IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :22.04.2025

CORAM:

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**CMA No.1212 of 2025 and**
**C.M.P.No.9981 of 2025**

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

**Vs.**

1.R.Shakila
2.R.Gugan (Minor)
3. R.Gagashri (Minor)
(Minors 2 and 3 rep. By
Mother/Gaurdian R1)
4.Valli
5.Sathyabrata Das ... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Award Passed in MCOP No. 1151 of 2022 dated 03.02.2014 on the file of Learned Subordinate Judge (Motor Accident Claims Tribunal) at Cuddalore, Cuddalore District.

For Appellant : Mr.J.Chandran
For Respondents : M/s.Ramya V.Rao for R1 to R4
R5-Notice dispensed with

**JUDGMENT**

The Civil Miscellaneous Appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal in MCOP No. 1151 of 2022.

2. The main original petition was filed by the dependents of the deceased Rajkumar seeking compensation of Rs.1,00,00,000/-.

3. According to the claimants, the husband of the first claimant, father of the minor claimants 2 and 3 and son of the 4th claimant namely Rajkumar died in a road accident that had occurred on 18.04.2022. According to them, when he was sleeping on the road divider in the National Highway at Alampuram Village, West Godavari District, a goods carrier belonged to the 5th respondent and insured with the appellant came in a rash and negligent manner and dashed against the deceased. As a result of the accident, he died. Hence, the claim petition was filed by the dependants of the deceased seeking compensation.

4. The 5th respondent, the owner of the goods carrier, remained exparte before the Tribunal and the claim petition was opposed by the

insurer. According to the insurer, at the time of accident, the deceased was sleeping on the divider in the middle of the road and therefore, the accident had occurred only due to the negligence on the part of the deceased.

5. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the goods carrier insured with the appellant. The compensation payable to the claimants was quantified at Rs. 43,31,000/-. Aggrieved by the quantum of compensation, the insurance company has come before this court by way of this appeal.

6. The learned counsel for the Appellant/ Insurance company submitted that at the time of accident, the driver of the goods carrier insured with the appellant was not authorized to drive heavy vehicles and hence, the Tribunal ordered pay and recovery. It is the submission of the learned counsel for the appellant that after amendment to the Motor Vehicles Act by the Central Act 32 of 2019 and the deletion of proviso to Section 149(4) of MV Act, the Tribunal cannot order pay and recovery. The learned counsel also submitted that the deceased invited the accident

by sleeping on the divider in the middle of the road and hence, he also contributed to the accident. The learned counsel further submitted that the amount awarded by the Tribunal under conventional heads are on higher side.

7. The learned counsel for the respondents 1 to 4/ claimants submitted that the Tribunal, based on proper appreciation of evidence available on record, came to the conclusion that the entire negligence was on the part of the driver of the goods carrier and the same need not be disturbed.

8. This Court in CMA.No.554 of 2025 and batch reported in 2025/MHC/991 had already held that notwithstanding the deletion of proviso to old Section 149(4) of MV Act (New Section 150), the Motor Accident Claims Tribunal can order pay and recovery. The relevant observation of this Court in ***2025/MHC/991*** reads as follows:-

> *28. The very same title or caption is retained in New Section 150 of Motor Vehicles Act. Further, defences enumerated under Section 150(2) are result of breach/omission by insured over which innocent third parties have no control. Hence, it is highly inequitable to interpret the*

*section against its own title and object of main enactment. In this regard, it would be appropriate to refer to observation of Apex Court in* ***British India General Insurance Co. Ltd., vs. Captain Itbar Singh and others reported in 1959 SCC OnLine SC 32,*** *which reads thus:-*

> *"17. ... ... ... ... It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries. The loss had to fall on some one and the statute has thought fit that it shall be borne by the insurer. That also seems to us to be equitable for the loss falls on the insurer in the course of his carrying on his business, a business out of which he makes profit, and he could so arrange his business that in the net result he would never suffer a loss. On the other hand, if the loss fell on the injured person, it would be due to no fault of his; it would have been a loss suffered by him arising out of an incident in the happening of which he had no hand at all."*

*(emphasis supplied)*

*The Apex Court in the above mentioned case law in a beautiful language emphasised the plight of third party victims and ability of insurer to cope up with liability created by law under Section 149(1) [New Section 150(1)]. Therefore, this Court holds that Section 149(1) [now Section 150 (1)] imposes a duty on insurer to satisfy award passed against insured in respect of third party claims and that duty is not affected by deletion of proviso to Section 149 (4).*

*29. Section 149(5) mandates that any amount paid by the insurer to the third party over and above the amount payable by insurer to the insured under the policy, shall be recovered by the insurer from the insured. Now, by virtue of new Section 147(2), the Central Government is empowered to prescribe a base premium and liability of the insurer in respect of such premium for the insurance policy. Since the liability of the insurer in respect of third party insurance is sought to be limited, by virtue of notification by Government in consultation with Insurance Regulatory and Development Authority, Sub-Section 5 of old Section 149 is deleted to remove doubt. The deletion of Sub-Section 5 of old Section 149 is in tune with the amendment introduced under Section 147(2).*

*30. In view of the discussions made earlier, this Court* *holds that notwithstanding deletion of proviso to Sub-Section (4) of Old Section 149 and Sub-Section (5) of very same Section which is renumbered as Section 150, the insurer's liability to honour the award passed against the insured in respect of third party claims continues and in the event of insurer's success in raising a defence under Sub-Section (2) of New Section 150, the Tribunal can very well order pay and recovery.*

In view of the same, the first argument made by the learned counsel for the appellant is rejected.

9. The Tribunal, based on the evidence of PW3, eyewitness, the contents of FIR marked as Exhibit P1 and the final report marked as Exhibit P6, came to the conclusion that the entire negligence was on the part of the driver of the goods carrier insured with the appellant.

10. A perusal of the Exhibit P6, final report would indicate that the deceased Rajkumar was sleeping on the divider in the middle of the road and the offending vehicle was driven by its driver in a rash and negligent manner and the vehicle ran over the railings on the divider and caused the accident. Therefore, it is clear that the offending vehicle was driven by its driver in a rash and negligent manner and the vehicle ran over the railings

on the divider and then, caused the accident. However, the divider in the middle of the road is not a place meant for sleeping or taking rest. Therefore, the deceased by sleeping on the divider also contributed to the accident to some extent. Taking into consideration Exhibit.P6 and the other evidence available on record, this court is inclined to fix 10% negligence on the part of the deceased. The findings of the Tribunal that the entire negligence is on the part of the driver of the offending vehicle is modified to that extent.

11. The Tribunal fixed Rs.20,000/- as notional income for the deceased in the absence of any evidence to prove the income. It was claimed that the deceased was a Driver cum Operator of harvesting machine and was earning Rs.50,000/- per month. However, no documentary evidence was let in to prove the income of deceased. Considering the date of accident and the prevailing cost of living this Court feels that it would be appropriate to fix Rs.18,000/- as notional income of the deceased. Based on driving license marked as Exhibit P4, the Tribunal fixed the age of the deceased at 32 years. Hence, the claimants are entitled to 40% enhancement towards future prospects. The

applicable multiplier is 16. Since there are four dependents, one-fourth of the amount shall be deducted towards the personal expenses of the deceased. Therefore, the loss of dependency would be Rs. 36,28,800/- which is calculated as follows:-

**18,000 x 1.4 x 12 x 16 x 3/ 4 = Rs. 36,28,800/-**

12.As per the law laid down by Hon'ble Apex Court in ***Pranay Sethi*** case, the claimants are entitled to 10% enhancement towards conventional damages once in three years. The judgment in ***Pranay Sethi*** was delivered on 31.10.2017. In the present case, the accident had occurred on 18-04-2022. Therefore, the claimants are entitled to 10% enhancement towards conventional damages. The amount awarded by the Tribunal under the head Transportation expenses is set aside. The Tribunal awarded a higher sum instead of 10% enhancement under the conventional damages and the same is modified as follows:-

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

| Sl | Description | Amount | Amount | Award |
|---|---|---|---|---|

| . N o | | awarded by Tribunal (Rs) | awarded by this Court (Rs) | confirmed or enhanced or granted |
|---|---|---|---|---|
| 1. | Loss of dependency | 40,32,000/- | 36,28,800/- | Reduced |
| 2. | Loss of Estate | 18,000/- | 16,500/- | Reduced |
| 3. | Funeral Expenses | 18,000/- | 16,500/- | Reduced |
| 4. | Loss of Consortium (1st claimant) | 48,000/- | 44,000/- | Reduced |
| 5 | Loss of love and affection ( minor claimants 2 & 3) and loss of filial consortium to 4th claimant | 2,00,000/- | 1,32,000/- (44,000 x 3) | Reduced |
| 6 | Transportation expenses | 15,000/- | Nil | Set aside |
| | **Total** | **43,31,000/-** | **38,37,800/-** | **Reduced by Rs.4,93,200/-** |
| | **Less:10%contributory negligence** | **Nil** | **3,83,780/-** | **Fixed by this Court** |
| | **Net compensation** | **43,31,000/-** | **34,54,020/-** | **Reduced by Rs.8,76,980/-** |

14. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.43,31,000/- is hereby reduced to Rs.34,54,020/-.The respondents 1 to 4/claimants are entitled to interest at the rate of 7.5% per annum from the

date of filing of the claim petition till the date of realization. The Appellant/Insurance company is directed to deposit the award amount to the credit of MCOP No. 1151 of 2022 on the file of Subordinate Judge (Motor Accident Claims Tribunal), Cuddalore, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this Judgment.

15. As far as apportionment is concerned, the 4th claimant/mother of the deceased is entitled to Rs.3,00,000/-. The minor claimants 2 and 3/children of the deceased are entitled to Rs.7,00,000/- each and the 1st claimant/wife of the deceased is entitled to Rs.17,54,020/-

16. The respondents 2 and 3, being minors, their share of award amount is directed to be deposited in anyone of the Nationalized Banks under a Fixed Deposit Scheme **for a period of three years** which shall be renewed periodically until they attain majority and the 1st respondent, being the Natural Guardian of the minor 2nd and 3rd respondents, is permitted to withdraw the interest accrued thereon **once in three months** and the same shall be used for the welfare of the minor 2nd and 3rd respondents. The 1st and 4th respondents are entitled to withdraw their

share of compensation amount, along with interest and costs, less the amount if any, already withdrawn, by making proper application before the Tribunal. Consequently, the connected miscellaneous petition is closed. No costs.

**22.04.2025**

Index:Yes
Internet:Yes
Neutral Citation: Yes
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**To**

1. Motor Accident Claims Tribunal
Subordinate Judge, Cuddalore,

2. The Section Officer,
VR Section,
High Court, Madras.

**S.SOUNTHAR, J.**

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