IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE K. RAJASEKAR

C.M.A.No.2833 of 2021

1. Vijayalakshmi
2. Venkatachalam
3. Achikannu .. Appellants

Vs.

The Managing Director
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited
at Periamilaguparai,
Tiruchirapalli – 620 001. .. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award passed by the Motor Accidents Claims Tribunal / Principal District Judge, Perambalur by its decree and judgment dated 23.03.2021 made in M.C.O.P.No.586 of 2017.

For Appellants : Ms.L.Meena
for Mr.C.Vidhusan

For Respondent : Mr.M.Murali Vinodh
for Mr.D.Venkatachalam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant against the award dated 23.03.2021 made in M.C.O.P.No.586 of 2017 on the file of the Motor Accident Claims Tribunal/Principal District Court, Perambalur for enhancement of compensation.

2. The claimants filed claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Selvam, who died in the accident that took place on 05.05.2017. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent and directed the respondent/Transport Corporation to pay a sum of Rs.13,24,400/- as compensation to the appellants/claimants. Not being satisfied with the award of the Tribunal, the appellants have come out with the present appeal for enhancement of compensation.

3.The learned counsel appearing for the appellants contended that the deceased was working as a Mazon abroad. The Tribunal erred in fixing meager sum of Rs.7,000/- per month as notional income, while the deceased was earning a sum of Rs.18,000/- per month. The deceased was aged 33 years at the time of accident. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

4. Per contra, the learned counsel appearing for the respondent contended that the appellants have not filed sufficient document to prove the income of the deceased. In the absence of such evidence, the notional income fixed by the Tribunal is not meager. The appellants are not entitled to any enhancement for future prospects as the deceased was working as Mazon abroad. The amounts awarded by the Tribunal are not meagre and prayed for dismissal of the appeal.

5. I have considered the submissions of the learned counsel appearing for the appellants as well as the respondent and perused all the materials available on record.

6. From the materials available on records, it is seen that the appellants claimed that the deceased was working as Mazon abroad and was earning a

sum of Rs.18,000/- per month. The appellants marked Ex.P4 Pass Port of the deceased and Ex.P5 issued by the Tamil Nadu Mazon Association in the year 2006 to prove employment. However, they have not added any documentary or any other proof to substantiate their case that the deceased was earning Rs.18,000/- p.m. Since the claimants have not proved the income of the deceased, the Tribunal had no other option except to fix the notional income as Rs.7,000/-.

7. 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 in ***Syed Sadiq Vs. United India Insurance Company [2014 (1) TNMAC 459],*** holding 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*

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

8. This Court is inclined to modify the notional income fixed by the Tribunal based on the dictum laid down by the Hon'ble Apex Court in the

judgment cited supra and the same is calculated as follows:

Date of accident	= 05.05.2017
Cost of Inflation index	= 272 (Financial Year 2017-2018)
Notional income of the deceased	= (6,500/- x 272) / (129)
	= *Rs.13,705/-*

9. The deceased was aged 33 years at the time of accident. The appellants are entitled to 40% of income towards future prospects. The Tribunal has applied the correct multiplier as '16'. Accordingly, the loss of dependency can be arrived at after deducting 1/3rd of his monthly income towards personal and living expenses and thereby a sum of Rs.24,55,936/- {Rs.13,705/- + Rs.5,482/- (40% of Rs.13,705/-) = 19,187 X 1/3 = 6,395 x 12 X 16} can be awarded. Under the conventional head of loss of consortium all the claimants are entitled to Rs.40,000/- each which includes loss of love and affection as held by the Apex Court in the case of ***United India Insurance Co. Limited v. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780].*** The Tribunal has failed to award any amount under the head loss of love and affection to the parents of the deceased and the same is awarded at Rs.40,000/- each. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the amounts awarded by the Tribunal are modified as

follows:

SL. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
1.	Loss of dependency	12,54,400/-	24,55,936/-	Enhanced
2.	Loss of consortium	40,000/- each	1,20,000/-	Granted
3.	Funeral Expenses	15,000/-	15,000/-	Confirmed
4.	Loss of Estate	15,000/-	15,000/-	Confirmed
	Total	**Rs.13,24,400/-**	**Rs.26,05,936/-**	**Enhanced**

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,24,400/- is hereby enhanced to Rs.26,05,936/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, excluding the default period, if any. The appellants are directed to pay necessary Court fee, if any, on the enhanced compensation. The respondent/Transport Corporation is directed to

deposit the enhanced award amount with interest now determined by this Court, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellants/claimants are permitted to withdraw their respective share on the basis of apportionment fixed by the Tribunal along with interest and cost, less the amount if any, already withdrawn. No costs.

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dpq
Index : Yes / No
Internet : Yes/ No

K. RAJASEKAR, J.

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