IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

CORAM
**THE HONOURABLE MR.JUSTICE M.SUNDAR**

and

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

**C.M.A.No.300 of 2024**

The Manager
Reliance General Insurance Company Ltd.,
Motor TP claims, No.6, Hadows Road,
Opposite to Sasthri Bhavan
Nubgambakkam,
Chennai -6 ... Appellant

Vs.

1.Divya
2.Minor S.D.Tharika Sri
3.Minor S.D.Anujaa Sri
4.Samundeswari
5.Senthilkumar
6.R.Logeswari .. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.07.2023 passed in M.C.O.P.No.123 of 2022 on the file of the Motor Accidents Claims Tribunal (No.1, Special District Court), Thiruvallur.

For Appellant : Mr.P. Suresh Srinivasan

**J U D G M E N T**

**(Order of the Court was made by K.GOVINDARAJAN THILAKAVADI, J.,)**

This appeal is directed against the award dated 20.07.2023 made in M.C.O.P.No.123 of 2022 on the file of the Motor Accident Claims Tribunal, Thiruvallur.

2. Shortly stated, on 17.06.2022 at about 7.30 p.m., the deceased Sudhakar was riding his Hero Honda Splendor motorcycle bearing Registration No.TN 12 H 2567 from Pattabiram to Poonamalee, at that time Honda Dio motorcycle bearing Registration No. TN 12 AK 5600 driven by its rider in a rash and negligent manner and dashed against the deceased motorcycle. Inspite of treatment, the deceased succumbed to death. At the time of accident, the deceased was owning two lorries and was earning Rs.40,000/- per month. Accordingly, claim for compensation has been made by the legal heirs.

3.The respondents in M.C.O.P.No.123 of 2022 alleged that the accident took place due to the negligent act of the deceased. The deceased was not wearing the helmet and was in a drunken mood, drove the vehicle in a rash and negligent manner and invited the accident. Hence, the respondents are not liable to pay any compensation. Accordingly, the claims Tribunal framed three issues. It came to the conclusion that the accident took place as alleged and claimants are entitled to claim compensation. Compensation of Rs. 27,63,972/- has been awarded carrying interest at the rate of 7.5% per annum.

4.Through this appeal, award has been challenged on many grounds. However, it is mainly focused on the ground that the income of the deceased has not been correctly calculated. The learned counsel appearing for the appellant/Insurance Company would submit that the learned Tribunal erred in fixing the monthly income of the deceased at Rs.16,678/- relying the judgment rendered in ***Syed Shadiq*** case, in the absence of any materials on record.

5.On the other hand, the learned counsel appearing for the respondents would submit that since it is a social beneficial legislation, the learned Tribunal has awarded a just compensation which calls for no interference.

6.Heard on both sides, records perused.

7.The learned counsel appearing for the appellant/Insurance Company would vehemently contend that the Tribunal went wrong in fixing the income of the deceased as Rs.16,700/- per month without any basis. On perusal of the impugned award passed by the Tribunal with regard to the income of the deceased, the Tribunal, relying on the judgments in ***Syed Shadiq*** case reported in ***(2014) 2 SCC 735*** and in ***Andal and others Vs Avinav Kannan and others*** reported in ***2019 (1) TNMAC 54 (DB)*** took the income of the deceased at Rs.6,500/- as notional income. The findings of the Tribunal in this regard is extracted as hereunder:

*"in the absence of any substantial proof of occupation and income of the deceased this Tribunal based upon decision reported in **2019(1) TNMAC 54 (DB) Andal and others Vs Avinav Kannan and others** wherein the Hon'ble Division Bench of the Madras High Court while taking the notional income of the victim for which case there is no proper income proof has taken the income fixed in Syed Shadiq case by the Hon'ble Apex Court at Rs.6500/- and the cost of inflation index '129' provided by the Central Board of Direct Taxation for the financial year 2007-2008, the year of accident in Syed Shadiq case as the constant parameters and had taken up the cost of inflation index provided by the Central Board of Direct Taxation for the financial year, in which accident year the notional income has to be calculated. Thus, in the present case the accident having taken place on 17.06.2022 the cost of inflation for the financial year 2022-2023 is 331.*

*Therefore, Rs.6500/- 129 X 331= Rs.16,678/-. Hence, this Tribunal is inclined to take the nearest hundred and conclude the notional income of the deceased as* ***Rs.16,700/- per month".***

8.Therefore, the Tribunal placing reliance on judgement in ***Andal and others Vs Avinav Kannan and others*** reported in ***2019 TNMAC 54 (DB)*** fixed the notional income of the deceased as Rs.16,700/- per month. The relevant paragraph in the above judgement is extracted as hereunder:

*" 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 Comer" 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".*

9.The CBDT vide notification **No.370142(E)(No.26/2008) (L.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* |
|---|---|---|
| 15. | 2015-2016 | 254 |
| 16. | 2016-2017 | 264 |
| 17. | 2017-2018 | 272 |
| 18. | 2018-2019 | 280 |

10.As per the above said index the cost of inflation index for the year 2018-2019 will be 280. Therefore, the Tribunal while determining the notional income of the deceased for the accident took place in the financial year 2022-2023 as 331, fixed the monthly income of the deceased as Rs.16,700/- per month which found to be correct. The Tribunal has rightly applied the cost of inflation index as issued by the Central Board of Direct Tax for the purpose of determination of notional income of the deceased persons which calls for no interference.

11.In the result, the impugned order passed by the Tribunal in M.C.O.P.No.321 of 2019 is confirmed. This civil miscellaneous appeal is dismissed. No costs.

**[M.S.J.,]** **[K.G.T.J.,]**

**14.02.2024**

gpa/vsn

**M.SUNDAR, J.,**
**and**
**K.GOVINDARAJAN THILAKAVADI, J.**

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