



CMA.No.465 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 15.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.465 of 2025

1. Marappan

2. Minor Magesh (3 years)

Minor represented by his natural guardian/
grand father Marappan

3. Mari D/o Marappan

... Appellants

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Salem-7, Regional Office,
Bharathipuram, Salem Main Road,
Dharmapuri 636 705.

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to enhance the compensation amount and also to fix entire liability on the respondent in the order dated 15.04.2021 in MCOP No.85 of 2020 on the file of the Special District Court, Motor Accident Claims Tribunal, Krishnagiri.



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For appellants : Mr. S.P.Yuvaraj

For Respondent : Mr.D.Nitin

JUDGMENT

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have come before this court by filing the present appeal.

2. The son of the first claimant, father of the second claimant and brother of the third claimant namely Suresh died in a road accident that had occurred on 12.09.2016. It was the case of the claimants that the deceased was riding his Hero Honda Splendor Plus Motor cycle slowly on the left hand side road from Sokkadi to K.R.P. Dam. When the deceased was nearing Sekar fish shop, a bus belonged to the respondent came in a rash and negligent manner and dashed against the two wheeler of the deceased. As a result of accident, the deceased sustained fatal injuries and died on the spot. Hence, the claimants filed a claim petition before the Tribunal seeking compensation of Rs.35,00,000/-.

3. The respondent Corporation filed counter and denied the



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manner of accident as described in the claim petition. It was the specific case of the respondent before the Tribunal that the accident had occurred only due to the negligence on the part of the deceased.

4. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Corporation bus. The Tribunal also fixed 10% contributory negligence on the part of the deceased for his failure to produce valid driving licence. The compensation payable to the claimants was quantified at Rs.19,44,400/- and after deducting 10% towards contributory negligence on the part of the deceased, the respondent was directed to pay a sum of Rs.17,49,960/- to the claimants. Not satisfied with the quantum of compensation and also aggrieved by the fixation of 10% contributory negligence on the part of the deceased, the claimants have filed the present appeal.

5. The learned counsel for the appellants would submit that the



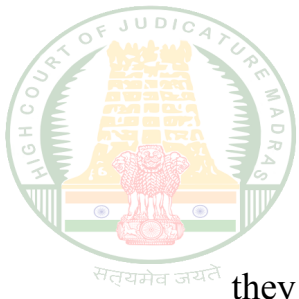
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notional income of Rs.9,000/- fixed by the Tribunal is very much on lower side and hence, it requires enhancement. He further submits that the Tribunal committed an error in fixing 10% contributory negligence on the part of the deceased for not having valid driving licence at the time of accident and hence, the said finding is liable to be set aside.

6. The learned counsel for the respondent would submit that the claimants have not produced any documentary evidence to prove the avocation and income of the deceased and hence, the Tribunal was justified in fixing notional income at Rs.9,000/- per month. He further submits that driving a vehicle, without valid licence is violation of provisions of the Motor Vehicles Act and the Rules framed there under. Therefore, the Tribunal was justified in fixing 10% contributory negligence on the part of the deceased.

7. In the claim petition, it was stated by the claimants that the deceased was employed in Country Brick Kiln. It was also claimed by them that the deceased was earning a sum of Rs.25,000/- per month. However, in order to prove the avocation and income of the deceased,



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they have not produced any documents. Even if there is no proof to establish the income of the deceased, taking into consideration the facts and circumstances of the case, the Tribunal can fix notional income. In the case on hand, the accident had taken place in the year 2016. Taking into consideration the year of accident and the cost of living, this court proceeds to fix a sum of Rs.15,000/- per month as notional income of the deceased. As per Ex.P2, Postmortem certificate, the Tribunal fixed the age of the deceased as 24 years. Therefore, the claimants are entitled to 40% enhancement towards future prospects. Having regard to the age of the deceased, the applicable multiplier is 18. Since there were three persons depending on the income of the deceased at time of accident, 1/3 shall be deducted towards personal expenses of the deceased. Accordingly, loss of dependency is fixed at Rs.30,24,000/- (15,000 x 1.4 x 12 x 18 x 2/3).

8. The amount awarded by the Tribunal under the heads loss of estate and Funeral Expenses are confirmed.

9. The Tribunal awarded a sum of Rs.1,00,000/- (Rs.80,000/- to



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1st and 2nd claimants and Rs.20,000/- to 3rd claimant) towards loss of consortium. However, the first claimant, being the father of the deceased is entitled to Rs.40,000/- towards filial consortium and the 2nd claimant being the son and the third claimant being the sister of the deceased, are entitled to Rs.40,000/- each under the head loss of love and affection (totalling to Rs.1,20,000/-). Therefore, the total compensation payable to the claimants is enhanced to Rs.31,74,000/-.

10. The Tribunal fixed 10% contributory negligence on the part of the deceased, because of his failure to produce the valid driving license. But, as per the law laid down by the Hon'ble Apex Court in the case of ***Sudhir Kumar Rana Vs Surinder Singh and Others*** reported in ***(2008) 12 SCC 436***, merely because there was no valid driving licence, contributory negligence cannot be fixed on the part of the deceased, unless there is a positive evidence to suggest that the driving of the victim contributed to the accident.

11. In the case on hand, there is no positive evidence on record to



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suggest that the driving of the victim contributed to the accident. In such circumstances, 10% contributory negligence fixed on the part of the deceased by the Tribunal is unsustainable, in the light of the law settled by the Apex Court in the above said decision. Therefore, the said finding of the Tribunal is set aside.

12. Accordingly, the revised compensation awarded by this Court is tabulated as under:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	18,14,400	30,24,000	enhanced
2.	Loss of filial consortium to first claimant and loss of love affection to claimants 2 and 3	1,00,000	1,20,000	enhanced
3	Loss of Estate	15,000	15,000	confirmed
3.	Funeral expenses	15,000	15,000	confirmed
	Total	19,44,400	31,74,000	enhanced
	Less 10% contributory negligence	1,94,440	-	set aside
	Compensation	17,49,960	31,74,000	enhanced by Rs.14,24,040

13. With the above modifications, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at



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Rs.17,49,960/- is hereby enhanced to **Rs.31,74,000/-** together with interest at 7.5% per annum from the date of claim petition till the date of deposit.

14. The appellants/claimants are not entitled to the interest for the delay period of 969 days, as per the order of this court in CMP No.2388 of 2025 dated 06.02. 2025.

15. The appellants/claimants are directed to pay applicable court fee for the enhanced compensation amount.

16. From the above compensation now determined by this court, the first claimant/father is entitled to Rs.10,00,000/-, second claimant/son is entitled to Rs.21,34,000/- and the third claimant/sister is entitled to Rs.40,000/-

17. The **respondent Corporation** is directed to deposit the compensation amount now determined by this Court to the credit of MCOP No.85 of 2020 on the file of the Special District Court, Motor Accident Claims Tribunal, Krishnagiri, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment. On such deposit



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being made, the first and third claimants shall be permitted to withdraw their respective compensation amount along with interest and costs, less the amount if any, already withdrawn, by making a formal application before the Tribunal.

18. Since the second claimant being a minor, his share shall be deposited in any one of the nationalized banks initially for a period of 3 years and the same shall be renewed periodically till his attainment of majority. The first claimant is entitled to withdraw the accrued interest thereon once in six months and the same shall be used for the welfare of the minor/ 2nd claimant.

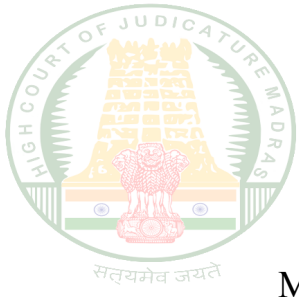
There shall be no order as to costs.

15.04.2025

Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
mst

To

1. The Special District Judge,



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WEB COPY Motor Accident Claims Tribunal,
Krishnagiri.

2. The Section Officer,
V.R.Section, Madras High Court.



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S.SOUNTCHAR, J.

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