



WEB COPY



C.M.A.No.724 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	12.06.2025
Pronounced on	03.07 .2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.No.724 of 2022

1. Sagunthala

2. Lakshmi

...Appellants

Vs.

1. Rajkumar

2. Rangaraj

3. The Manager

The Oriental Insurance Company Limited,

Office at No.209, Shriram Nilayam,

Hospital Road, Udhagamandalam

Nilgiris 643 001

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the judgment and Award of the Motor Accident Claims Tribunal (Special District Judge Court), Erode in M.C.O.P. No.630 of 2018 dated 28.09.2021.



WEB COPY



C.M.A.No.724 of 2022

For Appellants : Mr.J. Pragadeesh
for Mr. S. Kaithamalai Kumaran
For Respondents : No Appearance

JUDGMENT

Award in M.C.O.P. No.630 of 2018 dated 28.09.2021 on the file of the Motor Accident Claims Tribunal (Special District Judge Court), Erode, is under challenge in this appeal at the instance of the claimants before the Tribunal. The respondents herein are the respondents before the Tribunal.

2. The short facts of the case are as follows:

2.1 On 06.06.2018, at about 1.45 a.m, the first respondent in a negligent manner and without following the traffic rules parked the lorry bearing Registration Number TN 21 T 3254 on Kunnathur Road flyover at Coimbatore-Salem NH 544 Main road and at that time the deceased Anguraj drove his Bolero Pick up vehicle bearing Registration No.TN 36 AW 7193 towards west-east direction carefully with nominal speed and dashed against the Tata lorry bearing Registration Number TN 21 T 3254. As a result of the accident, the deceased suffered multiple grievous head injuries. Immediately



C.M.A.No.724 of 2022

WEB COPY

the said Anguraj was taken to Government Hospital, Tirupur, where he was declared brought dead.

2.2. According to the claimants, the deceased Anguraj was 29 years old at the time of accident and was working as a driver in Times of India Newspaper at Coimbatore and was earning not less than Rs.25,000/- per month. The first and second claimants are mother and grand mother respectively, of the deceased Anguraj. They filed the above claim petition claiming compensation of Rs.35,55,000/- for the death of the deceased Anguraj.

2.3. The third respondent/Insurance Company contested the Claim Petition by stating that the lorry bearing Registration Number TN 21 T 3254 was parked on the left hand side of the road following the traffic rules and at that time, the deceased, who drove the Bolero vehicle bearing Registration Number TN 21 T 3254 came in a rash and negligent manner and hit the parked lorry from behind. Hence, the deceased alone invited the accident and responsible for the same and therefore, the third respondent/Insurance



C.M.A.No.724 of 2022

Company is not liable to pay any compensation.

WEB COPY

2.4. Before the Tribunal the first claimant examined himself as P.W.1 and one Prabhakaran as P.W.2 and marked Ex.P1 to Ex.P15 and no evidence was let in on the side of the respondents.

2.5. Based on the materials on record, the Tribunal fixed 50% contributory negligence on the part of the deceased and awarded a sum of Rs.7,70,750/- as compensation to be paid by the third respondent/Insurance Company with 7.5% interest per annum from the date of claim petition till the date of realisation.

3. Aggrieved by this, the present appeal is preferred. Though the name of the respondents are printed in the cause list after due notice, there is no representation on the side of the respondents.

4. The learned counsel for the appellants/claimants submitted that

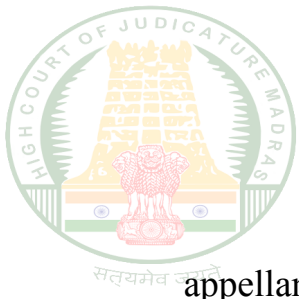


C.M.A.No.724 of 2022

WEB COPY

the occurrence took place at 1.45 a.m and that the first respondent had parked the vehicle in the fly over without switching on the parking lights and without placing parking symbols and the same has been established through the oral evidence of P.W.2. His further contention is that once substantive evidence before the Tribunal established that the lorry had been parked on the road at night without any parking symbols, there was no reason or justification for the Tribunal to proceed on the basis of conjecture in arriving at a finding of contributory negligence. Therefore, the Tribunal erred in holding that both vehicle drivers have contributed to the accident and accordingly apportioning the liability in the ratio 50:50 between the deceased and the first respondent. Hence, the same requires interference by this Court.

4.1. He further submitted that at the time of accident, the deceased was working as a driver and earning a sum of Rs.25,000/- per month and was getting 25% as yearly bonus. The same is established through the oral evidence of P.W.2 and Ex.P15. The Tribunal, however, fixed the notional monthly income of the deceased as Rs.10,000/- by holding that no proof of income was produced on the side of the claimants. Learned counsel for the



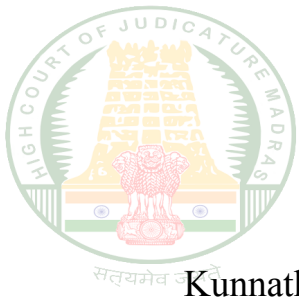
C.M.A.No.724 of 2022

WEB COPY

appellants/claimants would submit that for the accident occurred in the year 2019, this Court, in C.M.A. No.456/2025, fixed the income of the deceased as Rs.15,000/- per month even in the absence of proof of income. Therefore, prays for fixing the same income in the present case. In support of his contentions, the learned counsel for the appellants relied on the following decisions.

1. *2018 SCC online Mad 13886 (United India Insurance Company Limited vs. Kalaivani and others)*
2. *(2020) 5 Supreme Court Cases 807 (Jumani Begam vs. Ram Narayan and others)*
3. *C.M.A. No.456 of 2025 dated 19.02.2025 (Radha and others vs. A. Rajamani and another)*
4. *C.M.A. No.3019 of 2023 dated 04.06.2025 (S. Venkatesan vs. The Managing Director Metropolitan Transport Corporation Limited, Chennai)*

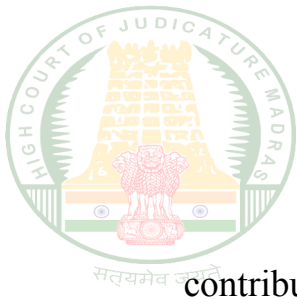
5. It is not in dispute that the 1st respondent parked the lorry at



C.M.A.No.724 of 2022

WEB COPY

Kunnathur road fly over at the time of accident. It is also not in dispute that the deceased Anguraj drove the Bolero Pick up vehicle bearing Registration No.TN 36 AW 7193 and dashed against the Tata lorry bearing Registration Number TN 21 T 3254. It is also not in dispute that the alleged accident took place on 06.06.2018 at about 1.45 a.m. The specific contention of the claimants is that the 1st respondent parked the lorry without any indicator in the night hours. This contention of the claimants was corroborated by the evidence of P.W.2. No contra evidence was let in on the side of the respondents. At the same time, the responsibility of the deceased who drove the Bolero vehicle, cannot be ignored as immaterial even though the other vehicle was parked on the road without proper signal. Needless to say that the driver of the moving vehicle should have been much more careful and cautious while driving the vehicle, more particularly, when he was driving the vehicle during dark hours. Therefore, the collision between the two vehicles would undoubtedly indicate that the deceased was also negligent and thus, contributed to the accident. On the part of the other parked vehicle, it ought to have been parked on the road with proper signal, that too, during night hours. Therefore, the Tribunal has rightly held that both of them



C.M.A.No.724 of 2022

WEB COPY

contributed to the accident. However, while fixing the percentage of negligence on each party, the arguments advanced by the learned counsel appearing for the appellant is to be noted with some force.

5.1. In view of the above, the percentage of liability is fixed 30:70 between the deceased and the 1st respondent. Having regard to the date of accident, this Court is inclined to fix Rs.15,000/- as notional monthly income of the deceased. As per the decision of the Supreme Court of India, 40% should be added towards future prospects of the deceased. The deceased died as a bachelor and hence, 50% is deducted towards his personal expenses. The deceased was aged 29 years on the date of the accident. The proper multiplier to be adopted in the instant case is 17.

Calculation :

Notional Income = Rs.15,000/-

40% Future Prospects = Rs.6,000/-

Total = Rs.15,000/- + Rs.6,000/- = Rs.21,000/-

After 1/2 deduction = Rs.10,500/-

Loss of dependency :



WEB COPY



C.M.A.No.724 of 2022

= Rs.10,500/- x 12 x 17

= Rs.21,42,000/-

In all other aspects, the compensation awarded by the Tribunal is confirmed.

The following tabular column would show the compensation awarded by the Tribunal and the enhanced compensation awarded by this Court.

S.No.	Head	Amount awarded by the Tribunal(Rs.)	Amount granted by this court (Rs.)
1.	Loss of dependency	14,28,000/-	21,42,000/-
2.	Funeral expenses	15,000/-	15,000/-
3.	Loss of estate	15,000/-	15,000/-
4.	Loss of consortium	80,000/-	80,000/-
5.	Transportation expenses	3,500/-	3,500/-
Total		15,41,500/-	22,55,500/-
		Rs.7,70,750/- (50% of the total compensation award of Rs.15,41,500/-	15,78,850/- (70% of the total compensation of Rs.22,55,500/-



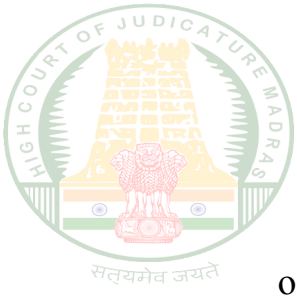
C.M.A.No.724 of 2022

WEB COPY

5.2. Since the contributory negligence fixed on the deceased is reduced to 30% from 50% fixed by the Tribunal, the claimants are entitled to a sum of Rs.15,78,850/- ($22,55,500 - 6,76,650 = 15,78,850$). This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

6. In the result,

- i. The appeal is partly allowed. No costs.
- ii. The negligence fixed by the Tribunal in the ratio 50:50 is modified as 30:70 between the deceased and the 1st respondent.
- iii. The compensation awarded by the tribunal is enhanced to Rs.15,78,850/- from Rs.7,70,750 /-.
- iv. The 3rd respondent/The Oriental Insurance Company Limited, Nilgiris is directed to deposit the enhanced compensation of Rs.15,78,850/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less the amount already deposited by them, within a period of eight weeks from the date of receipt of a copy



C.M.A.No.724 of 2022

of this order.

WEB COPY

- v. On such deposit being made, the claimants are permitted to withdraw their respective share, as per the apportionment made by the tribunal, on making appropriate application before the Tribunal.

03.07 .2025

bga

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

To

1. Motor Accident Claims Tribunal (Special District Judge Court),
Erode.
2. The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.724 of 2022

K.GOVINDARAJAN THILAKAVADI, J.

bga

Pre-delivery Judgment made in

C.M.A.No.724 of 2022

03.07 .2025