



C.M.A.No.721 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 17.04.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.721 of 2025

1.M.Lakshmi

2.Murugan

... Appellants

VS.

1.M/s.Raymix Concrete,
No.49, Sakthi Garden,
Seneerkuppam, Poonamallee,
Chennai – 600 056.

2.United India Insurance Co. Ltd.,
Silingi Building, New No.134,
Old No.40-45, Greams Road,
Chennai – 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the appeal and enhance compensation in M.C.O.P.No.7544 of 2015, dated 16.02.2024 on the file of the Motor Accident Claims Tribunal/In the Court of Special Sub Judge II, Chennai.

For Appellants : M/s.Ramya V.Rao

For R2 : M/s.V.Pushpa

For R1 : Notice Dispensed With



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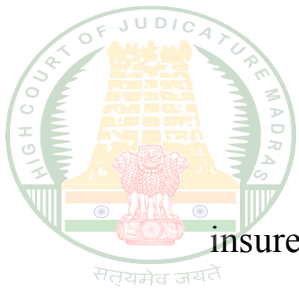
J U D G M E N T

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Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Court of Special Sub Judge No.II, Chennai in M.C.O.P.No.7544 of 2015, dated 16.02.2024, the claimants have come before this Court.

2. According to the appellants/claimants, the son of the claimants namely M.Vijayakumar died in a road accident that had taken place on 07.05.2015. According to them, the deceased was travelling as a pillion rider in a motorcycle bearing Registration No.TN 11 J 4984 proceeding from Oragadam to Padappai. When he came near Karanithangal Petrol Bunk, a concrete mixer lorry bearing Registration No.TN 20 AJ 8358 belonged to the 1st respondent and insured with the 2nd respondent came in a rash and negligent manner and hit against the motorcycle. As a result of the accident, the said M.Vijayakumar died. Hence, the claim petition was filed by his parents seeking compensation of Rs.30,00,000/-.

3. The 1st respondent-owner of the lorry remained *exparte* before the Tribunal and the claim petition was contested only by the 2nd respondent-



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insurer of concrete mixer lorry. According to the 2nd respondent-insurer, the accident had occurred only due to the negligence on the part of the driver of the two wheeler and negligence on the part of the driver of the lorry was specifically denied.

4. Before the Tribunal, the 1st appellant/1st claimant was examined as PW.1 and an eye-witness was examined as PW.2 and 14 documents were marked as Exs.P1 to P14 on behalf of the claimants. On behalf of the 2nd respondent/Insurance Company, the Staff of the Insurance Company was examined as RW.1 and 4 documents were marked as Exs.R1 to R4. The Aadhaar Card and Driving License of PW.2 were marked as Exs.X1 and X2 respectively.

5. The Tribunal based on the evidence available on record, came to the conclusion that the accident had occurred only due to the primary negligence on the part of the lorry driver. However, the Tribunal fixed 10% contributory negligence on the part of the deceased on the ground that he failed to wear helmet at the time of accident. The compensation payable to the claimants was quantified at Rs.15,96,150/- after deducting 10% towards



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contributory negligence (Rs.17,73,500 – 10%). Not satisfied with the quantum of compensation, the claimants have come before this Court.

6. The learned counsel appearing for the appellants/claimants would submit that the Tribunal without properly appreciating Pay Slip of the deceased marked as Ex.P10, erroneously fixed notional income at Rs.11,000/- per month and the same requires enhancement. The learned counsel also submitted that the Tribunal committed an error in fixing 10% contributory negligence for the failure of the deceased to wear helmet.

7. The learned counsel appearing for the 2nd respondent/Insurance Company would submit that the Tribunal taking into consideration the inclusion of various allowances which are personal in nature, fixed notional income of the deceased at Rs.11,000/- per month and therefore, it requires no interference by this Court. The learned counsel further submitted that the deceased failed to wear helmet at the time of accident, therefore, the Tribunal was justified in fixing 10% contributory negligence.



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8. It is the case of the claimants that the deceased was working as a

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Technician Trainee in M/s.Sundaram Clayton Ltd., Oragadam at the time of accident and he was drawing a salary of Rs.14,944/- per month. In order to prove the said fact, the pay slip of the deceased was marked as Ex.P10. A perusal of the same would indicate that a sum of Rs.1,823/- was included in the pay slip in the salary of the deceased under the head double overtime regular. We cannot assume that the deceased would work overtime in every month and receive the said amount. Therefore, the above said amount cannot be included in the income of the deceased. The Tribunal also deducted various other allowances mentioned in the salary slip and fixed only Rs.11,000/- per month as notional income of the deceased.

9. A perusal of Ex.P7-Provisional Certificate would indicate that the deceased passed Diploma in Mechanical Engineering and Ex.P8 is a Training Certificate issued by M/s.Sundaram Clayton Limited stating that he had undergone Technician Training with the said company. Ex.P10-pay slip issued by the said company would prove that he was temporarily placed there as a Technician Trainee. Taking into consideration all these factors, this Court feels that the amount of Rs.11,000/- fixed by the Tribunal as



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notional income is very meagre. Therefore, this Court is inclined to accept

the gross amount shown in the pay slip issued to the deceased after deducting the double overtime incentive. Therefore, the income of the deceased is fixed at Rs.13,121/-. As per Ex.P3, post mortem certificate, Ex.P4, death certificate and Ex.P11-Driving Licence, the Tribunal fixed the age of the deceased at 21 years. Therefore, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier is 18. Since the deceased died as a bachelor, 1/2 of the amount shall be deducted towards his personal expenses. Accordingly, the loss of dependency is fixed at Rs.19,83,895/- (Rs.13,121 x 1.4 x 12 x 18 x 1/2).

10. The amount awarded by the Tribunal under the heads loss of parental consortium, loss of estate, funeral expenses are in accordance with law settled by the Apex Court in *National Insurance Company Limited vs. Pranay Sethi and others* reported in (2017) 16 SCC 680.

11. It is seen from Ex.P3-Post Mortem Certificate, the deceased died due to head injury. Therefore, the Tribunal was justified in fixing 10% contributory negligence on deceased for his failure to wear helmet. The said



finding is affirmed.

WEB COPY 12. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Loss of Dependency	Rs.16,63,500/-	Rs.19,83,895/-	Enhanced
2.	Loss of Consortium	Rs.80,000/-	Rs.80,000/-	Confirmed
3.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Medical Bills	-	-	-
Total		Rs.17,73,500/-	Rs.20,93,895/-	Enhanced
Less 10% Contributory Negligence		Rs.1,77,350/-	Rs.2,09,390/-	Deducted
Total		Rs.15,96,150/-	Rs.18,84,505/-	Enhanced by Rs.2,88,355/-

13. Accordingly, the compensation amount payable to the claimants is enhanced to Rs.18,84,505/- from Rs.15,96,150/-. The 2nd Respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.18,84,505/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation to the credit of M.C.O.P.No.7544 of 2015 on the file of the Motor Accident Claims Tribunal, Court of Special Sub Judge No.II, Chennai, within a period of six



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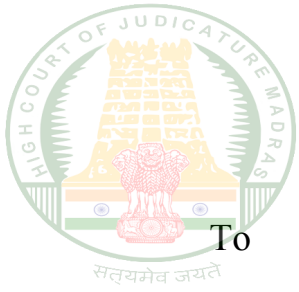
weeks from the date of receipt of copy of this judgment. On such deposit,

the claimants are permitted to withdraw the award amount by making formal application before the Tribunal.

14. With the above directions, the Civil Miscellaneous Appeal is partly allowed. No costs.

17.04.2025

Index :Yes/No
Speaking order :Yes/No
Neutral Citation :Yes/No
dm



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To

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- 1.The Motor Accidents Claims Tribunal/
In the Court of Special Sub Judge II, Chennai.
- 2.United India Insurance Co. Ltd.,
Silingi Building, New No.134,
Old No.40-45, Greaves Road,
Chennai – 600 006.
- 3.The Section Officer,
VR Section, High Court,
Madras.



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S.SOUNTHAR, J.

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