



CMA.No.1029 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :29.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.1029 of 2025

1.Kavitha
2.Pavithra
3.Parimala
4.Ravisankar

... Appellants

Vs.

1.R.Latha

2.Reliance General Insurance Co. Ltd.
Sri Laxmi Complex, 1st Floor, Bharathi Street, Omalur main Road,
Swarnapuri,
Salem

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and award on the Special District Judge's Court (Motor Accident Claims Tribunal) at Salem dated 01.08.2023 in MCOP No.70 of 2023.

For Appellant : Mr.R.P.Ruban Chakravarthy
for Mr.S.Kaithamalai Kumaran
For Respondent : M/s.R.Sree Vidhya for R2
R1-Notice dispensed with

JUDGMENT



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Not satisfied with the quantum of compensation fixed by the Motor Accident Claims Tribunal, the claimants have come before this court seeking enhancement of the compensation.

2. According to the appellants/claimants, the husband of the first claimant, the father of the claimants 2 to 4 namely Raja died in a road accident that had taken place on 21.09.2022. It was the case of the claimants before the Tribunal that the deceased Raja was riding his two-wheeler on the extreme left side of the Salem-Omalur main road. The lorry belonged to the first respondent and insured with the second respondent, came in the same direction in a rash and negligent manner and hit against the two-wheeler from behind. As a result of the accident, the above said Raja sustained grievous injuries and died on the spot. Hence, the claim petition was filed by his dependents seeking compensation of Rs.40,00,000/-.

3. The first respondent, owner of the lorry remained ex-parte before the Tribunal and the claim petition was opposed by the insurer of the lorry on the ground that the accident had occurred due to the rash and negligent driving of the deceased.



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4. 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 lorry. The compensation payable to the claimant was quantified at Rs.13,15,000/-. Not satisfied with the quantum, the claimants preferred this appeal.

5. Both the learned counsel for the appellants as well as the second respondent have not advanced any arguments on the questions of negligence as well as liability. Hence, the facts necessary to decide those questions are not discussed in this appeal.

6. The learned counsel for the Appellants submitted that the deceased was working as a driver and the Tribunal fixed the notional income only at Rs.10,000/- per month including the future prospects and hence, the same requires enhancement.

7. The learned counsel for the 2nd Respondent/Insurance Company submitted that the claimants have not produced any credible evidence to prove the avocation and income of the deceased. Hence, the Tribunal was justified in fixing notional income at Rs.10,000/- per month.



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8. In the claim petition, it was stated by the claimants that the deceased was working as Jeep driver in SVV Enterprises, Salem and was drawing a salary of Rs.25,000/- per month. In order to prove the same, the employer of the deceased was examined as PW-2 and through him, Exhibit X3, salary certificate was marked.

9. A combined reading of the evidence of PW-2 and Exhibit X3 would indicate that the deceased was paid a salary of Rs.18,000/- and Rs. 7,000/- as batta per month. Therefore, according to the claimants, the income of the deceased was Rs.25,000/- per month. The Tribunal observed that the employer of the deceased failed to produce his account book, Attendant register, etc., to prove that the deceased was employed under him and he was paid Rs.25,000/- per month. It is also stated that the employer did not produce any document to show that proper deductions were made from the salary of the deceased towards PPF, ESI, etc. PW2 in his evidence admitted that he paid a sum of Rs.5,000/- as income tax. Relying on the said admission, the Tribunal observed that the claim made by PW2 that he paid a salary of Rs.25,000/- to his employee is not



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believable. Had he paid Rs.25,000/- (Rs.3,00,000/- per annum) to his driver as salary, his income should have been much more and he should have paid much more income tax. Hence, his evidence cannot be fully believed.

10. In the case on hand, the driving license of the deceased has been marked as Exhibit P5. A perusal of the same would indicate that he was qualified to drive the heavy vehicle trucks and light motor vehicles. The accident had occurred in the year 2022. Even if there is no proof to establish the income of the deceased, the Court by taking into consideration the date of accident and the cost of living can fix the reasonable amount as notional income.

11. In the case on hand, Exhibit P5 proves that the deceased was a qualified driver. Taking into consideration the date of accident and the cost of living, this court can easily fix the notional income at Rs.18,000/-. Therefore, the notional income of the deceased is fixed at Rs.18,000/- per month. Exhibit P5, driving license, proves the age of the deceased at 48 years at the time of accident. Therefore, the claimants are entitled to 25% enhancement towards future prospects. The applicable multiplier is 13.



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Since there are four dependents, one-fourth of the amount shall be deducted towards personal expenses of the deceased. Therefore, the loss of dependency is fixed at Rs. 26,32,500/- which is calculated as follows:-

$$18,000 \times 1.25 \times 12 \times 13 \times 3 / 4 = \text{Rs. } 26,32,500/-$$

12. Since the accident had occurred after three years from the date of delivery of the judgment in *Pranay Sethi* case (31.10.2017), the claimants are entitled to 10% enhancement towards conventional damages. Therefore, the first claimant is entitled to Rs.44,000/- towards the loss of consortium. The claimants 2 to 4 are entitled to Rs.44,000/- each under the head loss of love and affection. Apart from the above said amount, the claimants are entitled to Rs.16,500/- each under the heads funeral expenses and the loss of estate.

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



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	11,70,000/-	26,32,500/-	Enhanced
2.	Loss of estate	Nil	16,500/-	Granted
3.	Funeral expenses	25,000/-	16,500/-	Reduced
4.	Loss of Consortium (1 st claimant)	40,000/-	44,000/-	Enhanced
5.	Loss of love and affection(claimants 2 to 4)	80,000/-	1,32,000/-	Enhanced
	Total	13,15,000/-	28,41,500/-	Enhanced by Rs.15,26,500/-

14. With the above modifications, the civil miscellaneous appeal is allowed and the compensation awarded by the Tribunal at Rs.13,15,000/- is hereby enhanced to Rs.28,41,500/-. The appellants are entitled to interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization. The 2nd respondent/Insurance Company



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is directed to deposit the enhanced award amount to the credit of MCOP

No.70 of 2023 on the file of Special District Judge (Motor Accident Claims Tribunal), Salem, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this Judgment. Out of the said amount, the claimants 2 to 4/children of the deceased are entitled to Rs.4,00,000/- each and the 1st claimant/wife of the deceased is entitled to remaining amount of Rs.16,41,500/- The appellants/claimants are permitted to withdraw the same along with interests and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. The appellants are directed to pay the applicable additional court fee on the enhanced sum. No costs.

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Index:Yes/No
Internet:Yes/No
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To

1. Motor Accidents Claims Tribunal
Special District Court, Salem

2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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