

C.M.A.No.1349 of 2021

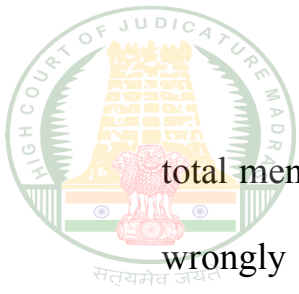
M.DHANDAPANI, J.

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This matter is listed before this Court under the caption “for being mentioned” at the instance of the learned counsel on the either side.

2. It is brought to the notice of this Court that, this Court, vide judgment dated 29.01.2025 allowed this Civil Miscellaneous Appeal in part, enhancing the compensation from Rs.20,10,730/- to Rs.31,86,470/-. However, in the tabular column under paragraph 9, inadvertently, a typographical error has crept in wherein the compensation towards medical bills was mentioned as Rs.11,62,286/- instead of Rs.11,66,286/- and as a result, the total compensation payable to the appellant was arrived at Rs.31,82,470/- instead of Rs.31,86,470/- which has to be modified. Further, the total compensation under the column *Awarded by the Tribunal (Amount in Rs.)* is mentioned as Rs.8,59,400/- instead of Rs.20,10,730/-, which requires to be corrected.

3. This Court perused the order dated 29.01.2025, more particularly paragraphs 9 and 10 of the said judgment and finds a typographical error wherein under the head medical bills, though the amount awarded is Rs.11,66,286/-, however, it is erroneously typed as Rs.11,62,286/-. Further, the



total mentioned in the column *Awarded by the Tribunal (Amount in Rs.)* is also wrongly mentioned as Rs.8,59,400/-. Accordingly, paragraphs 9 and 10 of the said judgment shall stand replaced with the following paragraphs:

“9. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>S. No.</i>	<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	<i>Loss of dependency</i>	<i>7,74,444/-</i>	<i>17,90,184/- (enhanced)</i>
2	<i>Medical Bills</i>	<i>11,66,286/-</i>	<i>11,66,286/-</i>
3	<i>Loss of consortium</i>	<i>40,000/-</i>	<i>40,000/-</i>
4	<i>Loss of estate</i>	<i>15,000/-</i>	<i>15,000/-</i>
5	<i>Funeral expenses</i>	<i>15,000/-</i>	<i>15,000/-</i>
6	<i>Loss of love and affection (Rs.40,000/- x 4)</i>	<i>---</i>	<i>1,60,000/-</i>
	<i>Total</i>	<i>20,10,730/-</i>	<i>31,86,470/-</i>

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.20,10,730/-** to **Rs.31,86,470/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.1771 of 2019 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any, already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. From the above modified compensation, the appellant is entitled to a sum of Rs.12,00,000/-, the 3rd respondent is entitled to a sum of **Rs.10,86,470/-** and the respondents 4 to 6 are entitled to a sum of Rs.3,00,000/- each. On such



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deposit being made, the Tribunal is directed to transfer the share of the appellant and the 3rd respondent, directly to their bank accounts, through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant and the respondents 3 to 6. The appellant and the respondents 3 to 6 are directed to pay necessary additional Court fee on the enhanced compensation amount. Further, the Tribunal is also directed to deposit the share of the respondents 4 to 6 in an interest yielding fixed deposit with any one of the Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until they attain majority and interest derived from out of the said deposits shall be paid to the 3rd respondent, who is the mother of the respondents 4 to 6, every quarter, to be utilised for the welfare of the said minor claimants. After attaining majority, it is open to the respondents 4 to 6 to file necessary application to establish their majority, at which point of time, the Tribunal is directed to transfer the amount in the fixed deposits directly to the bank account of the respondents 4 to 6 through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.”

4. Registry is directed to carry out the aforesaid corrections and issue fresh order copy to the parties.

19.03.2025

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M.DHANDAPANI, J.

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C.M.A.No.1349 of 2021

19.03.2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.01.2025**

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CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.1349 of 2021

and

C.M.P.No.6949 of 2021

Sevuthi

... Appellant

Vs.

1.Elumalai

2.M/s.The New India Assurance Company Limited,
Represented by its Divisional Office,
Sedu Krishna Trade Centre,
2nd Floor, Trichy Main Road,
Gugai, Salem – 636 006.

3.Eswari

4.Minor Tamilselvan

5.Minor Vasanth

6.Minor Sooryaprakash

[R4 to R6 are represented by their next
friend/guardian/mother Eswari]

... Respondents

(1st respondent remained exparte before the tribunal, hence, notice may be
dispensed with the 1st respondent)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, pleaded to enhance the compensation amount and award the entire medical bill to the tune of Rs.11,66,286/- to the appellant awarded in the judgment and decree dated 26.06.2020 made in M.C.O.P.No.1771 of 2019 on the file of the Special District Judge/MCOP Tribunal, Salem by allowing this



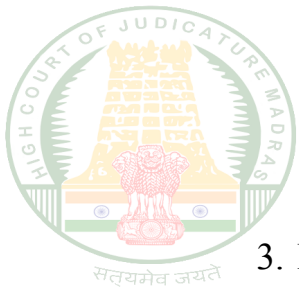
Civil Miscellaneous Appeal.

For Appellants : M/s.C.Meena
for Mr.M.Guruprasad
For Respondents : Mr.S.Dhakshnamoorthy [R2]
M/s.A.Ramesh [R3 to R6]

JUDGMENT

Assailing the fair and decreetal order passed by the Tribunal in and by which the Tribunal had awarded lower compensation, the present appeal has been filed by the appellant/mother of the deceased, seeking enhancement of compensation and to award the entire medical bill to the appellant alone.

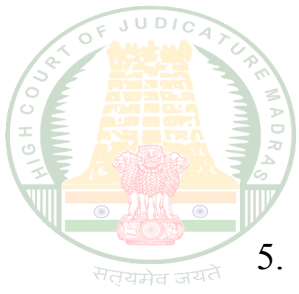
2. The appellant and the respondents 3 to 6 are the mother, wife and sons of the deceased Madheswaran. On 05.12.2018 at about 06.45 a.m., when the deceased was riding a cycle on SPB Colony – SPB Mill Road, near Annai Sathya Nagar Pallam bus stop, the offending vehicle bearing Regn.No.TN-30-AL-5056 belonging to the 1st respondent, which was insured with the 2nd respondent, driven by its driver in a rash and negligent manner and hit from behind. As a result, the deceased sustained grievous injuries and after prolonged treatment at various hospitals, he died on 04.05.2019. Therefore, the claimants have filed a claim petition claiming for a sum of Rs.60,00,000/- as compensation before the Tribunal in M.C.O.P.No.1771 of 2019 for the death of the deceased.



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3. Before the Tribunal, the claimants have examined two witnesses viz., P.W.1 and P.W.2 and marked 14 documents viz., Ex.P.1 to Ex.P.14. No witnesses were examined, but one document viz., Ex.R.1 was marked on the side of the respondents. After adjudication, the Tribunal partly allowed the petition and awarded a sum of Rs.20,10,730/- as compensation to the claimants. Not satisfied with the same, the appellant had preferred the present appeal seeking enhancement. Before this Court, the appellant had marked one document viz., A.15.

4. Learned counsel appearing for the appellant submitted that the monthly income fixed by the Tribunal is on the lower side, which requires to be re-considered by this Court. She further submitted that the compensation awarded under the other heads are on the lower side, which requires to be enhanced. Further, she submitted that the appellant has taken strenuous steps to save her son but she did not have the financial resources at that point of time, thereby, she had borrowed amount for the medical expenses of her deceased son and had spent a sum of Rs.11,66,286/-. Since the expense was borne by the appellant and in order to repay the same, the said amount has to be handed over to the appellant. Accordingly, he prays for appropriate enhancement in favour of the appellant.

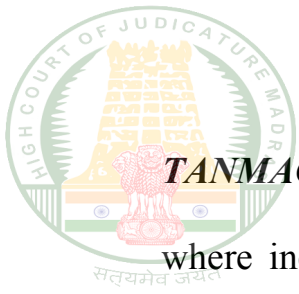


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5. Per contra, learned counsel appearing for the second respondent/Insurance Company as well as the learned counsel appearing for the respondents 3 to 6 submitted that, by considering all the oral and documentary evidence, the Tribunal has awarded just and reasonable compensation under various heads, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant, learned counsel appearing for the second respondent and the learned counsel appearing for the respondents 3 to 6 and perused the materials available on record.

7. The factum and manner of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded by the Tribunal. To compute the income under the head loss of income, no document in support of proof of the income of the deceased has been filed. However, it is claimed by the appellant that, at the time of accident, the deceased was a powerloom worker and earned a sum of Rs.18,000/- p.m. As per the decision of the Hon'ble Apex Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1)**



TANMAC 459, notional income of a vegetable vendor is fixed at Rs.6,500/-, where income of the deceased is not proved through documentary evidence.

However, the Tribunal had fixed a sum of Rs.8,000/- as notional income, which is on the lower side. Hence, by applying the ratio laid down by the Hon'ble Supreme Court in *Syed Sadiq's* case, fixing a notional income of Rs.16,500/- and adding future prospects at 10%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.18,100/-. Deducting 1/4th towards the personal expenses of the deceased, the income of the deceased is arrived at Rs.13,562/- per month and the deceased being aged about 51 years, as evidenced from the records, adopting the multiplier of 11 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in **(2009) 6 SCC 121**, the loss of income to the family is arrived at Rs.13,562/- * 12 * 11 = Rs.17,90,184/-, which is worked out as follows :-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	16,500
Add: Future Prospects (Rs.16,500 x 10%) (Per month)	1,650
	18,100
Less: Personal expenses (1/4 th) (Rs.18,100/- x 1/4 th) (Per month)	4,537.5
Rounded off to	4,538
	13,562
Notional income (per annum) (Rs.13,562/- x 12)	1,62,744



Loss of Income	Amount (in Rs.)
Multiplier	11
Total	17,90,184

8. Further, the Tribunal had awarded a sum of Rs.11,66,286/- towards medical bills; Rs.40,000/- towards loss of consortium; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. This Court finds that the compensation awarded under the heads medical bills, loss of consortium, loss of estate and funeral expenses are just and reasonable and the same is confirmed. Since no compensation has been awarded under the head loss of love and affection, this court awards a sum of Rs.1,60,000/- (Rs.40,000/- x 4) under the said head by awarding a sum of Rs.40,000/- each to the respondents 3 to 6.

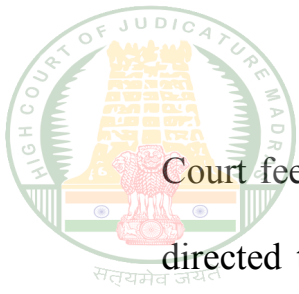
9. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

S. No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Loss of dependency	7,74,444/-	17,90,184/- (enhanced)
2	Medical Bills	11,62,286/-	11,62,286/-
3	Loss of consortium	40,000/-	40,000/-
4	Loss of estate	15,000/-	15,000/-



S. No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
5	Funeral expenses	15,000/-	15,000/-
6	Loss of love and affection (Rs.40,000/- x 4)	---	1,60,000/-
	Total	8,59,400/-	31,82,470/-

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.8,59,400/-** to **Rs.31,82,470/-**. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.1771 of 2019 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any, already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment. From the above modified compensation, the appellant is entitled to a sum of Rs.12,00,000/-, the 3rd respondent is entitled to a sum of Rs.10,82,470/- and the respondents 4 to 6 are entitled to a sum of Rs.3,00,000/- each. On such deposit being made, the Tribunal is directed to transfer the share of the appellant and the 3rd respondent, directly to their bank accounts, through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant and the respondents 3 to 6. The appellant and the respondents 3 to 6 are directed to pay necessary additional



Court fee on the enhanced compensation amount. Further, the Tribunal is also directed to deposit the share of the respondents 4 to 6 in an interest yielding fixed deposit with any one of the Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until they attain majority and interest derived from out of the said deposits shall be paid to the 3rd respondent, who is the mother of the respondents 4 to 6, every quarter, to be utilised for the welfare of the said minor claimants. After attaining majority, it is open to the respondents 4 to 6 to file necessary application to establish their majority, at which point of time, the Tribunal is directed to transfer the amount in the fixed deposits directly to the bank account of the respondents 4 to 6 through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

29.01.2025

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

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To

The Special District Judge/MCOP Tribunal, Salem.



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M.DHANDAPANI,J.,

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