



CMA.No.884 of 2025 & 1882 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :26.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.884 of 2025 & 1882 of 2024 and
C.M.P.No.14945 of 2024

CMA No.884of 2025

- 1.Mala
- 2.Kokilamsa
- 3.Sasikala
- 4.Shyamala

.... Appellants

Vs.

V.Sampath Kumar (Died)

1. The Manager
National Insurance Company Limited
3 floor, Anuradha Complex, 333 Bangalore Road,
Krishnagiri-635 001
2. S.Anitha

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to enhance the compensation amount and fix the entire liability on 1st respondent made in order dated 07-03-2023 made in MCOP.No.84/2019 on the file of the MACT Tribunal, Special district Court, Krishnagiri.

For Appellants : Mr.S.P.Yuaraj
For Respondent :Mr.S.Vadivel for R1
R2- remained exparte before the
Tribunal and hence, notice dispensed with.

CMA No.1882 of2024



CMA.No.884 of 2025 & 1882 of 2024

WEB COPY

The Manager
National Insurance Company Limited
3 floor, Anuradha Complex, 333 Bangalore Road,
Krishnagiri-635 001 Appellant

Vs.

1.Mala
2.Kokilamsa
3.Sasikala
4.Shyamala

V.Sampath Kumar (Died)
5. S.Anitha
(As per amended in I.A.No.4/2021
dated 28.02.2022) ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to set aside the Judgment and decree dated 07.03.2023 and made in M.C.O.P.No.84/2019 on the file of the Motor Accidents Claims Tribunal, Krishnagiri, Special District Court for Motor Accident Claims Cases, Krishnagiri.

For Appellant : Mr.S.Vadivel
For Respondents : Mr.S.P.Yuaraj for R1 to R4
R5-remained exparte before the
Tribunal and hence, notice dispensed with.

COMMON JUDGMENT

These Civil miscellaneous appeals are filed by the claimants and the Insurance company respectively, challenging the award passed by the Motor Accident Claims Tribunal, Special District Judge, Krishnagiri



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2. Since these appeals are interconnected and arising out of the same accident, both are taken up for hearing together.

3. For the sake of convenience, the parties are referred to as per their rankings before the Tribunal.

4. It is the case of the claimants that son of the 1st claimant and brother of the claimants 2 to 4 died in a road accident that had taken place on 09.09.2018 involving the car, belonged to the deceased first respondent, insured with the second respondent. The 3rd respondent is the legal representative of the deceased owner of the car who was brought on record pending original petition. According to the claimants, the deceased travelled in a two-wheeler driven by PW2 as a pillion rider. The driver of the two-wheeler namely PW2 had driven the vehicle slowly and steadily on the extreme left-hand side of the Dharmapuri to Krishnagiri National Highway road. When he came near



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Sundekuppam Krishnar Kovil on the above said highway, a car belonged to the deceased first respondent, insured with the second respondent, which proceeded in front of a two-wheeler in a rash and negligent manner without any signal applied sudden brake. Therefore, the two-wheeler dashed against the car on the back side. Due to the said sudden impact, the deceased fell down and sustained fatal injuries. Later, he died on the way to the hospital. Therefore, the claim petition was filed seeking compensation of Rs.75,00,000/-.

5. The claim petition was opposed by the respondents on the ground that the accident had occurred only due to the rash and negligent driving of the two-wheeler by PW2 and there was no negligence on the part of the driver of the car.

6. Before the Tribunal, the 1st claimant, mother of the deceased was examined as PW1 and the driver of the two-wheeler was examined as PW2. On behalf of the claimants, 18 documents were marked as Exhibit P1 to Exhibit P18. On behalf of the second respondent, the



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official of RTO office was examined as RW1. The authorisation letter given to RW1 has been marked as Exhibit R1.

7. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the car by its driver. However, the Tribunal dismissed the claim petition against the third respondent, who was brought on record as the legal representative of the deceased owner of the car. The Tribunal also fastened 10% contributory negligence on the part of the driver of the two-wheeler. The amount payable to the claimants was quantified at Rs.26,28,200/-. After deducting 10% contributory negligence, directed the respondents 1 and 2 to pay a sum of Rs.23,65,380/-. Not satisfied with the quantum of compensation, the claimants have preferred CMA.No.884 of 2025 and the 2nd respondent/Insurance company filed a separate appeal in CMA.No. 1882 of 2024 questioning the negligence as well as quantum.



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8. The learned counsel for the claimants submitted that the deceased was a B.E. Civil Engineering graduate engaged in private construction and the Tribunal fixed only Rs.12,000/- as notional income and the same requires enhancement.

9. The learned counsel for the second respondent/ Insurance Company submitted that the driver of the two-wheeler did not possess any valid driving license and the two-wheeler dashed against the car insured with the second respondent from backside. Therefore, the contributory negligence fixed on the part of the driver of the two-wheeler shall be enhanced. The learned counsel further submitted that the driver of the two-wheeler was solely responsible for the accident.

10. In order to prove the negligence aspect, the claimants examined the driver of the two-wheeler as PW2. He clearly deposed that the car which proceeded in front of his two-wheeler suddenly stopped by application of a sudden brake without any signal in a rash and negligent manner. Therefore, his vehicle dashed against the back



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side of the car. It is also seen that FIR was also filed against the driver of the car as seen from Exhibit P1. In order to prove negligence on the part of the driver of the two-wheeler, the respondents failed to examine the driver of the car. In these circumstances, based on the evidence of PW2 and the contents of Exhibit P1, FIR, the Tribunal rightly came to the conclusion that the accident had occurred due to the negligence on the part of the driver of the car insured with the second respondent. However, the Tribunal fixed 10% contributory negligence on the part of the driver of the two-wheeler on the ground that he failed to produce valid driving license. In fact, the official of RTO office examined as RW1 had stated that the driver of the two wheeler did not possess valid driving license on the date of the accident. The Hon'ble Apex Court in the case of *Sudhir Kumar Rana Vs Surinder Singh and Others* reported in *(2008) 12 SCC 436* clearly held that mere non-possession of valid driving license could not be the ground to fix contributory negligence unless there is a positive evidence to show that the person who had driven the vehicle without a driving license by his negligence contributed to the accident. In the case on hand, as mentioned earlier,



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the respondents failed to examine the driver of the car and lead any contra-evidence as against the deposition of PW2. In these circumstances, as per the law laid down in ***Sudhir Kumar's case***, the finding rendered by the Tribunal fixing 10% contributory negligence on the part of the driver of the two-wheeler is unsustainable and the same is set aside.

11. The Tribunal, after coming to the conclusion that the accident had occurred primarily due to the negligence on the part of the driver of the car, erroneously dismissed the claim petition against the legal representative of the deceased owner of the car without arising any reason. In fact, in the operative portion of the award, the deceased first respondent/owner of the car and the second respondent/ insurer of the car have been directed to pay the compensation amount. When the first respondent died pending original petition and his legal representative was brought on record as third respondent, the Tribunal committed an error in dismissing the original petition as against the third respondent. Therefore, the dismissal of the original petition against the third



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WEB COPY respondent is set aside and this Court holds that 2nd and 3rd respondents are jointly and severally liable to pay the compensation amount.

12. It was vehemently contended by the learned counsel for the claimants that amount of Rs.12,000/- fixed by the Tribunal as notional income is very much on lower side. It is seen from Exhibit P9, course completion certificate issued by GKM College of Engineering and Technology, Chennai, the deceased completed BE Civil Engineering. Though it was claimed by the claimants that the deceased was doing private construction work, he failed to lead any evidence to substantiate the same. In any event, taking into consideration that the deceased was a BE(Civil Engineering) graduate and the date of accident, this Court feels that it would be appropriate to fix Rs.18,000/- as notional income of the deceased. Based on post mortem certificate, death certificate and transfer certificate marked as Exhibits P2, P3 and P18, the Tribunal fixed the age of the deceased at 21 years. Hence, 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



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WEB COPY amount shall be deducted towards personal expenses of the deceased.

Therefore, the loss of dependency would be Rs. 27,21,600/- which is calculated as follows:-

$$18,000 \times 1.4 \times 12 \times 18 \times 1 / 2 = \text{Rs. } 27,21,600/-$$

13. The Tribunal granted 10% enhancement towards conventional heads like loss of estate, funeral expenses and loss of consortium. The judgment in *Pranay Sethi* case was delivered on 31-10-2017 and the accident had occurred on 09-09-2018 well within three years. Therefore, the claimants are not entitled to 10% enhancement. Therefore, the amount awarded by the Tribunal under the heads loss of estate and funeral expenses are reduced to Rs.15,000/- each. The 1st claimant/ the mother of the deceased is entitled to Rs.40,000/- under the head parental consortium. The claimants 2 to 4, who are married sisters of the deceased, are entitled to Rs.40,000/- each under the head loss of love and affection. The total compensation amount payable to the claimants is enhanced to Rs.29,11,600/-.

14. In view of the discussions made earlier, the award passed by



WEB COPY the Tribunal is modified 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	24,19,200/-	27,21,600/-	Enhanced
2.	Loss of Estate	16,500/-	15,000/-	Reduced
3.	Funeral Expenses	16,500/-	15,000/-	Reduced
4.	Loss of Consortium (Claimants 1 to 4)	1,76,000/-	1,60,000/-	Reduced
	Total	26,28,200/-	29,11,600/-	Enhanced by Rs.2,83,400 /-
	Less:10%contributory negligence	2,62,820/-	Set aside	Set aside
	Net compensation	23,65,380/-	29,11,600/-	Enhanced by Rs.5,46,220 /-

15. With the above modifications, the Civil Miscellaneous Appeal filed by the claimants in CMA.No.884 of 2025 is allowed and the compensation awarded by the Tribunal at Rs.23,65,380/- is hereby enhanced to Rs.29,11,600/-. It is made clear that the



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WEB COPY appellants/claimants are not entitled to claim any interest for the delay period of 567 days in respect of the enhanced sum. The appellants/claimants are entitled to interest at the rate of 7.5% per annum (excluding the delay period of 567 days as per order in CMP.No.4265 of 2025) from the date of filing of the claim petition till the date of realization. The 2nd respondent /Insurance company is directed to deposit the enhanced award amount before the Tribunal 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.

16. As far as apportionment is concerned, the claimants 2 to 4/sisters of the deceased are entitled to Rs.40,000/- each and the remaining compensation amount of Rs.27,91,600/- is payable to 1st claimant/mother of the deceased.

17.The appellants/claimants in CMA.No.884 of 2025 are permitted 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. The appellants are directed to



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WEB COPY pay the proportionate additional court fee on the enhanced sum.

18. Accordingly, the Civil Miscellaneous Appeal preferred by the Insurance company in CMA.No.1882 of 2024 is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

26.03.2025

Index: Yes/No
Internet: Yes/No
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To

1. Motor Accident Claims Tribunal,
Special district Court, Krishnagiri.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTCHAR, J.

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