IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.1644 of 2021

1. P.L. Uma Mageswari
2. Minor Kailash
3. Mrs. Valliammal
4. Azhagappan ... Appellants / Petitioners

Vs.

1. L. Suresh

2. United India Insurance Company Limited,
No.48, Arcot Road, Saligramam,
Chennai - 600 093. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 03.09.2015 passed in M.A.C.T.O.P. No. 827 of 2013 on the file of the III Additional District Judge, Motor Accidents Claims Tribunal, Tiruvallur at Poonamallee.

For Appellant	:	M/s. Sunithi Abirami
For R1	:	Ex-parte
For R2	:	M/s. J. Chandran

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.A.C.T.O.P. No. 827 of 2013, dated 03.09.2015 on the file of the III Additional District Judge, Motor Accidents Claims Tribunal, Tiruvallur at Poonamallee.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. On 13.08.2013, at about 7:30 PM, the deceased Palaniappan was riding his two wheeler bearing Registration No.TN-03-F-1723 in the GNT Road, while he reached opposite to Ragavendra Weight Bridge, a container lorry bearing Registration No.TN-30-AD-0330 came in the same direction, parallel to the right side of the deceased and suddenly turned left, thereby dashed against the deceased's two wheeler. Due to the impact, the deceased fell down and subsequently, the back tyre of the container lorry ran over the deceased head causing instantaneous death to him. A criminal case was registered in Cr.No.488/13 U/s.279, 304(A) of IPC on the

file of the GNT Road Traffic Investigation. For the loss of deceased Palaniappan, the claimants, who are the legal heirs of the deceased filed claim petition seeking compensation for a sum of Rs.50,00,000/- under section 166 of the Motor Vehicles Act, 1988.

4. The first respondent, who is the owner of the container lorry remained ex-parte. The second respondent – insurance company, who is the insurer of the container lorry filed counter disputing the manner in which the accident has taken place and also disputed the age, occupation, income of the deceased and dependancy of the claimants. The insurance company also further contended that the first respondent's lorry was falsely implicated in the accident and the compensation claimed is also on the higher side.

5. The Tribunal based on the evidence placed on record has held that the accident was taken place only due to the rash and negligence on the part of the first respondent's driver and fixed the liability on the part of the second respondent – insurance company to indemnify the first respondent and to pay compensation to the claimants. The Tribunal also quantified and awarded compensation for a sum of Rs.39,85,000/- along with interest @

7.5% per annum from the date of filing of petition till the date of realization.

6. Aggrieved over the quantum of compensation, the claimants have filed this appeal seeking enhancement of compensation. The insurance company has not preferred any appeal against the award.

7. The major contention raised by the learned counsel for the claimants is that, the Tribunal has not properly appreciated the evidences relating to the income of the deceased and deducted Rs.3,000/- which was granted under the head medical, leave travel and transport allowances to the deceased from his monthly gross income, which is not proper and the Tribunal has not considered the future prospectus of the deceased, while awarding compensation, hence prays to enhance the compensation.

8. The learned counsel for the insurance company submitted that the Tribunal after appreciating the evidence placed on record has awarded a just compensation, hence prays to confirm the award of the Tribunal.

9. I have considered the submissions made on both sides and

perused the materials available on record.

10. In this case, the claimants claimed that the deceased was working as an Executive in NEFAB India Pvt. Ltd., Kancheepuram and was earning Rs.30,986/- per month and to prove the same, the claimants have examined P.W.3 – Sivakumar, who is the Executive Personal Administration of the NEFAB India Pvt. Ltd., and through him Ex.P.9 – salary certificates from February 2013 to July 2013 with income tax particulars were marked, which shows that the claimant was earning Rs.29,250/- as monthly gross income. However, the Tribunal has deducted Rs.3,000/- from the monthly gross salary of the deceased, which was granted to the deceased under the head medical, leave travel and transport allowances, thereafter taken Rs.26,250/- as monthly salary of the deceased and after deducting one-third of his income towards his personal and living expenses, awarded compensation of Rs.35,70,000/- under the head loss of income.

11. The deduction of Rs.3,000/- made by the Tribunal from the monthly gross income of the deceased is towards the allowances, which are

standard components regularly paid to all the employees and it is not like occasional payment activities and this has been proved by examining the P.W.3, but this was not properly appreciated by the Tribunal. This Court is of the view that deduction of Rs.3,000/- from the monthly gross income of the deceased, while assessing compensation towards loss of income by the Tribunal is not proper, accordingly, the entire grosspay of Rs.29,250/- is considered as monthly income of the deceased.

12. The above income of the deceased is crossing the Income Tax slab, accordingly, 10% is deducted towards tax and also considering the number of dependants, one-fourth (1/4) of his monthly income is deducted towards his personal and living expenses. Ex.P.5- Driving licence shows that the date of birth of the deceased as 27.04.1982 and the date of accident is 13.08.2013, thereby the age of the deceased at the time of accident is 31 years, 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 '16'.

13. The Tribunal has not awarded future prospectus, admittedly,

in this case, the claimants have proved the avocation of the deceased that he is an Executive in NEFAB India Pvt. Ltd., even though in the Ex.P.9 – salary certificates, it is not mentioned whether the deceased is a temporary or permanent employee, however Ex.P.9 reveals that, 12% of the basic pay of the deceased (i.e.,) Rs.1,320/-, is deducted every month towards provident fund of the deceased. The Ex.P.9 – also shows that the deceased was employed in the company on 05.04.2010, hence, he was working for more than three years in the company. Based on the evidence produced before the Tribunal, this Court is of the view the deceased herein is a permanent employee of the Private Company, hence as per ***National Insurance Co. Ltd., vs. Pranay Sethi and other [2017(2) TN MAC 609 (SC): 2017 (16) SCC 680]***, the deceased is entitled for future prospectus of 50%, accordingly, the compensation under loss of income is assessed as follows:

Monthly income of the deceased	= Rs.29,250/-
After deducting 10% towards tax	= Rs.26,325/-
After deducting (¼) towards personal and living expenses	= Rs.19,744/- (round off)
Yearly income of the deceased	= Rs.2,36,928/-
Future prospectus @ 50%	= Rs.1,18,464/-
Total income	= Rs.3,55,392/-

Applicable Multiplier	=	16
Loss of income (Rs.3,55,392/- X 16)	=	**Rs.56,86,272/-**

12. On perusal of the award, it shows that the Tribunal has awarded Rs.1,00,000/- under the head loss of love and affection and Rs.1,00,000/- each to the first and second claimants and Rs.50,000/- each to the third and fourth claimants under the head loss of consortium. As per the Hon'ble Apex Court in ***United India Insurance Co. Limited v. Satinder Kaur and Ors. [MANU/SC/0500/2020 : (2021) 11 SCC 780]*** and ***Magma General Insurance Co. Ltd., vs Nanu Ram [2018 ACJ 2018]***, the compensation awarded under loss of love and affection is comprehended in loss of consortium and it has also laid a dictum that all the claimants are entitled to consortium of Rs.40,000/- each. Accordingly, the compensation awarded under the head loss of love and affection is rejected and the claimants who are the wife, son and parents of the deceased are entitled to Rs.40,000/- each as compensation under the head loss of consortium. The claimants are also entitled to compensation for Rs.15,000/- under the head loss of estate. The Tribunal has rightly awarded Rs.15,000/- under the head funeral expenses and the same is hereby confirmed.

13. 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 income	35,70,000/- (without future prospectus)	56,86,272/-	Enhanced
2.	Loss of Love and Affection	1,00,000/-	---	Cancelled
3.	Loss of Consortium (Rs.40,000/- X 4)	3,00,000/-	1,60,000/-	Reduced
4.	Funeral Expenses	15,000/-	15,000/-	Confirmed
5.	Loss of Estate	---	15,000/-	Granted
	Total Compensation	39,85,000/-	**58,76,272/-**	**Enhanced**

14. In this case, the claimants have made a claim of Rs.50,00,000/- 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."

15. 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.”*

16. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.39,85,000/- is hereby enhanced to **Rs.58,76,272/- [Rupees Fifty Eight Lakhs Seventy Six Thousand Two Hundred and Seventy Two only]** 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.827 of 2013 on the file of the III Additional District Judge, Motor Accidents Claims Tribunal, III Additional District Court at Poonamallee. 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. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Accounts 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.

08.02.2024

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

To:

1. The III Additional District Judge,
   Motor Accident Claims Tribunal,
   III Additional District Court at Poonamallee.

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

K. RAJASEKAR, J.

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C.M.A. No. 1644 of 2021

08.02.2024