



C.M.A.No.3244 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3244 of 2014

Shanthi

... Appellant

..Vs..

1.G.Kalaiselvan
2.S.Samsuddin
3.Bajaj Alliance General Insurance Company
No.1062/1, Suriabala Auto Private Ltd.,
Sungam CHinthamani Bus Stop
Trichy Road, Coimbatore-45.
4.Kuppusamy
5.Manonmani

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order made in MCOP No.935 of 2007, dated 24.08.2010 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Judge, Fast Track Court No.III, Coimbatore.

For Appellant	: Mr. C.Deepak Kumar
For Respondents	: Mr.K.Poomalai for R3 Mr.K.Ramar for R4 & R5 R2 - No Appearance



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JUDGMENT

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This appeal has been filed by the claimant seeking enhancement of compensation made under the impugned award dated 24.08.2010 passed by the Motor Accident Claims Tribunal/ Additional District and Sessions Judge, Fast Track Court No.III, Coimbatore, in M.C.O.P No.935 of 2007.

2. 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 (2700 (-) 1/3rd = 1,800 x 12 x 18	3,88,800/-
Transport to hospital	500/-
Funeral Expenses	5,000/-
Loss of love and affection	5,000/-
Loss of consortium	5,000/-
Total	4,04,300/-

3. The learned counsel appearing for the appellant mainly contended that the entire quantum of compensation awarded by the Tribunal is very



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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. Without considering Ex.P12 series, viz., Register of the salary extract, salary certificate and attendance register etc., the monthly income fixed by the Tribunal is not correct. The compensation awarded under the heads of love and affection, consortium, funeral expenses is very meagre. Further, the Tribunal has failed to award any amount towards loss of estate. Hence, he prays to enhance the award.

4. The learned counsel for the third respondent insurance company disputed the said contention of the appellant/claimant by stating that the salary certificate, Ex.P12 filed by the claimant is not authenticated one since it has been given in the letter head format and hence, the Tribunal fixed a sum of Rs.2,700/- as monthly income, which is not meagre. The Tribunal has rightly awarded a reasonable compensation and therefore, he prays for dismissal of the appeal.



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5. The accident occurred on 02.07.2006 at 5.15 p.m, near Krishna Gounder Kalyanamandapam, Bharathiar Road, Maniakarampalayam, Coimbatore. The TIW (C) Police Station registered a case in Crime No.258 of 2006 under Sections 279 and 304(A) IPC. While the deceased Ramalingam was proceeding along with his wife, who is the claimant/appellant herein, in his two wheeler bearing Registration No.TN-38 R 9086 near Krishna Gounder Kalayanamandapam, the driver of the 1st respondent motor cycle bearing Registration No.TN 38 E-5449 came in a opposite direction rashly and negligently and hit against the deceased and his wife. Due to the accident, he sustained fatal injuries all over the body and died in the hospital and the claimant/appellant sustained abrasion injury. Thereafter, the claim petition was filed by the wife of the deceased, the claimant/appellant herein. The Tribunal adjudicated the issues with reference to the documents as well as the evidences produced by the respective parties.

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



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Appellant/claimant is 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 Appellant.

7. In the claim petition, it was stated that the deceased Ramalingam was aged 28 years at the time of accident and was earning Rs.20,000/- per month. On perusal of Ex.P12 salary certificate, it is seen that the deceased was working as Engineer in a private company namely, Viswanathan Construction and was earning Rs.9,250/- per month. But, the said document is in the letter head format and no separate salary certificate has been filed on the side of the claimant and therefore, it cannot be treated as authenticated document as rightly contended by the learned counsel for the 3rd respondent/Insurance Company. However, without giving due consideration to the year of the accident and the avocation of the deceased as Diploma Engineer, the Tribunal has wrongly assessed the notional monthly income of the deceased at Rs.2700/-. Hence, this Court is of the



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considered view that it would be appropriate to fix Rs.7,500/- as notional monthly income of the deceased. Since the appellant is the wife and the respondents 4 and 5 are parents, $1/3^{\text{th}}$ will have to be deducted towards the personal expenses of the deceased. Accordingly, the loss of dependency is modified from Rs.3,88,800/- to Rs.15,12,000/- as detailed below:

$$7,500 + 40\% (-) 1/3 \times 12 \times 18 = \text{Rs.15,12,000/-}$$

8. 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 loss of consortium, funeral expenses 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 and the appellant/claimant is legally entitled to as per the settled practice. Accordingly, a sum of Rs.15,000/- is awarded as compensation to the appellant 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	3,88,800/- (2700/- (-)1/3 = 1800 x 12 x 18)	15,12,000/- 7,500 + 40% (-) 1/3=7000 x12 x 18
Transport to hospital	500/-	500/-
Consortium to wife	5,000/-	40,000/-
Loss of Estate	Nil	15,000/-
Funeral Expenses	5,000/-	15,000/-
Loss of love and affection to parents	5,000/-	80,000/-
Total	4,04,300/-	16,62,500/-

Accordingly, the claimant/appellant is entitled to a compensation of Rs.16,62,500/- (Rupees sixteen lakhs sixty two thousand five hundred only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization and out of the entire compensation amount, the appellant/claimant shall receive a sum of Rs.3,00,000/- and the respondents 4 and 5 shall receive a sum of Rs.6,81,250/- each.



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9. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 4,04,300/- to Rs.16,62,500/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.

(ii) The third respondent Insurance Company is directed to deposit the modified award amount i.e, Rs.16,62,500 /- 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.935 of 2007 within a period of six weeks from the date of receipt of a copy of this Judgment.

(iii) The third respondent/Insurance Company is permitted to recover the said amount from the 1st respondent/driver of the vehicle and the 2nd respondent/owner of the vehicle in accordance with law, as ordered by the Tribunal.

(iv) On such deposit being made, the Tribunal is directed to transfer the respective shares of award amount as per the ratio apportioned by this Court to the bank account of the Appellant/claimant and the



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respondents 4 and 5 along with accrued interest through RTGS within a period of two weeks thereafter.

(v) The appellant/claimant is 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.

13.06.2023

Index:Yes/No
Speaking/Non-speaking Order

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To

1. The Additional District and Sessions Judge,
Fast Track Court No.III,
(Motor Accidents Claims Tribunal),
Coimbatore.
- 2.The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.

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