



C.M.A.No.1598 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM:

**THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS JUSTICE R.KALAIMATHI**

C.M.A.No.1598 of 2023

and

C.M.P.No.16031 of 2023

The Manager,
M/s. United India Insurance Co. Ltd.,
(T.P. HUB), Vellore Division Office,
No.81, TKM Complex, 2nd Floor,
Katpadi Road, Vellore.

... Appellant

Vs.

1.P. Parvathi

2.Minor P. Sujithira

3.P. Nithra

4.A. Radha

5.V. Ashokan

6.S. Thiroomal

... Respondents



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 29.09.2021 made in M.C.O.P.No.92 of 2018 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Tiruttani.

For Appellant : Mr.S. Arun Kumar

For R1 to R5 : Mr.K.R. Ponnusamy
for M/s.Anand & Surya

JUDGMENT

(Judgement of the Court was made by R.SUBRAMANIAN, J.)

The Insurance Company is on appeal, questioning the quantum of compensation only. Since the appeal itself lies in a very narrow campus, we dispose of the appeal at the admission stage itself with the consent of learned counsel for the parties.

2. The claimants, who are the wife, minor children and parents of one Prabhakaran, who was working as a Welder in the Heavy Vehicles Factory at Avadi, had claimed compensation for the death of the said Prabhakaran in a motor accident that occurred on 03.12.2017. It is claimed



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that Prabhakaran was returning to his Village Kilandurai in his two wheeler bearing Registration No: TN-73-Z-0111, after visiting his friend. When he was riding near I.N.S. Rajali Navy 2nd Main Gate around 07.10 PM, a motorcycle bearing Registration No: TN-20-M-1285, driven by its Driver Thanigasalam in a rash and negligent manner, overtook a car which was proceeding ahead of him and dashed against the two wheeler, which was driven by the deceased Prabhakaran. As a result of the impact, he was thrown off the vehicle and sustained grievous facial injuries and injuries on his right thigh. He died due the injuries. Terming that the negligence was on the part of the Driver of the vehicle bearing Registration No: TN-20-M-1285 as the cause for the accident, the claimants sought for compensation of Rs.2 crores.

3. The claim was resisted by the Insurance Company contending that the deceased also contributed to the accident by his own negligence. It was also pointed out that he was not wearing a helmet. The quantum of compensation that was claimed was termed as highly excessive. Before the Tribunal, the first claimant P.Parvathi, wife of the deceased, was examined



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as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3.

Exhibits P.1 to P.15 were marked. No evidence was let in on the side of the Insurance Company or the owner of the vehicle, who was cited as the 6th respondent.

4. On the appreciation of the evidence on record, particularly Exs.P.1 to P.3, the copy of the First Information Report, Motor Vehicle Report and the Final Report, the Tribunal concluded that the accident happened due to the negligence of the Driver of the Hero Honda motorcycle bearing Registration No: TN-20-M-1285, which was insured with the appellant Insurance Company. On the quantum, the Tribunal took the monthly income at Rs.44,711/- as found in Ex.P.11, added 40% towards future prospects, deducted 1/4th for the personal and living expenses of the deceased, applied a multiplier of 16 and arrived at the total loss of dependency at Rs.64,38,336/-. The Tribunal awarded a sum of Rs.25,75,335/- towards future prospects, Rs.40,000/- each to the wife, minor children and Rs.40,000/- each to the mother and father towards loss of consortium and Rs.10,000/- for funeral expenses.



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5. The Tribunal apportioned the compensation among the claimants as follows:-

<i>Claimants</i>	<i>Loss of dependency & Future prospects</i>	<i>Consortium</i>	<i>Funeral Expenses</i>
1 st Claimant (Wife)	Rs.15,02,278.50	Rs.40,000	Rs.2,000
2 nd Claimant (1 st Daughter)	Rs.22,53,417.75	Rs.40,000	Rs.2,000
3 rd Claimant (2 nd Daughter)	Rs.22,53,417.75	Rs.40,000	Rs.2,000
4 th Claimant (Father)	Rs.15,02,278.50	Rs.40,000	Rs.2,000
5 th Claimant (Mother)	Rs.15,02,278.50	Rs.40,000	Rs.2,000
Total	Rs.90,13,671.00	Rs.2,00,000	Rs.10,000

6. Mr.S.Arun Kumar, the learned counsel appearing for the appellant/Insurance Company would submit that he is not questioning the liability. Though he has a grievance that the Tribunal has not deducted any amount towards negligence on account of non-wearing of helmet, since the said Prabhakaran did not die of an head injury, we do not think that we can entertain the grievance of the learned counsel for the appellant. The learned counsel would also point out that the Tribunal has not deducted the travelling allowance and the overtime pay, which worked out to Rs.2,876/-. On the quantum, the main contention of the learned counsel for the appellant



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is that the Tribunal has not deducted any amount towards Income Tax that is payable. If these amounts are deducted, the compensation would be much less than what has been awarded.

7. Mr.K.R.Ponnusamy, learned counsel appearing for the claimants would however submit that the Tribunal has fixed the future prospects at 40% instead of 50%. Drawing our attention to the judgement of the Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and Others* reported in (2017) 16 SCC 680, the learned counsel would submit that the Tribunal should have fixed 50% as future prospects.

8. We have considered the rival submissions carefully.

9. As rightly pointed out by the learned counsel for the appellant, the Tribunal ought to have deducted the conveyance allowance and overtime allowance from the gross salary of the deceased, as the same would not accrue as a benefit to the family. Similarly, the contention of the learned



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counsel for the appellant regarding deduction of Income Tax is also acceptable. We also find force in the arguments of the learned counsel for the claimants regarding the fixation of future prospects.

10. In the light of the above, the compensation needs to be worked out as follows:-

(i) Monthly income of the deceased will be taken as Rs.41,835/- (i.e. monthly income Rs.44,711 (-) conveyance and overtime allowance Rs.2,876/-).

(ii) Monthly income of the deceased including 50% future prospects will be taken as Rs.62,752/-. (i.e. monthly income Rs.41,835 + 50% future prospects).

(iii) Loss of annual income will be taken as Rs.6,89,919/- (i.e. Rs.62,752/- x 12 (-) annual income tax payable Rs.63,105/-).



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11. The tabulated statement of the compensation awarded is as follows:-

<i>S.No.</i>	<i>Description</i>	<i>Compensation awarded by this Court</i>
1	Loss of Dependency (Rs.6,89,919/- x 16 = 1,10,38,704 x 3/4)	Rs.82,79,028/-
2	Loss of consortium to wife	Rs.40,000/-
3	Loss of Love and affection to two minor children (Rs.40,000/- each)	Rs.80,000/-
4	Loss of Love and affection to parents (Rs.40,000/- each)	Rs.80,000/-
5	Loss of estate	Rs.15,000/-
6	Funeral expenses	Rs.15,000/-
	Total	Rs.85,09,028/-

12. Needless to point out, the claimants would be entitled to interest at the rate of 7.5% from the date of claim till the date of payment.

We apportion the compensation as follows: The wife of the deceased will take Rs.25,09,028/-, the minor children will take Rs.20,00,000/- each and the parents will take Rs.10,00,000/- each, with proportionate interest thereon. The Insurance Company is given eight weeks time to deposit the compensation awarded by this Court. On such deposit, the wife and the



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parents of the deceased are entitled to withdraw their share. The share of the minor children shall be kept in fixed deposit in an interest bearing cumulative fixed deposit account in a nationalized bank at Tirutani till the minors attain majority.

13. In the result, the Civil Miscellaneous Appeal is partly allowed.

No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) (R.K.M.,J.)

28.07.2023

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Speaking order

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To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruttani.



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R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

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