A(MD)No.611 of 2023:

1.Selvi
2.Minor.Sowmia
3.Minor.Harini
4.Chinnu
5.Pitchaiammal

(Respondents 2 and 3 represented by their mother and natural guardian Selvi 1st respondent) ... Appellants/Petitioners

Vs.

1.N.Ramalingam

2.The Branch Manager,
M/s.The National Insurance Company Ltd.,
Branch Office,
1st Floor,
No.1631-19, Salem Bhavani Main Road,
Sangagiri. ... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, fair and decreetal order in M.C.O.P.No.24 of 2016 dated 19.04.2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli.

For Appellants :Mr.N.Sudhakar Nagaraj
For R-1 :No Appearance
For R-2 :Mr.J.S.Murali

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed challenging the award of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli made in M.C.O.P.No.24 of 2016, dated 19.04.2021.

2. C.M.A(MD)No.130 of 2022 is filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal and the liability fixed on the Insurance Company.

3. C.M.A(MD)No.611 of 2023 is filed by the claimants seeking enhancement of compensation.

4. The claimants filed the claim petition stating that on 29.05.2010 at about 10.45 p.m., when the deceased Senthil Kumar, was walking on Salem-Trichy main road, Ahok Leyland lorry bearing Registration No.TN 27 B 5229, which came behind the deceased in a rash and negligent manner, hit the deceased. As a result, Senthil Kumar died on the spot. The first claimant is the wife of Senthil Kumar, claimants 2 and 3 are his children and the claimants 4 and 5 are his parents.

5. It is stated in the claim petition that the deceased was working as a Driver and was earning a sum of Rs.500/- per day and his monthly income was Rs.15,000/- per month. Due to sudden demise of the deceased, it is claimed that the claimants are left with no-one to take care of them and they find it very difficult to make both the ends meet. In the said circumstances, they filed the claim petition claiming total compensation of Rs.15,00,000/-.

6. The Insurance Company filed a counter affidavit stating that the deceased was also equally responsible for the accident. It was claimed that the driver of the vehicle had no driving licence.

7. During the course of enquiry, on the side of the claimants P.Ws.1 and 2 were examined and Exs.P1 to P11 were marked. There was no oral or documentary evidence produced on the side of the Insurance Company.

8. The Insurance Company challenges the award of the Tribunal on the ground that the accident happened due to the sudden cross of the deceased and therefore, certain percentage of the award amount should be deducted for contributory negligence on the part of the deceased. He further submitted that the quantum of compensation

awarded is on higher side and that the Tribunal committed error in holding that the Insurance Company is not entitled to deduct Tax on the compensation amount. It is against the provisions of the Income Tax Act, 1961. As per Income Tax Act, the Insurance Company is entitled to deduct TDS for the interest portion payable for the compensation amount. On these grounds, the learned counsel for the Insurance Company, challenges the award.

9. On the other hand, the learned counsel for the claimants submitted that the deceased is a Heavy Vehicle Driver and in support of this claim, his driving licence was produced as Ex.P5. The deceased was earning a sum of Rs.500/- per day and totally a sum of Rs.15,000/- per month. However, the Tribunal has taken a sum of Rs.6,000/- as monthly income. This is too low. He submitted that as per the judgments of this Court in ***Andal and others vs. Avinav Kannan and others*** reported in **2019 (1) TN MAC 54(DB)**, this Court adopted the Cost of Inflation Index during the period of accident as the basis for arriving at the monthly income of the deceased. As per this index, monthly income of the deceased would come to Rs.8,415/-. With this amount 40% of this amount should be added towards future prospects and thus, the monthly income of the deceased would have to be fixed at Rs.11,780/-(Rs.8415 + 3366). However, the Tribunal had

wrongly fixed the monthly income of the deceased at Rs.8,400/- and that resulted in reduction of amount towards loss of dependency. Thus, he prayed for enhancement of compensation on the basis of the monthly income of the deceased at Rs.11,780/-.

10. This Court considered the rival submissions and perused the records.

11. It is not is dispute that the deceased met with an road accident on 29.05.2010 and died on the spot. Though it is submitted by the learned counsel for the Insurance Company that the deceased had invited the accident by suddenly crossing the road, it appears that no evidence whatsoever was produced to sustain this claim before the Tribunal.

12. In the absence of any evidence to show that the deceased had suddenly crossed the road and had contributed to the accident, it cannot be decided that the deceased had contributed to the accident and certain percentage should be deducted from the compensation amount. Thus, the submission of the learned counsel for the Insurance Company in this regard is rejected.

13. With regard to the claim of the claimants for enhancement of compensation, reading of the award of the Tribunal shows that the Tribunal has come to the conclusion that the deceased would have earned Rs.200/- per day and calculated the monthly income of the deceased as Rs.6,000/-. Monthly income of the deceased was fixed approximately taking into consideration the occupation of the deceased. It is seen that the claimants had not produced the salary certificate or any other records to show the monthly income of the deceased.

14. As already stated, the learned counsel for the claimants produced the judgment of this Court in ***Andal's case (cited supra)*** for the proposition that the Cost of Inflation Index is to be considered for fixing the monthly income of the deceased.

15. The Hon'ble Supreme Court of India in the case of ***Syed Sadiq vs. United India Insurance Company Limited*** reported in ***2014 (1) TN MAC 459(SC)***, in the case of Vegetable Vendor fixed the monthly income at Rs.6,500/- during the year 2007-2008. Taking this as a base income, with the use of Cost of Inflation Index, income the deceased was arrived in the case of **Andal's case(cited supra)**. If this formula is adopted in this case, the notional income of the deceased is to be fixed at Rs.6,500/-, with the Cost of Inflation Index for

the year 2010-2011, the income of the deceased comes to Rs.8,414.72/- (rounded off to Rs.8415/-). The details of calculation is as follows:

The Notional income fixed by the Hon'ble Supreme Court of India for the vegetable vendor ie., Rs.6,500 during the year 2007-2008 X Cost of Inflation index for the year 2010-2011

Cost of Inflation index for the year 2007-2008

Therefore, income of the deceased is Rs.6,500 X 167
-------------------- = Rs.8,414.72
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16. As per this calculation, the monthly income of the deceased comes to Rs.8,415/-. It is not in dispute that the deceased was aged 31 years at the time of the accident. Therefore, 40% of this a amount is to be added as future aspects. In that case, 40% of the amount would be Rs.3,366/-. Then, the total monthly income comes to Rs.11,781/- (Rs.8415 + Rs.3,366). As per the decision in ***Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC),*** 1/4th amount has to be deducted towards personal expenditure of the deceased and that comes to Rs.8,836/-(Rs.11,781 – Rs.2,945) and then, the annual income would be

Rs.1,06,032/-(Rs.8836 X 12). The multiplier to be adopted is “16” and thus, the total loss of dependency comes to Rs.16,96,512/-.

17. The learned counsel for the Insurance Company submitted that the claimants restricted the claim of compensation only Rs.15,00,000/- and therefore, the compensation in excess of the claim petition cannot be awarded.

18. At this juncture, the learned counsel for the claimants produced the judgment in ***Meena Devi vs. Nunu Chand Mahto @ Nemchand Mahto & others*** reported in ***2022(2) TN MAC 605(SC)***, for the proposition that there is no restriction that the Tribunal/Court cannot award compensation exceeding the amount claimed. It is pertinent to refer to the relevant portion of the said judgment which reads as follows:

> *“14.At this stage, it is necessary to clarify that as per the decision of a Three-Judge Bench of this Court in* ***Nagappa v. Gurdayal Singh and others,*** *2003(2) SCC 274, it was observed that under the MV Act, there is no restriction that the Tribunal/Court cannot award compensation exceeding the amount so claimed. The Tribunal/Court ought to award 'just' compensation which is*

reasonable in the facts relying upon the evidence produce on record. Therefore, less valuation, if any, made in the Claim Petition would not be impediment to award Just Compensation exceeding the claimed amount."

19. This Court on going through the oral and documentary evidence and also relying on the judgement in **Andal's cas*****e(cited supra)***, has arrived at the just and fair compensation and therefore, the contention of the learned counsel for the Insurance Company that this Court cannot award more award than the amount claimed in the claim petition, cannot be accepted.

20. Coming to the last submission of the learned counsel for the Insurance Company that the Tribunal has given a direction to the Insurance Company not to deduct income tax on source, this Court finds that from the award of the Tribunal, the Tribunal has given this direction on the basis of the judgment of this Court in Managing Director, **Tamil Nadu State Transport Corporation Limited., v. Chinnadurai** reported in ***2016(2) TN MAC 71.***

21. It is now informed that the issue with regard to deduction of income tax on the interest payable on the award amount is pending before the Hon'ble Division Bench of this Court.

22. In the said circumstances, this Court is of the view that the direction issued by the Tribunal cannot be faulted. However, the claimants are not entitled for interest during the default period and for the delay in paying the balance Court fee.

23. In view of the discussions held above, this Court modifies the compensation awarded by the Tribunal, as under:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of dependancy	12,09,600	16,96,512	enhanced
2.	For Transportation	7,000	7,000	confirmed
3.	For loss of consortium to 1st claimant/wife	35,000	35,000	confirmed
4.	For loss of consortium to 2 & 3 claimants(Rs. 35,000/- each)	70,000	70,000	confirmed
5.	For loss of consortium 4 and 5 (each Rs.35,000/-)	70,000	70,000	confirmed
6.	For Funeral Expenses	10,000	10,000	confirmed
7.	For loss of estate	10,000	10,000	confirmed
	Total	Rs.14,11,600	Rs.18,98,512	By enhancing a sum of Rs.4,86,912

24. In the result,

(i) C.M.A(MD)No.130 of 2022, is dismissed. No Costs.

(ii) C.M.A(MD)No.611 of 2023 is partly allowed enhancing the award of the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli in M.C.O.P.No.24 of 2016, dated 19.04.2021, from **Rs.14,11,600/-** (Rupees Fourteen Lakhs Eleven Thousand and Six Hundred Only) to a sum of **Rs.18,98,512/-**(Rupees Eighteen Lakhs Ninety Eight Thousand Five Hundred and Twelve Only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

(ii) The apportionment made by the Tribunal is sustained.

(iii) The Insurance Company is directed to deposit the enhanced award amount with accrued interests and costs after deducting the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) The major claimants are permitted to withdraw their respective shares as apportioned by the Tribunal, with proportionate interests and costs. In respect of minor claimants, their share shall be deposited in any one of the nationalised banks in fixed deposit till they attain majority. The mother and guardian of the minor claimants, is permitted to withdraw the accrued interest once in three months directly from the bank, only for the welfare of minors.

(v) The claimants are liable to pay Court fee for the enhanced compensation awarded.

No Costs. Consequently, connected Miscellaneous Petition is closed.

06.10.2023

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Index:Yes/No

NCC:Yes/No

To,

1.The Motor Accident Claims Tribunal,
Special District Court, Tiruchirappalli.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

G.CHANDRASEKHARAN, J.

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C.M.A(MD)Nos.130 of 2022 and 611 of 2023

06.10.2023