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C.M.A.No.1465 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1465 of 2018

1. Rahana
2. Minor Rakshana
3. Minor Mohammad Rihan

... Appellants

..Vs..

1.S.Saravanan
2.Sri Ram General Insurance Company Limited
Sachin Complex, Saradha College Main Road
Near RBS Bank Alagapuram
Salem-4.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award made in MCOP No.94 of 2014, dated 06.08.2016 on the file of the Motor Accident Claims Tribunal / Special District Judge, Salem.

For Appellants : Mr. S.P.Yuaraj

For Respondents : Mr.Dhakshnamoorthy for R2



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JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation under the impugned award dated 06.08.2013 passed by the Motor Accident Claims Tribunal/ Special District Judge, Salem in M.C.O.P No.94 of 2014.

2. The Appellants unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of dependency (6500 (-) 1/3rd = 4,334 x 12 x 16 = 8,32,128/- less 25% contributory negligence)	6,24,100/-
Funeral Expenses	25,000/-
Loss of Consortium to wife	50,000/-
Loss of love and affection to 2 minor children	1,00,000/-
Total	7,99,100/-



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4. The learned counsel appearing for the appellants mainly contended that the entire quantum of compensation awarded by the Tribunal is very low. The Tribunal has failed to award compensation under the head of future prospectus without following various judgments laid down by the Hon'ble Apex Court. The contributory negligence fixed by the Tribunal only based on the rough sketch is not proper. The monthly income fixed by the Tribunal is very low. Hence, he prays to enhance the award.

5. The learned counsel for the 2nd respondent insurance company disputed the said contention of the appellants/claimants by stating that based on the oral and documentary evidence adduced, the Tribunal has rightly awarded a reasonable compensation and therefore, there is no need to interfere with the said finding of the Tribunal. Thus, the award given by the Tribunal is to be confirmed and the appeal is to be dismissed.

6. The accident occurred on 15.12.2013 at 6.30 p.m, at NH Udayapatti to Seelanaickenpatti Bye Pass Road, opposite to Arapuli Avenue.



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The TIW South Police Station registered a case in Crime No.718 of 2013 under Sections 279 and 304(A) IPC. While the deceased Hussain was proceeding in his two wheeler viz., Bajaj Discover bearing Registration No.TN 52 A 6793, the driver of the Maruthi Swift car bearing Registration No.TN 33 AR 7051 came in a rash and negligent manner and hit against the deceased. Due to the accident, he sustained fatal injuries all over the body and died in the hospital. Thereafter, the claim petition was filed by the wife and two minor children of the deceased, the claimants/appellants herein. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respective parties.

7. As far as the negligence is concerned, the learned counsel for the appellants/claimants contended that the Tribunal has erred in fixing 25% of contributory negligence on the part of the deceased in the absence of material evidence. However, as seen from the records, it would reveal that the deceased came in a wrong direction at the time of accident and he is also responsible for the accident. Therefore, this Court is of the considered opinion that the Tribunal has rightly fixed the negligence on the part of the



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driver of the 1st respondent at 75% and 25% contributory negligence on the part of the deceased.

8. As seen from the impugned award, the Tribunal has not awarded any compensation towards loss of future prospects which the Appellants/claimants are legally entitled to as per the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi & others*** reported in ***2017 (2) TN MAC 609 (SC)***. Accordingly, this Court grants 40% towards loss of future prospects to the Appellants.

9. In the claim petition, it was stated that the deceased was doing silver polishing. The deceased being a skilled worker, the monthly income fixed by the Tribunal at Rs.6,500/- is very low. The accident occurred in the year 2013. The cost of living has been increased enormously and salary of even unskilled workers has been increased substantially. Hence, this Court is of the considered view that it would be appropriate to fix a sum of Rs.10,000/- as his notional income. Thus, the loss of dependency is



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modified as follows:

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10,000/- + 40% future prospects=14,000/-

less 1/3rd deduction =9334/- x 12 x 16 = Rs.17,92,128/-

10. The compensation granted under the conventional heads are not in consonance with the principles laid down by the principal Apex Court of India in the case of Pranay Sethi. In view of the fact that the Tribunal has erroneously awarded the compensation under the heads of funeral expenses, consortium and love and affection, the award of compensation is to be modified. The Tribunal has erroneously failed to award any compensation towards loss of estate which the appellants/claimants are legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the claimants towards loss of estate. Thus, this Court is inclined to modify the compensation granted by the Tribunal as detailed hereunder:



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of dependency	6,24,100/- 6500/- (-) 1/3 rd deduction= 4334 x 12 x 16= 8,32,128/- (-) 25% contributory negligence	10,000 + 40% (-) 1/3 x 12 x 16 = Rs.17,92,128/-
Funeral Expenses	25,000/-	15,000/-
Loss of consortium to wife	50,000/-	40,000/-
Loss of love and affection to minor children	1,00,000/-	80,000/-
Loss of Estate	Nil	15,000/-
Total	7,99,100/-	19,42,128/-
Less contributory negligence 25%		4,85,532/-
Total	7,99,100/-	14,56,596/- rounded off to 14,56,600/-

11. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 7,99,100/- to Rs.14,56,600/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.

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(ii) The 2nd respondent Insurance Company is directed to deposit the modified award amount i.e, Rs.14,56,600 /- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.94 of 2014 within a period of six weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount as per the ratio apportioned by the Tribunal to the bank account of the 1st appellant along with accrued interest through RTGS within a period of two weeks thereafter.

(iv) Insofar as the minor Appellants 2 & 3 are concerned, the Tribunal is directed to deposit the share of their award amount bearing fixed deposit in any one of the Nationalised Bank till they attain majority and the first Appellant/mother of the minors is permitted to withdraw the interest accrued once in six months for the welfare of the minors. No costs.



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(v) The appellants/claimants are directed to pay the necessary court fee, if any for the enhanced compensation and the Registry is directed to draft the decree, after receipt of necessary court fee. No costs.

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Index:Yes/No

Speaking/Non-speaking Order

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To

1. The Special District Judge,
(Motor Accidents Claims Tribunal),
Salem.
2. The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.

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