IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE K. RAJASEKAR

C.M.A.No.2854 of 2021

and CMP.No.12655 of 2021

1. Saravanan (died)
2. Vijiya ... Appellants

Vs.

1. S. Umamaheshwari

2. The Divisional Manager,
United India Insurance Company Limited,
Divisional Office, No.146/N, 2nd floor,
Kumar Complex, Anna salai,
Tiruchengode – 637 211 .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 31.07.2019 made in M.C.O.P.No.774 of 2018 on the file of the Motor Accident Claims Tribunal Special District Court, Krishnagiri.

For Appellants : Mr.S.P.Yuaraj

For Respondents : Mr.J.Chandran for R2
No appearance for R1

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation of the award dated 31.07.2019 made in M.C.O.P.No.774 of 2018 on the file of Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

2. The appellants are the claimants in M.C.O.P.No.774 of 2018 on the file of Motor Accident Claims Tribunal, Special District Court, Krishnagiri. They filed the above claim petition, claiming a sum of Rs.50,00,000/- as compensation for the death of their son Poovizhibabu, who died in the accident that took place on 04.03.2018.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Private Bus belong to the first respondent herein and directed the 2nd respondent – Insurance Company being the insurer of the Bus to pay a sum of Rs.13,35,200/- as compensation to the appellants.

4. Not being satisfied with the compensation granted by the Tribunal, the appellants have come out with the present appeal seeking enhancement of

compensation.

5. The learned counsel appearing for the appellants contended that the deceased was aged 27 years and has completed ITI Trade Certificate in Motor Mechanic and was working in the MRF Tyre Dealers shop at Kaveripattinam and was earning a sum of Rs.16,000/- per month. The Tribunal erroneously fixed meager sum of Rs.9,000/- as monthly income of the deceased. The amount awarded by the Tribunal towards loss of love and affection and consortium are meager and prayed for enhancement of compensation.

6. The first respondent remained exparte before the Tribunal and the second respondent Insurance Company contested the case.

7. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the appellants have not filed any document to prove their claim that the deceased was working in MRF Tyre and Dealers and was earning a sum of Rs.16,000/- per month. In the absence of material evidence, the Tribunal correctly fixed a sum of Rs.9,000/- and granted 40% enhancement towards future prospects and total compensation

awarded by the Tribunal is not meager. The appellants have not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

8. I have heard the learned counsel appearing for the appellants as well as the second respondent and perused the entire materials on record.

9. From the materials on record it is seen that appellants have claimed that deceased was working in MRF Tyre Dealers shop at Kaveripattinam and was earning a sum of Rs.16,000/- per month and they failed to prove their contention. In the absence of material evidence, the Tribunal fixed monthly income of the deceased at Rs.9,000/-. The accident occurred in the year 2018. The deceased was aged 27 years at the time of accident and the monthly income fixed by the Tribunal is meager. The Division Bench 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 in ***Syed Sadiq Vs. United India Insurance Company [2014 (1) TNMAC 459],*** holding 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*

S.No.	*Financial Year*	*Cost of Inflation Index*
3	*2003-2004*	*109*
4	*2004-2005*	*113*
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 (i.e., Rs.6,500/-) X *Cost of Inflation Index for the vegetable vendor for the year 2013-2014*

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

9. Hence, this Court is inclined to modify the notional income fixed

by the Tribunal based on the dictum laid down by the Hon'ble Apex Court in the judgment cited supra and the same is calculated as follows:

Date of accident	= 04.03.2018
Cost of Inflation index	= 272 (Financial Year 2017-2018)
Notional income of the deceased	= (6,500/- x 272) / (129)
	= *Rs.13,705/-*

10. By following the above judgment, this Court considering the date of the accident and age of the deceased is inclined to fix the notional income of the deceased at Rs.13,705/-. The deceased was aged 27 years at the time of accident. The appellant is entitled to 40% of income towards future prospects. The Tribunal has applied the correct multiplier as '17'. The deceased was a bachelor, accordingly, the loss of dependency can be arrived at after deducting 50% of his monthly income towards personal and living expenses and thereby a sum of Rs.13,97,910/- {Rs.13,705/- + Rs.5,482/- (40% of Rs.13,705/-) X 12 X 17 X 1/2} be awarded. Under the head of loss of consortium the claimant is entitled to Rs.40,000/- which includes loss of love and affection as held by the Apex Court in the case of ***United India Insurance Co.Limited Vs. Satinder Kaur and Ors.*** [MANU/SC/0500/2020 : (2021) 11 SCC 780]. Thus the amount awarded by the Tribunal under the head "Loss of Consortium" is enhanced to

Rs.40,000/- and Rs.10,000/- awarded under the head "Loss of love and affection" is set aside. Pending the claim the first appellant/father of the deceased had died and the 2nd appellant/mother is the only legal heir. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the amounts awarded by the Tribunal are modified 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	12,85,200/-	13,97,910/-	Enhanced
2.	Loss of love and affection	10,000/-	-	Set aside
3.	Loss of consortium	10,000/-	40,000/-	Enhanced
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
5.	Loss of Estate	15,000/-	15,000/-	Confirmed
	Total	**Rs.13,35,200/-**	**Rs.14,67,910/-**	**Enhanced by Rs.1,32,710/-**

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,35,200/- is hereby enhanced to Rs.14,67,910/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined

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. On such deposit, the 2nd appellant is permitted to withdraw the enhanced award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs. Consequently connected miscellaneous petition is also closed.

08.02.2024

dpq
Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order

K. RAJASEKAR, J.,

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To

1.The District Court,
Krishnagiri.

2.The Section Officer,

VR Section,
High Court,
Madras.

C.M.A.No.2854 of 2021

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