IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.2539 of 2021

1. Lakshamamma
2. Minor Sivasankar
3. Minor Krishna Teja
4. Minor Vinayaka ... Appellants / Petitioners

Vs.

1. Chandra Sekar Naidu Vasantha

2. United India Insurance Co. Ltd.,
Divisional Office,
Having its office at
No.73-C, M.T.H. Road,
Ambattur,
Chennai – 600 053. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 03.03.2021 passed in M.C.O.P. No. 941 of 2015 on the file of the IV Additional District Judge, Motor Accidents Claims Tribunal, Ponneri.

For Appellant	:	M/s. K.M. Ramesh
For R1	:	Ex-parte
For R2	:	M/s. D. Bhaskaran

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No. 941 of 2015, dated 03.03.2021 on the file of the IV Additional District Judge, Motor Accidents Claims Tribunal, Ponneri for the death of deceased namely Mohan in the road accident on 02.10.2015. The claimants herein are the appellants and according to them, on 02.10.2015, at about 2:00 PM, while the deceased Mohan was engaged in cleaning work at the dust tank of the tipper lorry bearing Registration No.AP-03-Y-5529, the driver of the tipper lorry has suddenly and negligently moved the lorry and dashed against the iron pole, which resulted in causing severe injuries and the deceased died on the spot. A criminal case was registered against the driver of the tipper lorry in Cr. No.166 of 2015 U/s.304(A) IPC on the file of Putthur Police station. The claimants, who are the wife and children of the deceased Mohan has come forward with claim petition seeking compensation for a sum of Rs.9,00,000/- by invoking section 166 of the Motor Vehicles Act, 1988.

2. The first respondent is the owner of the tipper lorry has not contested the claim and remained ex-parte. The second respondent is the insurer of the lorry disputed the claim on the ground that the deceased has

negligently invited the accident and the driver of the lorry was not having a valid driving licence at the time of accident. The second respondent – insurance company also disputed the age, income, avocation of the deceased and dependency of the claimants. The Tribunal after due enquiry accepted the case of the claimants and awarded compensation for a sum of Rs.8,80,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

3. Aggrieved over the quantum of compensation, the claimants approached this Court by way of this appeal and the respondents have not preferred any appeal against the award. The only grievance raised by the learned counsel appearing for the claimants is that the notional income of the deceased fixed by the Tribunal requires to be enhanced and the compensation awarded under various heads are also on the lower side, hence prays to enhance the compensation.

4. Per contra, the learned counsel for the insurance company opposed the appeal on the ground that the claimants have only made claim of Rs.9,00,000/- as compensation in the claim petition and the Tribunal has

already awarded Rs.8,80,000/- as compensation, hence prays to dismiss the appeal.

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

6. In this case, the claimants have made a claim of Rs.9,00,000/- as compensation and granting compensation amount exceeding the claim amount is permissible since it is mandate on the part of the Tribunal to award 'Just Compensation'. The word 'Just Compensation' is interpreted by the Apex Court in ***Nagappa vs. Gurudayal Singh and others [2023 (2) SCC 274]*** as follows:

> *"12. This Court in Sheikhupura Transport Co. Ltd. v. Northern Indian Transport Insurance Co. MANU/SC/0539/1971 : AIR1971SC1624 observed as under:-*
>
> > *".....the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must be necessarily be an estimate or even partly a conjecture....*
> >
> > *The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error....."*

13. Hence, as stated earlier, it is for the Tribunal to determine just compensation from the evidence which is brought on record despite the fact that claimant has not precisely stated the amount of damages of compensation which he is entitled to. If evidence on record justifies passing of such award, the claim cannot be rejected solely on the ground that claimant has restricted this claim. From 63 of the Karnataka Motor Vehicles Rates, 1989, which is for filing an application for compensation, does not provide that claimant should specify his claim amount. It inter alia provides that he should mention his monthly income as well as the nature of injury sustained and medical certificates.

14. In case, where there is evidence on record justifying the enhanced compensation for the medical treatment which is required because of the injury caused to a claimant due to the accident, there is no reason why such amendment or enhanced compensation should not be granted. In such cases, there is no question of introducing a new or inconsistent cause of action. Cause of action and evidence remain the same. Only Question is - application of law as it stands.

15. Mr. P.K. Chakravarty, learned counsel appearing for the Insurance Company, in support of his contention that the Tribunal has no jurisdiction to award higher amount of compensation than what is claimed even though it is not likely to cause prejudice to the Insurance Company, heavily relied upon the decision rendered by the Full Bench of the High Court of Gujarat in Dr. Urmila J. Sangani v. Pragjibhai Mohanlal Luvana and Ors. MANU/GJ/0167/2000 : AIR2000Guj211 . In that case, the High Court after considering relevant decisions on the subject observed thus:--

> *"....We may mention that when the claimant feels that he is entitled to more compensation than what is claimed in the petition, it is always open to him/her to*

amend the claim petition and if the same is in consonance with the equity, justice and good conscience, there is no reason why the Claims Tribunal should not grant amendment. Before compensation more than claimed is awarded, the opposite parties should be put to notice, the requisite additional issue/issue should be raised and the parties should be permitted to adduce their evidence on the additional issues, but if no such opportunity is given, the procedure would obviously suffer from material irregularity affecting the decision."

16. From the aforesaid observations it cannot be held that there is a bar for the Claims Tribunal to award the compensation in excess of what is claimed, particularly when the evidence which is brought on record is sufficient to pass such award. In cases where there is no evidence on record, the Court may permit such amendment and allow to raise additional issue and give an opportunity to the parties to produce relevant evidence."

7. The Hon'ble Apex Court in ***Sidram vs. The Divisional Manager, United India Insurance [Manu/SC/1493/2022 : 2023 (3) SCC 439]***, has interpreted the term 'Just Compensation' as follows:

"32. This Court has emphasised time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives."

8. Before the Tribunal, the claimants have claimed that the deceased was working as 'helper' in a Stone Crusing Unit and earning Rs.30,000/- per month but to substantiate the same, they have not produced any oral or documentary evidence, hence the Tribunal has fixed the notional income of the deceased as Rs.6,000/- per month. Admittedly, the deceased herein was a manual labourer and for calculating the notional income, 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 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*

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

9. Based on the above observations, this Court is inclined to modify the notional income fixed by the Tribunal as **Rs.12,750/-**. Based on Ex.P.7- Accident Report, Ex.P.8 – Post-mortem certificate and claim petition filed by the claimants, the Tribunal has arrived to conclusion that the age of the deceased is 40 years at the time of accident. As per the dictum laid down in ***National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]***, the applicable future prospectus for the deceased is 25% and as per ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the applicable multiplier is '15'. Considering the number of dependants, one-fourth is deducted towards the personal and living expenses of the deceased, accordingly, the compensation under loss of income/

dependency with modified monthly notional income of Rs.12,750/-is assessed as follows:

Annual income (Rs.12,750/- x 12)	= Rs.1,53,000/-
Future prospects @ 25%	= Rs.38,250/-
Yearly income of the deceased	= Rs.1,91,250/-
Yearly contribution to his family (after deducting 1/4th)	= Rs.1,43,438/-
Applicable Multiplier	= 15
Total compensation (Rs.143,438/- x 15)	= **Rs.21,51,570/-**

10. The Tribunal has awarded Rs.40,000/- towards loss of consortium, but 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. Hence, this Court is inclined to grant the claimants, consortium of Rs.40,000/- each to the wife and children of the deceased Mohan as per the Apex Court Judgment stated supra. The Tribunal has awarded Rs.15,000/- each under the conventional head Loss of estate and funeral expenses, this Court is inclined to confirm the same.

11. 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	8,10,000/-	21,51,570/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	40,000/-	1,60,000/-	Enhanced
	Total Compensation	8,80,000/-	**23,41,570/-**	**Enhanced**

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,80,000/- is hereby enhanced to **Rs.23,41,570/- [Rupees Twenty Three Lakh Forty One Thousand Five Hundred and Seventy 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.941 of 2015 on the file of the IV Additional District Judge, Motor Accidents Claims Tribunal, Ponneri. 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. As far as minor claimants/ appellants 2 to 4 herein are concerned, the award amount to the minor claimants shall be deposited in the name of the minor claimants in any one of the Nationalized Bank in Fixed Deposit under the guardianship of their mother/ 1st appellant herein, till they attain the age of majority, and the 1st appellant herein is also permitted to withdraw the accrued interest, every six months for the welfare of minor claimants, if they already attained the age of majority, their share amount may be dispersed. 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

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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 IV Additional District Judge,
   Motor Accident Claims Tribunal,
   Ponneri.

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

C.M.A. No. 2539 of 2021

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