IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3310 of 2017
and
C.M.P No.20394 of 2017

The Branch Manager
United India Insurance Co. Ltd.,
254, Goodshed Road
Madurai. ... Appellant

..Vs..

1.Selvaraj
2.Mageshwari
3.Prabhakaran
4.Hajeemullah ... Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.44 of 2011, dated 24.11.2016 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Udumalpet District.

For Appellant : Mr. J.Chandran

For Respondents : Mr.R.Sreerangan - R1 & R2
R3 & R4 - Given up

JUDGMENT

The appeal on hand is filed against the judgment and decree dated 24.11.2016 passed in MCOP No.44 of 2011, on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Udumalpet.

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 towards funeral expenses and loss of love and affection are on the higher side and based 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 20 years. Thus, taking note of the fact

that the age of the deceased was 20 years, 40% future prospects alone is to be ordered. Contrary, the Tribunal has ordered 50% future prospects which is erroneous. The monthly income of the deceased fixed by the Tribunal at Rs.12,000/- is improper. The claimants have 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.12,000/-. 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 dependents awarded by the Tribunal is unsustainable. The Tribunal ought to have fixed 40% 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. The learned counsel for the respondents 1 & 2 disputed the the said contention of the appellant/Insurance company that based on the oral and documentary evidence adduced, the Tribunal has rightly fixed the monthly income as Rs.12,000/- and therefore, there is no need to interfere

with the said finding of the Tribunal by reducing the monthly income of the deceased. The Tribunal has awarded a reasonable compensation and there is no error as such. Thus, the award given by the Tribunal is to be confirmed and the appeal is to be dismissed.

5. The accident occurred on 21.01.2011 at 11.00 p.m., at Trichy to Pudukottai Main Road, near Mathur. The Mathur Police Station registered a case in Crime No.5 of 2011. The deceased Mani @ Manivannan was travelling as 2nd pillion rider in a motorcycle bearing Registration No.TN 59 AJ 0462 which was driven by the 3rd respondent herein / owner of the motorcycle at Trichy to Pudukottai Main Road, near Mathur towards north to south direction. Due to the accident, he sustained fatal injuries all over the body and died. Thereafter, the claim petition was filed by the father and mother of the deceased, the respondents 1 and 2 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 learned counsel for the appellant/Insurance Company contended that the deceased was travelling as 2nd pillion rider which is against the provision under Section 123 of Motor Vehicles Act and invited the accident. As seen from the records, the deceased was travelling as 2nd pillion rider. The Tribunal has considered the contentions made in the FIR and as well as the oral evidence and arrived a conclusion that the accident had occurred due to the rash and negligent driving of the driver cum owner of the motorcycle, who is the 3rd respondent herein and the deceased was also responsible for the accident. But, the Tribunal has erred in fixing the negligence on the part of the appellant/insurance company at 70% and 30% contributory negligence on the part of the deceased. Hence, in the considered view of this Court, it would be appropriate to fix 60% negligence on the part of the appellant/Insurance Company and 40% contributory negligence on the part of the deceased.

7. As far as the future prospects is concerned, the Tribunal has erred in granting 50% future prospects without following the decision of Hon'ble

Supreme Court in *Pranay Sethi* case. Hence considering the age of the deceased was 20 years at the time of accident, it would be appropriate to grant 40% future prospects.

8. A perusal of the award would reveal that as per Ex.P10 X Standard Mark Sheet and Transfer certificate of the deceased, the Tribunal has fixed the age of the deceased as 20 years at 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 18. In the claim petition, it was stated that the deceased was an Engineering student. However, there is no document to show the occupation and income of the deceased. In the absence of any such proof, the monthly income fixed by the Tribunal at Rs.12,000/- is on the higher side. The accident is of the year 2011. The deceased being an Engineering student, this Court is inclined to fix Rs.10,000/- as monthly income which would be reasonable. Since the deceased was a bachelor, 50% will have to be deducted towards the personal expenses of the deceased. Accordingly, the loss of dependency is modified from Rs.19,44,000/- to Rs.15,12,000/- as detailed below:

10,000 x 12 x 18 + 40% future prospects - 50% personal expenses

= Rs.15,12,000/-

9. 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 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 the respondents 1 & 2/claimants 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:

Heads	***Amount awarded by the Tribunal (Rs.)***	***Award Amount by this Court (Rs.)***
Loss of Dependency	12,000 x 12 x 18 + 50% future prospects, less 50% personal expenses = Rs.19,44,000/-	10,000 x 12 x 18 + 40% future prospects, less 50% personal expenses= Rs.15,12,000/-
Love and affection	1,00,000/-	80,000/-
Funeral Expenses	25,000/-	15,000/-
Loss of Estate	Nil	15,000/-
Total	20,69,000-	16,22,000/-
Less Contributory Negligence	6,20,700/- (30%)	6,48,800/- (40%)
Total	**14,48,300/-**	**9,73,200/-**

10. 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.9,73,200/- 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.44 of 2011 within a period of six weeks from the date of receipt of a copy of this Judgment.

(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 & 2/claimants along with accrued interest through RTGS within a period of two weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

20.03.2023

Index:Yes/No
Speaking/Non-speaking Order

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To

1.The Subordinate Judge
(Motor Accidents Claims Tribunal),
Udumalpet.

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

A.A.NAKKIRAN, J.

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C.M.A.No.3310 of 2017

and

C.M.P No.20934 of 2017

20.03.2023