



CMA Nos.2640 & 3517 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 10.09.2025

CORAM:

**THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NOS.2640 and 3517 of 2021

AND

CMP NO.15096 of 2021

CMA NO.2640 of 2021

The Oriental Insurance Co. Ltd.,
Rep., by its Branch Manager,
Office at Gopal Rao Library Building,
Town Hall Road, Kumbakonam Town.

... Appellant /
Respondent No.2

Vs.

1.Thillaiyammal
2.Sudha
3.Minor Suba

... Respondent Nos.1 to 3/
Petitioners

4.Abdul Kader @ Mohamed Abdur Kader

... Respondent No.4/
Respondent No.1

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated November 20, 2019 passed in M.A.C.T.O.P No.106 of 2017 on the file of the Motor Accidents Claims Tribunal, (District Court), Karaikal.



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CMA Nos.2640 & 3517 of 2021

For Appellant : Mr.S.Arunkumar

For Respondent Nos.1 to 3 : Mr.K.Varadhakamaraj

Respondent No.4 : Set exparte before the Trial Court
: Notice to R4 is dispensed with vide this order.

CMA NO.3517 of 2021

1.Thillaiyammal

2.Sudha

3.Minor Suba

... Appellants/Petitioners

Vs.

1.Abdul Kader @ Mohamed Abdul Kader

2.The Oriental Insurance Company Limited,
Represented by its Branch Manager,
Office at Gopal Rao Library Building,
Town Hall Road,
Kumbakonam Town

...Respondents/Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award dated November 20,2019 passed in M.A.C.T.O.P No.106 of 2017 on the file of the Motor Accidents Claims Tribunal, (District Court), Karaikal.

For Appellant : Mr.K.Varadha Kamaraj

For Respondent No.2 : Mr.S.Arunkumar

Respondent No.1 : Set exparte before the Tribunal
Steps not taken to effect service.

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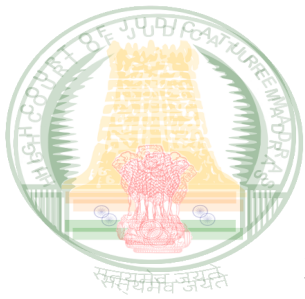
COMMON JUDGMENT

M.S.RAMESH, J.
AND
R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated November 20, 2019 passed by the 'Motor Accidents Claims Tribunal, (District Court), Karaikal, ['Tribunal' for short] in M.A.C.T.O.P No.106 of 2017, the second respondent therein / Insurance company has preferred CMA.No.2640 of 2021 questioning the quantum of compensation awarded, whereas the petitioners therein has preferred CMA.No.3517 of 2021 seeking enhancement of compensation, Both the Civil Miscellaneous Appeals will be disposed of by this Common Judgment.

2. For the sake of convenience, the parties herein will hereinafter be referred to as per their rank in the Motor Accident Claims Original Petition.

PETITIONER'S CASE



3. On March 12, 2017, at around 10:00 PM, the deceased Sudhakaran was walking on the extreme left side of the Thittacherry Main Road, Vazhmangalam, near Pillaiyar Koil. At that time, the first respondent drove a motorcycle bearing Registration No. PY-02-Q-6365 in a rash and negligent manner, hit Sudhakaran from behind and caused severe internal injuries. Sudhakaran was rushed to Government Hospital, Karaikal where he received treatment as an in-patient and was then referred to a Hospital in Thanjavur, but unfortunately, he succumbed to his injuries on the way. A complaint was lodged and an First Information Report (FIR) under Section 304 (A) of Indian Penal Code, 1860 was registered against the first respondent in Crime No. 107/2017 by Thittacherry Police. Therefore, the claimants have preferred the claim petition seeking compensation of Rs.35,00,000/- for the loss and death of the deceased-Sudhakaran from the respondents.

FIRST RESPONDENT'S CASE

4. The first respondent is the owner cum driver of the alleged offending motorcycle bearing Registration No.PY-02-Q-6365. He remained absent before the Tribunal and was hence set *ex-parte*.



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SECOND RESPONDENT'S CASE

5. The second respondent/ Insurer of the first respondent's motorcylce, filed a counter stating that the claim petition is not sustainable against the second respondent and prayed for exoneration from liability, on the grounds that the rider of the offending vehicle did not possess a valid driving license to drive a geared motorcycle at the time of the accident, thus, constituting a clear violation of the policy conditions. Further, it was contended that the second petitioner, being married and settled with her husband and children, is not entitled to compensation. The third petitioner, having attained majority, is capable of acting for herself. Furthermore, the compensation claimed was excessive, and accordingly, the second respondent sought dismissal of the claim petition.

TRIBUNAL

6. In order to prove the statements made in the claim petition, the first petitioner was examined as P.W.1 and one Mr.Saravanaselvam was examined as P.W.2 and Ex-P.1 to Ex-P.9 were marked. On the side of the respondents, One Mahalingam, Assistant from Regional Transport Office (RTO), Nagapattinam, was examined as R.W.1 and Ex-R.1 and Ex-R.2



were marked.

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7. The Tribunal based on the evidence and oral arguments, came to the conclusion that the accident happened due to the rash and negligent driving of driver of the first respondent's vehicle, that the first respondent did not possess a valid driving licence at the time of accident, and that the first respondent's vehicle was insured with the second respondent. Accordingly, the Tribunal directed the second respondent to pay compensation and recover the same from the first respondent. The compensation awarded by the Tribunal under various heads are as tabulated hereunder:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount</i>
1.	Notional Income	Rs.13302/-
2.	Future Prospects (40%)	Rs.18622/-
3.	Personal Deduction (1/2)	Rs.9311/-
4.	Multiplier (18)	Rs.20,11,176/-
5.	Loss of Love and Affection 1 st petitioner	Rs.1,00,000/-
	2 nd and 3 rd Petitioners (Rs.50,000/- each)	Rs.1,00,000/-
7.	Loss of Estate	Rs.15,000/-
8.	Funeral Expenses	Rs.15,000/-
Total Compensation		Rs.22,41,176/-



8. Feeling aggrieved by the Award, the petitioners have filed the appeal in CMA.No.3517 of 2021 praying for enhancement of compensation, while the second respondent / Insurance company has filed the appeal in CMA.No.2640 of 2021, assailing the quantum awarded by the Tribunal.

ARGUMENTS:

9. Mr. S. Arunkumar, learned Counsel for the Appellant in C.M.A. No.2640 of 2021/ second respondent argues that the first respondent had no driving licence at all and the said fact was proved through examination of R.W.1, who is an Assistant attached to the office of RTO, Nagapattinam. Driving without a valid driving licence is violation of the terms and conditions of the Insurance Policy and hence, the Insurance Company cannot be held liable to compensate the petitioners. The Tribunal rightly held that the first respondent did not possess a valid driving licence and violated the terms of the insurance policy but erred in ordering pay and recovery on the Insurance Company. He further argues that the Tribunal is not justifiable in fixing the notional income excessively at Rs.13,302/- without any proper basis for the same. Further, the Tribunal erred in awarding Rs.2,00,000/- under the head of loss of love and affection, which



is not in tune with the Judgment of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi***, reported in ***(2017) 16 SCC 680***.

Accordingly, he would pray to allow the Civil Miscellaneous Appeal in C.M.A. No.2640 of 2021, exonerate the Insurance Company from the liability and dismiss C.M.A. No.3517 of 2021.

10. On the other hand, Mr. K. Varadhakamaraj, learned Counsel for the appellants in C.M.A. No.3517 of 2021 / petitioners argues that the petitioners proved that the accident occurred due to rash and negligent driving of the first respondent, by examining P.W.2 -ocular witness to the accident and also by marking Ex.P1 -FIR & Ex.P9- Accident Inspection Report (AIR). Admittedly, the first respondent's vehicle was under the insurance coverage of the second respondent for third party damages. Hence, the respondents are liable to compensate the petitioners.

10.1. He further argues that the Tribunal ought to have at least taken Rs.500/- as the daily income of the deceased ie., Rs.15,000/- per month, in view of the evidence of P.W.1. Further, the Tribunal ought to have considered the fact that the first petitioner is a widow and the 2nd and 3rd petitioners are unmarried and deducted only 1/3rd of the income as personal deduction. The Tribunal erred in mechanically deducting ½ of the income



on the ground that the deceased was a bachelor without considering the facts and circumstances of the case. Accordingly, he prays for enhancement of compensation awarded by the Tribunal.

DISCUSSION:

11. Heard on either side. Perused the evidence available on record. The points that arise for consideration in these Civil Miscellaneous Appeals are:

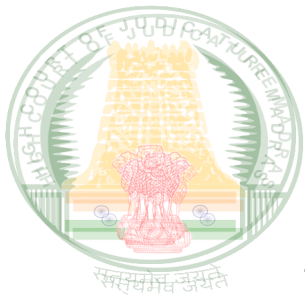
(i) Whether the notional income fixed by the Tribunal at Rs.13,302/- per month is correct?

(ii) Whether the Tribunal is justifiable in deducting $\frac{1}{2}$ from the income of the deceased towards his personal expenses?

(iii) Whether the compensation awarded by the Tribunal under the head of loss of love and affection is in tune with *Pranay Sethi's Case*?

(iv) Whether pay and recovery on the Insurance Company ordered by the Tribunal is right?

1. Case of the petitioners is that the first respondent rode a motorcycle in a rash and negligent manner on March 12, 2017, hit the deceased



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-Sudhakaran who was walking on the extreme left of an East-West Main Road from behind, and caused severe internal injuries leading to Sudhakar's death. To prove their case, the petitioners examined P.W.2- Saravana Selvam, an ocular witness to the accident and marked Ex.P.1- FIR registered against the first respondent and Ex.P.9, *prima facie* proves

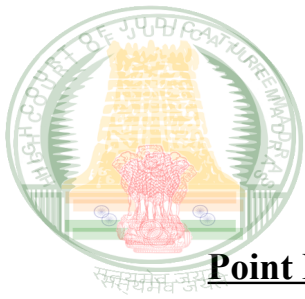
that the accident occurred due to the rash and negligence of first respondent. There is no evidence to the contrary. Hence, the Tribunal is right in concluding that the accident occurred due to the rash and negligence on the part of the first respondent. There is no need to interfere with the same. Moreover, the cause and manner of accident is not in serious dispute before this Court. The main contentions on either side are related to the quantum of compensation and the order quo pay and recovery.

Point No.(i)

13. As regards the income, P.W.1 / first petitioner has stated in the Original Petition as well as in her evidence that the deceased was working as an electrician under one contractor – Saravana Selvam after pursuing electrical course from an Industrial Training Institute (ITI) and thereby earned a sum of Rs.500/- per day. However, there is no documentary



evidence in support of the same. Ex.P.7 – Course Certificate marked on the side of the petitioners shows that the deceased did not complete the course as alleged, instead he was dropout from “Trade Fitter Course” offered by Srinivasa Industrial Training Institute. As per Ex.P.8 -XII Marksheet, his date of birth is May 18, 1998. As per post-mortem report, his age is 20 years old. Furthermore, PW-2 in his testimony, stated that the deceased was earning Rs.500/- per day. Even if this daily wage is taken at its face value, the Tribunal has reasonably determined the notional monthly income after accounting for four days of leave per month. As there was no direct documentary evidence in support of the income of the deceased, the Tribunal by relying on the by relying on the Judgment of Hon'ble Supreme Court in *Syed Sadiq -vs- United India Insurance Company Limited*, reported in **2014 (1) TNMAC 459** and Judgment of this Court in *Andal -vs- Abhinav Kannan* reported in **2019 (1) TNMAC 54 (DB)**, fixed the notional income of the deceased at Rs. 13,302/- by adopting inflation index method with the base salary as Rs.6,500/- for the year 2008 [Rs.6,500/- X 264/129 =Rs.13,302/-]. In the facts and circumstances of the case and in view of the evidence available on record, this Court finds the notional income fixed at Rs.13,302/- per month justifiable and hence, there is no reason to interfere with the same. **Point No.(i) is answered accordingly.**



Point No.(ii)

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14. As regards personal deduction, admittedly, the first petitioner is the mother while the 2nd and 3rd petitioners are the sisters of the deceased-Sudhakaran. The first petitioner's husband pre-deceased her. The deceased -Sudhakaran passed away as a Bachelor. According to the second respondent, at the time of accident, the second petitioner was married and settled along with her husband and hence, not entitled to any compensation. The petitioners did not controvert/deny the said averment. The 3rd petitioner was born on July 14, 2000. Ex.P5-Study certificate issued by Headmaster, Government Higher Secondary School, Thittacherry, proves the same. Hence, the contention raised by the 2nd respondent in its counter that the third petitioner was a major, at the time of accident does not hold water.

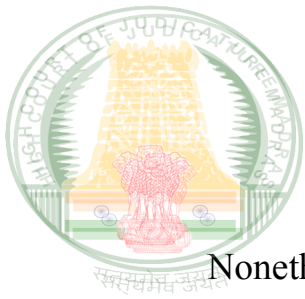
15. As per the Judgment of the Hon'ble Supreme Court in ***Sarla Verma -vs- Delhi Transport Corporation***, reported in ***(2009) 6 SCC 121*** [See Paragraph Nos.31 and 32], if the deceased is a bachelor, $\frac{1}{2}$ is the appropriate deduction. The rationale behind the same is that bachelors tend to spend more on themselves and their contribution to the family would likely be less. However, if the petitioners succeed in proving otherwise,



then lesser personal deduction may be made, as per *Sarla Verma's Case*. In this case, the petitioners have failed to satisfactorily show that the 2nd and 3rd petitioners were financially dependent on the income of the deceased. Hence, this Court is of the view that the Tribunal is justifiable in deducting ½ towards personal deduction. **Point No.(ii) is answered accordingly.**

Point No.(iii)

16. The Tribunal relying on the Judgment of the Hon'ble Supreme Court in *Sunita Tokas -vs- New India Insurance Company Limited*, reported in **CDJ 2019 SC 922**, awarded Rs.1,00,000/- as compensation to the mother first petitioner and Rs.50,000/- each to the 2nd and 3rd petitioners towards loss of love and affection. In the Judgment of Hon'ble Supreme Court relied on by the Tribunal, the compensation awarded by the Tribunal therein qua consortium was merely confirmed jointly along with the compensation under certain other heads, without discussing the same individually. The main question there was whether multiplier to be applied in case of a bachelor's death be on the basis of age of the bachelor or that of the mother. The compensation under the head of loss of love and affection/consortium does not appear to be in issue before the Hon'ble Supreme Court. Hence, it cannot be considered as a *ratio decidendi*.



Nonetheless, though the 2nd and 3rd petitioners may not be financially dependent on the deceased, they would obviously be deprived of the brotherly care, assistance, advise, companionship, emotional support, guidance *etc.* Their sufferings would have been deep felt, given that their father was not alive. In view of the facts and circumstances of the case, this Court is not inclined to interfere with the compensation awarded by the Tribunal under the head 'loss of love and affection'. To be noted, the above finding is based on the basis of the unique facts and circumstances of the case and shall not serve as a precedent for other cases. **Point No.(iii) is answered accordingly.**

Point No.(iv)

17. As regards pay and recovery, the Insurance Company has proved that at the time of accident the first respondent did not possess a valid and effective driving licence, by examining the R.W.1 Assistant attached to RTO, Nagapattinam. As per the terms of Ex-P.3 Insurance Policy, driving vehicle without a valid driving licence for the same is not permissible and a violation of the policy. Hence, the first respondent had violated the terms of Ex-P.3 -Insurance Policy. Considering the fact that compensation under the Motor Vehicles Act, 1988 is a scheme of social beneficial legislation,



and taking note of the fact that it would practically be an arduous task or even impossible in certain circumstances for the petitioners to realise the compensation amount directly from the first respondent, and also bearing in mind that the petitioners are all women, that the first petitioner is a widow and that the third petitioner is a minor, and further that delayed compensation would cause great injustice to them, this Court is of the view that, in the interest of justice, ordering the Insurance Company to pay the compensation and then to recover the same from first respondent is appropriate. Further, in CMA No.2640 of 2021, notice sent to the 1st respondent was returned with postal endorsement as "No such person". Thereafter, the appellant/2nd respondent did not take any steps to effect service. Hence, CMA No.2640 of 2021 was dismissed against the 1st respondent vide order of this Court dated December 23, 2022. Moreover, the Insurance Company is in a better position to realise the amount from first respondent. Hence, the Tribunal is right in ordering pay and recovery on the Insurance Company. **Point No.(iv) is answered accordingly.**

18. The other aspects of the Award are not in dispute and hence need not be delved into by this Court. In view of the foregoing narrative, the



CMA Nos.2640 & 3517 of 2021

Civil Miscellaneous Appeals are liable to be dismissed as devoid of merits.

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CONCLUSION:

19. Resultantly, both the Civil Miscellaneous Appeals stand dismissed. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

[M.S.R., J.]

[R.S.V., J.]

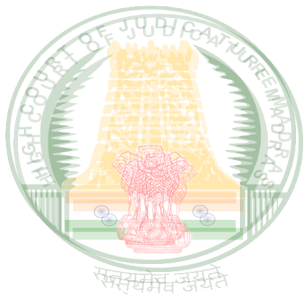
10.09.2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
Jai/Lbm

To

1.The Motor Accidents Claims Tribunal
(District Judge) Karaikal.

2.The Section Officer,
V.R.Section,
Madras High Court,
Chennai.



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