BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.(MD).No.468 of 2023

1. Palaniammal,,

2. Kumar, ... Petitioners

Vs

1. Kandasamy,
S/o.Palaniyandi,
No.1/79, Reddiyar Street,
Siluvampatti (Post),
Namakkal District..

2. The National Insurance Compa,
Ny Limited, Branch Office -1,
Promenet Road,
Cantonment,
Tirchirappalli.. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act 1988 against the judgment and decree dated 02.02.2022 in M.C.O.P. No. 690 of 2016 on the file of Motor Accidents Claims Tribunal/Special District Court, Trichirappalli and award further enhancement of compensation Rs. 5,00,000/-.

For Appellant : Mr.N.Sudhagar Nagaraj
For Respondents : Mr.V.Sakthivel for R2

J U D G M E N T

This civil miscellaneous appeal is filed challenging the award dated 02.02.2022 in MCOP No.690 of 2016 passed by the Motor Accident Claims Tribunal, Special District Court, Tiruchirappalli.

2. The challenge is to the quantum of award passed in MCOP No.690/2016. The claimants are the appellants herein.

3. The appellants/claimants filed MCOP No.690/2016 seeking compensation of Rs.10 lakhs for the death of one Athali. The first appellant is the wife and the second appellant is the son of the deceased. On 07.02.2011, at about 19.50 hrs., the deceased was walking on the left side of the road near Samathuvapuram Araichi village from west to east direction in Thuraiyur to Namakkal Road. The two wheeler bearing registration no.TN 28 AF 4129 had come in a rash and negligent manner from east to west came in the wrong side of the road and hit against the

deceased. As a result, the deceased suffered grievous injuries and died of the injuries. The deceased was an agricultural coolie and was earning not less than Rs.9,000/- per month. Due to his sudden demise, the appellants were left in lurch and they find it very difficult to manage their life. They lost their moral and financial support extended by the deceased and thus the claim petition.

4. The claim petition was opposed by the respondents by filing counter stating that the two wheeler rider was responsible for the accident. He was acquitted from the criminal case. The tort feasor vehicle rider had no driving license. The compensation claimed is very excessive.

5. During enquiry, before the tribunal, P.W.1 was examined and Ex.P6 to Ex.P8 were marked. R.W.1 and R.W.2 were examined and Ex.R1 was marked. On the basis of the oral and documentary evidence, the tribunal awarded a sum of Rs.7,27,000/- as compensation and directed the insurance company to pay the amount and then recover it from the owner/first respondent.

6. It is the submission of the learned counsel for the appellant that the tribunal had adopted notional income of Rs.4,500/- and this is too low. The deceased was aged 45 at the time accident and he should have easily earned not less than Rs.9,000/- per month by doing some physical work. In support of his contention, he pressed into service the judgment of the Division Bench of this Court in ***Andal and another and Avinan Kannan and others*** reported in ***2019(1) TNMAC 54 (DB)***.

7. The learned counsel for the 2nd respondent objected the contention of the appellants on the ground that there is no income proof filed and therefore, fixing the notional income of Rs.4,500/- is proper.

8. I have considered the rival submissions and perused the materials available on record.

9. The only issue that requires to be considered is whether the notional income fixed at Rs.4,500/- for computing the loss of dependency is correct. It is not in dispute that the accident had occurred on

07.02.2007. The deceased was aged 45 years at the time of the accident. He was able bodied person. This Court in the aforesaid judgment relying on the Apex Court judgment in Syed Sadiq v. United India Insurance Co. Ltd., reported in 2014 (1) TNMAC 459 and adopted the notional income of Rs.6,500/- per month, derived a formula and computed the compensation.

The notional income fixed by the cost of inflation index for the year 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 2013-2014
Cost of inflation index for the year 2007-2008		

This formula is used for arriving at the notional income of the deceased in a scientific manner. This Court is of the view that this method can also be adopted in the present case.

10. As per the formula, Rs.6,500/- x 184/129 = Rs.9271.3/-. Thus, this Court is of the view that the sum of Rs.9271.3/- rounded off to Rs.9,271/- can be notional income for fixing the loss of dependency to the deceased. The deceased was aged about 45 years. As per the

decision in the case of Smt. Sarla Verma v. Delhi Transport Corporation reported in 2009(2) TNMAC (1) SC, for 45 years, 25% has to be added towards future prospects. 25% would come to Rs.2,317.75/- rounded off to Rs.2,318/- and thus, the monthly notional income of the deceased comes to Rs.11,589/- (9271+2318). If 1/3rd is deducted towards personal expenses, then, the monthly income would be Rs.11,589 – Rs.3,863/- = Rs.7,726/- and thus, the monthly notional income of the deceased, after deducting 1/3rd towards his personal expenses is Rs.7,726/-. The proper multiplier is 14. When calculated, the loss of dependency would be at Rs.7,726 x 12 x 14 = Rs.12,97,968/-.

11. Though the appellants had claimed only Rs.10,00,000/- as compensation, that is not the criteria for awarding the compensation. The criteria is just and fair compensation. This is so held in ***2018 (1) TN MAC 592 (DB), [Managing Director, State Express Transport Corporation Limited, Vs. Radha and others*]**. The compensation awarded on the other heads is retained.

12. Thus, the compensation awarded is enhanced as follows:

Heads	**Awarded by the tribunal (Rs.)**	**Modified/ reduced**	**Final Compensation (Rs.)**
Loss of dependency	6,30,000	(enhanced)	12,97,968
Transportation	7,000/-	Confirmed	7,000
Loss of estate	10,000	Confirmed	10,000
Loss of consortium to the first appellant	35,000	Confirmed	35,000
Loss of love and affection to the 2nd appellant	35,000	Confirmed	35,000
Funeral expenses	10,000	Confirmed	10,000
Total	7,27,000	Enhanced	13,94,968

9. In the result, the civil miscellaneous appeal is allowed in part and the compensation awarded by the Tribunal is hereby enhanced from Rs.7,27,000/- to Rs.13,94,968/-. The 2nd respondent insurance company is directed to deposit the entire award amount of Rs.13,94,968/- (Rupees thirteen lakhs ninety four thousand nine hundred and sixty eight only), if not already deposited, within a period of four weeks from the date of

receipt of the judgment with interest at 7.5% per annum from the date of petition till the date of deposit to the credit of MCOP No.690/2016 on the file of the Motor Accident Claims Tribunal/Special District Court, Tiruchirappalli. On such deposit being made, the appellants/claimants are permitted to withdraw the entire award amount/their respective share as apportioned by the tribunal, with interest and costs, less the amount already withdrawn, if any, on due application before the Tribunal. The claimants are liable to pay Court fee for the enhanced compensation awarded. No costs.

08.12.2023

NCC : Yes/No
Internet : Yes/No

RR

To

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

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

G.CHANDRASEKHARAN,J.

RR

C.M.A.(MD).No.468 of 2023

08.12.2023