



WEB COPY



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2025

CORAM

THE HONOURABLE MR. JUSTICE S. SOUNTHAR

Civil Miscellaneous Appeal No. 935 of 2022 And

Cross Objection No. 25 of 2025

CMP.No. 6966 of 2022

CMA.No. 935 of 2022

New India Assurance Company Limited

Represented by its Manager,

East Cost Chambers

G.N.Chetty Road

T.Nagar, Chennai-600 017.

...Appellant

Versus

1.Naveena

W/o.Late.Ramakrishnan

2.Minor Tharun

S/o.Late.Ramakrishnan

3.Minor Dhanush

S/o.Late.Ramakrishnan

Minors are represented by N.F.Mother Naveena

4.Thimmakka

W/o. Narayanappa & Narayanan



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

All are residing at No. 4/27,
Periyakudibala Village
Beerpalli Post, Hosur Taluk, Krishnagiri District.

5.M.Komala
W/o. Marimuthu
No.82, Andal Nagar
Adukkamparai
Vellore District-632 011.

.. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Judgment and Decree passed in MCOP.No. 1163 of 2018 dated 16.03.2021 on the file of the Motor Accidents Claims Tribunal, (Special District Court), Krishnagiri, and be pleased to dismiss the above claim and allow the above Civil Miscellaneous Appeal.

Cross Objection No. 25 of 2025:

1.Naveena
W/o.Late.Ramakrishnan

2.Minor Tharun
S/o.Late.Ramakrishnan

3.Minor Dhanush
S/o.Late.Ramakrishnan
Minors are represented by N.F.Mother Naveena



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

4.Thimmakka

W/o. Narayanappa & Narayanan

All are residing at No. 4/27,
Periyakudibala Village
Beerpalli Post, Hosur Taluk,
Krishnagiri District.

...Respondents 1 to 4/Cross Objectors

Versus

1.New India Assurance Company Limited

Represented by its Manager,

East Cost Chambers, G.N.Chetty Road

T.Nagar, Chennai-600 017.

...Appellant/1st Respondent

2.M.Komala, W/o. Marimuthu

No.82, Andal Nagar

Adukkamparai

Vellore District-632 011.

...5th Respondent/2nd respondent

Prayer: Cross Objection filed under Order XLI Rule 22 of the Code of Civil Procedure, praying to enhance the compensation amount and fix the entire liability on the appellant awarded in the Judgment and Decree dated 16.03.2021 made in MCOP.No.1163 of 2018 on the file of the Motor Accidents Claims Tribunal, (Special District Court), Krishnagiri by allowing this cross appeal in CMA.No. 935 of 2022 on the file of this Court.



WEB COPY



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

For Appellants : Mr.S.P. Yuaraj

For Respondent-1 : Mr.J. Chandran

For Respondent-2 : Mr.Varadhakamaraj

COMMON JUDGMENT

Civil Miscellaneous Appeal has been filed by the Insurance Company seeking to set aside the Judgment and Decree passed in MCOP.No. 1163 of 2018 dated 16.03.2021 on the file of the Motor Accident Claims Tribunal, (Special District Court), Krishnagiri.

2. The Insurance Company is the appellant.

3. The respondents 1 to 4 are the claimants who filed Motor Accident Claim Petition seeking compensation of Rs.40,00,000/- for the death of husband of the 1st claimant, father of the claimants 2 & 3 and sons of the 1st claimant. As against the claim of Rs.40,00,000/-, the Tribunal awarded a sum of Rs.20,08,080/- after deducting 10% contributory negligence on the part of the deceased.



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

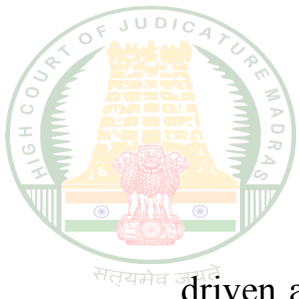
WEB COPY

4. Aggrieved by the said Award, the Insurer of the offending vehicle has preferred CMA and the claimants have also preferred Cross-Objection seeking enhancement of compensation.

5. For the sake of convenience, the parties are referred to as per their respective ranks before the Claims Tribunal.

6. It is the case of the claimants that the accident had occurred on 14.12.2016. The deceased was proceeding in his Yamaha bike from Hosur to Krishnagiri. The car belonging to the 1st respondent, insured with the Insurance Company/2nd respondent came in a rash and negligent manner and dashed against the Yamaha Motor Cycle. Therefore, the deceased sustained multiple injuries and he was rushed to the NIMHANS Hospital, Bangalore. However, later, he died in the hospital. Hence, the claim petition was filed by the claimants seeking compensation of Rs.40,00,000/-.

7. The owner of the offending car, the 1st respondent, remained *ex-parte* before the Tribunal. The Insurer of the car, namely, the Insurance Company/appellant herein filed counter denying the averments made in the claim petition. It is the case of the Insurance Company that the deceased had



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

WEB COPY

driven an unregistered Yamaha bike in a rash and negligent manner and the accident had occurred only due to his negligence.

8. Before the Claims Tribunal, the first Claimant, the wife of the deceased, was examined as PW1 and one eye witness was examined as PW2 on behalf of the Claimants and 10 documents were marked as Ex.P1 to Ex.P10. The Special Sub Inspector of Police, Soolagiri Police Station, was examined as RW1 on behalf of the respondents and three documents were marked as Ex.R1 to Ex.R3.

9. The Tribunal, based on the evidence available on record, came to a conclusion that the accident had occurred due to rash and negligent driving by the driver of the vehicle insured with the Insurance Company/appellant. The Tribunal also found that the deceased also contributed to the accident as he did not possess valid driving licence at the time of the accident. Hence, the Tribunal fixed 10% contributory negligence on the part of the deceased. The amount payable to the claimants was quantified at Rs.20,08,080/- after deducting 10% of the amount towards contributory negligence.



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

WEB COPY

10. Aggrieved by the said Award, the Insurer of the offending vehicle as well as the Claimants have filed the above appeal and Cross-Objection, respectively.

11. The learned counsel appearing for the appellant/Insurance Company would submit that the accident had occurred solely due to the negligence on the part of the deceased. The Tribunal, without appreciating the evidence on record, fixed 90% contributory negligence on the part of the car. He also submitted that the quantum of compensation awarded by the Tribunal is on the higher side and the same is required to be reduced.

12. The learned counsel for the claimants/Cross-Objectors would submit that the Tribunal, based on the evidence of PW1 and one eye witness, rightly came to a conclusion that the driver of the offending car was primarily responsible for the accident. He further submitted that the Tribunal committed an error in fixing 10% of contributory negligence on the part of the deceased. He further submitted that the deceased was a Mason, agriculturist and also a stage actor at the relevant point of time and the Tribunal fixed very meagre notional income of Rs.9,000/- per month and the same is required to be enhanced.



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

WEB COPY

13.In order to prove the negligence aspect, the claimants examined PW1 and PW2. PW1 is the wife of the deceased and she is not an eye witness to the accident. Therefore, her evidence is not useful for the purpose of deciding the question of negligence. PW2 is an eye witness and in his evidence, he has clearly deposed that the driver of the offending car was proceeding from Hosur to Krishnagiri and dashed against the two wheeler driven by the deceased from behind. RW1-Krishnan, SSI of Police, Soolagiri Police Station, who was in-charge of a Police Station, was examined on behalf of the respondents, who deposed that the rider of the two wheeler proceeded from Krishnagiri to Hosur in the wrong direction. Ex.R3 indicated that the accident had occurred on the left extremity of the road. Both PW2 and RW1 clearly deposed that the car was proceeded from Hosur to Krishnagiri. PW2 in his evidence deposed that the two wheeler also proceeded from Hosur to Krishnagiri and the car dashed against the two wheeler in the back side. However, RW1 in his evidence deposed that the two wheeler proceeded in the wrong direction from Krishnagiri to Hosur.

14. A perusal of Ex.R3-rough sketch indicates that the car proceeded from Hosur to Krishnagiri on the left hand side of the road by following the traffic rules. However, two wheeler only came in the wrong



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

WEB COPY

direction and dashed against the car. The same can be gathered from the damages caused to the two wheeler in the front side as seen from the Ex.R1 Motor Vehicle Inspector's Report. If the evidence of PW2 is correct, the two wheeler should have been damaged only on the back side. However, two wheeler got damaged in the front portion. Therefore, it probabalize the evidence of RW1 that the two wheeler proceeded in the wrong direction and dashed against the car. Taking into consideration the accident had occurred on the left extremity of the road, near mud portion, the car also had an opportunity to avoid the accident. Since the car is a heavy vehicle compared to the two wheeler, this Court is inclined to fix 60% negligence on the part of the car and 40% of the negligence on the part of the two wheeler.

15. Coming to the question of quantum, it was stated that the deceased was Mason, agriculturist, stage actor and was earning a sum of Rs.30,000/- per month. However, to prove the avocation and income of the deceased, the claimants have not produced any documents. Even if there is no document to establish the income of the deceased, by taking into consideration the facts and circumstances of the case, this Court can fix the notional income. In the case on hand, the accident had occurred in the year 2016. Taking into consideration the accident of the year (2016) and the



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

WEB COPY

prevailing cost of living, this Court is inclined to fix Rs.15,000/- per month as notional income. Based on Ex.P2-Post Mortem Certificate, the Tribunal fixed the age of the deceased as 24 years. Hence, the multiplier would be “18”. Therefore, the Claimants are entitled to 40% enhancement towards future prospects as per the law settled by **National Insurance Company Limited v. Pranay Sethi and Others**, reported in **2017 (2) TNMAC 609 (SC)**. Since there are four Claimants, 1/4th has to be deducted towards personal expenses. Therefore, the loss of dependency is fixed at Rs.34,02,000/- [Rs.15,000 x 1.4 x 12 x 18 x 3/4] = Rs.34,02,000/-. The amount awarded by the Tribunal under the other heads of loss of estate, funeral expenses, loss of consortium and loss of love and affection are in accordance with law as settled by *Pranay Sethi* case. Hence they are affirmed.

16.In view of the above discussions, the Claimants are entitled to Rs.35,92,000/-. This Court already fixed 40% contributory negligence on the deceased. After deducting 40% towards contributory negligence, the Claimants are entitled to Rs.21,55,200/-.



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

WEB COPY

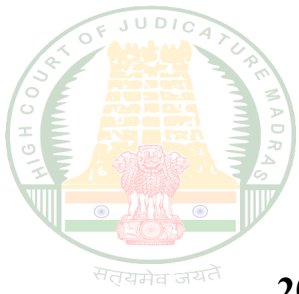
17. In view of the above discussions, award passed by the Tribunal

is modified as follows:-

Sl. No.	Description	Award passed by the Tribunal (Rs)	Award passed by this Court (Rs)	Enhanced/ Confirmed
1	<u>Loss of Dependency:</u>	20,41,200	34,02,000	enhanced
2.	Loss of Estate	15,000	15,000	confirmed
3.	Funeral Expenses	15,000	15,000	confirmed
4.	Loss of Consortium: (Claimants 1 to 4) = Rs.40,000/- x 4 = Rs.1,60,000/-)	1,60,000	1,60,000	confirmed
	Less: Contributory negligence on the part of the deceased	2,23,120.00 (10%)	14,36,800 (40%)	enhanced
	Total	20,08,080	21,55,200	enhanced by Rs.1,47,120

18. Therefore, the Civil Miscellaneous Appeal filed by the Appellant/Insurance Company is dismissed. However, Cross-Objection filed by the claimants is allowed by enhancing the compensation amount of Rs.21,55,200/-.

19. Out of the aforesaid amount, 1st claimant/wife of the deceased is entitled to Rs.9,55,200/-, minor claimants 2 and 3 are entitled to Rs.5,00,000/- each and the 4th claimant/mother of the deceased is entitled to Rs.2,00,000/-.



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

WEB COPY

20.The Appellant/Insurance Company is directed to deposit the enhanced award amount of Rs.21,55,200/- together with interest to the credit of M.C.O.P.No.1163 of 2018 on the file of Motor Accidents Claims Tribunal, Krishnagiri, Special District Court for Motor Accident Claims Cases, Krishnagiri, within a period of six weeks from the date of receipt of a copy of this order. The claimants 1 and 4 are permitted to withdraw their respective share as apportioned by this Court. The share of the minor claimants 2 and 3 shall be deposited in any one of the nationalized banks in a fixed deposit scheme initially for a period of three years and the same shall be renewed periodically till they attain majority. The guardian of the minor claimants 2 and 3, namely, 1st claimant is entitled to withdraw the accrued interest on the fixed deposit account once in six months and the same shall be used for the benefits of the minor claimants.

21.No costs. Consequently, connected Civil Miscellaneous Petition is closed.

25.03.2025

Index :Yes/No
Internet:Yes/No
Speaking/Non speaking order
MSM



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

To
WEB COPY

The Motor Accidents Claims Tribunal,
(Special District Court), Krishnagiri.



WEB COPY



CMA.No. 935 of 2022 and
Cross Objection No. 25 of 2025

S. SOUNTHAR, J

MSM

Civil Miscellaneous Appeal No. 935 of 2022 &
Cross Objection No. 25 of 2025

25.03.2025