



C.M.A.No.119 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2023

CORAM:

**THE HONOURABLE MRS. JUSTICE N. MALA**

Civil Miscellaneous Appeal No. 119 of 2020  
and  
C.M.P.No.780 of 2020  
C.M.P.No.9843 of 2021

The New India Assurance Co. Ltd.,  
No.232, N.S.C. Bose Road,  
Bombay Mutual Building, 6<sup>th</sup> Floor,  
Broadway, Chennai-600 001

.. Appellant

Versus

1. K. Esthar  
2. S. Selvamalar Samuel  
3. A. Samuel Ashok Kumar  
4. C. Venkatesan

.. Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 30.07.2019 made in M.C.O.P.No.329 of 2017 on the file of the Motor Accident Claims Tribunal, III Additional District Court, Tiruvallur, Poonamallee.

|                 |   |                                      |
|-----------------|---|--------------------------------------|
| For Appellant   | : | Mr. S. Dhakshnamoorthy               |
| For respondents | : | Mr. K.T.S. Sivakumar<br>for R1 to R3 |

### **JUDGMENT**

The Civil Miscellaneous Appeal is filed by the appellant/Insurance Company challenging the judgment and decree dated 30.07.2019 made in



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M.C.O.P.No.329 of 2017 on the file of Motor Accident Claims Tribunal, III

Additional District Court, Tiruvallur, Ponnammallee.

2. The appellant/Insurance Company has filed this appeal questioning the quantum of compensation awarded by the Tribunal.

3. The brief summary of the case leading to filing of this appeal is as follows:

On 29.11.2017 when the deceased was riding his motor cycle bearing Registration No.TN-12-F-7178 from East to West, on Ambattur Estate South Avenue, the lorry bearing Registration No.TN 25 BY 5559 belonging to the first respondent driven by its driver in a rash and negligent manner, came in the opposite direction and dashed against the motor cycle driven by the deceased. In the impact, the deceased sustained severe head injuries and died on the spot. The widow and foster parents of the deceased, therefore filed a claim petition. According to the claimants, the deceased was working as an Assistant Manager and earning a sum of Rs.30,000/- per month in Goodwill Engineers Private Limited. The claimants therefore filed the claim petition seeking compensation of Rs.75,00,000/-, before the Claims Tribunal.



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4. The first respondent/the owner of the vehicle remained exparte before the Tribunal and the counter was filed by the second respondent. The second respondent denied the negligence, liability and the quantum of compensation claimed by claimants.

5. Before the claims Tribunal, the first claimant examined himself as P.W.1 and two other witnesses were examined as P.W.2 & P.W.3 and Exs.P1 to P25 were marked. On the side of the second respondent no oral or documentary evidence was filed.

6. The claims Tribunal on assessment of entire evidence on record, returned a finding of negligence against the Driver of the first respondent and awarded a sum of Rs.42,08,370/- along with interest at the rate of 7.5% per annum. Aggrieved by the award passed by the Claims Tribunal, the insurance company has filed the above appeal.

7. The learned counsel for the appellant submitted that the claimants suppressed the fact that the second and third respondents, who were said to be foster parents of the deceased, were Directors of the company in which the deceased was employed. The learned counsel therefore submits that the salary



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certificate filed as Ex.P.20 was self serving document and the salary mentioned was escalated only for the purpose of claiming higher compensation. The learned counsel submitted that in the salary certificate, it was clearly mentioned that an amount as Rs.550/- was deducted towards E.S.I., contribution and for such deduction the appropriate salary would be Rs.11,580/- and therefore the disclosure of income of the deceased at Rs.22,000/- was untenable. The learned counsel submitted that the compensation towards love and affection and loss of consortium at Rs.2,40,000/- was on higher side and against the dictum of the Hon'ble Supreme Court in *National Insurance Co. Ltd., vs. Pranay's Sethi* reported in 2017(2) TN MAC 609 (SC) in C.M.A.No.1190 of 2015. The learned counsel further submitted that the addition of 50% towards future prospects was against the dictum of the Honourable Supreme Court, *National Insurance Co. Ltd., vs. Pranay's Sethi*. On these grounds, the learned counsel prayed that the appeal be allowed.

8. The learned counsel for the respondents 1 to 3 on the other hand submitted that there was no suppression as alleged by the appellant. The salary certificate was produced as Ex.P.20, and the same was signed by the foster father of the deceased. The learned counsel further submitted that the



appellant had failed to cross examine the claimant or P.W.3., the Manager of the company to prove that the salary certificate issued was a self serving document and that it was issued for the purpose of getting higher compensation. On the issue of future prospects and loss of consortium, the learned counsel for the respondents fairly conceded that the amount awarded by the Tribunal was against the judgment of the Honourable Supreme Court.

9. Heard the learned counsel appearing on both sides and perused the materials placed on record.

10. The accident and the negligence of the first respondent's driver is not disputed and the short point for consideration in the appeal is the quantum of compensation that can be awarded to the respondent/claimants.

11. The learned counsel for appellant contended that the respondents have suppressed the fact that the employer of the deceased was his foster father and he was also impleaded as claimant 3 in the claim petition. It is seen that there is absolutely no whisper about this in the counter and further no objection was taken to the marking of the document in evidence. I am therefore of the view that the appellant cannot be permitted to dispute Ex.P.20 at this stage.



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**WEB COPY** 12. It is conceded by the learned counsel for the respondents that the deduction towards future prospects cannot be below Rs.40% and hence the deduction at 50% by the Tribunal is erroneous. Further, it is also conceded that the compensation awarded towards love and affection at Rs.2,00,000/- and loss of consortium at Rs.40,000/- is against the dictum of the Honourable Supreme Court in , *National Insurance Co. Ltd., vs. Pranay's Sethi* case. In view of the above discussions, I find that award of the Tribunal needs to be modified and the same is modified as follows:

| S.No | Description              | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|------|--------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.   | Loss of dependency       | 39,38,370/-                     | 36,96,000/-                       | Reduced                                |
| 2.   | Funeral expenses:        | 15,000/-                        | 15,000/-                          | Confirmed                              |
| 3.   | Loss of love & affection | 2,00,000/-                      | 1,20,000/-                        | Reduced                                |
| 4.   | Loss of consortium       | 40,000/-                        |                                   |                                        |
| 5.   | Loss of Estate           | 15,000/-                        | 15,000/-                          | Confirmed                              |
|      | <b>Total</b>             | <b>Rs.42,08,370/-</b>           | <b>Rs.38,46,000/-</b>             | <b>Reduced by Rs.3,22,370/-</b>        |



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13. In the result, the claimants are entitled to Rs.38,46,000/- along with interest at the rate of 7.5% per annum towards compensation. It is submitted by the learned counsel for the appellant that 50% of the award amount was already deposited. The appellant insurance company is directed to pay the balance amount, as determined by this Court, within a period of six weeks from the date of receipt of copy of this order. On such deposit, the claimants shall be entitled to withdraw the amount by making proper application before the Tribunal. It is made clear that the first claimant will be entitled to Rs.25,00,000/- and the claimants 2 to 3 would be entitled to the balance amount in equal proportion along with accrued interest.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected miscellaneous petitions are closed. No costs.

23.03.2023

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Index: Yes/No

Internet: Yes/No

Neutral Citation Case: Yes/No



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**N.MALA, J.**

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To

1.The Judge,  
Motor Accidents Claims Tribunal,  
III Additional District Court,  
Tiruvallur,  
Poonamallee.

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

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