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CMA.No.542 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 01.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.542 of 2025

1. Devika
2. Minor Kesavarthini
3. Minor Pradeep
4. Nanjammal
5. Chinnakutti

... Appellants

Vs.

- 1.K.Narasimman
2. Sriram General Insurance Company Ltd.,
rep. by its Manager No.64, Pidamaneri Main Road,
Dharmapuri Town and Taluk,
Charmapuri District 636 701.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to enhance the compensation amount made in MCOP No.775 of 2022 dated 20.11.2024 on the file of the Presiding Officer, Motor Accident Claims Tribunal, Dharmapuri.

For appellants : Mr.S.Udhayakumar

For Respondents : Mr.B.Sivakolappan for second respondent



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JUDGMENT

Aggrieved by the award passed by the Tribunal, fixing compensation, after deducting 20% contributory negligence on the part of the deceased, the claimants have come before this court by filing the present appeal.

2. According to the claimants, the husband of the 1st claimant, father of the 2nd and 3rd claimants, son of the 4th and 5th claimants died in a road accident that had occurred on 20.06.2022. It is the case of the claimants that the deceased was proceeding in his motorcycle in Papparapatti-Pennagaram Road and when he came near Sitlakarampatti Jayavel's JSK Hallow Bricks, a car belonging to the first respondent and insured with the second respondent dashed against the two wheeler and hence, he sustained grievous injuries and died in the hospital. Therefore, the claimants filed claim petition seeking compensation of Rs.30,00,000/-.

3. The first respondent remained exparte before the Tribunal and the claim petition was contested by the second respondent/ insurance



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company, denying the manner of accident as narrated in the claim petition. It was the case of the Insurance company that the accident had occurred only due to the rash and negligent driving of the deceased.

4. Before the Tribunal, in order to prove the negligence on the part of the driver of the car, the claimants examined an eye witness as PW2. The driver of the car, insured with the second respondent was examined as RW1. On appreciation of evidence available on record, the Tribunal came to the conclusion that there was contributory negligence on the part of the deceased also and fixed 20% contributory negligence on the part of deceased and 80% on the part of the driver of the car. The amount payable to the claimants was quantified by the Tribunal at Rs.23,19,200/-, after deducting 20% towards contributory negligence. Aggrieved by the same, the claimants have come before this court by filing the present appeal.

5. The learned counsel for the appellant would submit that the Tribunal committed an error in fixing 20% contributory negligence on the part of the deceased. He also submits that the notional income fixed by the Tribunal at Rs.14,000/- is very much on lower side.



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6. The learned counsel for the second respondent would submit that the Tribunal, on proper appreciation of evidence on record, came to the conclusion that the deceased also contributed to the accident and rightly fixed 20% contributory negligence on the part of the deceased. He further submits that the claimants have not produced any documentary evidence to prove the income and avocation of the deceased and hence, the Tribunal was justified in fixing notional income at Rs.14,000/- per month.

7. The claimants examined an eyewitness as PW2 and he deposed that the accident had occurred only due to the rash and negligent driving of the car by its driver. The driver of the car was examined as RW1 and he deposed that the deceased had driven his motorcycle at high speed in a rash and negligent manner and dashed against the car. Taking into consideration the evidence of PW2 and RW1, the Tribunal fixed 80% contributory negligence on the part of the driver of the car and 20% on the part of the deceased. Having regard to the fact that the car is a heavy vehicle and the accident had occurred in a broad main road, the Tribunal was justified in fixing contributory



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negligence at 20% on the part of the deceased. Therefore, the said finding of the Tribunal requires no interference by this court.

8. It was stated in the claim petition that the deceased was a mason and he was earning a sum of Rs.25,000/- per month. However, there is no proof of income and avocation of the deceased, on the side of the claimants. Taking into consideration the facts and circumstances of the case, date of accident and also the prevailing cost of living, this court proceeds to fix a sum of Rs.18,000/- per month as notional income. The Tribunal fixed the age of the deceased as 38 years, based on the Ex.P5, School Transfer Certificate. Therefore, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier is 15. Since there were 5 dependents, on the date of accident, $\frac{1}{4}$ amount shall be deducted towards personal expenses of the deceased. Accordingly, loss of dependency is fixed at Rs.34,02,000/- ($18,000 \times 1.40 \times 12 \times 15 \times \frac{3}{4}$)

9. The amount awarded by the Tribunal under the heads loss of consortium, loss of love and affection, loss of filial consortium, loss of



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Estate and Funeral expenses are in accordance with the law settled by the Apex Court in *National Insurance Company Limited Vs. Pranay Sethi and others reported in AIR 2017 SC 5157* and hence, the same are confirmed.

10. Accordingly, the revised compensation awarded by this Court is tabulated 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	26,46,000	34,02,000	enhanced
2.	Loss of consortium to first claimant	44,000	44,000	confirmed
3	Loss of love and affection to claimants 2 and 3	88,000	88,000	confirmed
4.	loss of filial consortium to claimants 4 and 5	88,000	88,000	confirmed
5.	Loss of estate	16,500	16,500	confirmed
6.	Funeral expenses	16,500	16,500	confirmed
	Total	28,99,000	36,55,000	enhanced
	Less 20% towards contributory negligence	5,79,800	7,31,000	confired
	Compensation	23,19,200	29,24,000	enhanced by Rs.6,04,800



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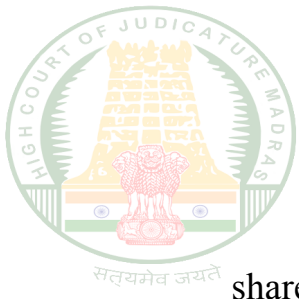
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12. With the above modifications, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.23,19,200/- is hereby enhanced to **Rs.29,24,000/-** together with interest at 7.5% per annum from the date of claim petition till the date of deposit. The claimants are directed to pay applicable court fee on the enhanced compensation amount now determined by this court.

13. From the above compensation now determined, the first claimant/wife is entitled to Rs.15,74,000/-, and the minors /claimants 2 and 3 are entitled to Rs.5,00,000/- each, and the claimants/father and mother are entitled to Rs.1,75,000/- each.

14. The **second respondent** 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 **four weeks** from the date of receipt of a copy of this judgment. On such deposit being made, the claimants 1, 4 and 5 shall be permitted to withdraw their respective compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal.

15. Since the claimants 2 and 3 being minors, their respective



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share shall be deposited in any one of the nationalized banks initially for a period of 3 years and the same shall be renewed periodically till their attainment of majority. The first claimant is entitled to withdraw the accrued interest thereon once in six months and the same shall be used for the welfare of the minors/ claimants 2 and 3.

There shall be no order as to costs.

01.04.2025

Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
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To

1. The Presiding Officer
Motor Accident Claims Tribunal,
Dharmapuri.
2. The Section Officer,
V.R.Section, Madras High Court.



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S.SOUNTHAR, J.

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