IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3125 of 2021

Murugesan ... Appellant / Petitioner

Vs.

1. S. Parthasarathy

2. Unitied India Insurance Co. Ltd.,
Rep. by its Branch Manager,
No.50A, Pallivasal Street,
Perambalur. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 02.11.2020 passed in M.C.O.P. No. 58 of 2018 on the file of the Sessions Judge, Motor Accident Claims Tribunal, Perambalur.

For Appellant	:	M/s. C. Vidhusan
For R1	:	No Appearance
For R2	:	M/s. I. Malar

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in passed in M.C.O.P. No. 58 of 2018,dated 02.11.2020 on the file of the Sessions Judge, Motor Accident Claims Tribunal, Perambalur.

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

3. On 09.08.2017, at about 2:15PM, the deceased Poonkodi, while crossing the Perambalur to Atthur road at Veppanthattai from east to west, opposite to Sub-Registrar Office, a Yamaha Fazer motorcycle beraring Registration No.TN-46-T-5058, ridden by its rider in a rash and negligent manner, came from north to south direction, hit on the deceased, thereby causing grievous injuries to her. Immediately after the accident, the said Poonkodi was taken to Government Hospital, Tiruchirapalli, on the way to hospital, she succumbed to injuries. A criminal case was registered in Cr.No.287/2017, U/s.279 and 304(A) of IPC on the file of Arumbavoor Police Station. For the loss of deceased Poonkodi, the claimant, who is the husband of the deceased has filed claim petition seeking compensation for a

sum of Rs.25,00,000/- under section 140 and 166 of the Motor Vehicles Act, 1988.

4. The first and second respondents are the owner and insurer of the Yamaha Fazer motorcycle bearing Registration No.TN-46-T-5058. Before the Tribunal, the first respondent remained ex-parte and the second respondent – insurance company has filed a counter and denied the manner in which the accident has taken place and further disputed the age, income and occupation of the deceased.

5. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P.1 to P.9 were marked. On the side of the respondents, no witnesses were examined and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in Point no.1, has held that the rash and negligence on the part of the rider of the first respondent's motorcycle is responsible for the accident and fixed the liability on the part of the second respondent – insurance company to indemnify the first respondent and to pay compensation to the claimant. In Point nos.2 and

3, the Tribunal has quantified and granted compensation for a sum of Rs.6,55,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the award, the claimant has filed this appeal seeking enhancement of compensation. The insurance company has not preferred any appeal against the liability fixed on them to indemnify the first respondent and to pay compensation to the claimant.

8. 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, hence prays to enhance the compensation.

9. 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, hence prays to confirm the same.

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

11. The major contention raised by the claimant is that the notional income fixed on the deceased is lower than fixing of notional income followed by this Court for the self employed people. The claimant claim that the deceased is a Milk Vendor and was earning Rs.15,000/- per month and to prove the same, the claimant has marked Ex.P.5 to P.7, which are the documents speaks about the involvement of the deceased in the Milk vending activities. The Ex.P.7- receipt issued to the deceased by the Hatsun Agro Product Ltd., and it certifies that the deceased used to supply milk to the Hatsun Agro Product Limited. But, to prove the income of the deceased, the claimant has not adduced any oral or documentary evidences, hence the Tribunal has fixed the monthly notional income of the deceased as Rs.6,000/-.

12. Considering the age and avocation of the deceased, even though, the claimant was not able to prove the income of the deceased as Rs.15,000/- 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. As per the Division Bench judgment of this Court in ***Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]***, which has laid down guidelines for fixing the notional income of various categories of persons, whose income has not been proved, and 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*
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)"

13. 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	= 09.08.2017
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)**

14. 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 25% 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 '13' by considering the age of the deceased at the time of the accident. The Ex.P2- Postmortem report, Ex.P.3 – Death certificate and oral evidence of P.W.1 shows that the deceased is aged about 46 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. Since the claimant is only one person in this case, hence deducting half (1/2) of the deceased monthly income towards her 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 @ 25%	= Rs.41,115/-
Yearly income of the deceased	= Rs.2,05,575/-
Yearly contribution to his family (deduction of 1/2)	= Rs.1,02,787.50
Applicable Multiplier	= 13
Total compensation (Rs.1,02,787.50 x 13)	= Rs.13,36,237.50
	= Rs. 13,36,238/-(round off)

15. The Compensation other heads are concerned, the Tribunal has awarded a just compensation, hence 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	5,85,000/-	13,36,238/-	Enhanced
2.	Consortium	40,000/-	40,000/-	Confirmed
3.	Loss of Estate	15,000/-	15,000/-	Confirmed
4.	Funeral expenses	15,000/-	15,000/-	Confirmed
	Total Compensation	6,55,000/-	**14,06,238/-**	Enhanced

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,55,000/- is hereby enhanced to **Rs.14,06,238/- [Rupees Fourteen Lakh Six Thousand Two Hundred and Thirty Eight 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.58 of 2018 on the file of the Sessions Judge, Motor Accidents Claims Tribunal, Perambalur. On such deposit, the

appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is 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 Sessions Judge,
   Motor Accident Claims Tribunal,
   Perambalur.

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

<u>K. RAJASEKAR, J.</u>

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