IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

C.M.A.No.1539 of 2021
and
C.M.P.No.8066 of 2021 & 9548 of 2021

The Branch Manager,
HDFC ERGO General Insurance Company Ltd.,
Shop Nos.G3, G4 Part Rear Side,
No.11 Achutha, Bharathithasan Salai,
Cantonment, Thiruchirapalli – 620 001. ...Appellant

Vs.

1.B.Selvi

2.B.Jayasri

3.Minor B.Kowsika
[represented by next friend/ mother 1st respondent]

4.R.Senthilnathan ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 30.01.2020 in MCOP.No.174 of 2018 passed by the Motor Accident Claims Tribunal (District Court), Karaikal.

For Appellant : Mr.N.Somasundaar

For Respondents : Mr.T.Sai Krishnan for R1 to R3

R4 – No appearance

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JUDGMENT

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.)**

The Insurance Company is on appeal questioning the quantum of compensation granted at Rs.45,37,900/- for the death of one Balashanmugam in a motor accident that occurred on 22.04.2018.

2. The said Balashanmugam was working as an Upper Division Clerk in the Government of Puducherry. He is said to have riding his TVS Scooty on the junction between the Church Street and Thomas Arul Street at Karaikal. The 4th respondent who was riding his motorcycle Honda Unicorn came from the side in a rash and negligent manner and dashed against the Scooty. As a result of the impact the deceased was thrown off the vehicle and suffered fatal injuries. Though moved to the Government Hospital, Karaikal, he succumbed to the injuries. Claiming that the rash and negligent driving on the part of the rider of the motorcycle as the cause for the accident, the claimants sought for a compensation of Rs.50,00,000/-. The quantum was sought to be supported by contending that the deceased was earning a sum of Rs.33,831/- per month and he had very bright future prospects.

3. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimants. It was claimed that the deceased contributed to the accident by his own negligence. It was also contended that the deceased was not wearing a helmet. The age and income particulars were denied and the claimants were put to strict proof of the same.

4. At trial before the Tribunal, Selvi wife of the deceased was examined as PW1 and one Shanmugasundaram, eye witness was examined as PW2. One Kalvimaran was examined as RW1. While Exs.P1 to P19 were marked on the side of the claimants, no documents were marked on the side of the respondents.

5. The Tribunal considering the evidence on record, particularly relying upon the FIR marked as Ex.P1 and the accident inspection report marked as Ex.P2 came to a conclusion that the accident occurred due to the rash and negligent driving of the rider of the motorcycle which was insured with the appellant Insurance Company.

6. On the quantum, the Tribunal took the income of the deceased at Rs.33,831/- per month, added future prospects at 40%, deducted 1/3rd towards personal expenses, applied the multiplier '11' and arrived at the total loss of dependency at Rs.41,67,000/-. The Tribunal also awarded a sum of Rs.3,00,000/- towards loss of love and affection for the petitioners and Rs.40,000/- towards loss of consortium for the 1st petitioner. A sum of Rs.15,000/- each was awarded for funeral expenses and loss of estate. Thus, the total compensation was arrived at Rs.45,37,900/-.

7. We have heard Mr.N.Somasundaar, learned counsel appearing for the appellant/ Insurance Company and Mr.T.Sai Krishnan, learned counsel appearing for the respondents/ claimants.

8. Mr.N.Somasundaar, learned counsel appearing for the Insurance Company would vehemently contend that the Tribunal erred in adopting future prospects at 40% which is against the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others** reported in **(2017) (2) TN MAC 609 (SC).** According to the learned counsel, as per the said judgment, for a person aged 50 to 60 years future prospects should be taken at 15% and not 40%. He would also fault the Tribunal for having awarded a sum of Rs.3,00,000/- towards loss of love and affection which is also higher than the amount fixed by the Hon'ble Suprme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others** referred to *supra.*

9. Mr.T.Sai Krishnan, learned counsel appearing for the respondents/ claimants would submit that though the future prospects was taken at 40% the awards on the other heads can be justified.

10. We have considered the rival submissions.

11. In paragraph 61(iii) of the judgment in **National Insurance Company Limited Vs. Pranay Sethi and Others** reported in **(2017) (2) TN MAC 609 (SC),** the Hon'ble Supreme Court has specifically laid down that the future prospects can be taken for a permanent employee aged between 50 to 60 years at 15% only. Therefore, adoption of 40% by the Tribunal cannot be accepted. Even for grant of compensation under the heads of loss of love and affection and loss of consortium, as per the judgment of the Hon'ble Supreme Court, it cannot be more than Rs.40,000/-. Therefore, grant of

Rs.3,00,000/- towards loss of love and affection appears to be incorrect. Hence, we are constrained to allow the appeal and the compensation is re-fixed as follows:-

HEADS	***CALCULATION***	
Monthly income	Rs.33,831/-	
Add : 15% toward future prospects	Rs.5,074/-	
Total monthly income	Rs.38,905/-	
Deduct : $1/3^{rd}$ towards personal expenses	Rs.38,905/- - Rs.12,968/- =Rs.25,937/-	
Total loss of dependency	Rs.25,937/- x 12 x 11 = Rs.34,23,684/-	Rs.34,23,684/-
Loss of Love and affection for the 2^{nd} and 3^{rd} respondents and loss of consortium for the 1^{st} respondent at Rs.40,000/- each	Rs.1,20,000/-	Rs.1,20,000/-
Loss of estate	Rs.15,000/-	Rs.15,000/-
Funeral expenses	Rs.15,000/-	Rs.15,000/-
Total		**Rs.35,73,684/-**

12. The Insurance Company has deposited 50% of the compensation. There will be a direction to the Insurance Company to deposit the remaining amount within a period of twelve (12) weeks from the date of receipt of a copy of the order. The compensation will carry interest at 7.5% per annum from the date of petition till date of payment. Costs made easy in this appeal. The compensation awarded is apportioned as follows:-

The claimants 2 and 3, who are the daughters will be entitled to

Rs.10,00,000/- each with proportionate interest. The 1st claimant wife will take the balance amount with proportionate interest. On such deposit the major claimants will be entitled to withdraw their shares of the compensation. The share of the minor claimant/ 3rd respondent will be kept in a cumulative interest earning Fixed Deposit in any Nationalized Bank till she attains majority. On her attaining majority her share will be paid over to her along with accrued interest. Consequently, the connected miscellaneous petitions are closed.

(R.S.M.,J.) **(N.S.,J.)**
14.12.2023

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Index :No
Internet :Yes
Neutral Citation :No
Speaking order

To

1.The District Judge,
Motor Accident Claims Tribunal,
District Court, Karaikal.

2.The Section Officer, VR Section,
High Court, Madras – 104.

R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

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C.M.A.No.1539 of 2021

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