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CMA.No.1291 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-07-2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

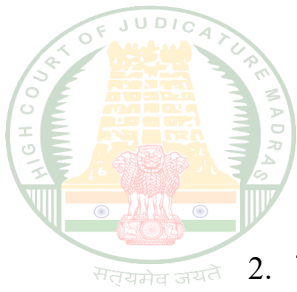
Civil Miscellaneous Appeal No.1291 of 2022

1. Malar, W/o.Samidurai (Late),
residing at North Street, Elampur Post,
Perambalur Taluk & District.
2. Minor Soundarya
D/o.Samidurai (Late), Rep.by Natural
Guardian and N.F.Malar - 1st Petitioner
herein, residing at, North Street,
Elampur Post, Perambalur Taluk
and District.
3. Minor Logesh
S/o.Samidurai (Late), Rep.by Natural
Guardian and N.F.Malar - 1st Petitioner
herein, residing at, North Street, Elampur
Post, Perambalur Taluk and District.
4. Sellammal
W/o.Bojan (Late), residing at,
North Street, Elampur Post,
Perambalur Taluk and District.

...Appellants

Vs

1. The Chairman, Sri Saradha Arts
and Science College for Women,
Sri Saradha Nagar, Siruvachur, Perambalur
Taluk and District.



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2. The Branch Manager
The New India Assurance Co.Ltd,
No.99/C-3, Ist Floor, Opp New Bus Stand,
Perambalur, Policy No
73090631160100001411.

...Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988
against the judgment and decree dated 04.5.2021 made in MCOP.
No.87 of 2018 on the file of the Motor Accidents Claims
Tribunal/Sessions Judge, Mahila Court, Perambalur.

For Appellants: Mr.S.Harish for
Mr.A.Prabhu Saravana

For Respondents: Mr.K.Vinod for R2

CMA dismissed as not pressed
as against R1 vide order of court
dated 29.7.2024

JUDGMENT

This appeal has been filed against the award dated 04.5.2021
made in MCOP.No.87 of 2018 on the file of the Motor Accidents
Claims Tribunal (Sessions Judge, Mahila Court), Perambalur wherein
the claimants are seeking for enhancement of compensation.



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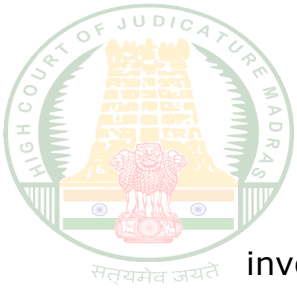
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2. Heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing for the second respondent.

3. The first appellant – first claimant is the wife, appellants 2 and 3 – claimants 2 and 3 are the children and the fourth claimant is the mother of the deceased – one Mr.Samidurai.

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

(i) The said Mr.Samidurai was riding a two wheeler on 31.5.2017 at Elambalur Bypass Road and at about 5.30 PM, when the said Mr.Samidurai stopped his vehicle on the extreme southern side of the road, at that point of time, the offending vehicle, which was driven in a rash and negligent manner, dashed against the vehicle driven by the said Mr.Samidurai, as a result of which, he was thrown out of the vehicle and had sustained fatal injuries. Even on the same day, he succumbed to the injuries at the Government Hospital, Perambalur. The first respondent was the owner of the vehicle and the second respondent was the insurer of the vehicle



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(ii) Later, a first information report (FIR) came to be registered in Crime No.623 of 2017 on the file of the Inspector of Police, Perambalur Police Station against the driver of the offending vehicle. It was under those circumstances, the claim petition came to be filed by the appellants – claimants before the Tribunal below.

(iii) The Tribunal below, on considering the facts and circumstances of the case and on appreciation of the oral and documentary 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 offending vehicle.

(iv) Having rendered the above finding, the Tribunal below came to the conclusion that the said Mr.Samidurai did not possess a valid driving licence and that therefore, 10% contributory negligence was attributed against him. Ultimately, the Tribunal below fixed the total compensation at Rs.16,05,240/- to be payable by the second respondent together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization under the following heads:



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S.No.	Head	Amount
1	Loss of dependency	Rs.17,13,600/-
2	Consortium (for wife only)	Rs. 40,000/-
3	Loss of estate	Rs. 15,000/-
4	Funeral expenses	Rs. 15,000/-
	Total:	Rs.17,83,600/-
	Deduction for violation of the Motor	
	Vehicles Rules 10% (-)	Rs. 1,78,360/-
	Compensation payable	Rs.16,05,240/-

(v) The above total compensation was directed to be paid by the second respondent along with interest at the rate of 7.5% interest per annum from the date of claim petition till the date of realization. Aggrieved by that, the appellants – claimants have filed this appeal seeking for enhancement of compensation.

5. The main ground that was urged by the learned counsel appearing on behalf of the appellants - claimants is that the Tribunal below fixed the notional monthly income of the deceased – the said Mr.Samidurai at Rs.8,000/- for an accident that took place in the year 2017, that the notional monthly income requires enhancement, that the Tribunal below granted consortium only to the first appellant – first claimant (wife of the deceased) and did not grant



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any compensation under this head to the other appellants – other claimants and that the Tribunal below went wrong in deducting 10% out of the total compensation amount only on the ground that the deceased – the said Mr.Samidurai did not possess a valid driving licence.

6. 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.

7. In the case in hand, the accident had taken place in the year 2017 and the Tribunal below fixed the notional monthly income at Rs.8,000/-, which, in the considered view of this Court, is clearly on the lower side. Hence, this Court is inclined to fix the notional monthly income at Rs.15,000/-. Accordingly, the compensation under the head 'loss of dependency' is calculated as follows:

**"Rs.15,000/- + Rs.6,000/- (towards
40% future prospects) X 12 X $\frac{3}{4}$ X 17 =
Rs.32,13,000/-."**



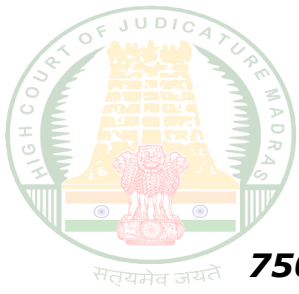
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8. The Tribunal below granted compensation under the head 'loss of consortium' to the first appellant – first claimant, who is none other the wife of the deceased – the said Mr.Samidurai. The other claimants, who are the children and mother of the deceased are also entitled to compensation under this head. Accordingly, the compensation under the head 'loss of consortium' is fixed at Rs.1,60,000/- (Rs.40,000/- each).

9. In so far as the Tribunal below attributing 10% contributory negligence against the deceased – the said Mr.Samidurai on the ground that he did not possess a valid driving licence is concerned, the same is not sustainable and it requires the interference of this Court. Merely because the deceased did not possess a valid driving licence, that, by itself, cannot raise a presumption that there was negligence on the part of the deceased.

10. Useful reference can be made to the judgment of the Hon'ble Apex Court in the case of ***Dinesh Kumar,J (a) Dinesh,J Vs. National Insurance Co.Ltd. [reported in 2018 (1) SCC***



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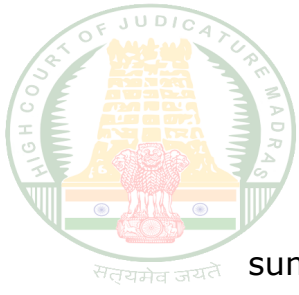
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11. In view of the above, the finding of the Tribunal below attributing 10% contributory negligence on the part of the deceased – the said Mr.Samidurai is set aside.

12. In the light of the above discussions, the total compensation granted by the Tribunal below is modified as follows:

S.No.	Head	Amount granted by the Tribunal below	Amount granted by this Court in this appeal
1	Loss of dependency	Rs.17,13,600/-	Rs.32,13,000/-
2	Consortium (for wife only)	Rs. 40,000/-	Rs. 1,60,000/- (Rs.40,000/- each)
3	Loss of estate	Rs. 15,000/-	Rs. 15,000/-
4	Funeral expenses	Rs. 15,000/-	Rs. 15,000/-
	Total:	Rs.17,83,600/-	Rs.34,03,000/-
	Deduction for violation of the Motor Vehicles Rules 10% (-)	Rs. 1,78,360/-	----
	Compensation payable	Rs.16,05,240/-	Rs.34,03,000/-

13. Accordingly, the above civil miscellaneous appeal is partly allowed and the award dated 04.5.2021 made in MCOP.No.87 of 2018 on the file of the Tribunal below is modified to the extent that the second respondent – Insurance Company shall deposit the said



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sum of Rs.34,03,000/- (Rupees thirty four lakhs and three thousand only) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization within a period of six 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.

07-07-2026

To

1.The Motor Accidents Claims Tribunal/
Sessions Judge, Mahila Court, Perambalur.

2.The Branch Manager
The New India Assurance Co.Ltd,
No.99/C-3, Ist Floor,
Opp New Bus Stand, Perambalur.

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