IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2161 of 2021

1. Padmavathi
2. Srinivasan
3. Prabhu
4. Rathinammal ... Appellants / Petitioners

Vs.

1. Athimoolam

2. The United India Insurance Co. Ltd.,
Divisional Office - 2, First Floor,
Peramanur Main Road, Peramanur,
Salem - 636 007. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 02.03.2021 passed in M.C.O.P. No. 1940 of 2017 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem.

For Appellant	:	M/s. C. Paraneedharan
For R1	:	No Appearance
For R2	:	M/s. S. Arunkumar

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants challenging the contributory negligence fixed on the part of the deceased and for seeking enhancement of compensation awarded in M.C.O.P. No. 1940 of 2017, dated 02.03.2021 on the file of the Special District Judge, Motor Accident Claims Tribunal, Salem.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 30.08.2017, at about 4:00PM, the deceased Loganathan was riding a two wheeler bearing Registration No.TN-27-E-4361 on Chennai-Salem bye pass road and while he was waiting at the souther end of the road in order to cross the road, a Hyundai Creta car bearing Registration No.TN-25-AP-9977 came in a rash and negligence manner, hit on the two wheeler of the deceased, causing grievous injuries on the head and the deceased succumbed to injuries on the same day. A criminal case was also registered against the driver of the car in Cr.No.581/2017 under section 279, 338 of IPC on the file of Ammapet Police Station, Salem City. For the loss of deceased Loganathan, the claimants, who are the wife, sons and mother of

the deceased filed this claim petition seeking compensation for a sum of Rs.25,00,000/- under section 166 of the Motor Vehicles Act.

4. The first respondent, who is the owner-cum-driver of the car has not contested the claim and remained ex-parte. The second respondent - insurance company filed a counter and contended that the accident was taken place only due to the rash and negligence on the part of the deceased, who suddenly crossed the main road without observing the on-coming vehicles. The insurance company also stated that the deceased has no valid driving licence and was not wearing a helmet at the time of occurrence and disputed the age, occupation and income of the deceased and contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P.1 to P.21 were marked. On the side of the respondents, R.W.1 was examined and Ex.C.1 was marked.

6. Based on the evidence placed on record, the Tribunal in point

nos.1 and 2, has held that the rash and negligence on the part of the first respondent and negligence on the part of the deceased of not possessing a valid driving licence and not wore a helmet at the time of occurrence are responsible for the accident, hence fixed the contributory negligence in the ratio of 80:20 on the part of the first respondent and the deceased respectively. In point no.3, the Tribunal has quantified and granted compensation for a sum of Rs.7,89,200/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and fixed the liability on the second respondent - insurance company to indemnify the first respondent and to pay the awarded compensation to the claimants.

7. Aggrieved over the award, the claimants have filed this challenging the contributory negligence fixed on the part of the deceased and for seeking enhancement of compensation.

8. The learned counsel appearing for the claimants submitted that the Tribunal has not properly appreciated the evidences placed on record and fixed contributory negligence on the part of the deceased and with regard to employment and monthly earnings of the deceased, the

Tribunal has fixed Rs.9,000/- as notional monthly income and awarded compensation. The Tribunal has also not properly awarded compensation under the head consortium and also the compensation awarded under other heads are on the lower side, hence prays to enhance the monthly income of the deceased fixed by the Tribunal and award just compensation under various other heads.

9. Per contra, the learned counsel appearing for the respondent – insurance company has submitted that based on the evidences placed on record, the Tribunal has rightly fixed the notional income of the deceased and also awarded just compensation, hence prays to confirm the award of the Tribunal.

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

11. The Tribunal based on Ex.P.2 - Accident Register, Ex.P.3 - death summary, Ex.P.4 - Postmortem certificate of the deceased and Ex.P.8 - rough sketch, held that the root cause for the death of the deceased is due to

the injuries sustained on the head area, if the deceased had wore a helmet, he might have survived in the occurrence. Further, P.W.1, who is the wife of the deceased has admitted that the deceased was not having a valid driving licence to drive the two wheeler, hence the Tribunal has concluded that the deceased has also contributed to the accident and fixed contributory negligence of 20% on the part of the deceased. 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 that non-wearing head gear attracts contributory negligence and observed in paragraph no.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. The evidence of witnesses shows that, the deceased was not wearing head gear to protect his head from injuries. The injuries recorded in Postmortem certificate also shows that, if the deceased was wearing helmet/ protective head gear, he could not have succumbed to the injuries. This Court is of the view that the Tribunal has rightly appreciated the evidences placed on record and fixed 20% negligence on the part of the deceased for non possession of valid driving licence and protective head gear, hence this Court is inclined to confirm the contributory negligence fixed on the part of the deceased.

13. In this case, the claimants have stated that the deceased was a Weaver and earning an income of Rs.35,000/- per month. To prove the income, they have examined P.W.3, who claimed that he was maintaining the income and expenditure accounts of the deceased and through him Ex.P.18 to P.21 were marked. However, after examining those documents, the Tribunal has held that all the documents were created for the purpose of inflating the income of the deceased, hence considering the age and avocation of the deceased, the Tribunal has fixed the monthly notional income of the deceased as Rs.9,000/- and awarded compensation under the head loss of dependency. However, this Court considering the age and year of the accident finds that the notional income fixed on the deceased by the Tribunal is on the lower side. 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*

S.No.	*Financial Year*	*Cost of Inflation Index*
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. Hence, this Court is inclined to modify the notional income fixed by the Tribunal based on the dictum laid down in the Hon'ble Apex Court judgment cited supra and the same is calculated as follows:

Date of accident	= 30.08.2017
Cost of Inflation index	= 272 (Financial Year 2017-2018)
Notional income of the deceased	= (6,500/- x 272) / (129)
	= Rs.13,705.42/-
	= **Rs.13,705/- (Round off)**

15. The Tribunal has rightly followed the dictum as laid down in ***National Insurance Co. Ltd., vs. Pranay Sethi and other*** reported in ***[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]*** and fixed 10% as future prospectus and as per ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and others*** reported in ***[2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the multiplier is fixed as '11' by considering the age of the deceased as 55 years as mentioned in the claim petition, at the time of the accident. This Court finds no infirmity in the above fixing of future prospectus and multiplier adopted by the Tribunal and hence, confirms the same. After deducting one-third (1/3) of his monthly income towards his personal and living expenses, the compensation under loss of dependency with modified monthly notional income of Rs.13,705/- is assessed as follows:

Annual income (Rs.13,705/- x 12) = Rs.1,64,460/-
Future prospects @ 10% = Rs.16,446/-
Yearly income of the deceased = Rs.1,80,906/-
Yearly contribution to his family
(deduction of 1/3) = Rs.1,20,604/-
Applicable Multiplier = 11
Total compensation (Rs.1,20,604/- x 11) = **Rs.13,26,644/-**

16. The Tribunal has awarded Rs.40,000/- as compensation under the head loss of consortium, as per the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd., vs Nanu Ram*** reported in ***2018 ACJ 2018,*** all the claimants herein are entitled for consortium. Hence, this Court is inclined to grant the claimants Rs.40,000/- each to the wife, sons and mother of the deceased Loganathan, as per the Apex Court Judgment stated supra. Whereas the other heads are concerned, the compensation awarded by the Tribunal are just and the same are hereby confirmed.

17. 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	6,96,960/- (after deducting 20% contributory negligence)	13,26,644/-	Enhanced
2.	Medical Bills	22,540/-	22,540/-	Confirmed

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
3.	Loss of consortium	40,000/-	1,60,000/-	Enhanced
4.	Loss of estate	15,000/-	15,000/-	Confirmed
5.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total	7,89,200/-	15,39,184/-	Enhanced
	Deduction of 20% contributory negligence	---	3,07,837/-	
	Total Compensation	7,89,200/-	**12,31,347/-**	**Enhanced**

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,89,200/- is hereby enhanced to **Rs.12,31,347/- [Rupees Twelve Lakh Thirty One Thousand Three Hundred and Forty Seven 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. No.1940 of 2017 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 Accounts 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.

04.01.2024

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

K. RAJASEKAR, J.

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To:

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

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

C.M.A. No. 2161 of 2021

04.01.2024