



CMA.No.512 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 11.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.512 of 2025

The Branch Manager,
The Oriental Insurance Co.Ltd.,
BO, Opp to Cuddalore NT Police Station,
Bharathi Road, Cuddalore 607 001.

... Appellant

Vs.

- 1.Vijaya
2. V. Kathirvel
3. Madankumar
4. V.Anbarasan
5. Minor V.Chinrasu
rep. by his mother Vijaya, 1st respondent
6. Muniyamma
7. J.Kirubakaran

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to set aside the order passed in MCOP No.949 of 2022 dated 23.08.2024 on the file of the Special District Court No.1, Motor Accident Claims Tribunal, Cuddalore.

For appellant : M.Krishnamoorthy

For Respondents : Ms. Ramya V Rao

JUDGMENT



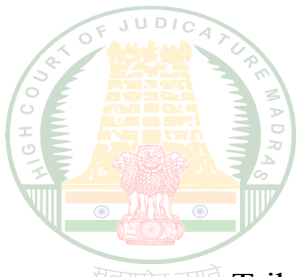
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Aggrieved by the award passed by the Tribunal, the insurance company has filed the present appeal.

2. According to the respondents/claimants 1 to 6, the husband of the first claimant, father of the claimants 2 to 5 and son of the sixth claimant, namely Velayutham died in a road accident that had occurred on 03.05.2022. According to the claimants, the deceased was driving his two wheeler on the left hand side portion of the road on 03.05.2022 and when he was nearing water tank, Mettu street, Panchamadevi, a bus belonging to the seventh respondent, insured with the appellant came in a rash and negligent manner and dashed against the two wheeler of the deceased. As a result of accident, the deceased sustained grievous injuries and he was admitted to Government Hospital, Mundiampakkam, Villupuram. However, on admission, he was declared as dead by the doctors. Therefore, the claimants filed claim petition seeking compensation of Rs.50,00,000/-.

3. The seventh respondent remained exparte before the



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Tribunal.
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4. The appellant herein filed counter denying the negligence on the part of the driver of the bus. It was the case of the appellant/ insurance company that the accident had occurred only due to the negligence on the part of the deceased.

5. On the side of the claimants, the first claimant was examined as PW1 and an eye witness was examined as PW2 and 8 documents were marked as Ex.P1 to Ex.P8. On the side of the appellant/insurance company no oral and documentary evidence were adduced.

6. The Tribunal, based on the evidence available on records, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the bus, insured with the appellant and the amount payable to the claimants was quantified at Rs.22,34,000/-. Aggrieved by the same, the insurance company has come before this court by way of filing the present appeal.



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7. The learned counsel for the appellant/ insurance company would submit that it is the case of head on collusion and therefore, the Tribunal committed an error in fixing the entire negligence on the part of the driver of the bus. He also submits that the deceased died due to his failure to wear helmet at the time of accident and hence, the Tribunal should have fixed contributory negligence on the part of the deceased for his failure to wear helmet. He further submits that, the accident had occurred in the year 2022, however, the Tribunal erroneously granted 20% enhancement on the compensation awarded under the heads loss consortium, loss of love and affection, loss of estate and funeral expenses and the same needs to be reduced to 10%.

8. In order to prove the negligence on the part of the driver of the bus, an eyewitness was examined as PW2 on the side of the claimants. The PW2 clearly deposed about the negligence on the part of the driver of the bus and he was also subjected to cross examination by the appellant/insurance company. However, appellant/ insurance company has not taken any steps to examine the driver of the offending vehicle/

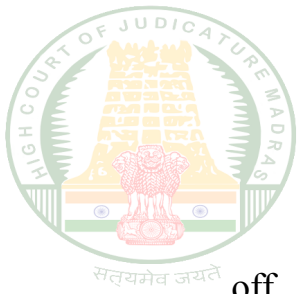


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bus to prove their contention that only due to the negligence on the part of the deceased, the accident had occurred. Further, they have not produced any documentary evidence to prove their contentions, whereas, Ex.P1, FIR was registered against the driver of the bus. Therefore, the finding of Tribunal that the accident had occurred due to negligence of bus driver is confirmed.

9. It is seen from Ex.P2, postmortem certificate that the deceased died due to head injury. Therefore, the learned counsel for appellant vehemently contended that contributory negligence shall be fixed on the part of the deceased for his failure to wear helmet. However, the appellant in his counter before the Tribunal, did not raise the point relating to the non wearing of helmet by the deceased and there is no plea to support the contention raised by the learned counsel for the appellant. Though the eyewitness, PW2 was cross examined on the side of the appellant/insurance company, no suggestion was put forth to him with regard to the aspect of non wearing of helmet by the deceased. Further, the PW2 clearly deposed that at the time of accident, the victim had worn helmet and due to the impact of the accident the helmet fell



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off. In such circumstances, the arguments made by the learned counsel for the appellant regarding contributory negligence is not accepted.

10. The Tribunal fixed notional income of the deceased at Rs.17,000/- per month and quantified the compensation under the head loss of dependency at Rs.18,51,300. Having regard to the year of accident (2022) the notional income fixed by the Tribunal is conservative one. However, the same has not been questioned by the claimants.

11. As per the law laid down by the Hon'ble 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***, 10% enhancement should be given on the conventional heads, once in three years from the date of delivery of judgment [i.e. 31.10.2017]. In the case on hand, the accident had occurred on 03.05.2022 and hence, the claimants are entitled to only 10% enhancement on the conventional heads. However, the Tribunal erroneously granted 20% enhancement and awarded a sum



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of Rs.48,000/- each. Therefore, the first claimant is entitled to Rs.44,000/- towards loss of consortium and the claimants 2 to 5 are entitled to Rs.44,000/- each towards loss of love and affection and the 6th claimant is entitled to Rs.44,000/- towards parental consortium. Like wise, the amounts awarded under the heads Loss of Estate and Funeral expenses are also reduced to Rs.16,500/- each from Rs.18,000/- each. Further, the compensation of Rs.10,000/- awarded under the head transportation charges is set aside, as it is covered by the compensation awarded towards loss of estate.

12. Accordingly, the compensation awarded by the Tribunal is revised 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	18,51,300	18,51,300	confirmed
2.	Loss of consortium to first claimant	48,000	44,000	reduced
3.	Loss of love affection to claimants 2 to 5 & loss of parental consortium to 6th claimant	2,88,000	2,20,000	reduced
4	Transportation charges	10,000	---	set aside
5.	Loss of estate	18,000	16,500	reduced



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6.	Funeral expenses	18,000	16,500	reduced
	Total	22,34,000	21,48,300	reduced by 85,700

13. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.22,34,000/- is hereby reduced to **Rs.21,48,300/-** together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

14. The appellant/insurance company is directed to deposit the compensation amount now determined by this Court, 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 being made, the claimants shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn in same proportion, as per the apportionment made by the Tribunal, by making formal application before the Tribunal.

There shall be no order as to costs. Connected miscellaneous



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petition is closed.
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Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
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To

1. Special District Court No.1,
MACT, Cuddalore.
2. The Section Officer,
V.R. Section, Madras High Court.



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S.SOUNTHAR, J.

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