



CMA.No.976 of 2025

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :01.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.976 of 2025 and
C.M.P.No.7767 of 2025

The Divisional Manager
The United India Insurance company Limited,
No.13-A SBI Complex,
Nethaji Road, Manjakuppam, Cuddalore 607 001 ... Appellant

Vs.

1. A.Lakshmi
2.A.Ananth
3.A.Asha
4.Minor A.Arthi
5.Minor A.Anushiya
(Minors 4 and 5 are represented by
1st petitioner)
K.Dhandapani(Died)
6. K.Babu ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to set aside the award passed in MCOP No. 1020 of 2020 dated 10.01.2024 on the file of the Learned Motor Accidents Claims Tribunal (Special District Court) Cuddalore.

For Appellant : Mr.J.Chandran

For respondents : M/s.Ramya V.Rao for R1 to R5

R6-Notice dispensed with



CMA.No.976 of 2025

WEB COPY

JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the award passed by the Motor Accident Claims Tribunal, Special District Court, Cuddalore by the insurance company.

2. It was the case of the respondents 1 to 5/claimants 1 to 6 that the husband of the first claimant, father of the claimants 2 to 5 and son of the deceased 6th claimant namely Azhagesan died in a road accident that had taken place on 10.07.2020. According to the claimants, the deceased was driving his two-wheeler in Cuddalore to Vridhachalam main road. When he came near V.Sathamangalam new bus stand, an Ashok Leyland goods carrier belonged to the 6th respondent, insured with the appellant came in a rash and negligent manner and dashed against the two-wheeler. As a result of the accident, the deceased sustained grievous injuries and died. Therefore, the claim petition was filed seeking compensation of Rs.50,00,000/-



CMA.No.976 of 2025

WEB COPY

3. The 6th respondent remained *exparte* before the Tribunal and the claim petition was contested only by the appellant/ insurance company, on the ground that the accident had occurred only due to the rash and negligent driving of the deceased.

4. The Tribunal, based on the evidence of P.W.2 and the contents of Ex.P1, FIR and Ex.P5, final report, came to the conclusion that the accident had occurred due to the negligence on the part of the driver of the vehicle insured with the appellant/ insurance company. The compensation payable to the claimants was quantified at Rs. 29,88,000/-. Aggrieved by the same, the insurance company has come before this court by way of this appeal.

5. The learned counsel for the appellant/Insurance Company submitted that the deceased did not possess a valid driving license at the time of accident. Therefore, the tribunal should have fixed contributory negligence on his part. He further submitted that the



CMA.No.976 of 2025

WEB COPY

notional income of Rs.18,000/- fixed by the tribunal is on higher side. It is also stated by him that the amount awarded by the tribunal under conventional damages is also on higher side.

6. The learned counsel for the respondents 1 to 5/ claimants submitted that mere failure to produce the valid driving license is not a ground to fix contributory negligence. The learned counsel also submitted that the deceased had six dependents at the time of accident including one son and three unmarried daughters. Therefore, the tribunal was justified in fixing Rs.18,000/- per month as notional income.

7. The Hon'ble Apex Court in the case of ***Sudhir Kumar Rana Vs Surinder Singh and Others*** reported in ***(2008) 12 SCC 436*** categorically held that mere failure to produce a valid driving license is not a ground to fix contributory negligence on the part of the deceased unless there is a positive evidence to show that he also contributed to the accident. In the case on hand, there is no positive evidence to



CMA.No.976 of 2025

WEB COPY

suggest that the deceased by his rash and negligence contributed to the accident. Therefore, following the law laid down in ***Sudhir Kumar Rana*** case cited supra, this Court holds that contributory negligence cannot be fixed on the part of the deceased.

8. As far as the quantum of compensation is concerned, the claimants in their petition had stated that the deceased was a contract labourer employed in NLC India Limited and was earning a sum of Rs. 25,000/- per month. However, to prove the said plea, they have not produced any documentary evidence. In these circumstances, the tribunal fixed Rs.18,000/- as notional income for the deceased. Even if there is no evidence to prove the avocation and income, this Court, by taking into consideration the facts and circumstances of the case, can fix a notional income.

9. It is submitted by the learned counsel for the claimants that the deceased had a large family including three unmarried daughters and one son. Therefore, according to him, the tribunal was justified in fixing Rs.18,000/- as notional income.



CMA.No.976 of 2025

WEB COPY

10. Having a large family or more dependents is not a factor while fixing the notional income. In the absence of any evidence to show the avocation and income, taking into consideration the date of accident and the prevailing cost of living, the Court can fix a reasonable amount as notional income. Therefore, taking into consideration the facts and circumstances of the case, this Court is inclined to fix Rs.16,500/- as notional income for the deceased. The tribunal fixed the age of the deceased as 49 years based on Exhibit P2, Post Mortem Report. Therefore, the claimants are entitled to 25% enhancement towards future prospects. The applicable multiplier is 13. Since there are six dependents, one-fourth of the amount has to be deducted towards the personal expenses of the deceased. In that case, the loss of dependency would be Rs.24,13,125/- which is calculated as follows:-

$$16,500 \times 1.25 \times 12 \times 13 \times 3/4 = \text{Rs.}24,13,125/-$$

11. The accident had occurred within three years from the date of



CMA.No.976 of 2025

WEB COPY pronouncement of judgment in ***Pranay Sethi*** case (31.10.2017).

Therefore, the first claimant is entitled to Rs.40,000/- towards loss of consortium. The claimants 2 to 5, children of the deceased and the 6th claimant/ father of the deceased are entitled to Rs.40,000/- each under the heads loss of love and affection and loss of parental consortium. Though the 6th claimant died pending original petition, the benefit of his estate will go to his legal representatives namely the children of the pre-deceased son/claimants 2 to 5. The benefit of the non-pecuniary damage to the deceased 6th claimant will also go to the claimants 2 to 5. Therefore, the compensation under the head loss of love and affection and loss of parental consortium is fixed as Rs.2,00,000/- instead of Rs. 2,50,000/-The amount awarded by the tribunal under the head funeral expenses is confirmed and the amount awarded under the head transportation charges is set aside. The amount of Rs.25,000/- awarded by the tribunal under the head loss of estate is reduced to Rs.15,000/-. Accordingly, the total compensation payable to the claimants is reduced to Rs.26,83,125/-.

12. In view of the discussions made earlier, the award passed by



WEB COPY the Tribunal is modified as follows:-

Sl • No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	26,32,500/-	24,13,125/-	Reduced
2.	Loss of Estate	25,000/-	15,000/-	Reduced
3.	Funeral Expenses	15,000/-	15,000/-	Confirmed
4.	Loss of Consortium(1 st claimant)	50,000/-	40,000/-	Reduced
5	Loss of love and affection (claimants 2 to 5) and loss of parental consortium	2,50,000/-	2,00,000	Reduced
6	Transportation expenses	15,000/-	Nil	Set aside
	Total	34,12,452/-	26,83,125/-	Reduced by Rs.3,04,875/-
	Less:20%contributory negligence			



CMA.No.976 of 2025

WEB COPY

13. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.29,88,000/- is hereby reduced to Rs.26,83,125/-. The respondents 1 to 5/claimants 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 appellant /Insurance company is directed to deposit the award amount before the Tribunal 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.

14. As far as apportionment is concerned, the claimants 2 to 5/children of the deceased are entitled to Rs.3,00,000/- each and the 1st claimant/wife of the deceased is entitled to Rs.14,83,125/-

15. The respondents 1 to 5/claimants are permitted to withdraw



CMA.No.976 of 2025

WEB COPY their share of compensation amount, along with interest and costs, less the amount if any, already withdrawn, by making proper application before the Tribunal subject to satisfying the Tribunal about attainment of majority by minor claimants 4 and 5. Consequently, the connected miscellaneous petition is closed. No costs.

01.04.2025

Index:Yes/No
Internet:Yes/No
nr

To

1. Motor Accidents Claims Tribunal
Special District Court, Cuddalore.
2. The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



CMA.No.976 of 2025

S.SOUNTCHAR, J.

nr

CMA No.976 of 2025 and
C.M.P.No.7767 of 2025

01.04.2025