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CMA.No.474 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

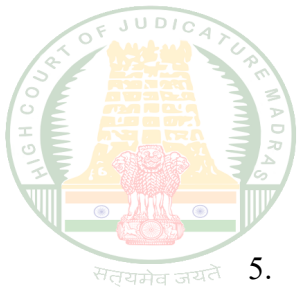
**DATED: 14-07-2026**

CORAM

**THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

**Civil Miscellaneous Appeal No.474 of 2023**

1. P.Nathiya  
W/o. S.Parthiban (Late), Residing at  
No.30/W-1, Natta Street, Thavani,  
Vandhavasi Taluk, Thiruvannamalai  
District-604 503.
2. P.Yogalakshmi (Minor)  
D/o. S.Parthiban (Late), Minor rep.  
by their Mother and Next Friend  
P.Nathiya, Residing at No.30/W-1,  
Natta Street, Thavani,  
Vandhavasi Taluk,  
Thiruvannamalai District-604 503.
3. P.Vishnu Priya (Minor)  
D/o. S.Parthiban (Late), Minor rep.  
by their Mother and Next Friend  
P.Nathiya, Residing at No.30/W-1,  
Natta Street, Thavani,  
Vandhavasi Taluk, Thiruvannamalai  
District-604 503.
4. S.Suseela  
M/o. S.Parthiban (Late), Residing at  
No.30/W-1, Natta Street, Thavani,  
Vandhavasi Taluk, Thiruvannamalai  
District-604 503.



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5. K.Subramani(Late)  
F/o. S.Parthiban (Late), Residing at  
No.30/W-1, Natta Street, Thavani,  
Vandhavasi Taluk, Thiruvannamalai  
District-604 503.

6. Mithilesh (Minor)  
S/o. S. Parthiban (Late), Minor rep.  
by their Mother and Next Friend  
P.Nathiya, Residing at No.30/W-1,  
Natta Street, Thavani,  
Vandhavasi Taluk,  
Thiruvannamalai District-604 503.

...Appellants

Vs

1. M.Nagarajan, Kanchipuram High Road,  
Mahalakshmi Nagar, Thimmavaram,  
Chengalpattu, Kancheepuram-603 002.

2. Tata AIG General Insurance Co. Ltd  
No.1, Ethiraj Salai, Egmore,  
Chennai-600 008.

...Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988  
against the judgment and decree dated 29.11.2022 passed in MCOP  
No.4780 of 2016 by the Motor Accident Claims Tribunal (IV Judge,  
Court of Small Causes), Chennai.



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For Appellants:

Mr.Jerry Chella Raja for  
Mr.M.Pachaiyappan

For Respondents:

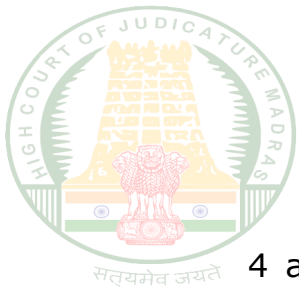
Mr.K.Vinod for R2  
R1 – Notice sent was returned  
with the endorsement 'UNCLAIMED'

### **JUDGMENT**

This appeal has been filed by the appellants - claimants against the award dated 29.11.2022 made in MCOP.No.4780 of 2016 on the file of the Motor Accidents Claims Tribunal (IV Judge, Court of Small Causes), Chennai wherein they are seeking for enhancement of compensation and are also questioning the finding of the Tribunal below exonerating the second respondent - Insurance Company from paying the total compensation amount.

2. Heard the learned counsel for the appellants – claimants and the learned counsel appearing for the second respondent – Insurance Company.

3. The first appellant – first claimant is the wife, appellants 2, 3 and 6 – claimants 2, 3 and 6 are the minor children and appellants



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4 and 5 – claimants 4 and 5 are the parents of one Mr.Parthiban (since deceased).

4. The case of the appellants – claimants is as follows:

(i) On 29.5.2016, the said Mr.Parthiban was travelling in a mini load van as the owner of the goods and the vehicle was driven by his brother. It was alleged that the mini load van was driven in a rash and negligent manner and as a result, it hit an unknown bus that was going in front of the mini load van. As a consequence, the said Mr.Parthiban sustained grievous injuries and succumbed to the injuries even on the same day. The first respondent was the owner of the mini load van and the second respondent is its insurer. It was under those circumstances, the claim petition came to be filed before the Tribunal below.

(ii) The Tribunal below, on considering the facts and circumstances of the case and on appreciation of the evidence, came to the conclusion that the accident had taken place due to the rash and negligent driving on the part of the driver of the mini load van.



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(iii) The Tribunal below, having rendered the above finding, went into the issue as to whether the second respondent – Insurance Company could be made liable to pay the compensation. The Tribunal below came to the conclusion that deceased - the said Mr.Parthiban was neither a loadman nor owner of the goods, that he was only travelling as a gratuitous passenger, that therefore, the second respondent – Insurance Company could not be made to indemnify the first respondent, who is the owner of the mini load van and accordingly, exonerated the second respondent – Insurance Company from the liability and that the claim petition was ultimately dismissed as against the second respondent – Insurance Company.

(iv) The Tribunal below further proceeded to fix the total compensation at Rs.23,18,500/- under the following heads:

| <i>S.No.</i> | <i>Head</i>                    | <i>Amount</i>         |
|--------------|--------------------------------|-----------------------|
| 1            | <i>Loss of dependency</i>      | <i>Rs.20,16,000/-</i> |
| 2            | <i>Loss of estate</i>          | <i>Rs. 16,500/-</i>   |
| 3            | <i>Funeral expenses</i>        | <i>Rs. 16,500/-</i>   |
| 4            | <i>Loss of consortium</i>      | <i>Rs. 2,64,000/-</i> |
| 5            | <i>Transportation expenses</i> | <i>Rs. 5,500/-</i>    |
|              | <i>Total</i>                   | <i>Rs.23,18,500/-</i> |

(v) The above total compensation was directed to be paid by the first respondent together with interest at the rate of 7.5% per



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annum from the date of petition till realization in the proportion fixed by the Tribunal below. Aggrieved by that, the appellants – claimants are before this Court by filing this appeal.

5. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

6. In the case on hand, the best evidence that could have been let in before the Tribunal below was the evidence of the driver of the mini load van, who is none other than the brother of the deceased. Unfortunately, he did not get into the box and as a result, the best evidence was lost in this case.

7. It is seen from the records that the claim petition was initially filed before the Tribunal below by projecting the deceased as a loadman. However, later, the claim petition was amended and the deceased was shown to be the owner of the goods.



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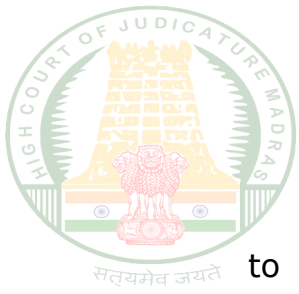
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8. P.W.2 was examined as an eyewitness in this case. This witness was not able to confirm as to whether the deceased travelled in the van in his capacity as the owner of the goods. At best, this witness could state only the manner, in which, the accident had taken place.

9. P.W.1 is the wife of the deceased. Even this witness was not able to confirm as to whether the deceased was the owner of the goods.

10. After analysing the evidence of P.W.1 and P.W.2, the Tribunal below came to the conclusion that there was no evidence available to establish that the deceased travelled in the vehicle in his capacity as the owner of the goods.

11. Ex.P.1 is the first information report registered based on the complaint given by the first respondent, who is the owner of the mini load van. In the complaint, the first respondent stated that one Mr.Parthasarathy, who is the brother the deceased, requested him



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to lend his vehicle to bring rice from Thavani Village, near Vandavasi. In the final report that was marked as Ex.P.7, it has been stated that the deceased was travelling in the mini load van sitting next to his brother and that the mini load van was driven in a rash and negligent manner by the brother of the deceased. Even in the final report, there was no confirmation regarding the ownership of the goods.

12. In the light of the above evidence that was available, the Tribunal below was not able to conclude that the deceased travelled in the mini load van in his capacity as the owner of the goods. In view of the same, the Tribunal below came to the conclusion that the deceased was travelling only as a gratuitous passenger in the mini load van that was driven by his brother and was, therefore, not covered under the insurance policy and that consequently, the second respondent – Insurance Company could not be saddled with the liability. The above finding rendered by the Tribunal below does not suffer from any perversity warranting the interference of this Court.



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13. It may be true that the deceased left behind his wife, three minor children and parents and that they would have been left in lurch since the only earning member died in the accident. These are hard facts, which were encountered by Courts in every other case involving motor accidents. That is the reason as to why Courts try to be more reasonable and flexible when it comes to appreciation of evidence and Courts also take into consideration the fact that the Motor Vehicles Act, 1988 is a beneficial legislation. But, that does not mean that Courts can bend the evidence and the pleadings and render a finding in every case in favour of the claimants.

14. This Court is reminded of the famous expression '**hard facts make bad law.**' If this Court is going to bend the pleadings and the evidence and try to write an order in favour of the claimants, the Insurance Company will be naturally aggrieved and such orders will be cited as a precedent before the Courts below. Hence, there is some responsibility vested with the High Court while passing orders in the appeals filed under Section 173 of the Motor Vehicles Act, 1988. In the light of the above discussions, the award



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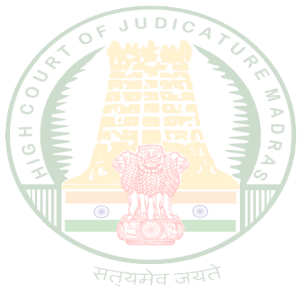
passed by the Tribunal below exonerating the second respondent – Insurance Company from the liability does not warrant the interference of this Court.

15. The next issue is regarding the enhancement of compensation sought for by the appellants – claimants.

16. In the case in hand, the accident had taken place in the year 2016. The deceased was aged about 33 years at the time of accident and there are totally six claimants in this case. The Tribunal below fixed the notional monthly income of the deceased at Rs.10,000/-, which is clearly on the lower side. Hence, this Court is inclined to fix the notional monthly income at Rs.14,000/-. Accordingly, the compensation under the head 'loss of dependency' is calculated as follows:

*"Rs.14000/- + 40% of Rs.14000/- =  
Rs.19,600/-;*

*Out of Rs.19,600/-, after 1/4th deduction  
towards personal expenses, the total comes to :  
Rs.14,700/- (Rs.19,600/- X ¾)*



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*Compensation arrived at under the head of loss  
of dependency is :*

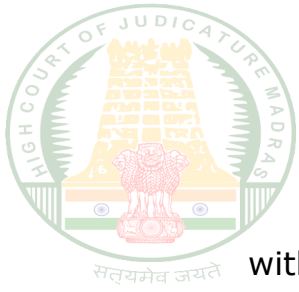
*Rs.14,700/- X 12 x 16 = Rs.28,22,400/-".*

17. In the considered view of this Court, the compensation fixed under the other heads is just and reasonable and does not warrant the interference of this Court.

18. Accordingly, the above civil miscellaneous appeal is partly allowed and the award dated 29.11.2022 made in MCOP.No.4780 of 2016 on the file of the Tribunal below is modified in the following manner :

| <i>S.N<br/>o.</i> | <i>Head</i>                    | <i>Amount awarded<br/>by the Tribunal<br/>below</i> | <i>Amount awarded<br/>by this Court in<br/>this appeal</i> |
|-------------------|--------------------------------|-----------------------------------------------------|------------------------------------------------------------|
| 1                 | <i>Loss of dependency</i>      | <i>Rs.20,16,000/-</i>                               | <i>Rs.28,22,400/-</i>                                      |
| 2                 | <i>Loss of estate</i>          | <i>Rs. 16,500/-</i>                                 | <i>Rs. 16,500/-</i>                                        |
| 3                 | <i>Funeral expenses</i>        | <i>Rs. 16,500/-</i>                                 | <i>Rs. 16,500/-</i>                                        |
| 4                 | <i>Loss of consortium</i>      | <i>Rs. 2,64,000/-</i>                               | <i>Rs. 2,64,000/-</i>                                      |
| 5                 | <i>Transportation expenses</i> | <i>Rs. 5,500/-</i>                                  | <i>Rs. 5,500/-</i>                                         |
|                   | <i>Total</i>                   | <i>Rs.23,18,500/-</i>                               | <i>Rs.31,24,900/-</i>                                      |

There shall be a direction to the first respondent to deposit the enhanced compensation amount of Rs.31,24,900/- (Rupees thirty one lakhs twenty four thousand and nine hundred only) together



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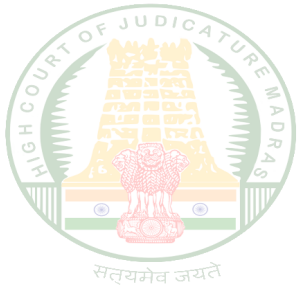
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with accrued interest at the rate of 7.5% per annum from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants – claimants will be entitled to withdraw the same in the proportion fixed by the Tribunal below. No costs.

**14-07-2026**

To  
1.The Motor Accidents Claims Tribunal  
(IV Judge, Court of Small Causes),  
Chennai  
  
2.Tata AIG General Insurance Co.Ltd.,  
No.1, Ethiraj Salai, Egmore,  
Chennai-600 008.

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**N.ANAND VENKATESH,J**

RS

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