BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.08.2024

DELIVERED ON : 29.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGOVAN

C.M.A.(MD).No.748 of 2021
and C.M.P.(MD).No.6796 of 2021

Priyatharshini ... Appellant/3rd Respondent

Vs.

1.Tamilarasi

2.Vinothkumar

3.Prakash

(Name of R3 is amended vide Court dated 20.09.2022 made in C.M.P.(MD)No.2984 of 2022. Minor 3rd respondent is declared as major and the guardianship of his mother/R1 is discharged vide Court order dated 10.03.2023 made in C.M.P.(MD)Nos.2724 & 2426 of 2023)

4.Proprietor/Owner,
Messers Shiv Machine Tools,
No.67, Aarmenian Street,
Chennai – 600 001, Tamil Nadu.

5.Branch Manager,
The United India Insurance Company Limited,
No.6, Railway Peeter Road,
Nearing of LIC.,
Sulur, Coimbatore District.

6.Sheik Arafath ... Respondents 4 to 6/Respondents 1, 2 & 4

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the

Motor Vehicles Act, to modify the shares of the claimants in award passed and made in M.C.O.P.No.214 of 2013 on the file of the Motor Accident Claims Tribunal and Additional District Court, Pudukottai dated 26.03.2021.

For Appellant : Mr.K.C.Maniyarasu

For Respondents : Mr.M.Benazir Begum for R1 to R3
Mr.M.Sudharani for R4
Mr.A.S.Mathialagan for R5
R6 – Exparte

JUDGMENT

This appeal has been filed to modify the shares of the claimants in award passed and made in M.C.O.P.No.214 of 2013 on the file of the Motor Accident Claims Tribunal and Additional District Court, Pudukottai dated 26.03.2021.

2.The facts in brief:

On 21.04.2012 at about 5.45 p.m., the deceased Samiyaiah was riding his two wheeler bearing Registration No.TN 55 V 2466 on the Pudukottai to Trichy Main Road. At that time, from the opposite direction a vehicle bearing registration No.TN 04 Q 8287 was driven by its driver in rash and negligent manner and hit the deceased. As a result of which, he died on the spot.

3.He was aged about 48 at the time of occurrence and was working as Mazthur in TNEB and earning Rs.12,202/- per month. Claiming compensation amount of Rs.30,00,000/-, the claim application was filed.

4.That was resisted by the first respondent, who is the owner of the vehicle, contending that the vehicle bearing Registration No.TN 04 Q 8284 was not owned by him. It was sold to one Sheik Arafath and RC book was also transferred on 31.01.2012. So he is not a necessary party.

5.The second respondent, who is the Insurance Company of the first respondent vehicle, filed a counter stating that the accident took place because of the rash and negligent driving on the part of the deceased himself. He suddenly came to the middle of the road and invited the accident. In spite of the best efforts taken by the deceased himself, he could not avoid the accident. On seeing the opposite coming vehicle, he turned to left and skidded in the pit on the road side. So the car did not hit the deceased's two wheeler. Moreover, it is also stated that the deceased was not having proper driving licence.

6.The third respondent Priyadharshini, who is a daughter of the deceased, who is the appellant herein, supported the case of the claimants. She stated that she is also entitled for compensation if awarded.

7.Regarding the first aspect of negligence, it fixed the contributory negligence at the rate of 20% on the deceased and 80% on the vehicle driver bearing Registration No.TN 04 Q 8287.

8.Regarding the compensation amount, since he was working as Mazthur in Pudukottai TNEB on the basis of the salary Certificate under Ex.P12, the monthly salary was fixed as Rs.12,607/-. The age of the deceased was mentioned as 48 in the death certificate under Ex.P3. No record is available with regard to the date of birth mentioned in his service particulars. So the age mentioned in the death certificate is taken as base for calculating the compensation. Considering the age, 30% was taken towards the future prospects. So the monthly salary was fixed as Rs.16,389/-. 1/4th was deducted towards personal and living expenses. Considering the age, multiplier 13 was adopted and loss of dependency was fixed as Rs.19,17,552/-. To that the customary amounts were added as indicated in the table below.

Sl. No.	*Nature of Head*	*Award (Rs.)*
1.	*For Loss of Income*	*19,17,552*
2.	*For Loss of Consortium to the 1st petitioner*	*40,000*
3.	*For loss of estate to the 1st petitioner*	*15,000*
4.	*Rs.50,000/- is awarded to each of the petitioners 2, 3 and 3rd respondent towards loss of love and affection of their father totalling Rs.1,50,000/-.*	*1,50,000*
5.	*Ambulance Charges*	*10,000*
6.	*Funeral expenses*	*15,000*
	Total	***21,47,552***
	20% of the total amount which the petitioners have to forgo due to the negligence and violation of the rules of motor vehicles Act and Insurance Policy Act, by the deceased Samiyaiah.	***4,29,510***
	Amount payable by the 2nd and 4th respondents to the petitioners towards compensation is	***17,18,042***
	Amount rounded off	***17,18,040***

9.20% was deducted towards contributory negligence on the part of the deceased, the total compensation arrived at Rs.17,18,040/- was ordered.

10.Against which, this appeal is preferred by the third respondent in the main petition namely Priyadharshini. The learned counsel for the appellant would submit that there were two promotion aspects for the deceased. The Tribunal omitted to take into account the promotional aspects of the deceased. Fixing of contributory negligence is not proper. The evidence of PW1 was not taken into account by the Tribunal.

11.Regarding the first aspect of negligence, the appellant supported the case of the claimants. Reading of the judgment of the trial court and evidence on record shows that both were responsible for the accident. On the side of the claimant, it was established that the two wheeler was hit behind. Even though it is contended by the owner of the four wheeler that there was no hit, but from the evidence of the eye witness, it stands established that it is a case of hit behind. There was no contrary evidence on the side of the Insurance Company before the Tribunal. The contributory negligence was fixed on the ground that the deceased was not wearing proper helmet at the time of occurrence. So it is clear case of violation of Rules and Regulations under the Provision of Motor Vehicles Act. Even though the above said finding was recorded on factual aspects without any evidence on record, it may not be proper on the part of this Court to interfere into the finding of fact. So I am not convinced by the arguments advanced by the appellant herein that it is not a case of contributory negligence.

12.The learned counsel for the appellant relied upon the judgment of the Honourable supreme Court of India, made in the case of ***Sureshchandra Bagmal Doshi and another Vs. The New India Assurance Company Limited and others*** in Civil Appeal 5206 of 2016 reported in 2018 (1) TNMAC 755 (SC), to the content that these two judgments were not taken into account by the Tribunal, while calculating the future prospects.

13.The Honourable Supreme Court by referring to the Judgment rendered in ***National Insurance Company Limited Vs. Pranay Sethi & Ors.,*** has made the following observation.

> *11. We have the benefit of the Constitution Bench judgment of this Court in National Insurance*

Company Limited v. Pranay Sethi & Ors., while examining the observations in Sarla Verma, the Constitution Bench gave its imprimatur to the addition of 50 per cent to actual salary of the deceased towards future prospects where the deceased had a permanent job and was below the age of 40 years, as in the present case. However, learned counsel for the appellant has brought to our notice a recent order passed by this Court in SLP (C) No.22134/2016 and other connected matters dated 22.11.2017 wherein 3 AIR 2017 SC 5157 4 supra while taking note of the views expressed by National Insurance Company Limited5, it has been observed that the percentage for calculating future rise in income is no bar to future prospects being taken at a higher level where the assessment is based on actual evidence led to the satisfaction of the Tribunal/the Court that the future prospects were higher than the standard percentage. Learned counsel, thus, submitted in the context of the evidence led in the present case that the two certificates dated 16.10.1998 and 8.7.2005 were proved in terms whereof the deceased's future prospects would have entitled her to a gross salary in the range of Rs.14,000 to Rs. 17,000 per *month. No doubt the second certificate is dated 8.7.2005, after a lapse of 7 years from the first certificate, but then that would be a more realistic estimate of what a person holding that post would be earning at that stage of time. There is no rebuttal evidence led by the insurance company and we see no reason to doubt these certificates. Thus, the assessment of the Tribunal is based on the evidence led in the present case. As noticed above, the standardized percentage is capable of being varied if the evidence is so led."*

Which is also followed in the case of ***Hem Raj Vs. Oriental Insurance Company Ltd.,*** reported in ***(2018) 15 SCC 654.***

14.PW4 who is the Administrative Officer attached to Tamil Nadu Electricity Board, Pudukottai, has produced only the pay slip. He has stated that the second promotion for the deceased is the 'Wire Man' and next grade is 'Line Inspector'. He has stated that next man in the promotional panel namely Muthiah was promoted as Wire Man and earning Rs.25,064/- per month. But, no documentary evidence was produced by the claimant before the Tribunal. The claimants ought to have examined any higher official by producing the promotional Rules or Service Rules as the case may be or the panel showing the seniority list and proper salary for the respective promotional cadres. So nothing was brought on record by the claimants. So the Court cannot take into consideration the above said point without proper certificate to that effect as pointed out by the Honourable Supreme Court in the above said judgments. This is now too late. She did not choose to examine any witness to bring on record the promotional aspects or as mentioned above, it is too late an attempt on the part of the appellant herein.

16.So regarding the assessment of compensation as noted above 30% of the future prospects was added to the monthly income as per the settled procedure prescribed in the Judgment passed in the case of ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680.*** In the absence of any direct evidence to show that two promotion aspects were waiting to the deceased, his contention cannot be accepted. So loss of dependency were properly calculated. But as mentioned above loss of consortium namely for wife and for children has been wrongly calculated. It can be fixed as Rs.

40,000/- each and recalculated as noted below. For four persons, it should be 4 x 40,000 = 1,60,000/-.

16.So, I find no reason to interfere into the award passed by the Tribunal. But for the reasons stated above, it got to be reduced.

17.So this Court is of the view that this appeal fails and accordingly, dismissed and award is modified and reduced as indicated below.

Sl. No.	***Nature of Head***	***Award (Rs.)***
1.	*For Loss of Income*	*19,17,552*
2.	*For Loss of Consortium to the 1st petitioner*	*40,000*
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4.	*Rs.40,000/- is awarded to each of the petitioners 2, 3 and 3rd respondent towards loss of love and affection of their father totalling Rs.1,20,000/-*	*1,20,000*
5.	*Ambulance Charges*	*10,000*
6.	*Funeral expenses*	*15,000*
	Total	***21,17,552***

	20% of the total amount which the petitioners have to forgo due to the negligence and violation of the rules of motor vehicles Act and Insurance Policy Act, by the deceased Samiyaiah.	***4,23,510***
	Amount payable by the 2nd and 4th respondents to the petitioners towards compensation is	***16.94,042***
	Amount rounded off	***16,94,040***

(I) The quantum of compensation awarded by the Tribunal is reduced to Rs.***16,94,040***/- (Sixteen Lakhs Ninety Four Thousand and Forty), which shall carry interest at the rate of 7.5% per annum.

(ii) The insurance company is directed to deposit the entire compensation of Rs.***16,94,040***/- (Sixteen Lakhs Ninety Four Thousand and Forty) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs before the Tribunal, within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimants are permitted to withdraw the entire award amount of Rs.***16,94,040***/- (Sixteen Lakhs Ninety Four Thousand and Forty) after following the due process of law, less any amount already received by them.

(iv) Consequently, connected miscellaneous petition stands closed.

29.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Additional District Judge, Motor Accidents Claims Tribunal,
Pudukottai.

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

G.ILANGOVAN,J.

TM

C.M.A.(MD).No.748 of 2021

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