IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3053 of 2021

1. Kokila
2. Minor Mithran Abimanu
3. V. Raja
4. V. Selvi ... Appellants / Petitioners

Vs.

The Managing Director,
TNSTC Salem,
D.No.12, Ramakrishna Road,
Salem Town, Namakkal District. ... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 08.04.2019 passed in M.C.O.P. No. 29 of 2015 on the file of the Principal District Judge, Motor Accident Claims Tribunal, Namakkal.

For Appellants : M/s. R. Nalliyappan

For Respondent : M/s. D. Nitin
(Standing Counsel for Transport Corporation)

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No. 29 of 2015, dated 08.04.2019 on the file of the Principal District Judge, Motor Accident Claims Tribunal, Namakkal.

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

3. On 23.10.2016, at about 02:00 PM, the deceased Kumaresan was riding a motor cycle bearing Registration No.TN-77-Y-0399 on the Namakkal to Salem main road, while he reached near Ashok Leyland Company of Thasanaichenpatti, a TNSTC (Town Bus No.52) bearing Registration No.TN-30-N-0203 came from Salem to Rasipuram, driven by its driver in a rash and negligent manner, dashed against the motorcycle of the deceased, thereby causing fatal injuries and the deceased died on the spot. A criminal case was registered in Cr.No.373/2016 U/s.279 and 304(A) of IPC on the file of Mallur Police station. For the loss of deceased

Kumaresan, the claimants, who are the wife, minor son and parents of the deceased have filed claim petition seeking compensation for a sum of Rs.25,00,000/- under section 166 of the Motor Vehicles Act, 1988.

4. The respondent – Transport Corporation has filed a counter and contended that the driver of the TNSTC bus has driven the bus with due care and caution and the accident was taken place only due to the rash and negligence on the part of the deceased, who while trying to over take a share auto, suddenly dashed against the bus and invited the accident. The Transport Corporation also contended that the deceased was not having a valid driving license at the time of accident and disputed the age, occupation and income of the deceased and further contended that the compensation claimed is highly excessive.

5. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligent act of the Transport Corporation's driver is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.12,12,400/- 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 filed this appeal seeking enhancement of compensation and the respondent – Transport Corporation has not preferred any appeal against the liability fixed and quantum of compensation awarded by the Tribunal.

7. The learned counsel for the claimant submitted that the Tribunal has not properly appreciated the evidence placed on record regarding the avocation and income of the deceased and fixed Rs.6,000/- as monthly notional income, which is on the lower side and also the Tribunal has only awarded Rs.40,000/- as compensation under the head consortium, whereas the dependents in this case are four in numbers but the Tribunal has made a deduction of one-third towards the living and personal expenses of the deceased, hence prays to modify the notional income and deduction towards personal and living expenses and to enhance the compensation.

8. Per contra, the learned counsel for the insurance company submitted that based on the evidence placed on record, the Tribunal has

awarded a just compensation and submitted that the third claimant is the father of the deceased, who is not a legal heir to the deceased herein, hence the Tribunal has rightly made the deduction of one-third towards the living and personal expenses of the deceased, hence prays to confirm the same.

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

10. The major contention raised by the claimants is that the notional income fixed on the deceased is on the lower than fixing of notional income followed by this Court for the self employed people, since the claimants claim that the deceased in this case is a Painting Contractor was earning Rs.25,000/- per month. Since, there is no records or witness to prove the income of the deceased and to substantiate the case of the claimants by any documentary evidence, the Tribunal has rightly rejected the income of the deceased as claimed by the claimants and fixed the monthly notional income of the deceased as Rs.6,000/-.

11. Considering the age and avocation of the deceased, even

though, the claimants were not able to prove the income of the deceased as Rs.25,000/- per month, this Court is of the view that the monthly notional income of Rs.6,000/- fixed by the Tribunal is on the lower side. 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 judgment 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 enhancement 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*

S.No.	*Financial Year*	*Cost of Inflation Index*
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)"

12. Based on the above observations, 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	= 23.10.2016
Cost of Inflation index	= 264 (Financial Year 2016-2017)
Notional income of the deceased	= (6,500/- x 272) / (129)
	= Rs.13,302.32
	= **Rs. 13,300/- (Round off)**

13. 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 40% 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 '17' by considering the age of the deceased at the time of the accident. The Ex.P2- Postmortem certificate shows that the deceased is aged about 27 years at the time of accident, hence, this Court finds no infirmity in the above fixing of future prospectus and multiplier adopted by the Tribunal and hence, confirms the same.

14. In this case, the third claimant, who is the father of the deceased is also one of the dependent of the deceased and the claimants have also given evidence that he was depending upon the income of the deceased and there is no direct evidence to show that he is not a dependent to the deceased. However, the Tribunal has held that the name of the father of the deceased was not stated in the legal heir certificate, hence he could not be considered as dependent of the deceased, this Court is of the view that the same is not proper. As per **Sarla Verma's case** cited supra, while

deciding the question of personal and living expenses of the deceased has held in paragraph 14 as follows:

> *"Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3 rd) where the number of dependent family members is 2 to 3, one-fourth (1/4 th) where the number of dependant family members is 4 to 6, and one-fifth (1/5 th) where the number of dependant family members exceed six."*

15. Admittedly, in this case, the compensation has to be decided based on the dependency and as per the evidence adduced on the side of the claimants shows that the father of the deceased was depending on the income of the deceased, hence this Court is of the view that the third claimant is also the dependent of the deceased and he is entitled to get compensation. Accordingly, the deduction of one-third towards personal and living expenses adopted by the Tribunal is modified to one-fourth for assessing loss of dependency. Accordingly, the loss of dependency is assessed as follows:

Annual income (Rs.13,300/- x 12) = Rs.1,59,600/-
Future prospects @ 40% = Rs.63,840/-
Yearly income of the deceased = Rs.2,23,440/-
Yearly contribution to his family (After deduction of ¼) = Rs.1,67,580/-
Applicable Multiplier = 17
Total compensation (Rs.1,67,580/- x 17) = **Rs.28,48,860/-**

16. The Tribunal has awarded Rs.40,000 as compensation under the head loss of consortium, however, 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 Rs.40,000/- each to the wife, minor son and parents of the deceased Kumaresan, 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 with 40% future prospectus	11,42,400/-	28,48,860/-	Enhanced

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Loss of consortium	40,000/-	1,60,000/-	Enhanced
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total Compensation	12,12,400/-	**30,38,860/-**	**Enhanced**

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs. 12,12,400/-is hereby enhanced to **Rs.30,38,860/- [Rupees Thirty Lakh Thirty Eight Thousand Eight Hundred and Sixty Only 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 respondent - Transport Corporation 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.29 of 2017 on the file of the Principal District Judge, Motor Accidents Claims Tribunal, Namakkal. On such deposit, the appellants 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.

23.01.2024

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

To:

1. The Principal District Judge,
   Motor Accident Claims Tribunal,
   Namakkal.

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

K. RAJASEKAR, J.

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C.M.A. No. 3053 of 2021

23.01.2024