



CMA NO.2183 OF 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 20 / 01 / 2025

JUDGMENT DELIVERED ON: 29 / 04 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

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1.Arunambigai

2.Minor Narmatha

3.Minor Sanjai Gandhi

(Minors Appellants 2 and 3 are represented
by their mother / 1st petitioner - Arunambigai)

4.Thirupathy

5.Manickammal

... Appellants 1 to 5 /
Petitioners 1 to 5

Vs.

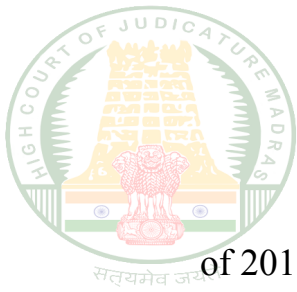
1.K.C.Saminathan

2.The New India Assurance Company Ltd.,
Vellore.

... Respondents 1&2 /
Respondents 1&2

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying for enhancement of the compensation amount awarded in the Award dated November 23, 2018 made in M.C.O.P.No.423

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of 2017 on the file of the Motor Accident Claims Tribunal / III Additional District Judge, Vellore at Tirupattur.

For Appellant : M/s.Karan and Uday
For Respondent-1 : No appearance
For Respondent-2 : Mrs.Srividya

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated November 23, 2018 passed in MCOP No.423 of 2017 by the 'Motor Accident Claims Tribunal / III Additional District Judge, Vellore at Tirupattur' ['Tribunal' for short], the petitioners therein have preferred this Civil Miscellaneous Appeal praying for enhancement of the compensation awarded by the Tribunal.

2. For the sake of convenience, the parties will hereinafter be referred to as per their rank in the Motor Accident Claims Original Petition.

Petitioners' case

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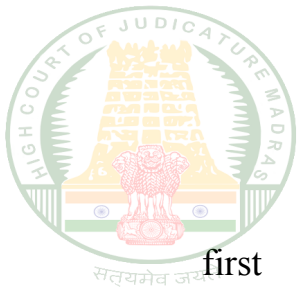


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3. The first petitioner is the wife, the second and third petitioners are the daughters, and the fourth and fifth petitioners are the parents of the deceased - Kumaresan. At the time of the accident, the deceased - Kumaresan was 42 years old, employed as a Tamil Nadu Grade-I Police Constable, and earning a sum of Rs.32,000/- as monthly income.

3.1. On June 25, 2017, at about 06.20 a.m., in front of Rajeswari Marriage Hall at Jolarpet Junction, on the Tirupattur-Vaniyambadi Main Road, an auto bearing Registration No.TN-23-BX-5853, owned by the 1st respondent, was being driven in a rash and negligent manner by its driver (who is first respondent's son) towards Vaniyambadi from Tirupattur. It collided with another auto bearing Registration No.TN83-W-6696, which was driven by the deceased - Kumaresan, in the opposite direction, on the extreme left side of the road. Due to the impact, the deceased - Kumaresan sustained multiple grievous injuries on his head and all over his body. Immediately, the deceased was taken to the Government Hospital in Tirupattur and admitted as an inpatient for treatment. Later, he succumbed to the injuries. The first respondent is the owner and the second respondent is the insurer of the

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first respondent's auto bearing Registration No.TN-23-BX-5853.

Therefore, the petitioners filed a claim petition before the Tribunal, seeking compensation of Rs.50,00,000/- (Rupees Fifty Lakhs only) from the respondents.

First Respondent's case

4. The first respondent remained absent before the Tribunal and accordingly was set *ex-parte* by the Tribunal.

Second Respondent's case

5. The second respondent / insurance company filed a counter, denying the allegations made in the claim petition. It is averred that the deceased - Kumaresan was not a competent auto-rickshaw driver and did not possess a valid driving license at the time of the accident. The petitioners are put to strict proof of the alleged manner of the accident, the dependency of the deceased as well as transportation and funeral expenses. The age, occupation, and income of the deceased are denied. The compensation claimed by the petitioners is exorbitant, arbitrary, and excessive. Hence, the second respondent prayed for the dismissal of the petition.

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6. During enquiry, on the side of the petitioners, the first petitioner was examined as P.W.1, one Mr.Arulnambi, ocular witness, was examined as P.W.2 and Ex-P.1 to Ex-P.14 were marked. On the side of the second respondent, Mr.Baskaran, Assistant attached to the RTO Office, Vaniyambadi was examined as R.W.1, and Ex-R.1, a letter from the MV Inspector to the Tribunal, was marked.

7. The Tribunal, after considering the evidence available on record, found that both vehicles collided with each other from opposite directions. Hence, both were equally held liable for the accident and therefore, 50% contributory negligence was mulcted on the deceased. The Tribunal, accordingly, held that the second respondent is liable to pay compensation to the petitioners, as tabulated below:-

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1.	Loss of income	Rs.11,34,000.00
2.	Future prospectus	Rs.2,83,500.00
3.	Funeral expenses	Rs.15,000.00
4.	Loss of consortium	Rs.40,000.00
5.	Love and affection	Rs.80,000.00
6.	Transportation	Rs.5,000.00

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<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
	Total	Rs.15,57,500.00
	Deduction : Contributory Negligence (50%)	(-) Rs.7,78,750.00
	Compensation payable	Rs.7,78,750.00

8. Feeling aggrieved by the quantum of compensation awarded by the Tribunal, the petitioners have preferred this Civil Miscellaneous Appeal.

Arguments

9. Learned counsels for the appellants/petitioners, submitted that the accident occurred due to the rash and negligent act of the 1st respondent's driver, who is none other than the son of the 1st respondent. The Tribunal ought to have taken into account the fact that, while only four persons are permitted to travel in the 1st respondent's auto bearing Registration No.TN-23-BX-5853 as per the auto permit, on the date of the accident, 10 persons were travelling in the auto. This very fact reveals that the accident occurred due to the negligence of the 1st respondent's driver. Further, the Tribunal failed to consider the evidence of P.W.2, who is an ocular witness to the accident. He clearly deposed in his chief examination



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as well as in his cross-examination that the accident occurred due to the rash and negligent driving of the 1st respondent's driver. Likewise, the Tribunal failed to consider the fact that except for the Motor Vehicle Inspector, no one was examined on behalf of the 2nd respondent/insurance company. Neither the Investigating Officer nor the driver of the 1st respondent's auto was examined to prove contributory negligence. The Tribunal grossly erred in ignoring Ex-P.1 - First Information Report (FIR) and Ex-P.10 - Charge Sheet filed against the driver of the 1st respondent's auto. Accordingly, they prayed to allow the appeal and enhance the compensation.

10. *Per contra*, learned counsel appearing for the second respondent/insurance company, contended that the deceased alone drove his auto in a rash and negligent manner, collided with the 1st respondent's auto, sustained injuries, and later passed away in the hospital. Further, the deceased was not employed anywhere as on the date of the accident and was not receiving a monthly salary of Rs.32,000/- as alleged. She further contended that the deceased did not possess a valid driving license at the time of the accident, which is evident from the evidence of R.W.1. Hence, the Tribunal was right in concluding that the deceased and the first

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respondent's driver equally contributed to the accident. It accordingly passed an Award fixing 50% contributory negligence on the deceased. There is no warrant to interfere with the award of the Tribunal. Accordingly, she prayed for the dismissal of the appeal.

Discussion

11. This Court has considered both sides' submissions and perused the evidence available on record.

12. The factum of the accident is admitted. The question is who was responsible for the accident. In this case, Ex-P.1 – First Information Report (FIR) was lodged against the first respondent's driver, who is none other than the first respondent's son. The police after investigation laid Ex-P.10 – Charge sheet against the first respondent's driver. P.W.2, an ocular witness, deposed in his evidence that the Rajeswari Marriage Hall (Conventional Centre) is situated on the east and the deceased was coming from Vaniyambadi to Tirupattur, i.e., from north to south. He further deposed that the first respondent's auto came from the opposite direction and collided with the deceased's auto leading to the accident. Furthermore, he deposed that the accident occurred opposite the

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Rajeshwari Marriage Hall. In Ex-P.1 - FIR and Ex-P.10 - Charge Sheet, it has been stated that the accident occurred opposite the Rajeshwari Marriage Hall at Jolarpet Junction, on the Tirupattur-Vaniyambadi main road. While the term “opposite the Rajalakshmi Marriage Hall” may give an impression that the accident occurred on the western side of the road (which would mean the deceased was travelling in the wrong lane), cumulative reading of evidence of P.W.2 in his chief examination and cross-examination would clearly show that the accident occurred in front of the Rajalakshmi Marriage Hall. “Opposite Rajalakshmi Marriage Hall” does not mean that the accident occurred on the other side of the road, but given the context and the evidence of P.W.2, it rather means in front of Rajalakshmi Marriage Hall. The term ‘opposite’ is used in the sense of ‘in front of’. Thus, the deceased was travelling in the correct lane and it is the first respondent’s driver who came in the deceased’s lane in the opposite direction.

13. The evidence of P.W.2 coupled with Ex-P.1 – FIR and Ex-P.10 – Charge sheet would show that the first respondent was negligent and caused the accident. One who bring up the plea of contributory negligence must prove it. Contributory Negligence cannot be inferred. The

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second respondent has not taken any steps to prove its case of contributory negligence; it has neither examined the first respondent nor his driver.

Further, whether the deceased had a valid driving licence or not, is not a material question in the facts and circumstances of this case. The material questions are who was negligent and whether there was any negligence on the part of the deceased. As stated *supra*, the deceased was travelling in the correct lane and the accident occurred due to the negligence of the first respondent's driver who travelled in the wrong lane and collided with the deceased auto. There appears to be no negligence on part of the deceased. The Tribunal by merely relying on the statement of P.W.2 in his evidence that both the autos collided with each other from opposite direction, mulcted 50% contributory negligence on the deceased, which is not justifiable. The evidence of P.W.2 has to be appreciated in a comprehensive manner; his chief and cross examination has to be read and understood as a whole. Thus, this Court holds the first respondent's driver solely responsible for the accident and the second respondent being its insurer is liable to pay compensation to the petitioners.

14. Case of the petitioners is that the deceased was working

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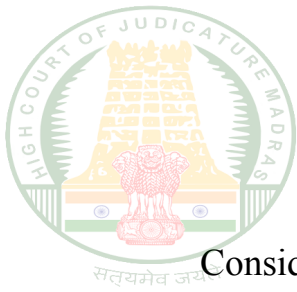


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as a Police Constable and earning Rs.32,000/- per month. In support of the same, Ex-P.9 - Pay Certificate of the deceased for May 2011 has been marked which shows the gross salary of the deceased as Rs.18,402/-. In Ex-P.1 – FIR, it has been stated by the complainant / father of the deceased that, the deceased was dismissed from the police department and that he was thereafter running his family with the income from the autorickshaw. P.W.1 / wife of the deceased has denied the said fact by relying on Ex-P.9 – Pay Certificate for May 2011 and contending that the deceased was only under suspension and not dismissed. Notably, the specific case of the second respondent is that the deceased was dismissed. If really the deceased was in service or only suspended at the time of accident, the petitioners, who bears the burden of proof, ought to have proved the same with sufficient evidence; they could have marked the pay certificate for any month closer to the time of accident. To be noted, Ex-P.9 is for May 2011 while the accident occurred on June 25, 2017. The petitioners have miserably failed to prove their case that the deceased was not dismissed. In the absence of any supporting document, this Court has no option but to follow the notional income method. The Tribunal rightly resorted to notional income method and fixed a notional income of Rs.9,000/-, which, however, in the considered opinion of this Court is on the lower side.

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Considering the age of the deceased viz., 45 years, size of his family at the time of accident as well as the cost of living that prevailed at that time, this Court is of the view that the deceased would have earned not less than Rs.13,500/- per month.

15. From Ex-P.14 – Transfer Certificate, it could be inferred that the age of the deceased at the time of accident is 45 years. Therefore, the Tribunal rightly adopted the multiplier of 14 and deducted 1/4th towards personal expenses as per Judgement of Hon'ble Supreme Court in ***Sarla Verma -vs- Delhi Transport Corporation reported in (2009) 6 SCC 121***, and added 25% for future prospects as per Judgement of Hon'ble Supreme Court in ***National Insurance Company Limited -vs- Pranay Sethi*** reported in ***(2017) 16 SCC 680***. Considering notional income at Rs.13,500/- instead of Rs.9,000/-, the compensation under the head of loss of income would come to Rs.21,26,250/- [(Rs.13,500/- + 25% of Rs.13,500/-) $\times$ 12 $\times$ 14 - 1/4].

16. The compensation awarded under the heads of funeral

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expenses, loss of consortium, love and affection, and transportation requires no interference.

17. To sum up, the award passed by the Tribunal is modified

as below:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1	Loss of income (Rs.13,500/-(NI)+ 25%(FP) x 12m x 14M – 1/4)	Rs.21,26,250.00
2	Funeral expenses	Rs.15,000.00
3	Loss of spousal consortium	Rs.40,000.00
4	Loss of filial consortium	Rs.80,000.00
5	Loss of parental consortium	Rs.80,000.00
6	Loss of estate	Rs.15,000.00
7	Transportation	Rs.5,000.00
Total		Rs. 23,61,250.00

18. The second respondent / Insurance Company is directed to deposit Rs.23,61,250/- (Rupees Twenty-Three Lakh Sixty-One Thousand Two Hundred and Fifty only), along with costs incurred before the Tribunal and interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit and costs, to the credit of M.C.O.P. No.423 of 2017 on the file of the Motor Accident Claims Tribunal / III

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Additional District Judge, Vellore at Tirupattur, after deducting amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment.

18.1. Upon such deposit being made, the first petitioner/first appellant, being the wife of the deceased, is entitled to a sum of Rs.8,00,000/-, the second and third petitioners/second and third appellants, being the minor children of the deceased, are entitled to Rs.5,00,000/- each, and the remaining amount shall be apportioned equally between the fourth and fifth petitioners / fourth and fifth appellants, being the parents of the deceased.

18.2. The minors would have attained the age of majority by now and hence, all the petitioners are permitted to withdraw their shares along with proportionate interest and costs, less the amount already withdrawn, if any, by filing appropriate application.

Conclusion

19. Resultantly, the Civil Miscellaneous Appeal is allowed in

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part with proportionate costs and a modified Award is passed as detailed above.

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[J.N.B., J.] [R.S.V., J.]
29 /04/ 2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No

TK

To

1.The Motor Accident Claims Tribunal
III Additional District Judge, Tirupattur,
Vellore.

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



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J.NISHA BANU, J.
AND
R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
CMA NO.2183 OF 2022

29 /04/ 2025

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