



C.M.A.(MD) Nos.542 to 545 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) Nos.542 to 545 of 2024

Minor Manikandan alias Sabarish
S/o.Kannan
[represented through his mother and
next guardian Veeralakshmi]

... Appellant in
C.M.A.(MD) No.542/24

Minor Kaviya
D/o.Balasubramanian
[represented through her mother and
next guardian Mariammal]

... Appellant in
C.M.A.(MD) No.543/24

1.Veeralakshmi
W/o.Kannan

2.Minor Muthukumar
S/o.Kannan

3.Minor Manikandan alias Sabarish
S/o.Kannan

[Minors second and third appellants are
represented through their mother and next
guardian Veeralakshmi, the first appellant]

... Appellants in
C.M.A.(MD) No.544/24



C.M.A.(MD) Nos.542 to 545 of 2024

1.Lakshmi
W/o.Chinnadurai

2.Chinnadurai
S/o.Thalavai Mooppanar

... Appellants in
C.M.A.(MD) No.545/24

Vs.

1.Lakshmi
W/o.Subbaiah

2.The New India Assurance Company Ltd.,
Through its Divisional Manager,
No.41-B, First Floor, Victoria Street,
Tuticorin - 628 215.

3.The New India Assurance Company Ltd.,
Through its Divisional Manager,
No.84-A, Trivandrum Road,
Palayamkottai.

... Respondents in
all C.M.As.

Prayer in C.M.A.(MD) No.542 of 2024: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the quantum of compensation award to the tune of Rs.7,00,000/- that apart from the amount of compensation already awarded in M.C.O.P.No.145 of 2021 on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Tirunelveli, dated 29.08.2022.

Prayer in C.M.A.(MD) No.543 of 2024: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the quantum of compensation award to the tune of Rs.8,00,000/- that apart



C.M.A.(MD) Nos.542 to 545 of 2024

from the amount of compensation already awarded in M.C.O.P.No.146 of 2021 on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Tirunelveli, dated 29.08.2022.

Prayer in C.M.A.(MD) No.544 of 2024: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the quantum of compensation award to the tune of Rs.7,00,000/- that apart from the amount of compensation already awarded in M.C.O.P.No.147 of 2021 on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Tirunelveli, dated 29.08.2022.

Prayer in C.M.A.(MD) No.545 of 2024: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the quantum of compensation award to the tune of Rs.4,00,000/- that apart from the amount of compensation already awarded in M.C.O.P.No.148 of 2021 on the file of the Motor Accident Claims Tribunal (Special Subordinate Court), Tirunelveli, dated 29.08.2022.

For Appellant(s)
in all C.M.As. : Mr.N.Ramamoorthy

For R2 & R3
in all C.M.As. : Mr.A.Ilango

COMMON JUDGMENT

Since the instant appeals arise out of the claim petitions filed for the death of the deceased and for the injured in the same accident and the



C.M.A.(MD) Nos.542 to 545 of 2024

Tribunal has passed the common award in all the claim petitions, these appeals are taken up together.

2. The instant appeals have been filed, seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (Special Subordinate Court), Tirunelveli, in the following claim petitions, vide *its* common award dated 29.08.2022:

Sl. No.	C.M.A.(MD) No.	M.C.O.P.No
1	C.M.A.(MD) No.542 of 2024	M.C.O.P.No.145 of 2021
2	C.M.A.(MD) No.543 of 2024	M.C.O.P.No.146 of 2021
3	C.M.A.(MD) No.544 of 2024	M.C.O.P.No.147 of 2021
4	C.M.A.(MD) No.545 of 2024	M.C.O.P.No.148 of 2021

3. The appellants in all C.M.As. filed the above claim petitions before the Tribunal, stating that on 08.06.2020 at about 11.30 a.m., while the deceased Kannan, his two children, and another minor girl were traveling in his two-wheeler bearing Registration No.TN-75-T-6560, a car bearing Registration No.TN-69-AT-2252 owned by the first respondent and insured with the second respondent, Insurance Company, came in a rash and negligent manner and collided with the two-wheeler at the



C.M.A.(MD) Nos.542 to 545 of 2024

junction of the road, as a result of which the rider of the two-wheeler, Kannan and the minor girl Makisha died and two other children, namely, Kaviya and Manikandan alias Sabarish, sustained grievous injuries.

4. The first respondent, the owner of the car, filed a counter stating that the accident took place only due to the rash and negligent riding of the rider of the two-wheeler; that the car driver drove the vehicle in a careful manner; and that, in any case, the compensation claimed by the appellants/claimants was excessive.

5. The second and third respondents filed a common counter denying the averments made in the claim petitions and stating that the rider of the two-wheeler caused the accident by crossing the road in violation of traffic rules and by carrying three pillion riders, and hence, they are not liable to pay any compensation.

6. The claimants examined four witnesses as P.W.1 to P.W.4 on their side and marked Exs.P1 to P54. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2, and two documents were marked as Exs.R1 and R2. The Disability Certificate for the minor



C.M.A.(MD) Nos.542 to 545 of 2024

Manikandan [the appellant in C.M.A.(MD) No.542 of 2024] was marked as Ex.C1, and the Disability Certificate for the minor Kaviya [the appellant in C.M.A.(MD) No.543 of 2024] was marked as Ex.C2.

7. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the rash and negligent driving of both the driver of the car and the rider of the two-wheeler, fixed 50% contributory negligence on the rider of the two-wheeler, i.e., the deceased Kannan, and awarded the following compensation to the claimants:

Sl. No	C.M.A. (MD) No.	M.C.O.P. No.	Award amount	Remarks
1	542/2024	145/2021	Rs.12,61,660 - (50%) Rs. 6,30,830 ----- Rs. 6,30,830	For the injured minor Manikandan alias Sabarish
2	543/2024	146/2021	Rs.15,05,258 - (50%) Rs. 7,52,629 ----- Rs. 7,52,629	For the injured minor Kaviya
3	544/2024	147/2021	Rs.14,76,944 - (50%) Rs. 7,38,472 ----- Rs. 7,38,472	For the death of Kannan



Sl. No	C.M.A. (MD) No.	M.C.O.P. No.	Award amount	Remarks
4	545/2024	148/2021	Rs. 4,52,000 - (50%) Rs. 2,26,000 ----- Rs. 2,26,000	For the death of the minor girl, Makisha

8. The learned counsel for the appellants/claimants submitted that the compensation awarded by the Tribunal was inadequate; that the finding of the Tribunal fixing contributory negligence on the pillion riders of the two-wheeler is erroneous; and that hence, the compensation has to be enhanced.

9. Since the issue involved in the instant appeal is with regard to the quantum of compensation payable by the second respondent, the notice to the first respondent is dispensed with.

10. The learned counsel for the second respondent, Insurance Company, per contra, submitted that the manner of the accident has been established through the rough sketch and the evidence of R.W.2, the driver of the car, which would suggest that the rider of the two-wheeler contributed to the accident by cutting across the road, and therefore, the



C.M.A.(MD) Nos.542 to 545 of 2024

contributory negligence fixed by the Tribunal is just and reasonable, and prayed for dismissal of these appeals.

11. This Court has carefully considered the rival submissions and perused the evidence on record.

12. The questions involved in the instant appeals are: (a) whether the Tribunal was right in fixing the contributory negligence on the rider of the two-wheeler at 50%; and (b) whether the compensation awarded by the Tribunal in all the claim petitions is just and reasonable.

13. As regards the first question, the appellants/claimants examined three witnesses. However, it is seen that P.W.1 and P.W.2 are not the eye witnesses. P.W.3, the father of the deceased minor girl, Makisha, stated that he witnessed the accident from a distance of 10 to 15 feet. However, he had not chosen to lodge the complaint. It is the case of the second respondent, Insurance Company, that four people travelled in the two-wheeler, and one of the minor children was standing in the two-wheeler in front of the rider, and two other children were seated at the back of the two-wheeler. Even as per the claim petitions, the deceased rider has



C.M.A.(MD) Nos.542 to 545 of 2024

violated the provisions of the Motor Vehicles Act, 1988, by taking three minor children dangerously positioned in the two-wheeler.

13.1. The respondents examined the driver of the car, who stated that in order to avoid the routine check-up by the police, the rider of the two-wheeler suddenly cut across the main road in which the car was preceding at 70 km/h. However, it is seen that Ex.P1, FIR, was lodged against R.W.2. The claimants also marked Ex.P10, Final Report, which accuses the driver of the car of rash and negligent driving.

13.2. In the light of the evidence adduced on the side of the claimants and the respondents, this Court is of the view that both the rider of the two-wheeler and the car driver contributed to the accident. The evidence of P.W.3 and R.W.2 read together would lead to the irresistible conclusion that the rider of the two-wheeler has violated the law by taking three people in the two-wheeler and allowing a child to stand in front of him and has attempted to cut across the main road where the vehicles are expected to travel fast. At the same time, the driver of the car also ought to have been careful and slowed down the vehicle, especially at a junction of the road.



C.M.A.(MD) Nos.542 to 545 of 2024

13.3. Considering the fact that the car driver has also driven the vehicle in a rash and negligent manner and that he was charged by the police for rash and negligent driving, this Court is of the view that the accident predominantly took place due to the rash and negligent driving of the car driver. Therefore, this Court is of the view that instead of apportioning the contributory negligence on the rider of the two-wheeler at 50% as held by the Tribunal, it would be just and reasonable to fix the contributory negligence on the rider of the two-wheeler at 35% for not only violating the law by taking three pillion riders but also for violating the traffic rules by cutting across the main road without any signal or warning. Therefore, 35% of the compensation is payable by the insurer of the two-wheeler.

13.4. Although the Tribunal has held that the respondents are jointly or severally liable to pay compensation, considering the fact that the second respondent is the insurer of the first respondent, this Court is of the view that the second respondent is liable to pay the compensation. Thus, Point No.1 is answered accordingly.



C.M.A.(MD) Nos.542 to 545 of 2024

14. As regards the quantum of compensation, this Court deals with each of the cases separately.

15. C.M.A.(MD) No.542 of 2024 - [M.C.O.P.No.145 of 2021]

15.1. This appeal pertains to the compensation awarded by the Tribunal for the minor boy, Manikandan alias Sabarish. The Tribunal has awarded a sum of Rs.12,61,660/- to the minor appellant/injured claimant under the various heads. The learned counsel for the appellant was unable to point out any infirmity in the award of the Tribunal. However, taking into consideration the disability suffered by the minor claimant, this Court finds that the Tribunal ought to have awarded a sum of Rs.1,00,000/- towards future medical expenses for the minor claimant as he has sustained a fracture and a steel plate was also fixed for treatment, which requires to be removed at a later point of time. Therefore, this Court awards a sum of Rs.1,00,000/- towards future medical expenses. The compensation under the other heads is just and reasonable and is therefore confirmed. Thus, the total compensation awarded by the Tribunal is enhanced to Rs.13,61,660/- [Rs.12,61,660/- + Rs.1,00,000/-].

15.2. After deducting 35% towards contributory negligence fixed



C.M.A.(MD) Nos.542 to 545 of 2024

on the rider, the second respondent, Insurance Company, is liable to pay a sum of **Rs.8,85,079/-** [13,61,660 - 4,76,581]. The second respondent, Insurance Company, is directed to deposit the aforesaid enhanced compensation of Rs.8,85,079/- together with interest at 7.5% per annum from the date of the claim petition, i.e., 18.01.2021, until the date of realization and costs, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment.

15.3. Since the appellant/injured claimant is a minor, the compensation amount is directed to be deposited in an interest-bearing fixed deposit [F.D.] in any nationalized bank until he attains majority. His mother/guardian of the appellant/injured claimant, Veeralakshmi, is permitted to withdraw the accrued interest once every six months.

15.4. The appellant/claimant is directed to pay the necessary court fee, if any, for the enhanced amount of compensation.

16. C.M.A.(MD) No.543 of 2024 - [M.C.O.P.No.146 of 2021]

16.1. This appeal pertains to the compensation payable to the



C.M.A.(MD) Nos.542 to 545 of 2024

injured minor girl, Kaviya. The Tribunal has awarded a sum of Rs.15,05,258/- to the minor girl under the various heads. The learned counsel for the appellant was unable to point out any infirmity in the award of the Tribunal.

16.2. However, considering the nature of the injury suffered by the minor Kaviya, this Court finds that the Tribunal ought to have awarded a sum of Rs.1,00,000/- towards future medical expenses. As admittedly, a steel plate and rods were fixed for the fracture suffered by her, the minor is liable to incur expenses for the removal of the said plate and rods. Hence, a sum of Rs.1,00,000/- is awarded towards future medical expenses. The compensation under the other heads is just and reasonable and is therefore confirmed. Thus, the total compensation awarded by the Tribunal is enhanced to Rs.16,05,258/- [Rs.15,05,258/- + Rs.1,00,000/-].

16.3. After deducting 35% contributory negligence, the second respondent, Insurance Company, is liable to pay a sum of Rs.10,43,417.70 [16,05,258.00 - 5,61,840.30], which is rounded off to Rs.10,43,418/-. The second respondent, Insurance Company, is directed to deposit the aforesaid enhanced compensation of **Rs.10,43,418/-** together with interest



C.M.A.(MD) Nos.542 to 545 of 2024

at 7.5% per annum from the date of the claim petition, i.e., 18.01.2021, until the date of realization and costs, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment.

16.4. The appellant/injured claimant was 16 years old at the time of filing the claim petition in 2021. She would have now attained the majority. Therefore, the appellant/injured claimant is directed to file a suitable application before the Tribunal, to record her majority, and to withdraw the compensation, along with interest and costs.

16.5. The appellant/claimant is directed to pay the necessary court fee, if any, for the enhanced amount of compensation.

17. C.M.A.(MD) No.544 of 2024 [M.C.O.P.No.147 of 2021]

17.1. This appeal pertains to the compensation awarded for the death of the rider of the two-wheeler, namely, Kannan. The claimants examined the wife of the deceased as P.W.1 to establish that the deceased was working as a tea master. However, no documentary evidence has been provided, to establish the income of the deceased. The deceased was



C.M.A.(MD) Nos.542 to 545 of 2024

42 years old and was taking care of his wife and two minor children at the time of the accident. Considering the age of the deceased, his avocation, and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased at Rs.15,000/- per month instead of Rs.10,000/- per month, fixed by the Tribunal. The compensation under the other heads is just and reasonable. Therefore, the compensation awarded under the head 'loss of income' is modified as follows:

Loss of Income:

Age of the deceased - 42 years

Notional Monthly Income - Rs.15,000/-

Annual Income

[Rs.15,000 x 12] : Rs.1,80,000/-

Add: Future Prospects

[Rs.1,80,000/- x 25/100] : Rs. 45,000/-

: Rs.2,25,000/-

Less : Personal Expenses at 1/3rd

[2,25,000 x 1/3] * : Rs. 75,000/-

: Rs.1,50,000/-

Applicable Multiplier – 14

[Rs.1,50,000/- x 14] - Rs.21,00,000/-

[since there are three dependents of the deceased]*



C.M.A.(MD) Nos.542 to 545 of 2024

17.2. The total compensation awarded by the Tribunal is modified

as follows:

<i>Sl. No</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of Income	Rs.13,99,944/-	Rs.21,00,000/-	Enhanced
2	Loss of Consortium to the wife	Rs. 44,000/-	Rs. 44,000/-	Confirmed
3	Loss of Estate	Rs. 16,500/-	Rs. 16,500/-	Confirmed
4	Funeral Expenses	Rs. 16,500/-	Rs. 16,500/-	Confirmed
Total		Rs.14,76,944/-	Rs.21,77,000/-	Enhanced by Rs.7,00,056/-

17.3. After deducting 35% contributory negligence, the second respondent, Insurance Company, is liable to pay a sum of **Rs.14,15,050/-** [21,77,000 - 7,61,950]. The second respondent, Insurance Company, is directed to deposit the enhanced compensation of **Rs.14,15,050/-** together with interest at 7.5% per annum from the date of the claim petition, i.e., 18.01.2021, until the date of realization and costs, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment.



C.M.A.(MD) Nos.542 to 545 of 2024

17.4. On such a deposit, the claimants are entitled to the compensation as per the apportionment fixed by the Tribunal.

17.5. The first appellant/first claimant is permitted to withdraw her share, along with proportionate interest and costs, less the amount already withdrawn, if any, by filing a suitable application before the Tribunal.

17.6. Since the second and third appellants/second and third claimants are minors, their shares are directed to be deposited in an interest-bearing fixed deposit [F.D.] in any nationalized bank until they attain a majority. The first respondent/first claimant is permitted to withdraw the accrued interest once every six months.

17.7. The appellants/claimants are directed to pay the necessary court fee, if any, for the enhanced amount of compensation.

18. C.M.A.(MD) No.545 of 2024 [M.C.O.P.No.148 of 2021]

18.1. The appeal pertains to the compensation awarded for the death of the minor girl, Makisha, who was 7 years old at the time of the accident. The compensation under the heads 'loss of estate' and 'funeral



C.M.A.(MD) Nos.542 to 545 of 2024

expenses' is just and reasonable and is confirmed.

WEB COPY

18.2. However, the Tribunal has awarded only Rs.44,000/- towards the parental consortium, which is meagre. Both the appellants/claimants, who are the parents of the deceased minor girl, are entitled to the consortium at the rate of Rs.44,000/- each. Hence, the compensation under the head 'parental consortium' is enhanced to Rs.88,000/-.

18.3 As regards the compensation under the head 'loss of income', this Court finds that the Tribunal has fixed the notional income of the deceased minor girl at Rs.25,000/- per annum, which is also meagre. In similar circumstances, this Court has adopted a sum of Rs.60,000/- per annum for the minors. Therefore, this Court is of the view that it would be just and reasonable to fix the income at Rs.60,000/- per annum. The multiplier applicable is 15 for the minors. Thus, the compensation under the head 'loss of income' has to be fixed at Rs.9,00,000/- [60,000 x 15]. The total compensation is enhanced in the following manner:



C.M.A.(MD) Nos.542 to 545 of 2024

<i>Sl. No</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of Income	Rs.3,75,000/-	Rs.9,00,000/-	Enhanced
2	Loss of Estate	Rs. 16,500/-	Rs. 16,500/-	Confirmed
3	Funeral Expenses	Rs. 16,500/-	Rs. 16,500/-	Confirmed
4	Parental Consortium	Rs. 44,000/-	Rs. 88,000/-	Enhanced
Total		Rs.4,52,044/-	Rs.10,21,000/-	Enhanced by Rs.5,68,956/-

18.4 After deducting 35% contributory negligence, the second respondent, Insurance Company, is liable to pay a sum of **Rs.6,63,650/-** [10,21,000 - 3,57,350]. The second respondent, Insurance Company, is directed to deposit the aforesaid enhanced compensation of Rs.6,63,650/- together with interest at 7.5% per annum from the date of the claim petition, i.e., 18.01.2021, until the date of realization and costs, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment.

18.5 For the sake of convenience, this Court reiterates that the claimant in C.M.A.(MD) No.542 of 2024 - [M.C.O.P.No.145 of 2021] is entitled to **Rs.8,85,079/-**, the claimant in C.M.A.(MD) No.543 of 2024 - [M.C.O.P.No.146 of 2021] is entitled to **Rs.10,43,418/-**, the claimants in C.M.A.(MD)No.544 of 2024 [M.C.O.P.No.147 of 2021] are entitled to



C.M.A.(MD) Nos.542 to 545 of 2024

Rs.14,15,050/- and the claimants in C.M.A.(MD)No.545 of 2024

[M.C.O.P.No.148 of 2021] are entitled to **Rs.6,63,650/-**.

18.6 On the deposits made by the second respondent as aforesaid, the appellants/claimants are permitted to withdraw the same, as per the apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount already withdrawn, if any, by filing a suitable application before the Tribunal.

18.7 The appellants/claimants are directed to pay the necessary court fee, if any, for the enhanced amount of compensation.

19. In the result, these Civil Miscellaneous Appeals are partly allowed. No costs.

21.08.2024

Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

JEN

To:

- 1.The Special Subordinate Judge,
Motor Accident Claims Tribunal, Tirunelveli,
Tirunelveli District.
- 2.The Section Officer,
V.R.Section, Madurai Bench of Madras high Court, Madurai.



WEB COPY



C.M.A.(MD) Nos.542 to 545 of 2024

SUNDER MOHAN, J.

JEN

C.M.A.(MD) Nos.542 to 545 of 2024

21.08.2024