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CMA.No.2630 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 12.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.2630 of 2021

1. Selvi
2. Chinnapapu

Rajamanickam (died)

... Appellants

Vs.

1. P.Sumesh
2. The United India Insurance Company Limited,
Rep. by its Manager, MO Office, 22-B, 11,
Krishnaveni Complex, Pallipalayam,
Namakkal District.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to enhance the compensation made in the award and judgment in MCOP No.53 of 2017 dated 12.12.2018 on the file of the Special District Judge, Motor Accident Claims Tribunal, Erode.

For appellants: Mr.C.Kulanthaivel

For Respondent: Mr.J.Chandran, second respondent

JUDGMENT



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This civil miscellaneous appeal has been filed by the claimants challenging the fixation of contributory negligence as well as seeking enhancement of compensation awarded by the Tribunal in MCOP No.53 of 2017, dated 12.12.2018.

2. It is the case of the appellants/claimants that the husband of the first claimant, son of the claimants 2 and 3 was proceeded with his TVS motorcycle on 12.10.2016 on the Pallipalayam to Komarapalayam road and when he approached the Aavathipalayam Arasankadu Bus stop, a car belonging to the first respondent, insured with the second respondent came in the opposite direction and dashed against the two wheeler driven by the deceased. Due to the accident, he was thrown out from the vehicle and sustained grievous injuries and subsequently, he died in the hospital. The claimants filed claim petition seeking compensation of Rs.25,00,000/-.

3. The first respondent, owner of the vehicle remained exparte before the Tribunal. The claim petition was resisted only by the second respondent/insurance company by filing counter. The second



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respondent claimed that the accident had occurred only due to the negligence on the part of the deceased and sought for dismissal of the claim petition.

4. Pending claim petition, the 3rd claimant, father of the deceased died and the claim petition was pursued by the claimants 1 and 2.

5. Based on the evidence available on record, the Tribunal came to the conclusion that the accident had occurred in the middle of the road and therefore, both the deceased and the first respondent, who had driven the car were equally responsible for the accident and fixed 50 % contributory negligence on the part of the deceased. The amount payable to the claimant was quantified at Rs.4,64,250/-, after deducting amount towards contributory negligence. Aggrieved by the same, the claimants have come before this court.

6. The learned counsel for the appellant would submit that the



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accident had taken place only due to the negligent driving of the first respondent and the Tribunal committed serious error in fixing 50% contributory negligence on the part of the deceased. He further submits that the notional income fixed by the Tribunal at Rs.6,500/- is very much on lower side and the same needs enhancement.

7. The learned counsel for the second respondent/ insurance company would submit that the Tribunal, based on the rough sketch Ex.P3, fixed contributory negligence on the part of the deceased and the same is based on proper appreciation of evidence. He further submits that the claimants have not produced any document to substantiate the actual income of the deceased and hence, the Tribunal was justified in fixing a sum of Rs.6,500/- as notional income.

8. In order to prove the negligence on the part of the driver of the car, the claimants examined an eye witness to the accident as PW2 and he clearly deposed about the rash and negligent driving of the car belonged to the first respondent. The First Information Report Ex.P1 also proved that the case was registered against the driver of the car. A



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perusal of rough sketch Ex.P3 would indicate that the accident had occurred in the middle of the road. Based on Ex.P3, the Tribunal fixed 50% contributory negligence on the part of the deceased. The deceased was driving his two wheeler and the other vehicle involved in the accident is a car owned by the first respondent. The PW2, eye witness to the accident speaks about the rash and negligent driving on the part of the driver of the car. Therefore, the Tribunal was not justified in fixing 50% contributory negligence on the part of the deceased, who had driven a two wheeler. Taking into consideration the entire facts and circumstances of the case, this court is inclined to fix 40% contributory negligence on the part of the deceased and 60% on the part of the driver of the car.

9. In the claim petition, it was stated by the claimants that the deceased was employed in courier service and was earning a sum of Rs.12,000/- per month. The employer of the deceased was examined as PW3 and he also produced salary certificate issued to the deceased and the same was marked as Ex.P8. The Tribunal committed a serious error in ignoring the evidence of PW3 merely on the ground that the



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attendance register, salary book and other relevant material documents were not produced. Even if there is no other positive evidence to prove the income of the deceased, in the light of the evidence of PW3 and documentary evidence of Ex.P8, this court is inclined to fix income of the deceased at Rs.12,000/- per moth.

10. As per Ex.P6 postmortem certificate, the age of the deceased was 46 years and hence, the Tribunal was right in giving 25% enhancement towards future prospects. The applicable multiplier is 13. There were three persons depending on the deceased at the time of filing claim petition and hence, 1/3 should be deducted towards personal expenses of the deceased. Accordingly, the claimants are entitled to a sum of Rs.15,60,000/- ($12,000 \times 1.25 \times 12 \times 13 \times \frac{2}{3}$) under the head loss of dependency.

11. Apart from the above compensation, the first claimant/ wife is entitled to Rs.40,000/- towards loss of consortium and the second claimant/ mother of the deceased is entitled to Rs.40,000/- towards loss of filial consortium. Further, the claimants are entitled to Rs.15,000/-



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each towards loss of estate and funeral expenses. However, the compensation of Rs.10,000/- awarded by the Tribunal towards transport expenses is set aside, as it was covered by the compensation towards loss of estate.

12. Accordingly, the compensation awarded by the Tribunal is revised 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	8,38,500	15,60,000	enhanced
2.	Loss of consortium to first claimant	40,000	40,000	confirmed
3.	Loss of filial consortium to 2nd claimants	25,000	40,000	enhanced
4.	Loss of estate	--	15,000	granted
5.	Funeral expenses	15,000	15,000	confirmed
6.	Transportation charges	10,000	--	set aside
	Total	9,28,500	16,70,000	
	Deduct contributory negligence	4,64,250 (50%)	6,68,000 (40%)	
	Compensation	4,64,250	10,02,000	enhanced by 5,37,750

13. With the above modifications, this Civil Miscellaneous



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Appeal is allowed and the compensation awarded by the Tribunal at Rs.4,64,250/- is hereby enhanced to **Rs.10,02,200/-** together with interest at 7.5% per annum (*excluding delay period interest for 340 days on enhanced compensation, as per order in CMP No.10480 of 2021, dated 08.09.2021*) from the date of petition till the date of deposit. The appellants are directed to pay the applicable court fees for the enhanced compensation now determined by this court.

14. From the above enhanced compensation, the second claimant/ mother of the deceased is entitled to Rs.2,25,000/- towards her share and the first claimant/wife of the deceased is entitled to the remaining compensation amount as her share.

15. The second respondent/insurance company 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 **six weeks** from the date of receipt of a copy of this judgment. On such deposit, the claimants shall be permitted to withdraw their respective shares along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal.



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There shall be no order as to costs.

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

1. The Special District Judge,
Motor Accident Claims Tribunal, Erode.
2. The Section Officer,
V.R.Section, Madras High Court.



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S.SOUNTCHAR, J.

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