



C.M.A.(MD).No.240 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : **06.03.2024**

CORAM:

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

C.M.A.(MD).No.240 of 2021

and

C.M.P.(MD).No.2033 of 2021

The Branch Manager,
United India Insurance Company Limited,
Mano Complex, Kumaraiah Kovil Opposite,
Ramanathapuram.

... Appellant

Vs.

- 1.Kavitha
- 2.Minor Nithish
- 3.Minor Vikash
- 4.Paulthai
- 5.Ramaiah

(The Minor respondents 2 and 3 are represented
by their mother and natural guardian 1st respondent.
Hence, notice is not necessary to respondents 2 and 3).

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.09.2017 passed in M.C.O.P.No.102 of 2015 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Ramanathapuram.



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For Appellant : Mr.G.Prabhu Rajadurai
For R1 to R4 : Mr.J.M.Hassanul Bazari
For R5 : No appearance

J U D G M E N T

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

Challenging the award passed by the Motor Accident Claims Tribunal (Additional District Judge), Ramanathapuram in M.C.O.P.No.102 of 2015, dated 01.09.2017, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

2. The respondents 1 to 4 filed the claim petition in M.C.O.P.No.102 of 2015, stating that while the deceased Selvapitchai was riding his motorcycle bearing Registration No.TN 69 P 5511, on 08.09.2014, at about 2.00 p.m., the driver of TATA ACE mini van bearing Registration No.TN 65 E 6491 drove the van in a rash and negligent manner and abruptly stopped in the middle of the road. Due to which, the deceased hit the van on its back side and died on the spot. Hence, a case in Crime No.141 of 2014 has been registered against the driver of the van for the offence under Section 304 (A) of I.P.C., by Soorankudi Police Station. Therefore, the respondents 1 to 4 filed the claim petition before



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the Tribunal seeking compensation of Rs.40,00,000/-.

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3. The appellant/Insurance Company filed a counter denying the negligence and also the monthly income of the deceased.

4. To prove the case of the claimants, on the side of the petitioners, P.Ws.1 to 3 were examined and Exs.P1 to P10 were marked and on the side of the respondents, no one was examined and no document was marked.

5. Finding of the Tribunal:

The Tribunal, after considering all the aspects, fixed the negligence on the driver of the insured vehicle. The Tribunal also considering the various judgments produced by the claimants to prove the income of the deceased, fixed the monthly income of the deceased at Rs.20,000/- per month, added 50% towards future prospects, granted Rs.1,00,000/- towards consortium, Rs.2,00,000/- towards love and affection for the petitioners 2 and 3, Rs.50,000/- towards love and affection for the fourth petitioner, Rs.25,000/- towards funeral expenses and totally awarded a sum of R.44,25,000/- as compensation under the following heads:-



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<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rupees</i>
1.	Loss of income	Rs.40,50,000/-
2.	Consortium (for wife)	Rs. 1,00,000/-
3.	Love and affection (for petitioners 2 and 3)	Rs. 2,00,000/-
4.	Love and affection (petitioner 4)	Rs. 50,000/-
5.	Funeral expenses	Rs. 25,000/-
	Total	Rs.44,25,000/-

Challenging the same, the Insurance Company has filed this appeal questioning the negligence and also the quantum.

6. Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal failed to fix contributory negligence on the part of the deceased, who had not maintained a safe distance between his vehicle and the van. Hence, the finding of the Tribunal is liable to be set aside. He would further submit that the Tribunal added 50% towards future prospects, which is against the law as laid down by the Hon'ble Apex Court in the case of ***Pranay Sethi***. Further, the amount awarded towards love and affection and consortium also is higher. Hence, he seeks interference of this Court.



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7. Submission of the learned counsel for the Respondents:

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The learned counsel appearing for the respondents/claimants would submit that no one was examined on the side of the Insurance Company. The driver of the van was not examined and based on the evidence of independent witness/P.W.2, entire negligence was fixed. P.W.2 cogently deposed before the Tribunal about the accident. He would further submit that the Tribunal, considering the business run by the deceased, added 50% towards future prospects. Hence, there no interference is required in fixing the future prospects. He would also submit that considering the age of the wife, the children and the dependence, the Tribunal fixed a sum of Rs.1,00,000/- towards consortium and Rs.2,50,000/- towards love and affection. Hence, no interference is required and seeks for dismissal of the appeal.

8. This Court heard the rival submissions made by the learned counsel appearing on either side and perused the award passed by the Tribunal.

9. The following points arise for consideration of this appeal:

9.1. Whether the negligence is correctly fixed on the driver of the vehicle insured with the appellant?

9.2. Whether the compensation granted is in accordance with law?



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10. Discussion on the negligence:

According to the claimants, on 08.09.2014, the deceased went to Periyasamypuram Village for the purpose of salt business and was returning to his house by his motorcycle bearing Registration No.TN 69 P 5511. In front of him, the insured vehicle bearing Registration No.TN 65 E 6491 was going and it suddenly stopped in the middle of the road without any signal whatsoever. Hence, the accident had happened. P.W.2, an eye-witness to the accident clearly deposed that when the TATA ACE van abruptly stopped in the middle of the road, the deceased hit the backside of the TATA ACE Vehicle. Hence, the negligence was fixed upon the driver of TATA ACE vehicle. To rebut the evidence of P.W.2, no evidence was adduced on the side of the Insurance Company. Further, no document was marked to rebut the above evidence. In the said circumstances, this Court finds no merit in the contention of the learned counsel for the appellant/Insurance Company. Hence, the finding rendered by the Tribunal fixing the negligence on the side of the Insurance Company is confirmed.



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11. Discussion on quantum:

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As far as the quantum of compensation is concerned, this Court perused the documents produced by the claimants. The age of the deceased is fixed as 39 years by the Tribunal. The deceased doing business by selling salt and he was an income tax payer. Hence, the Tribunal correctly fixed a sum of Rs.20,000/- as monthly income of the deceased. As rightly pointed out by the learned counsel for the appellant/Insurance Company, the Tribunal ought not to have taken 50% towards future prospects. As per the judgment of Hon'ble Supreme Court in the case of *National Insurance Co.Ltd., Vs. Pranay Sethi*, reported in **2017(2) TNMAC 609(SC)**, 40% is to be added towards future prospects and instead of 40%, the Tribunal erred in adding 50%. In this aspect, this Court reduces the amount of future prospects into 40%. The amount awarded towards consortium is reduced to Rs.40,000/- from Rs.1,00,000/-. Further, the amount awarded towards love and affection for the petitioners 2, 3 and 4 is reduced to Rs.1,20,000/- from Rs.2,50,000/- and in respect of other aspects, the amount awarded by the Tribunal is confirmed.

12. Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-determined as follows:-



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Sl. No.	Head	Amount in (Rs) awarded by the Tribunal	Re-quantified amount in (Rs) by this Court	Status
1.	Loss of income	40,50,000/-	37,80,000/- [20,000+8,000x12 -1/4 th (84000) x 15]	Reduced
2.	Consortium (for wife)	1,00,000/-	40,000/-	Reduced
3.	Love and affection (for petitioners 2, 3)	2,00,000/-	80,000/-	Reduced
4.	Love and affection (petitioner 4)	50,000/-	40,000/-	Reduced
5.	Funeral expenses	25,000/-	25,000/-	Confirmed
	Total	44,25,000/-	39,65,000/-	Reduced

13. In the result, the Civil Miscellaneous Appeal is partly allowed.

The compensation awarded in M.C.O.P.No.102 of 2015, on the file of the Motor Accident Claims Tribunal, (Additional District Judge), Ramanathapuram, dated 01.09.2017, is hereby reduced from Rs.44,25,000/- Rs.39,65,000/-. The appellant/Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less any amount if already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the same by making necessary application. The shares of the minor claimants shall be deposited in any one of the Nationalised Bank, till they attain majority and their mother, the first claimant is permitted to withdraw the



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interest once in three months. The insurance company is permitted to withdraw

the remaining amount, if already deposited. There shall be no order as to costs.

Consequently, the connected Miscellaneous Petition is closed.

[V.B.S.,J.] & [K.K.R.K.,J.]
06.03.2024

Index : Yes/No

Internet : Yes/No

NCC : Yes/No

akv/sbn

To

- 1.The Motor Accident Claims Tribunal
(Additional District Judge),
Ramanathapuram.
- 2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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