



C.M.A.(MD).No.385 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.02.2024

CORAM

**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

C.M.A.(MD).No.385 of 2021

and

C.M.P.(MD).No.3349 of 2021

Cholamandalam
M/s. General Insurance Company Limited,
through its Branch Manager,
Having office at 2nd Floor,
Dare House, No.2 NSC Bose Road,
Chennai.

... Appellant

Vs.

1.Jeyalakshmi
2.Minor Ashwin
3.Rajalakshmi (died)
(Minor 2nd petitioner Ashwin through the
Guardian and mother 1st petitioner
Jeyalakshmi)
4.P.Sakthivel
5.K.Chandran
(5th respondent herein is given up.
No notice need be served to him)

6.National Insurance Company
through its Branch Manager,
represented by its Divisional Officer,
No.3, Northveli Street,
2nd Floor, Madurai.



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7.Kanchana

8.Anbazzhagan

9.Ayyanan

10.Ayyavu

11.Selvi

... Respondents

(respondents 7 to 11 are brought on record as LR's of the deceased 3rd respondent vide Court order dated 01.03.2021 made in C.M.P. (MD).Nos.9090, 9092 and 9093 of 2019 in C.M.A.(MD).SR.No.40200 of 2018).

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order dated 28.02.2017 made in M.C.O.P.No.4 of 2017 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

For Appellant	: Mr.S.Srinivasa Raghavan
For R1, R8 to R10	: Mr.V.Sasi Kumar
For R2	: Mr.B.Santhanam Rajeshkumar
For R7 & R11	: Mr.R.M.Arun Swaminathan

J U D G M E N T

(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN, J.**)

Being aggrieved over with the quantum of compensation awarded by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai in M.C.O.P.No.4 of 2017, dated 28.02.2017, the Insurance Company has preferred this appeal.



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2. According to the claimants, on **30.03.2014** at about 3.00 p.m., while the deceased Karuthan Ambalam and the another deceased Nanni Ananthan were travelling in a two wheeler bearing Registration No.TN 59 BZ 4592 towards Avarankulam Village, the load vehicle Garco Tempo Trux bearing Registration No.TN 60 B 9229 came in a rash and negligent manner and struck the two wheeler. Due to this accident, both the persons, who were travelling in the two wheeler died. Therefore, the claimants filed a petition in M.C.O.P.No. 4 of 2017 before the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai, claiming compensation of Rs.95,00,000/-. The appellant / Insurance Company opposed the claim by filing a counter disputing the manner of accident, age, occupation and the monthly income of the deceased. The Tribunal, after considering the oral and documentary evidence, held that the accident occurred only due to the rash and negligent act of the first respondent driver, the fourth respondent herein and awarded a sum of Rs.57,30,000/- as compensation. Aggrieved over the same, the appellant/ Insurance Company has filed this appeal.

3. Since the Insurance Company filed this appeal only on quantum, this Court need not go into the other aspects.



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4. The learned counsel appearing for the appellant/Insurance Company questioned the quantum of compensation awarded by the Tribunal on the ground that the Tribunal added 50% towards future prospects, which is against the decision of the Hon'ble Apex Court in the case of ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***, Further, as per the judgment of the Hon'ble Apex Court, the amount awarded towards loss of consortium and loss of love and affection is excessive.

5. The learned counsel appearing for the claimants would submit that considering the nature of work, the Tribunal correctly fixed 50% towards future prospects and also considering the age of the deceased and other aspects, the Tribunal has awarded a sum of Rs.1,00,000/- towards consortium and a sum of Rs.2,00,000/- towards love and affection. Hence, he seeks for dismissal of this appeal.

6. Heard the learned counsel for the appellant/Insurance Company and the learned counsel for the claimants and perused the materials available on records.



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7. The following question arises for determination in this case:

(i) Whether the quantum of compensation is correctly fixed by the learned Tribunal Judge?

8. The deceased is aged about 23 years. He worked in the Foreign country “Bahrain” and earned more than a sum of Rs.1,00,000/- per month. To prove the monthly income of the deceased, the salary increment certificate was marked as Ex.P3. Ex.P4 also marked to show the salary increment certificate of the deceased issued by Bahrain company Manager of A1-A'Ali Enforcement Kingdom of Bahrain. The said documents were not disputed. But, adding 50% of the monthly income towards the future prospects is against the principle laid down by the Hon'ble Constitution Bench of the Supreme Court in the case of *National Insurance Company Limited vs. Pranay Sethi and others* reported in (2017) 16 SCC 680 and hence, the same is liable to be interfered with. As per the judgment of the Hon'ble Apex Court, in this case, 40% to be added towards future prospects. From the above salary certificate/Ex.P3 and increment certificate/Ex.P4, the learned Tribunal Judge has correctly fixed the monthly income of the deceased as Rs.25,000/-. Adding 40% of the future prospects, it comes around Rs.10,000/-, totally Rs.35,000/-. By applying the multiplier 18 and deducting 1/3 towards his personal expenditure, the amount comes around



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Rs.50,40,000/-[35,000 X 12 X 18 X 2/3 = 50,40,000/-].

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9. Similarly, the amount awarded towards loss of consortium and love and affection is not in accordance with the law laid down by the judgment of the Hon'ble Supreme Court, in the case of *National Insurance Company Limited vs. Pranay Sethi and others* reported in (2017) 16 SCC 680. Therefore, the same was recalculated as a sum of Rs.40,000/- towards loss of consortium and a sum of Rs.80,000/- is awarded towards loss of love and affection. Further, as per the above judgment, the claimants are entitled to the loss of estate to the tune of Rs.12,000/-

10. In view of the above, the amount awarded by the Tribunal is reduced as follows:

<i>S. No</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>	<i>Award confirmed or enhanced or granted</i>
1.	For Transport Charges	5,000	5,000	confirmed
2.	For funeral charges	25,000	25,000	confirmed
3.	For loss of consortium	1,00,000	40,000	reduced
4.	For loss of love and affection	2,00,000	80,000	reduced
5.	Loss of Estate	-----	12,000/-	awarded



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
6.	For loss of income (monthly income + 40% future prospects - 1/3 rd towards personal expenses)	54,00,000	25,000/- + 10,000/- x 12 x 18 = 75,60,000 - 1/3 rd = 50,40,000	reduced
	Total	57,30,000	52,02,000/-	

11. In fine, the Civil Miscellaneous Appeal is allowed in part, reducing the award of the Tribunal from Rs.57,30,000/- (Rupees Fifty Seven Lakhs and Thirty Thousand only) to a sum of Rs.52,02,000 (Rupees Fifty Two Lakhs Two Thousand only) along with 7.5% interest from the date of petition till the date of realization. The appellant is directed to deposit the award amount, less the amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this order. The claimants are entitled to receive the following compensation amount.

Claimants	Amount in Rs.
Jeyalakshmi/wife of the deceased	31,21,200/-
Minor / son of the deceased	10,40,400/-

11.1. The 3rd respondent namely mother of the deceased died during the pendency of this appeal. Her legal heirs also impleaded as the respondent Nos.7 to 11. They are equally entitled to the amount of Rs.10,40,400/-.



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12. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited.

13. On such deposit being made, the first claimant/wife of the deceased is entitled to withdraw a sum of Rs.31,21,200/- with the proportionate interest and costs and the second claimant is entitled to receive a sum of Rs.10,40,400/- with the proportionate interest and costs and their amount is directed to be deposited in any one of the Nationalised Bank in a fixed deposit scheme, till they attain majority. The first respondent, who is the mother and guardian of the minor claimant, is permitted to withdraw the accrued interest once in three months directly from the Bank only for the welfare of the minor. No Costs. Consequently, the connected Miscellaneous Petition is closed.

[V.B.S.,J.] [K.K.R.K.,J.]
22.02.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
akv/sbn



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To

The Motor Accident Claims Tribunal
(Chief Judicial Magistrate),
Sivagangai.



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

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