



C.M.A.No.1051 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 15.04.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.1051 of 2025

1.Gowri

2.Minor Suruthi

(Rep. by her next friend mother Gowri)

3.Iythal

... Appellants

VS.

1.Manimegalai

2.Royal Sundaram General Insurance Co. Limited.,
No.186/5, "Royal Towers",
3rd Floor, New Bus Stand Road, Meyyanur,
Salem District.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the appeal and enhance the award dated 13.10.2022 in MCOP No.674 of 2021 on the file of Special District Judge, MCOP Tribunal, Salem.

For Appellants : Mr.R.Navaneetha Krishnan

For R2 : Mr.G.Vasudevan

For R1 : Notice Dispensed With



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J U D G M E N T

WEB COPY Not satisfied with the quantum of compensation awarded by the Special District Judge, MCOP Tribunal, Salem in M.C.O.P.No.674 of 2021, dated 13.10.2022, the claimants have come before this Court.

2. According to the appellants/claimants, the husband of the 1st claimant, father of the 2nd claimant and son of the 3rd claimant namely Krishnamoorthy died in a road accident that had taken place on 04.10.2020. According to them, the deceased was riding his two wheeler on the extreme left side of Omalur-Sankari Main Road. When he came near Konganapuram State Bank, a mini lorry bearing Registration No.TN-70-Q-8705 belonged to the 1st respondent and insured with the 2nd respondent came in a rash and negligent manner in the opposite direction and dashed against the two wheeler. As a result of the said accident, the said Krishnamoorthy died and hence, a claim petition was filed seeking compensation of Rs.70,00,000/-.

3. The 1st respondent-owner of the mini lorry remained *exparte* before the Tribunal and the claim petition was opposed by the 2nd respondent-insurer of the mini lorry by denying the manner of accident as averred in the



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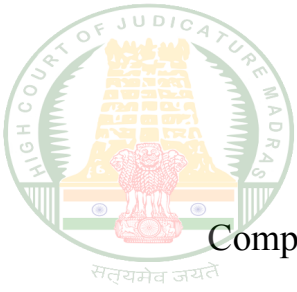
claim petition. It was the case of the 2nd respondent before the Tribunal that accident had occurred only due to the negligence on the part of the deceased.

4. Before the Tribunal, the 1st appellant/1st claimant was examined as PW.1 and 12 documents were marked as Exs.P1 to P12 on behalf of the claimants. On behalf of the respondents, no witness was examined and no document was marked.

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 mini lorry. The compensation payable to the claimants was quantified at Rs.13,25,000/-. Not satisfied with the quantum of compensation, the claimants have come before this Court.

6. The learned counsel appearing for the appellants/claimants would submit that the Tribunal committed an error in fixing meagre notional income of Rs.10,000/- that too including the future prospects and therefore, it requires enhancement.

7. The learned counsel appearing for the 2nd respondent/Insurance



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Company would submit that claimants have not produced any documentary evidence to prove the avocation and income of the deceased and hence, the Tribunal was justified in fixing Rs.10,000/- as notional income of the deceased.

8. In the claim petition it was stated by the claimants that the deceased was owner-cum-driver of Mahindra Bolero city pick up vehicle and he was also doing agricultural work at the relevant point of time. It was also stated that he was earning a sum of Rs.35,000/- per month. However, in order to prove the avocation and income of the deceased, the claimants have not produced any documentary evidence. Even if there is no documentary evidence to prove the income of the deceased, the Court by taking into consideration the facts and circumstances of the case, can fix notional income.

9. In the case on hand, the claimants had stated that the deceased owned Mahindra Bolero city pick up vehicle and was earning Rs.35,000/- per month. Taking into consideration the date of accident and prevailing cost of living, this Court is inclined to fix Rs.16,500/- as notional income of



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the deceased. As per Ex.P11-Driving Licence of the deceased, his age was fixed at 37 years by the Tribunal. Therefore, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier is 15. Since there are three dependents, $1/3^{\text{rd}}$ of the amount shall be deducted towards his personal expenses. Accordingly, the loss of dependency is fixed at Rs.27,72,000/- ($16,500 \times 1.4 \times 12 \times 15 \times 2/3$).

10. The 1st claimant-wife of the deceased is entitled to Rs.40,000/- towards loss of consortium. The 2nd claimant-minor daughter of the deceased is entitled to Rs.40,000/- towards loss of love and affection. The 3rd claimant-mother of the deceased is entitled to Rs.40,000/- towards parental consortium as per the law laid down by the Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***

11. The amount awarded by the Tribunal under the head loss of love and affection is modified accordingly. In addition to the above said sum, the claimants are entitled to Rs.30,000/- under the heads funeral expenses and loss of estate.



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WEB COPY 12. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Loss of dependency	Rs.12,00,000/-	Rs.27,72,000/-	Enhanced
2.	Loss of Love and Affection to 2 nd claimant and loss of parental consortium to 3 rd claimant.	Rs.60,000/-	Rs.80,000/-	Enhanced
3.	Loss of Consortium to 1 st claimant	Rs.40,000/-	Rs.40,000/-	Confirmed
4.	Funeral Expenses and Loss of Estate	Rs.25,000/-	Rs.30,000/-	Enhanced
Total		Rs.13,25,000/-	Rs.29,22,000/-	Enhanced by Rs.15,97,000/-

13. Accordingly, the total award amount payable to the claimants is fixed at Rs.29,22,000 as against Rs.13,25,000/- awarded by the Tribunal. Out of the above said sum, the 3rd claimant-mother of the deceased is entitled to Rs.4,00,000/-. The 2nd claimant-minor daughter of the deceased is entitled to Rs.10,00,000/-. The 1st claimant-wife of the deceased is entitled to Rs.15,22,000/-.

14. The 2nd Respondent/Insurance Company is directed to deposit the



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enhanced award amount of Rs.29,22,000/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, to the credit of M.C.O.P.No.674 of 2021 on the file of the Special District Judge, MCOP Tribunal, Salem, within a period of six weeks from the date of receipt of copy of this judgment.

15. On such deposit, the claimants 1 and 3 are permitted to withdraw their share of the award amount by making formal application before the Tribunal.

16. The share of the minor 2nd claimant shall 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 she attains majority and the 1st appellant/1st claimant, being the Natural Guardian of the minor 2nd claimant, 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 claimant.



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17. With the above directions, the Civil Miscellaneous Appeal is allowed. The appellants/claimants are directed to pay applicable additional court fee. It is made clear the claimants are not entitled to claim interest for the delay period of 734 days. No costs.

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Index :Yes/No
Speaking order :Yes/No
Neutral Citation :Yes/No
dm



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- 3.The Section Officer,
VR Section, High Court,
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S.SOUNTHAR, J.

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