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CMA.Nos.640 of 2020 and 2587 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.640 of 2020 and
CMA No.2587 of 2021

In CMA No.640 of 2020

1. Jayanthi
2. Sharmila
3. N.Vinith
4. M.Chinnaponnu

... Appellants

Vs.

1. B.Arumugam
2. The Manager,
United India Insurance co. Ltd.,
Motor third party claim office,
Silingi Building, IV Floor,
134, Greams Road, Chennai-6.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the decree and judgment dated 03.06.2019 made in MACT OP No.5067/2017 on the file of the II Judge, Small Causes Court, Chennai.



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In CMA No.2587 of 2021

N.Sharmila

... Appellant

Vs.

1. B.Arumugam

2. The Manager,
United India Insurance co. Ltd.,
Motor third party claim office,
Silingi Building, IV Floor,
134, Greams Road, Chennai-6.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the decree and judgment dated 03.06.2019 made in MACT OP No.5068/2017 on the file of the II Judge, Small Causes Court, Chennai.

In both appeals

For appellant/s : Ms.P.T.Saleem Fathima

For Respondents : Ms.R.Rathna Thara for second respondent

R1- exparte



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COMMON JUDGMENT

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The appellants in CMA No.640 of 2020 are the claimants in MCOP No.5067 of 2017 and they are the legal representatives of the deceased Nagarathinam, viz., the first claimant is wife and the claimants 2 and 3 are his children and the fourth claimant is his mother.

2. The appellant in CMA No.2587 of 2021 is the claimant in MCOP No.5068 of 2017 (2nd claimant in MCOP No.5067/2017), who sustained injury in the same accident and she is also the daughter of the deceased Nagarathinam.

3. Not satisfying with the quantum of compensation awarded by the Tribunal, both the appeals have been filed by the respective claimants, seeking enhancement of compensation.

4. The facts and circumstances of the case and issues involved in both the appeals have been arisen out of same accident and hence, both the appeals have been taken together for passing common judgment.



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5. According to the claimants/appellants, on 04.07.2017 at 9.45 hours, the deceased Nagarathinam was riding the motor cycle bearing registration No.TN-22-BP 8791 in Gandhi Road, and the second claimant Sharmila was the pillion rider. When the deceased approached Sathananthapuram City Union Bank, a Tata Ace Van, proceeding in front of the vehicle driven by the deceased suddenly applied brake. Therefore, the deceased was also constrained to apply brake, as result of which, he lost his balance and fell down on the road. At that point of time, a mini lorry belonging to the first respondent, came in the opposite direction had hit the deceased, as a result of which, he received head injuries and died on 05.07.2017 at Rajiv Gandhi Government Medical College Hospital, Chennai. The pillion rider/ claimant in CMA No.2587 of 2021 suffered multiple abrasion injuries on her right hand. Therefore, the appellants in CMA No.640 of 2020 filed MCOP No.5067 of 2017, seeking compensation of Rs.35,00,000/- and the appellant in CMA No.2587 of 2021 filed MCOP No.5068 of 2017, seeking compensation of Rs.3,00,000/- .



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6. The first respondent in both the appeals is owner of the mini lorry and he remained *exparte* before the Tribunal and the claim petitions were contested by the insurer of the mini lorry, namely second respondent by filing counter affidavit, wherein it denied the allegations made in the claim petitions.

7. The Tribunal, based on the available evidence, came to the conclusion that the deceased also contributed to the accident and hence, fixed 25% contributory negligence on the deceased. The Tribunal awarded a compensation of Rs.12,70,000/- in favour of the legal heirs of the deceased in MCOP No.5067 of 2017 and awarded a sum of Rs.18,750/- as compensation to the claimant in MCOP No.5068 of 2017. Not satisfied with the quantum of compensation and also fixation of contributory negligence on the part of the deceased, the appellants have filed the present appeals.

8. The learned counsel for the appellants submitted that the Tribunal ought not to have fixed contributory negligence on the part of the deceased, when the mini lorry driven by the first respondent



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crossed the median and caused the accident. The learned counsel further submitted that the deceased was employed as a Spray Operator in R.K.Leather Private Limited, Nagalkeni, Chrompet and was earning a sum of Rs.18,000/- per month. The pay slip produced by the claimants were not properly appreciated by the Tribunal and hence, a sum of Rs.10,000/- fixed towards income of the deceased was very much on lower side and the same need to be enhanced.

9. The learned counsel for the second respondent vehemently contended that the accident took place due to the head on collusion and therefore, the Tribunal is justified in fixing the contributory negligence at 25% on the deceased. It is also submitted by her that though the claimants produced pay slips and salary certificate as Ex.P11 and Ex.P13 respectively to show that the salary of the deceased was Rs.14,100/- per month, the said pay slips were not signed or sealed by the issuing authority. Therefore, the Tribunal is justified in rejecting the same and hence, she submitted that the finding of the Tribunal need not be interfered with.



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10. In order to fix the contributory negligence, this court had a look at the sketch prepared by the police, which was marked as Ex.P3. A perusal of the same would suggest that the mini lorry driven by the first respondent crossed the median and came to the right hand side of half of the road and caused the accident. The two wheeler driven by the deceased found in left side half of the road. Therefore, it is clear that the accident had occurred due to the negligence of the driver of the mini lorry who crossed the median line. The Tribunal, without taking into consideration of Ex.P3 sketch, had erroneously fixed the contributory negligence on the part of the deceased. Therefore, the said finding of the Tribunal is set aside and this court holds that the accident had taken place due to the rash and negligent driving of the driver of the mini lorry.

11. As far as the income of the deceased is concerned, the accident took place in the year 2017. The appellants/claimants produced Ex.P11 and Ex.P13 salary slips, wherein, monthly salary of the deceased was mentioned as Rs.13,700/- and Rs.14,100/- per month. Ex.P11 series are the computer generated pay slips issued to the



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deceased for the month of January 2017 to April 2017 and the same would indicate that the monthly salary of the deceased was Rs.13,700/- Ex.P13 is the salary certificate issued by the employer of the deceased. A perusal of the above salary slips would indicate that the salary of the deceased at the relevant point of time was Rs.14,100/-. Ex.P13 further shows that an allowance of Rs.400/- per month was fixed and the Ex.P13 was signed by the employer. However, the Tribunal has made an observation that the salary certificate was not signed and sealed by the employer of the deceased and consequently, fixed a sum of Rs.10,000/- as monthly income of the deceased. In view of the foregoing discussion, the observation made by the Tribunal is not correct and the fixation of Rs.10,000/- as monthly income is very much on lower side. In the absence of any proof filed by the claimants to show the income of the deceased, this court could have easily fixed the notional income at Rs.15,000/-, by taking into consideration the date of accident. However, in the case on hand, the claimants produced the salary certificates, indicating that the income of the deceased was only Rs.14,100/-. Therefore, this court proceeds to fix the income of the deceased at Rs.14,100/- per month.



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12. As per the law laid down by the Honourable Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others reported in AIR 2017 SC 5157(Special Leave Petition (Civil) No.25590 of 2014 dated 31.10.2017)*, the claimants are entitled to 25% enhancement towards future prospects. Therefore, the monthly income of the deceased is fixed at Rs.17,625/- (14,100 +3525), which includes 25% future prospects. There are 4 dependents for the deceased. Therefore, as the law laid down by the Hon'ble Supreme Court in *Sarla Verma and other Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121*, 1/ 4 of the amount shall be deducted towards personal expenses. Further, proper multiplier to be adopted in this case is '13', as the deceased was aged 49 years. Accordingly, ***Loss of dependency is fixed at Rs. 20,62,125/-*** [17,625 x 12 x 13 = 27,49,500 (-) 6,87,375 = 20,62,125]

13. The award passed by the Tribunal under the other conventional heads, viz., loss of estate, funeral expenses, consortium to the first claimant-wife and love and affection towards claimants 2 and 3/children, totalling to Rs.1,70,000/- are hereby confirmed. In all, the



claimants are entitled to Rs.22,32,125/-.

14. Accordingly, the modified award passed by this Court in
CMA No.640 of 2020 under various heads are as follows.

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	15,21,000	20,62,125	enhanced
2.	Loss of estate	15,000	15,000	confirmed
3.	Funeral expenses	15,000	15,000	confirmed
4.	Consortium to wife	40,000	40,000	confirmed
5.	Love and affection Rs.50,000/- each to claimants 2 and 3	1,00,000	1,00,000	confirmed
6.	Total	16,91,000	22,32,125	
	Less Contributory negligence at 25%	4,22,750	nil	enhanced
	Award amount	12,68,250 rounded off to 12,70,000	22,32,125	enhanced by 9,62,125



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15. As far as the **CMA No.2587 of 2021** is concerned, the injured/ daughter of the deceased is the appellant/claimant. A perusal of the typed set of papers and other records would indicate that she sustained only simple injury in her right hand. Therefore, the Tribunal awarded only a sum of Rs.25,000/- as compensation and after deducting 25% towards contributory negligence, has granted compensation at Rs.18,750/-. This court already held that the accident had taken place due to the negligence of the driver of the mini lorry, which came in the opposite direction. Therefore, the contributory negligence cannot be fixed on the driver of the two wheeler. In such circumstances, the deduction made by the Tribunal for contributory negligence is liable to be set aside. Taking into consideration the nature of simple injury suffered by the claimant, this court feels that the amount of Rs.25,000/- would represent just compensation.

16. Accordingly, the appellant/ claimant in CMA No.2587/2021 is entitled to a sum of Rs.25,000/- as compensation.



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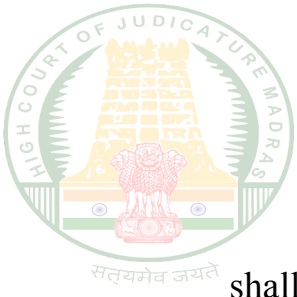
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17. With the above modifications, this Civil Miscellaneous Appeals are partly allowed.

As far as the CMA No.640 of 2020 is concerned, the compensation awarded by the Tribunal at Rs.12,70,000/- is hereby **enhanced** to Rs.22,32,125/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

As far as the CMA No.2587 of 2021 is concerned, the compensation awarded by the Tribunal at Rs.18,750/- is hereby **enhanced** to Rs.25,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

18. The second respondent is directed to deposit the compensation amount now determined by this Court in both the appeals, 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, the appellants/claimants



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shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn, on filing formal application. No costs.

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Index:Yes/No
Internet:Yes/No
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To

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Chennai.
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S.SOUNTHAR, J.

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