IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. Nos. 1748 and 1749 of 2021

C.M.A. No. 1748 of 2021

Kalamani ... Appellant / Petitioner

Vs.

1. M.I. Mansoor

2. M/s. National Insurance Co. Ltd.,
Represented by its Divisional Office – I,
L.R.N. Complex,
Salem – 636 007. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 17.02.2021 passed in M.C.O.P. No. 1292 of 2019 on the file of the Special District Judge, MCOP Tribunal, Salem.

For Appellant	:	M/s. M. Guruprasad
For R1	:	Dispensed With
For R2	:	M/s. S. Vadivel

C.M.A. No. 1749 of 2021

1. Kalamani
2. Minor Surya
3. Minor Maikalraj
4. Minor Neela ... Appellants / Petitioners

Vs.

1. M.I. Mansoor

2. M/s. National Insurance Co. Ltd.,
Represented by its Divisional Office – I,
L.R.N. Complex,
Salem – 636 007. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 17.02.2021 passed in M.C.O.P. No. 1294 of 2019 on the file of the Special District Judge, MCOP Tribunal, Salem.

For Appellant	:	M/s. M. Guruprasad
For R1	:	Dispensed With
For R2	:	M/s. S. Vadivel

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JUDGMENT

These Civil Miscellaneous appeals have been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. Nos. 1792 and

1794 of 2019, dated 17.02.2021 on the file of the Special District Judge, M.C.O.P. Tribunal, Salem.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. On 24.03.2019, at about 8:30 AM, the deceased Sekar along with his son Dharani as a pillioner was riding a two wheeler bearing Registration No.TN-33-K-6919 on Salem – Coimbatore National Highway, inorder to cross the highway road, he stopped the two wheeler at an inter junction near JKKN College, Vattamalai, at that time, a Mini Lorry bearing Registration No.TN-66-S-2589, driven by its driver in a rash and negligent manner, dashed against the two wheeler of the deceased Sekar and caused instant death to both the rider and the pillion rider. A criminal case was registered against the driver of the Mini Lorry in Cr.No.187/2019 U/s. 279, 304(A) of IPC on the file of Komarapalayam Police Station. For the loss of both Sekar and his Dharani, dependants of both deceased have filed separate claim petitions claiming compensation for a sum of Rs.48,00,000/- and

Rs.25,00,000/-, respectively by invoking section 166 of the Motor Vehicles Act, 1988.

4. The first respondent is the owner of the Mini Lorry has not contested the claim and remained ex-parte. The second respondent – insurance company filed a counter, denied the manner in which the accident has taken place and contended that the accident was taken place only due to the negligence on the part of the deceased Sekar, who has all of a sudden entered into the middle of the national highway, thereby invited the accident. The insurance company further contended that the deceased Sekar as well as the first respondent's driver does not possess a valid driving licence at the time of accident and the compensation claimed under various heads are on the higher side.

5. The Tribunal after considering the evidences placed on record has fixed the contributory negligence of 30% on the part of the deceased Sekar for not wearing helmet and not possessing a valid driving licence and 15% on the part of the deceased Dharani for not wearing helmet at the time of accident. The Tribunal has also quantified and granted compensation for

a sum of Rs.11,28,400/- and Rs.5,44,080/- for the loss of deceased Sekar and deceased Dharani, respectively along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

6. Aggrieved over the award, the claimants have come forward with this appeal seeking enhancement of compensation. The respondents have not come forward with any appeal challenging the award.

7. The learned counsel appearing for the claimants submitted thta the Tribunal has not properly appreciated the evidence placed on record and fixed contributory negligence on both the deceased. He further contended that the notional income fixed on the part of the deceased Sekar and also the compensation awarded under various heads in both the claim petitions are on the lower side and prays to enhance the compensation.

8. The learned counsel for the insurance company submitted that the Tribunal based on the evidence placed on record has rightly fixed the contributory negligence on both the deceased Sekar as well as deceased Dharani and the Tribunal has also awarded a 'Just' compensation and prays

to confirm the award.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. In this case, it is true that the driving licence of the deceased Sekar was not produced at the time of inspection of vehicle and it is the case of the claimants that, the deceased Sekar crossed one part of the road, stopped and was waiting at the center median for crossing the other part of the road, at that point of time, a mini lorry driven by its driver in a rash and negligent manner, dashed against the two wheeler of the deceased. Therefore, it is the case that, the deceased while awaiting at the centre median of the highway for crossing, the accident has taken place, hence it is not the case of insurance company that deceased without knowledge or ability of riding a two wheeler, he invited the accident.

11. The insurance company has taken a specific stand that the deceased Sekar was not having a valid driving licence and both the deceased were not wearing safety helmet at the time of accident. In the

evidence of P.W.1, even though she has denied that the deceased was not wearing helmet, it is admitted that the injuries noted in the postmortem certificates of both the deceased, shows that they have sustained head injuries, hence this evidence is sufficient to held that both the deceased were not wearing helment at the time of accident and due to which, they sustained head injuries, which resulted in causing instant death. This Court in ***C.M.A.(MD). No. 987 and 988 of 2014 dated 13.02.2017, Branch Manager (Oriental Insurance Company Limited) vs. Indirani and others*** has held in paragraph 11 and 12 as follows:

> *"11. Without wearing a helmet, no rider can drive the two wheeler and as per Section 129 of the Motor Vehicles Act, 1988, it is mandatory. Section 129 of the Motor Vehicles Act, 1988, is usefully extracted hereunder:*
>
> > ***"129. Wearing of protective headgear.-*** *Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear [protective headgear conforming to the standards of Bureau of Indian Standards]:*
> >
> > *Provide that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:*
> >
> > *Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.*
> >
> > *Explantion.- "Protective headgear"means a helmet*

which,-

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the even of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

12. This Court has elaborately dealt with the instances of wearing of helmet by quoting the details of death cases due to non-wearing of helmet in R. Mallika and others vs. A. Babu and others [C.M.A.No.3235 of 2014,decided on 08.06.2015] and therefore, 15% negligence has to be fixed on the rider of the two wheeler for not wearing the helmet and accordingly, 15% negligence is fixed on the rider of the two wheeler."

12. Based on the above observations, this Court is of the view that non wearing of helmet is termed as contributory negligence, accordingly, 15% contributory negligence is fixed on the part of both the deceased.

13. With regard to quantum of compensation, as far as the deceased Sekar is concerned, he was a powerloom weaver and earning Rs.20,000/- per month, however, the claimants have not proved the same before the Tribunal, hence the Tribunal has fixed Rs.9,000/- as monthly notional income of the deceased. 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*
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*

129

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

14. Based on the above observation, this Court is inclined to modify the notional monthly income of the deceased to Rs.14,100/-. The Tribunal by following the dictum as laid down in ***National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680],*** fixed 40% as future prospectus and as per ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the multiplier is fixed as '15' by considering the age of the deceased at the time of the accident, hence this Court finds no infirmity in the above fixing of future prospectus and multiplier adopted by the Tribunal and confirms the same. Based on the number of dependants, one-third is deducted from his monthly income towards personal and living expenses, accordingly, the compensation under loss of income with modified monthly notional income of Rs.14,100/-is assessed as follows:

Annual income (Rs.14,100/- x 12) = Rs.1,69,200/-

Future prospects @ 40%	= Rs.67,680/-
Yearly income of the deceased	= Rs.2,36,880/-
Yearly contribution to his family(after deducting 1/3)	= Rs.1,57,920/-
Applicable Multiplier	= 15
Total compensation (Rs.1,57,920/- x 15)	= **Rs.23,68,800/-**

15. The Tribunal has awarded Rs.40,000/- towards loss of consortium, as per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018],*** all the claimants are entitled for consortium. Accordingly, this Court is inclined to grant Rs.40,000/- to each of the claimants, who are the wife and children of the deceased Sekar. Whereas the other conventional heads are concerned, the Tribunal has awarded just compensation and this Court is inclined to confirm the same.

16. 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 (after deducting contributory negligence @ 30%)	10,58,400/-	23,68,800/-	Enhanced
2.	loss of consortium	40,000/-	1,60,000/-	Enhanced
3.	Loss of estate	15,000/-	15,000/-	Confirmed

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	11,28,400/-	25,58,800/-	Enhanced
	Contributory negligence @ 15% (modified)	---	3,83,820/-	
	Total Compensation	11,28,400/-	**21,74,980/-**	**Enhanced**

17. As far as the deceased minor Dharani is concerned, the Tribunal after considering the fact that the deceased was aged about 14 years and was studying 8th standard at the time of accident, fixed notional monthly income of Rs.4,000/- and after deducting 15% towards contributory negligence for non-wearing of helmet, awarded Rs.5,14,080/- as compensation under the head loss of dependency, the Tribunal has also awarded Rs.15,000/- each under the conventional head loss of estate and funeral expenses. This Court finds no infirmity in the above fixing of notional income, contributory negligence and compensation awarded under conventional heads, hence the same are hereby confirmed. However, the Tribunal has not awarded compensation under the head loss of consortium, as per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018],*** the claimant is entitled for consortium.

Accordingly, this Court is inclined to grant Rs.40,000/- to the claimant, who is the mother of the deceased Dharani.

18. 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 (after deducting contributory negligence @ 15%)	5,14,080/-	5,14,080/-	Confirmed
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	---	40,000/-	Granted
	Total Compensation	5,44,080/-	**5,84,080/-**	**Enhanced**

19. In the result, these Civil Miscellaneous Appeals are partly allowed. In C.M.A.No.1749 of 2021, the compensation awarded by the Tribunal at Rs.11,28,400/- is hereby enhanced to **Rs.21,74,980/- [Rupees Twenty One Lakh Seventy Four Thousand Nine Hundred and Eighty only]** and in C.M.A.No.1748 of 2021, the compensation awarded by the Tribunal at Rs.5,44,080/- is hereby enhanced to **Rs.5,84,080/- [Rupees Five**

Lakh Eighty Four Thousand and Eighty 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 second 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.Nos.1292 and 1294 of 2019 on the file of the Special District Judge, Motor Accidents Claims Tribunal, Salem. On such deposit, the appellants/ claimants 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.

09.02.2024

stn
Index:Yes/No

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

To:

1. The Special District Judge,
   Motor Accident Claims Tribunal,
   Salem.

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

K. RAJASEKAR, J.

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C.M.A. Nos. 1748 and 1749 of 2021

09.02.2024