



C.M.A.Nos.780 & 783 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 21.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

**C.M.A.Nos.780 and 783 of 2021
and
C.M.P.Nos.4651 and 4661 of 2021**

National Insurance Company Limited,
Motor Third Party Claims,
No.751, Anna Salai,
Chennai - 600 002.

... Appellant
in both CMAs

-Vs-

1. Reddy Sruthi
2. Minor Sree Dhanvitha
(Minor represented by her mother &
NF Reddy Sruthi)
3. Rajani Kanta Biswal
4. Swaroopa Kumari
5. Anandha Reddy

... Respondents
in C.M.A.No.780 of 2021

1. Reddy Sruthi
2. Rajani Kanta Biswal

... Respondents
in C.M.A.No.783 of 2021



C.M.A.Nos.780 & 783 of 2021

COMMON PRAYER : Appeals under Section 173 of the Motor Vehicles Act, 1988, against the common award dated 15.10.2019 made in M.C.O.P.Nos.7707 & 7706 of 2013 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant in both CMAs	:	Mr.S.Arun Kumar
For Respondents in C.M.A.No.780/21	:	Mr.F.Terry Chella Raja - R1&R2 R3 - Exparte No appearance for R4 & R5
For Respondents in C.M.A.No.783/21	:	Mr.F.Terry Chella Raja for R1 R2 - Exparte

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

Since these two civil miscellaneous appeals arise out of the common award passed by the Motor Accidents Claims Tribunal, Chennai, II Court of Small Causes, Chennai dated 15.10.2019 in M.C.O.P.Nos.7707 and 7706 of 2013, both these appeals were taken up together and disposed of by this common order.

2. Due to the road accident taken place on 02.08.2013, the husband of the first claimant, namely, one Mohan Kumar @ Murali died. While he was riding



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a two wheeler with Registration No.KA 01 EZ 6727, where the first claimant / wife was a pillion rider had a direct hit with a lorry bearing Registration No.OR-14-Y-1008.

3. The first claimant / wife sustained a minor injury, whereas the husband died, therefore, in order to get compensation, these two MCOPs were filed, one for seeking compensation for the death of the husband and another for the injury sustained by the first claimant / wife.

4. The deceased was working in a IT Company and his salary certificate as well as the income tax returns were taken into account by the Tribunal for fixing his monthly earnings at Rs.78,550/-. Based on the income fixed by the Tribunal, 40% of which has been added as future prospects. Therefore, it would come to Rs.1,09,970/- and therefore, the notional income has been fixed at Rs.13,19,640/- (Rs.1,09,970/- * 12).

5. Since he was 31 years at the time of accident, the multiplier '16' was employed, based on which, the 'loss of dependency' has been calculated at Rs.1,58,35,680/- after deducting 1/4th as personal expenses for the deceased. For the injury sustained by the wife, a sum of Rs.25,000/- separately was



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awarded in M.C.O.P.7706 of 2013. The Insurance Company has filed these

appeals mainly on the award given to the deceased person on the quantum.

6. In this context, it is the contention of Mr.S.Arun Kumar, learned counsel appearing for the appellant / Insurance Company that, even as per the evidence recorded that it is the case of the first claimant that the two wheeler ridden by the victim had a direct hit on the backside of the lorry, for which, the reasons attributed according to the claimants is that, because of the sudden brake applied by the driver of the lorry, such an eventuality occurred, where the two wheeler ridden by the deceased had a direct hit on the backside of the lorry.

7. It is yet another version that the lorry was stationed on the main road, and since it was very early hours without any light or signal, the two wheeler ridden by the deceased could not notice such stationed lorry and therefore, there had been a hit directly on the backside of the lorry.

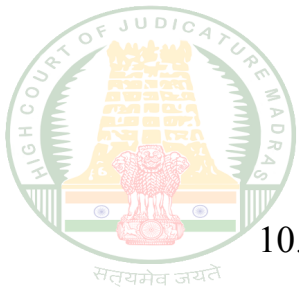
8. Based on these two theories, it is the further contention on the side of the claimants that, due to the negligence on the part of the lorry driver either the vehicle has been stationed or suddenly the brake was applied, therefore, it could be stated as a negligence on the part of the lorry driver, therefore, the entire



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responsibility rests on the lorry driver, hence, the compensation is payable by the insurer of the vehicle, i.e., lorry.

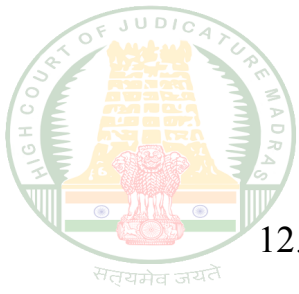
9. In this context, the learned counsel appearing for the appellant / Insurance Company would further contend that, the evidence of the first claimant / wife who deposed before the Tribunal has recorded that about 10 feet between the lorry and the two wheeler, she was able to see the lorry was stopped suddenly. Therefore, pointing out the evidence recorded on behalf of the wife of the deceased who was the first claimant, the learned counsel pointed out that had it been noticed by the wife who was a pillion rider, certainly the deceased who was the rider of the two wheeler could also have noticed that there had been a sudden brake applied by the lorry driver 10 feet away from them, hence he could have immediately applied his brake. Had he applied the brake immediately, he would have averted the accident itself, therefore the entire responsibility has to be fixed only on the rider of the two wheeler, i.e., victim, instead the Tribunal has erroneously fixed the responsibility in entirety on the driver of the vehicle, i.e., lorry, that is the erroneous approach according to the learned counsel appearing for the appellant.



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10. However, Mr.F.Terry Chella Raja, learned counsel appearing for the respondents 1 & 2 / claimants would contend that, it is wee hours, i.e., 04.45 am, on the road if a heavy vehicle has been stationed mainly on the road or stopped suddenly, any person who was ridding the two wheeler cannot control the vehicle even if brake is applied such an accident could not be avoided. The accident has been taken place solely on the reason of the rash and negligent manner in which the lorry driver either suddenly applied the brake or stationed the vehicle on the main road without any signal or light, therefore, the entire liability has to be fastened only on the lorry driver and therefore, the Tribunal having considered all these aspects and the evidence adduced before it has come to the conclusion that the responsibility has to be fixed only on the lorry driver and therefore, the compensation has been awarded accordingly, hence he submits that there is no interference is called for on the Tribunal's order.

11. We have considered the said rival submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.



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12. On the basis of the evidence that has been adduced before the Tribunal it is the case of both sides that the two wheeler ridden by the deceased had a direct hit on the backside of the lorry. The reason for such sudden hit of the two wheeler on the backside of the lorry is, according to the version of the first claimant, i.e., wife of the deceased, that the lorry has applied the sudden brake. Assuming that if the lorry has applied the sudden brake, had the rider of the two wheeler was consciously driving the vehicle even in wee hours as his safety is always primary and had he applied the brake suddenly, even though accident could have taken place, but it might not have led to a fatal accident.

13. Therefore, to that extent, we feel that, there is some negligence on the part of the rider of the two wheeler also to be noticed, in that case, we feel that, it is the case of the contributory negligence.

14. However, since the lorry being the heavy vehicle either has been stationed immediately on the main road or applied the sudden brake without any indication, certainly would be a negligent act on the part of the lorry driver, for which the negligence to be contributed from the side of the lorry driver must be fixed at 75% and the remaining 25% of the negligence can be fixed on the rider of the two wheeler, who is the victim. If that percentage of 75 : 25 as



contributory negligence is taken into account, the award has to be modified accordingly.

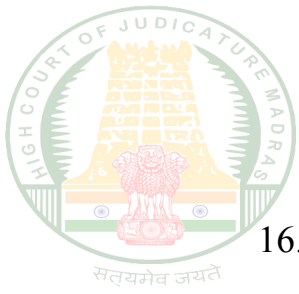
15. Coming to the side of the quantum of compensation awarded under the head of 'loss of dependency', there could be no quarrel in fixing the salary of Rs.78,550/- which is based on the documents. If the monthly salary is taken as Rs.78,550/- the victim since was working in IT Company on permanent basis is entitled for future prospects to the extent of 50% which shall be taken. Adding with the said salary of 50% as future prospects after deducting the personal expenses of 1/3rd instead of 1/4th because one of the dependent, namely, the father of the deceased is a pensioner and therefore, he cannot be taken as a dependant, therefore, only the mother of the deceased, wife of the deceased and the child of the deceased can only be taken as dependants. Hence personal expenses for the deceased could be deducted at 1/3rd. If 1/3rd expenses is deducted, the remaining sum could be multiplied by the correct multiplier of '16' for the age of 31 of the victim at the time of the accident, the calculation would be thus:

$$\text{Rs.78,550/-} \times 50\% = \text{Rs.1,17,825/-} (\text{Rs.78,550/-} + \text{Rs.39,275/-})$$

$$\text{Rs.1,17,825/-} \times 12 = \text{Rs.14,13,900/-}$$

$$\text{Rs.14,13,900} \times \frac{1}{3} = \text{Rs.9,42,600/-} (\text{Rs.14,13,900/-} - \text{Rs.4,71,300/-})$$

$$\text{Rs.9,42,600/-} \times 16 = \text{Rs.1,50,81,600/-}$$



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16. Under the head 'loss of consortium', a sum of Rs.40,000/- was awarded, which we confirm. 'Loss of love and affection' for the mother, father and the child that has to be reduced from Rs.1,50,000/- to Rs.1,20,000/-. We decline to award the sum of Rs.1,00,000/- towards 'parental consortium' and 'filial consortium'. However the 'funeral expenses' of Rs.15,000/- stands confirmed and for 'loss of estate', the Tribunal ought to have awarded a sum of Rs.15,000/-.

17. Therefore, as per the present modification, the quantum would be fixed under the following heads:

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Loss of Dependency	1,58,35,680/-	1,50,81,600/-
2	Loss of Consortium	40,000/-	40,000/-
3	Loss of Love and Affection (Rs.40,000/- x 3)	1,50,000/-	1,20,000/-
4	Parental Consortium	1,00,000/-	-
5	Filial Consortium	1,00,000/-	-
6	Funeral Expenses	15,000/-	15,000/-
7	Loss of Estate	-	15,000/-
	Total	1,62,40,680/-	1,52,71,600/-
	Less 25% of contributory negligence		38,17,900/-
	Compensation payable		1,14,53,700/-



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WEB COPY 18. In the result, C.M.A.No.780 of 2021 is allowed in part and the compensation awarded by the Tribunal at Rs.1,62,40,680/- is hereby reduced to Rs.1,14,53,700/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. If any amount is deposited that should be deduced, the remaining amount as per the modified award under this order shall be deposited by the Insurance Company within a period of two months from the date of receipt of a copy of this order. On such deposit being made, the same can be withdrawn by the respondents / claimants as per the apportionment ordered by the Tribunal.

19. In view of the judgment passed in C.M.A.No.780 of 2021, C.M.A.No.783 of 2021 is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed. .

(R.S.K., J.) (A.D.M.C., J.)
21.02.2025

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

1. The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.
2. The Section Officer,
V.R. Section, High Court,
Chennai.



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and
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