IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2906 of 2021

1. Jansi
2. Minor. Kavina
3. Rajendiran
4. Banumathi ... Appellants / Petitioners

Vs.

1. Ameer Basha

2. The Divisional Manager,
National Insurance Co. Ltd.,
Vellore Division,
No.9, Infantry Road,
Near Shankar Theatre,
Vellore – 632001. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 21.04.2021 M.C.O.P. No. 233 of 2020 on the file of the District Judge, Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For Appellants	:	M/s. S.P. Yuaraj
For R1	:	No Appearance
For R2	:	M/s. N.B. Surekha

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No. 233 of 2020, dated 21.04.2021 on the file of the District Judge, Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

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

3. On 28.08.2019, at about 10:45 hours, the deceased Guna was riding a TVS Appache motorcycle bearing Registration No.TN-48-W-9721 from Melsomarpettai towards his house situated at Anandha Nagar, Krishnagiri, while he reached near D.K. Samy school and near Anjaneya Traders at Hosur to Krishnagiri service road, an APE Auto bearing Registration No.TN-24-AR-8946, driven by the first respondent in a rash and negligent manner, came in the opposite direction and dashed against the deceased's motorcycle, thereby causing grievous injuries to the deceased. Immediately, the deceased was taken to the Government Head Quarter Hospital, Krishnagiri and succumbed to the injuries on the same day. A

criminal case was registered in Cr.No.470/2019 under Section 279 and 304(A) of IPC. For the loss of deceased Guna, the claimants, who are the wife, minor child and parents of the deceased has filed claim petition seeking compensation for a sum of Rs.50,00,000/- under Section 166 of the Motor Vehicles Act.

4. The first respondent is the owner cum driver of the APE Auto vehicle has filed a counter and disputed the manner in which the accident has taken place and contended that the accident was taken place only due to the rash and negligence of the deceased, who suddenly entered into the middle of the road and dashed against the APE Auto, thereby invited the accident and sustained injuries. He also subitted that the second respondent – insurance company is the insurer of the said vehicle and the insurance policy was also in force at the time of accident, hence the second respondent is alone liable to pay compensation.

5. The second respondent – insurance company has filed a counter and contended the deceased without wearing helmet and proper driving knowledge, rode the Apache motorcycle in a rash and negligent

manner and while over taking another vehicle, the deceased has crossed the middle of the road and invited the accident. The insurance company also disputed the age, income and occupation of the deceased and further contended that the first respondent has no valid driving licence at the time of accident.

6. Considering the evidence placed on record, the Tribunal has held that the first respondent is the tortfeasor and due to his rash and negligence, the accident has taken place and directed the second respondent – insurance compay to pay the compensation and to recover the same from the first respondent. The Tribunal also quantified and granted compensation for a sum of Rs.21,86,073/- 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 claimants have come forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimants submitted that the deceased was aged about 28 years at the time of accident and was

earning Rs.25,000/- per month by working in a Finance Company. However, the Tribunal has not appreciated the evidence placed on record and fixed monthly notional income of Rs.9,000/-, which is not proper, hence prays to enhance the compensation.

9. Per contra, the learned counsel for the insurance company submitted that the Tribunal has rightly appreciated the evidences placed on record and awarded a just compensation and the monthly notional income fixed on the deceased is also proper, if the same is increased, it would be a bonanza for the claimants and go against the principle of awarding just compensation. She further submitted that the third claimant, who is the father of the deceased was having a separate income, hence he is not a dependent to the deceased herein and the same was not observed by the Tribunal, hence prays to dismiss the claim against the third claimant, who is the father of the deceased.

10. Heard the submissions made on both sides and perused the materials available on record:

11. The major contention raised by the claimants is that the monthly notional income fixed on the deceased is on the lower side. In this case, the age of the deceased is 28 years at the time of accident and to prove the same, the claimants have marked Ex.P.12 – driving licence of the deceased and it is claimed by the claimants that the deceased was working in a Financial company and was earning Rs.25,000/- per month and to substantiate the same, no oral or documentary evidences was produced before the Tribunal. Therefore, the Tribunal considering the age of the deceased has fixed Rs.9,000/- as monthly notional income of the deceased and awarded compensation under the head loss of dependency. However, this Court considering the date of accident and age of the deceased finds that fixing monthly notional income of Rs.9,000/- is on the lower side.

12. This Court consistently following the dictum laid down in the Division Bench judgment in ***Andal and others vs. Avinav Kannan and others [2019 (1) TN MAC 54 (DB)]***, wherein for a self employed or a manual labourer, the notional income is fixed based on the Cost of Inflation Index issued by the Central Board of Direct Tax (CBDT) by considering the date of accident with respect to the monthly notional income of the base year

of 2008. In this case, the date of accident is 28.08.2019 accordingly, the monthly notional income fixed for the financial year 2019 – 2020, which comes to Rs.14,562/-, hence **Rs.14,500/-** is fixed as the monthly notional income of the deceased herein.

13. Considering the age of the deceased, who is 28 years at the time of accident, as per the dictum laid down in Hon'ble Apex Court judgments in ***National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]***, the future prospectus is fixed as 40% and as per ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and others [2009 ACJ 1298 SC : 2009 (6) SCC 121]***, the multiplier is fixed as '17'.

14. The other contention raised by the insurance company is that the third claimant, who is the father of the deceased is having a separate income, hence he is not entitled for compensation. On close scrutiny of the evidence of P.W.1 – wife of the deceased, she specifically stated that her parents in law are also living with her and her husband is the only bread winner of the entire family. This evidence of her was not contradicted by the

insurance company by way of cross examination and further, the insurance company has not produced any documents or evidences to show that the third claimant is not a dependent. Hence, in the absence of any contra evidence to P.W.1, the Tribunal has rightly considered her evidence and held that the dependents herein are four in numbers and deducted one-fourth of his income towards his personal and living expenses. This Court finds no infirmity in such fixing of one-fourth deduction, accordingly, the compensation under the head loss of dependency for the modified notional income of Rs.14,500/- is assessed as follows:

Annual income (Rs.14,500/- x 12)	= Rs.1,74,000/-
Future prospects @ 40%	= Rs.69,600/-
Yearly income of the deceased	= Rs.2,43,600/-
Yearly contribution to his family(deducting 1/4)	= Rs.1,82,700/-
Applicable Multiplier	= 17
Total compensation (Rs.1,82,700/- x 17)	= **Rs.31,05,900/-**

15. The compensation awarded under other conventional heads are concerned, the Tribunal has awarded a just compensation and the same are hereby confirmed. The Tribunal has also held that there is a violation of policy condition on the ground that the first respondent has no valid driving licence at the time of accident and the deceased herein is a third party in the accident, hence the Tribunal rightly followed the principle of "Pay and

Recover" and this Court finds no infirmity and 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	19,27,800/-	31,05,900/-	Enhanced
2.	Loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	1,60,000/-	1,60,000/-	Confirmed
5.	Medical Expenses	68,273/-	68,273/-	Confirmed
	Total Compensation	21,86,073/-	**33,64,173/-**	**Enhanced**

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.21,86,073/- is hereby enhanced to **Rs.33,64,173/- [Rupees Thirty Three Lakhs Sixty Four Thousand One Hundred and Seventy Three 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.233 of 2020 on the file of the District Judge, Motor Accidents Claims Tribunal, Special District Court, Krishnagiri. The second respondent – insurance company is given liberty to recover the same from the first respondent. 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.

29.01.2024

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

To:

1. The District Judge,
   Motor Accident Claims Tribunal,

Special District Court, Krishnagiri.

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

K. RAJASEKAR, J.

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