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C.M.A.No.1646 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1646 of 2018

1.Jothi
2.Suganya
3.Sudhakar
4.Sugapriya

... Appellants

..Vs..

1.Rani
2.The National Insurance Co. Ltd.,
First Floor, Nires Complex
No.910, Cuddlore Main Road
P.V.No.7, Aathur Salem District.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the judgment and decree dated 18.07.2017 made in MCOP No.628 of 2015 on the file of the Principal District Judge/ Motor Accidents Claims Tribunal, Perambalur.

For Appellant : Mr. A.Sathishkumar
for M/s.C.Thangaraju

For Respondents : M/s.N.B.Surekha for R2
No Appearance for R1



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JUDGMENT

WEB COPY This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 18.07.2017 passed by the Motor Accident Claims Tribunal / Principal District Judge, Perambalur, in M.C.O.P No.628 of 2015.

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

3. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.7,97,400/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of Income	7,56,000/-
Loss of Love and Affection	50,000/-
Loss of Consortium	50,000/-
Funeral Expenses and Transportation	25,000/-
Loss of Estate	5,000/-



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
Total	8,86,000/-
Less 10% towards contributory negligence	88,600/-
Total	7,97,400/-

4. Before the Tribunal, the Appellants/claimants have filed twenty five documents which were marked as Ex.P1 to Ex.P25 and the 1st and 3rd claimants were examined as PW1 and PW2 on their side. On the side of the 2nd respondent, two witnesses were examined as RW1 and RW2 and Ex.R1 to R3 were marked. The 1st respondent was set exparte.

5. Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent/Insurance Company and also perused the materials on record.

6. The accident occurred on 16.01.2015 at about 16.00 hours, at Neikuppai to V.Kalathur Main Road, opposite to cattle shed, 12 k.m south west of V.Kalathur Police station. The V.Kalathur Police Station registered a case in Crime No.20 of 2015 under Sections 279 and 337 and 304(A) IPC.



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Due to the fatal injuries, the deceased died on the spot. Thereafter, the claim petition was filed and the Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. As far as the negligence is concerned, the driver of the TATA Ace Mini Van bearing Registration No.TN 77 5718 had driven the vehicle in a rash and negligent manner and caused the accident. The said fact has not been disputed by the 2nd respondent/Insurance company. But, the Tribunal has committed grave error in fixing the contributory negligence at 10% on the 3rd claimant/3rd appellant, who was the rider of the two wheeler. The contributory negligence fixed at 10% by the Tribunal is only on the basis of the evidences of RW1 and RW2 and there is no material in the form of the independent witnesses to show that the 3rd claimant had driven the vehicle in a rash and negligent manner. In the absence of any material to show that the rash and negligent driving on the part of the 3rd claimant, the fixation of contributory negligence on the part of the claimant cannot be sustainable.

7. As seen from the impugned award, the Tribunal has not awarded any compensation towards loss of future prospects which the



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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 25% towards loss of future prospects to the Appellants.

8. The Tribunal has rightly applied 14 multiplier, since the deceased was aged 43 years at the time of accident as per Ex.P5-passport. Since the Appellants are wife, son and daughters of the deceased, 1/3rd will have to be deducted towards the personal expenses of the deceased. The Tribunal has assessed the notional monthly income of the deceased at Rs.6000/-. It is contention of the appellants that at the time of the accident, the deceased was an agriculturist and was earning a sum of Rs.15,000/- per month. The appellants have not produced any material evidence to prove the avocation and income of the deceased. In the absence of any material evidence with regard to avocation and income, the Tribunal has fixed the notional income of the deceased at Rs.6000/- per month and after deducting 1/4th towards personal expenses of the deceased and applying the multiplier 14, awarded a



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sum of Rs.7,56,000/- towards loss of dependency. In this regard, the learned counsel for the appellants relied on the judgment of this Court reported in **2020(1) TN MAC 617 [M.Chinnathambi Vs. S.Deepa and another]**. The accident occurred in the year 2015. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, this Court is of the considered view that it would be appropriate to fix a sum of Rs.7,500/- as his notional income. Thus, the loss of dependency is modified as follows:

$$7,500/- + 25\% \text{ future prospects} = 9,375/-$$

$$\text{less } 1/3\text{rd deduction} = 6,250/- \times 12 \times 14 = \text{Rs.10,50,000/-}$$

9. In addition to the pecuniary loss sustained by the Appellants, the Tribunal has granted a compensation of Rs.50,000/- towards loss of consortium to the 1st appellant being the wife of the deceased, Rs.50,000/- towards love and affection to the appellants 1 to 4, Rs.25,000/- towards funeral expenses and transport charges and Rs.5,000/- towards loss of estate. However, the compensation awarded by the Tribunal towards loss of love and affection is low. Hence, this Court is inclined to award a



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compensation of Rs.40,000/- each towards love and affection to the appellants 2 to 4. As per the settled practice, the compensation towards loss of consortium is reduced to Rs.40,000/- from Rs.50,000/- and towards funeral expenses reduced to Rs.15,000/- from Rs.25,000/-.

10. The Tribunal has awarded a sum of Rs.5,000/- towards loss of estate which is very meagre. As per the settled practice, a sum of Rs.15,000/- is awarded as compensation to the Appellants towards loss of estate.

11. For the forgoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.7,97,400/- to Rs.12,40,000/- as detailed hereunder.

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
Loss of dependency	7,56,000/- (6000 -1/4 =4500 x 12x14)	10,50,000/- (7500 + 25/100 = 9375 - 1/3rd deduction =6250x12x14)
Loss of Consortium	50,000/-	40,000/-
Loss of Love &	50,000/-	1,20,000/-



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<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
affection		
Funeral Expenses	25,000/-	15,000/-
Loss of Estate	5,000/-	15,000 /-
Total	8,86,000/-	12,40,000/-
10% contributory negligence	88,600/-	Nil
Total	7,97,400/-	12,40,000/-

12. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from Rs.7,97,400/- to Rs.12,40,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.

(ii) The second respondent Insurance company is directed to deposit the modified award amount i.e, Rs.12,40,000/- 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.628 of 2015 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



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the respective shares of award amount as per the ratio apportioned by the Tribunal to the bank accounts of the Appellants 1 to 4 along with accrued interest through RTGS within a period of two weeks thereafter. No costs.

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Index:Yes/No

Speaking/Non-speaking order:Yes/No

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To

- 1.The Principal District Judge,
Motor Accidents Claims Tribunal
Perambalur.
- 2.The Section Officer
V.R.Section, High Court of Madras.

A.A.NAKKIRAN, J.

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