IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. Nos.3650 and 3501 of 2021

Anantha Vishnu ... Appellant/Petitioner

Vs.

1. M.Deepak Kumar

2. National Insurance Co.Ltd
Motor Third Party Cell,
No.751, Anna Salai, 3rd Floor,
Chennai – 600 002. ...Respondents/ Respondents

PRAYER in C.M.A.No.3650 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the amount awarded in M.C.O.P.No.3684 of 2015 dated 04.03.2021 on the file of Motor Accident Claims Tribunal, (II Small Causes Court) Chennai.

PRAYER in C.M.A.No.3651 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the amount awarded in M.C.O.P.No.3569 of 2015 dated 04.03.2021 on the file of Motor Accident Claims Tribunal, (II Small Causes Court) Chennai.

For Appellant	:	M/s.K.Varadha Kamaraj
For R1	:	NA
For R2	:	M/s.R.Sreevidhya

COMMON JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimant challenging the Judgment and Decree passed in M.C.O.P. No. 3684 and 3569 of 2015 dated 04.03.2021 on the file of Motor Accident Claims Tribunal, (II Small Causes Court) Chennai.

2. Both the appeals arising out of claim petitions filed for compensation for the accident taken place on 23.01.2015 wherein claimant's father and mother died in road accident.

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

4. On 21.03.2015, the father and mother of the claimants have travelled in a car along with the claimant and other relatives bearing Registration No. TN 22 CH 9852 from Gundurnadu Nathukuzhipatti to Ilakkiyampatti Road. While they reached near Kongalayi Amman Koil Land, Namakkal District, the driver of the car has negligently driven the vehicle in

high speed and suddenly applied brake which resulted the car capsizing 200 feet big ditch at Kollimalai Hills. In the accident, the Mother of the claimant Srilatha died on the spot and others sustained injuries. Subsequently, father of the claimant namely Ganadasan was succumb to the injuries. A criminal case was registered against the driver of the car in Crime No.36 of 2015 under Section 279 of I.P.C (1 count), 338 of I.P.C (2 counts) and 304(A) of I.P.C (4 counts). The claimant come forward with the claim petition for the compensation for the death of the father and mother claiming compensation for Rs.30,00,000/- (Rupees thirty lakhs only) and Rs.1,20,00,000/- (Rupees one crore twenty lakhs only).

5. Totally four claim petitions were filed seeking compensation for the injuries and death caused to the passengers of the car. Since all the claim petitions arise out of one accident, a common enquiry was conducted. Evidence were recorded in M.C.O.P.No.3569 of 2015 and common award dated 04.03.2021 was passed. The first respondent is the owner of the vehicle, not contested the claim and remained exparte. The second respondent/Insurance company filed counter and contended that the compensation claimed by the claimant is excessive. The second Respondent also denied the age, avocation of the persons deceased in the accident. They

also disputed the manner of the accident taken place. After considering the evidence, based on record, the Tribunal has held that the driver of the car negligently driven the vehicle and hence the owner of the vehicle and Insurer of the vehicle are liable to pay compensation. The Tribunal has quantified the compensation, awarded Rs.23,30,950/- (Rupees twenty three lakhs thirty thousand nine hundred and fifty only) for the death of the deceased Ganadasan and awarded Rs.8,65,000/- (Rupees eight lakhs sixty five thousand only) for the death of the deceased Srilatha.

6. Aggrieved over the quantum of compensation awarded, the claimant in both the M.C.O.P has come forward with this appeal. The respondents have not filed any appeal against the award. The learned counsel for the claimant submits that Notional Income fixed on the mother of the claimant is not proper. Similarly, the father of the claimant was working in Ordinance Clothing Factory (OCF), Avadi and Income certificate was also exhibited by examining official of the factory. Tribunal has not awarded compensation based on the gross salary, but awarded compensation based on the net salary which is not proper. He further submits that Tribunal has not properly awarded the compensation of consortium and prays to enhance the compensation. The learned counsel for the Insurance company submits that

based on the evidence placed on record, the Tribunal has awarded just compensation and there is no ground to enhance the compensation.

7. I have considered the submissions of both side and perused the records. As far as compensation quantified for the death of the Ganadasan, He was working as a Tailor in OCF, Avadi. To prove his income, P.W-2/Official of the factory which is administrated by the Ministry of defence was examined and through him six months salary slips and appointment order copy of the deceased have been marked as Ex.P-20 and Ex.P-21. On perusal of Ex.P21, the deceased was entitled to get Rs.48,577/- (Rupees forty eight thousand five hundred and seventy seven only) as gross pay. Out of which, deduction of various loans payable by him also deducted. After taking loan amount, Net salary paid to him was Rs.22,193/- (Rupees twenty two thousand one hundred and ninety three only). This was taken as income of the deceased and based on which, compensation has been awarded.

8. The approach of the Tribunal is not proper and the Gross salary is to be taken as income and the deductions which are payable as loan and other deductions like provident fund, LIC premium shall not be taken into consideration. In this case, the claimant is entitled to receive Rs.48,577/- every month and deducted salary may vary due to various loans received by

him. This Court is of the view that income of the deceased should be considered as Rs.48,577/-, while computing the compensation under the head loss of income. The deceased was aged about 53 years at the time of accident. The multiplier is arrived at '11', as per dictum laid down in ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and others*** reported in ***[2009 ACJ 1298 SC : 2009 (6) SCC 121]*** and as per the dictum laid down in ***National Insurance Co. Ltd., vs. Pranay Sethi and other*** reported in ***[2017(2) TN MAC 609 (SC): 2017 (16) SCC 680],*** future prospectus as 15%. After deducting one-third (1/3) of his monthly income towards his personal and living expenses, the compensation under loss of income/ dependency with modified monthly notional income of Rs.48,577/- is assessed as follows:

Annual income (Rs.48,577/- x 12)	= Rs.5,82,924/-
Less: 10% Deducted towards I.T	= Rs.5,24,632/-
Future prospects @ 15%	= Rs.78,695/-
Yearly income of the deceased	= Rs.6,03,326/-
Yearly contribution to his family(deducting 1/3)	= Rs.4,02,218/-
Applicable Multiplier	= 11
Total compensation (Rs.4,46,908/- x 11)	= Rs.44,24,393/-

Under the head loss of consortium, the claimant is entitled to

Rs.40,000/- accordingly compensation is 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	22,45,936/-	44,24,393/-	Enhanced
2.	loss of estate	15,000/-	15,000/-	Confirmed
3.	Funeral expenses	15,000/-	15,000/-	Confirmed
4.	Loss of consortium	50,000/-	40,000/-	Enhanced
5.	Transport charges	5,000/-	-	
	Total Compensation	**23,30,936/-**	**44,94,393/-**	**Enhanced**

As far as mother of the claimant, deceased Srilatha is concerned, the Tribunal has fixed the petitioner's notional income as Rs.6,000/- per month. Considering the fact that the accident has taken place in the year 2015 and the deceased was aged about 44 years at the time of accident, this Court is of the view that the notional income fixed by the Tribunal is on the lower side and the same is modified to Rs.12,000/- per month.

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 '14' by considering the age of the deceased at the time of the 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. After deducting one-third (1/3) of her monthly income towards personal and living expenses, the compensation under loss of income / dependency with modified monthly notional income of Rs.12,000/-is assessed as follows:

Annual income (Rs.12,000/- x 12)	= Rs.1,44,000/-
Future prospects @ 25%	= Rs.36,000/-
Yearly income of the deceased	= Rs.1,80,000/-
Yearly contribution to his family(deducting 1/3)	= Rs.1,20,000/-
Applicable Multiplier	= 14
Total compensation (Rs.1,20,000/- x 14)	= Rs.16,80,000/-

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	7,80,000/-	16,80,000/-	Enhanced
2.	loss of estate	**15,000/-**	15,000/-	Confirmed
3.	Funeral expenses	**15,000/-**	15,000/-	Confirmed
4.	Loss of consortium	**50,000/-**	40,000/-	Enhanced
5.	Transport charges	**5,000/-**		
	Total Compensation	**8,65,000/-**	**17,50,000/-**	**Enhanced**

In the result, this Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal in CMA.No.3501 of 2021 for Rs.23,30,936/- is hereby enhanced to **Rs.44,94,393/- [Rupees Forty four lakhs ninety four thousand three hundred and ninety three only]** and award by the Tribunal in **C.M.A.No.3650 of 2021** for **Rs.8,65,000/-** is hereby enhanced to **Rs.17,50,000/- [Rupees Seventeen lakh fifty thousand 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. 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.Nos.3569 and 3684 of 2015 on the file of the II Small Causes Court, Motor Accidents Claims Tribunal, Chennai. 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, 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 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.

10.01.2024

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

To
The Joint Commissioner of Labour -II,
Chennai.

K. RAJASEKAR, J.

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and 3501 of 2021**

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