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C.M.A.No.2087 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.2087 of 2018

and

C.M.P No.16207 of 2018

National Insurance Co. Ltd.,
Represented by its Divisional Office-I
LRN Complex, Salem-7.

... Appellant

..Vs..

1.S.Muthulakshmi
2.Minor K.S.Haritha
3.Minor K.S.Vikas
4.Kuppayee
5.The Chairman
Vivekananda Women's Engineering
& Technical College
Elayaiyampalayam,
Tiruchengodu Taluk
Namakkal District.

... Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.653 of 2016, dated 06.10.2017 on the file of the Motor Accident Claims Tribunal / Special District Court, Salem.



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For Appellant : Mr. V.Bharathidasan
For M/s.S.Arun Kumar

For Respondents : No Appearance

JUDGMENT

The appeal on hand is filed against the judgment and decree dated 06.10.2017 passed in MCOP No.653 of 2016, on the file of the Motor Accident Claims Tribunal/Special District Judge, Salem.

2. The National 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 towards funeral expenses, loss of consortium and loss of love and affection are on the higher side and based



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on that, the appellant/Insurance Company has chosen to file the present appeal. The Tribunal has erroneously granted future prospects. This apart, the age of the deceased at the time of the death is 45 years. Thus, taking note of the fact that the age of the deceased was 45 years, 30% future prospects alone is to be ordered. Contrary, the Tribunal has ordered 50% future prospects which is erroneous. Thus, the compensation awarded is exorbitant. For the aforesaid reasons, the award is liable to be dismissed.

4. Though notice has been served on the respondents 1 to 4/claimants and the 5th respondent, they have not entered appearance before this Court.

5. The accident occurred on 25.02.2016 at 6.30 p.m., at Karumapuram Pirivu Road, near Morpalayam. The Mallasamudram Police Station registered a case in Crime No.33 of 2016. The deceased Selvam was proceeding in his two wheeler bearing Registration No.TN 34 H 7423 on his side of Salem to Thiruchengode Main Road, at Karumapuram Pirivu Road, near Morpalayam, towards north to south direction. Due to the accident, he sustained fatal injuries all over the body and died on the spot.



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Thereafter, the claim petition was filed by the wife, two minor children and mother of the deceased, the respondents 1 to 4 herein. 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 aspect is concerned, the Tribunal has considered the contentions made in the FIR and as well as the oral evidence. There is no contra evidence to that effect. Thus, the Tribunal has arrived a conclusion that the accident had occurred due to the rash and negligent driving of the driver of the 5th respondent college bus. Accordingly, the Tribunal has awarded the quantum of compensation. Undoubtedly, the Tribunal considered all these aspects. Even the judgment of the **National Insurance Company vs. Pranay Sethi and others**, has also been considered by the Tribunal.

7. A perusal of the award would reveal that as per Ex.P7 Identity card of the deceased, (who was working as Over Seer in Mallasamudram Union Office), the Tribunal has fixed the age of the deceased as 45 years at



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the time of the accident. As far as the multiplier is concerned, considering the age of the deceased, the Tribunal is right in fixing the multiplier as 14.

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, loss of 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 they 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:

8. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:



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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	Rs.4,82,326 x 14 = 67,52,564/-	Rs.67,52,564/-
Funeral Expenses	25,000/-	15,000/-
Loss of Consortium	50,000/-	40,000/-
Loss of Love and Affection to the 2nd and 3rd petitioners	1,50,000/-	80,000/-
Loss of Love and Affection to the 4th petitioner	25,000/-	40,000/-
Loss of Estate	Nil	15,000/-
Total	70,02,564/-	69,42,564/- rounded off to Rs.69,42,570/-

9. In the result,

(i) This appeal is partly allowed and the Appellant Insurance Company is directed to deposit the modified award amount i.e, Rs.69,42,570/- 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.653 of 2016 within a period of four weeks from the date of receipt of a copy of this Judgment.



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(ii) 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 accounts of the respondents 1 & 4/claimants along with accrued interest through RTGS within a period of two weeks thereafter. Insofar as the minor respondents/claimants 2 & 3 are concerned, the Tribunal is directed to deposit the share of their award amount bearing fixed deposit in any one of the Nationalized Bank till they attain majority and the first respondent/mother of the minors is permitted to withdraw the interest accrued once in three months for the welfare of the minors. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking/Non-speaking Order

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To

- 1.The Special District Court, Salem.
(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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