



C.M.A(MD)No.250 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.250 of 2019

The Divisional Manager,
M/s.United India Insurance Company Ltd.,
Promenade Road,
Cantonment,
Trichy.

: Appellant/2nd Respondent

Vs.

1.Anbalagan

2.Selvarani

: Respondents 1 & 2/
Petitioners

3.R.Sathishkumar

: 3rd Respondent/
1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 27.11.2017 passed in M.C.O.P.No.3900 of 2013 by the Motor Accident Claims Tribunal (Special District Court) Tiruchirappalli.

For Appellant	: Mr.K.Sasiprabha for Mr.G.Prabhu Rajadurai
For R1 & R2	: Mr.D.Kirubakaran
For R3	: Ex-Parte



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JUDGMENT

[Judgment of the Court was made by **K.K. RAMAKRISHNAN .J.**]

The appellant Insurance Company, aggrieved by the award passed by the Motor Accident Claims Tribunal (Special District Court) Tiruchirappalli in M.C.O.P.No.3900 of 2013, dated 27.11.2017, has preferred this appeal, questioning the quantum of compensation awarded by the tribunal.

2. The appellant Insurance Company is the second respondent in M.C.O.P.No.3900 of 2013, on the file of the Motor Accident Claims Tribunal (Special District Court), Tiruchirappalli. The respondents 1 & 2 are the claimants and the third respondent is the driver of the vehicle. The respondents 1 & 2 filed the claim petition in M.C.O.P.No.3900 of 2013, claiming a sum of Rs.1,00,00,000/-(Rupees One Crore only) as compensation for the death of their son Sathish Varman in the accident that occurred on 12.04.2013. By the award, dated 27.11.2017, the Tribunal awarded a sum of Rs.88,29,760/- as compensation.



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3. Facts of the Case:-

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According to the respondents 1 & 2, on 12.04.2013 at about 03.15 a.m., the deceased, after completing his night shift work was travelling along with his friends in a car bearing Registration No.TN-09-BC-1471 that was proceeding from west to east near Addampakkam Thillai Ganga Nagar Sub-way, and the car was driven in a rash and negligent manner by its driver and met with the accident. In the impact, he died on the spot. The jurisdictional police filed the First Information Report and after investigating the matter, the police filed the final report against the driver of the insured vehicle.

4. The appellant filed a counter contending that the accident happened due to drunken driving and over speed by the driver swaying from one side to the otherside of the road breaking the median. Hence, the appellant is not liable to pay the compensation to the claimants and the compensation claimed by the claimants are highly excessive and exorbitant and without any basis.



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5. Before the Tribunal, on the side of the claimants P.Ws.1 to 3 were examined and Ex.P1 to Ex.P17 and Ex.X1 to Ex.X9 were marked. On the side of the respondents, no witness was examined and no document was marked.

6. The Tribunal relying upon the evidence of P.W.1 and P.W.3, Ex.P1-FIR, Ex.P3-Report of the Motor Vehicle Inspector came to the conclusion that the driver of the car was responsible for the accident and awarded compensation of Rs.88,29,760/- along with interest @ 7.5% per annum. Challenging the quantum of compensation awarded by the Tribunal, the present appeal has been filed.

7. The learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal erred in adding 50% future prospects. This is against the judgment of the Apex Court reported in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**. As per the above said judgment, the claimants would be entitled for 40% towards future prospects. Further, submitted that the Tribunal has also deducted 1/3rd for personal expenses instead of 1/2 and awarded a



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sum of Rs.2,00,000/- for loss of love and affection, which is also against the judgment of **Pranay Sethi** and prayed for allowing the appeal.

8. On the other hand, the learned counsel for the claimants/respondents 1 & 2 would submit that the Tribunal after considering the age, nature of work has added 50% future prospects as a special case. He would further submit that Rs.2,00,000/- awarded by the Tribunal towards love and affection is in accordance with law, because they lost their only son and breadwinner of their family and prayed for dismissal of the Civil Miscellaneous Appeal.

9. This Court considered the rival submissions made by both sides and also perused the materials available on record.

10. The point for determination is whether the award passed by the Tribunal is correct or not?

11. The nature of accident and the negligence on the part of driver are not in dispute and the present appeal is confined only to the quantum



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of compensation and therefore, there is no necessity to go into the other aspects.

12. In the judgment in **2017(2) TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi]**, the Hon'ble Apex Court has held that considering the nature of work, 40% has to be granted for future prospects.

13. Hence, this Court is inclined to modify the future prospects as 40% instead of 50% and as per the decision of the **SARLA VERMA AND OTHERS vs. TRANSPORT CORPORATION AND ANOTHER** reported in **(2009) 4 MLJ 997**, 50% is to be deducted for personal and living expenses as the deceased was a bachelor and the parents are claimants. Instead of 1/3rd for the loss of love and affection awarded by the Tribunal it is reduced to Rs.80,000/- from Rs.2,00,000/-.

14. Accordingly, the award of the Tribunal is modified as follows:-

Rs.39,860 as monthly salary + Rs.15,944/- (40% future prospects)
= 55,804/- and deducted 1/2 as personal expenses = 27,902/- Rs.27,902

6/14



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x 12 x 18 = 60,26,832/-. Therefore, the loss of income would be Rs. 60,26,832/-.

15.In the result, this Civil Miscellaneous Appeal is partly allowed.

The award of the Tribunal is reduced to **Rs.60,46,832 from Rs. 88,29,760/-** with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization. The appellant Insurance Company is directed to deposit the modified amount, minus the amount already deposited, if any, within a period of eight weeks from the date of receipt of the judgment copy. On such deposit, the claimants are permitted to withdraw their share amount as per the apportionment made by the Tribunal. No costs.

(V.B.S.J.) (K.K.R.K.J.)
22.02.2024

Index:Yes/No
Internet:Yes/No
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To

1. The Motor Accident Claims Tribunal
(Special District Court)
Tiruchirappalli.
2. V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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am/vsg

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V.BHAVANI SUBBAROYAN, J.,
and
K.K.RAMAKRISHNAN,J.,

(Order of the Court was made by **Mr.K.K.RAMAKRISHNAN,J.**)

When the matter was taken up for hearing today under the caption “for being mentioned” at the instance of the learned counsel appearing for the respondents.

2.The learned counsel appearing for the respondents would submit that the judgment dated 22.02.2024, in C.M.A.(MD)No.250 of 2019, in paragraph No.15, there is some calculation error. According to him, there was an omission to add Rs.80,000/- under the head of love and affection. Hence, he seeks to incorporate in the award.

3.The learned counsel appearing for the appellant/insurance company fairly accepted the same.



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4. Therefore, this Court inclines to rectify the said inadvertent mistake and correct the award amount of Rs.61,26,832/- instead of Rs. 60,46,832/-.

5. Accordingly, this Court rectifies the said calculation and the mistake and modify the Paragraph No.15 as follows:

15. In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the Tribunal is reduced to **Rs.61,26,832/-** from **Rs.88,29,760/-** with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization. The appellant/Insurance Company is directed to deposit the modified amount, minus the amount already deposited, if any, within a period of eight weeks from the date of receipt of the judgment copy. On such deposit, the claimants/respondents are permitted to withdraw their share amount as per the apportionment made by the Tribunal. No costs. ”

6. Registry is directed to make necessary corrections and issue



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fresh order copy to the parties concerned.

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[V.B.S.,J] &
[K.K.R.K.,J]
28.10.2024

vsg



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V.BHAVANI SUBBAROYAN, J.,
and
K.K.RAMAKRISHNAN, J.,

vsg

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28.10.2024



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