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C.M.A.No.1521 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1521 of 2018

and

C.M.P No.12097 of 2018

United India Insurance Co. Ltd.,
Divisional Office – II (HUB)
104-A, Peramanur Main Road
Salem-7.

... Appellant

..Vs..

1.Kandamani
2.T.Chandrasekaran

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.428 of 2017, dated 07.12.2017 on the file of the Motor Accident Claims Tribunal / II Additional District Judge, Salem.

For Appellant : Mr. I.Malar

For Respondents : No Appearance



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JUDGMENT

The appeal on hand is filed against the judgment and decree dated 07.12.2017 passed in MCOP No.428 of 2017, on the file of the Motor Accident Claims Tribunal/II Additional District Judge, Salem.

2. The United India Insurance Company Limited is the appellant, who filed this appeal questioning the quantum of compensation.

3. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the quantum of compensation granted by the Tribunal is exorbitant and the principles settled in the case of **National Insurance Company Ltd., v. Pranay Sethi & others** reported in **2017(2) TN MAC 609 (SC)** by the Apex Court has not been followed by the Tribunal. The compensation granted under various heads are on the higher side and based on that, the appellant/Insurance Company has chosen to file the present appeal. This apart, the age of the deceased at the time of the death is 21 years. The monthly income of the deceased fixed by the Tribunal



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at Rs.15,000/- is improper. The claimant has not submitted any proof to establish the income of the deceased. In the absence of any such acceptable document, the Tribunal ought not to have fixed the monthly income of the deceased as Rs.15,000/-. The Tribunal has awarded a sum of Rs.1,00,000/- towards love and affection instead of Rs.40,000/-. As per the Pranay Sethy case, the loss of love and affection of the dependent awarded by the Tribunal is unsustainable. The Tribunal ought to have fixed 50% contributory negligence on the part of the deceased, who had invited the accident on his own fault. For the aforesaid reasons, the award is liable to be reduced.

4. Though notice was served on the 1st respondent/claimant, she has not entered appearance before this Court.

5. The accident occurred on 12.11.2016 at 7.40 p.m., at Veppadai to Komarapalayam Main Road, Ranganoor. The Pallipalayam Police Station registered a case in Crime No.691 of 2016 under Sections 279 and 304(A) of IPC. The deceased Tamilarasan @ Tamilarasu was proceeding in his two wheeler bearing Registration No.TN 34 D 1488 at Veppadai to



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Komarapalayam Main Road towards east to west direction. Due to the accident, he sustained fatal injuries all over the body and died on the spot. Thereafter, the claim petition was filed by the mother of the deceased. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respective parties.

6. As far as the negligence is concerned, even though the learned counsel for the appellant/Insurance company contended that the deceased alone came in the wrong side and invited the accident, no oral and documentary evidence was adduced on their side. However, as seen from the records, at the time of accident, the deceased did not wear helmet. Therefore, this Court is of the considered opinion that the Tribunal has rightly fixed the contributory negligence on the part of the appellant/insurance company at 85% and 15% negligence on the part of the deceased. As far as the future prospects is concerned, as per the Pranay Sethi case, the Tribunal is right in granting 40% future prospects.

7. The learned counsel appearing on behalf of the appellant/Insurance



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Company relying on the document, viz., Ex.P2 postmortem certificate could able to establish that the age of the deceased at the time of the accident was 21 years. Thus, the Tribunal has fixed the age of the deceased as 21 years at the time of the accident. In the claim petition, it was stated that the deceased was working as a Mason. However, there is no document to show that the occupation and income of the deceased. But, the Tribunal has fixed the monthly income as Rs.15,000/- as per the decision of the Hon'ble Supreme Court. The accident is of the year 2016. Hence this Court is inclined to fix Rs.14,000/- as monthly income which would be reasonable. The compensation granted under the head of love and affection is 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 head of 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 claimant is legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the claimant towards loss of estate.



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8. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

9. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is modified from Rs.20,34,050/- to Rs.18,67,280/- in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Dependency	Rs.15,000/- + $6,000 \times 12 \times 18 \times 1/2$ = 22,68,000/-	Rs.14,000/- + 5,600 x $12 \times 18 \times 1/2$ = Rs.21,16,800/-
Loss of Love and Affection	1,00,000/-	40,000/-
Funeral Expenses	15,000/-	15,000/-
Loss of Estate	...	15,000/-
Transport charges	10,000/-	10,000/-
Total	23,93,000/-	21,96,800/-
15% deduction	3,58,950/-	3,29,520/-
Total (After deducting 15%)	20,34,050/-	18,67,280/-

Conclusion:



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10. In the result, this appeal is partly allowed. The appellant/Insurance Company is directed to deposit the modified amount i.e, Rs.18,67,280/- 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.428 of 2017 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the 1st respondent/claimant through RTGS within a period of two weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No

Internet:Yes/No

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1.The II Additional District Judge
Salem.

2.The Section Officer
V.R.Section, High Court of Madras.

A.A.NAKKIRAN, J.
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