



C.M.A.No.142 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 09.04.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.142 of 2023

1.S.Nalini

2.S.Venkatesan

3.S.Bhuvaneswari

4.HemaMuthiyalu @ HemaSeenivas

... Appellants

*(3rd and 4th appellants are amended as per the Order in
I.A.No.945/2018 in M.C.O.P.No.121/2014 dated 13.03.2018)*

vs.

R.Baby @ Saroja (Died)

1.The Oriental Insurance Company Ltd.,
CBO-I, Siva Complex,
22-C, Sarada College Main Road,
Salem - 16.

2.Usha

3.Mala

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation awarded in the Judgment and Decree dated 05.08.2019 made in M.C.O.P.No.121 of 2014 on the file of the Special District Judge, MCOP Tribunal at Salem, Salem District.



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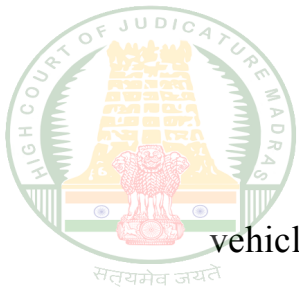
For Appellants : M/s.M.Rakhi for M/s.Law Vision
For R1 : Mr.D.Bhaskaran
For R2 and R3 : No Appearance

J U D G M E N T

Aggrieved by the quantum of compensation awarded by the Special District Judge, MCOP Tribunal, Salem in M.C.O.P.No.121 of 2014, dated 05.08.2019, the claimants have come before this Court seeking enhancement of compensation.

2. It is the case of the appellants/claimants that on 27.02.2012 the husband of the 1st claimant and father of the claimants 2 to 4 namely K.Selvaraj died in a road accident that had occurred on 27.02.2012. According to them, the deceased was riding the bi-cycle from Dharmapuri to Salem Main Road and attempted to cross the road. At that point of time, the driver of the bus bearing Registration No.TN 29 AL 2199 belonged to one R.Baby @ Saroja, who died pending original petition and insured with the 1st respondent herein/Insurance Company had driven the vehicle in a rash and negligent manner and dashed against the bi-cycle of the deceased. As a result of the accident, he died and hence, a claim petition was filed seeking compensation of Rs.30,00,000/-.

3. Pending claim petition, the 1st respondent therein-owner of the



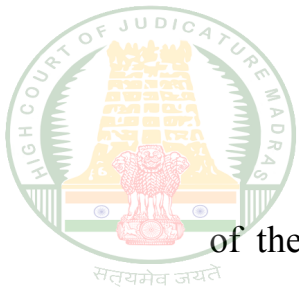
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vehicle namely R.Baby @ Saroja died and her legal representatives were brought on record as respondents 3 and 4 before the Tribunal. In this appeal the Insurance Company is arrayed as 1st respondent and the legal representatives of the deceased-owner of the bus are arrayed as respondents 2 and 3.

4. The owner of the bus remained *exparte* before the Tribunal and the claim was resisted by the insurer of the bus mainly on the ground that accident had occurred due to the negligence on the part of the deceased/K.Selvaraj.

5. Before the Tribunal, the 2nd appellant/2nd claimant was examined as PW.1 and yet another witness was examined as PW.2 and 9 documents were marked as Exs.P1 to P9 on behalf of the claimants. On behalf of the respondents, no witness was examined and 2 documents were marked as Exs.R1 and R2.

6. The Tribunal based on the evidence available on record, came to the conclusion that primary negligence was on the part of the driver of the bus. However, the Tribunal fixed 15% contributory negligence on the part



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of the deceased. The compensation amount payable to the claimants was quantified at Rs.3,51,034/-. Aggrieved by the same, the claimants have come before this Court.

7. The learned counsel appearing for the appellants/claimants would submit that the Tribunal fixed the contributory negligence on the part of the deceased without any basis and therefore, the same require to be set aside. The learned counsel further submitted that the notional income of Rs.6,500/- fixed by the Tribunal is very much on lower side.

8. The learned counsel appearing for the 1st respondent/Insurance Company would submit that the deceased had attempted to cross the road in his bi-cycle without any precaution. Therefore, the Tribunal was justified in fixing the contributory negligence on his part. He also submitted that taking into consideration the facts and circumstances of the case, the notional income of Rs.6,500/- fixed by the Tribunal is fair and reasonable.

9. In order to prove the negligence on the part of the driver of the bus, the claimants marked FIR as Ex.P1. A perusal of the same would indicate that a criminal case was registered against the driver of the bus. The 2nd



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claimant, who was examined as PW.1 during the course of his examination,

clearly admitted that his father attempted to cross the road from east to west in his bi-cycle and at that point of time, the bus dashed against his bi-cycle. The Tribunal also noted that the accident had occurred at 7.00 a.m., when the vehicular traffic was minimal, a person crossing the main road should have taken all precautions. In the case on hand, the deceased appeared to have crossed the road without noticing other vehicles on road. Therefore, the Tribunal was justified in fixing 15% contributory negligence on the part of the deceased.

10. In the claim petition, it was stated by the claimants that the deceased was a Dealer of ELGI Pump Set and was doing agriculture at the time of accident and he was earning Rs.75,000/- per month. However, in order to prove the income of the deceased, the claimants have not produced any documents. To establish the Dealership, the claimants produced Exs.P5 and P6, Certificate of Registration of Nalini Enterprises and dealership agreement. The Tribunal pointed out that Exs.P5 and P6 were pertaining to the year 1996 and the claimants failed to produce any contemporaneous document to establish that the deceased was engaged in Dealership at the



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time of accident. It is also noted that there is no evidence available on record to suggest that after death of deceased, the claimants discontinued the alleged dealership or agricultural operations.

11. In these circumstances, we cannot come to a conclusion that death of deceased resulted in deprivation of total income from agriculture and dealership, even assuming he continued the same till his death. In the light of the above factual scenario, taking into consideration the date of accident, this Court feels that the amount of Rs.6,500/- fixed by the Tribunal as notional income is appropriate. The Tribunal taking into consideration that the deceased was 69 years old, rightly applied multiplier of 5 and fixed the loss of dependency at Rs.2,60,040/- ($6500 \times 12 \times 5 \times \frac{2}{3}$), the same is affirmed.

12. The Tribunal rightly awarded Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses, the same is in accordance with law settled by the Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in (2017) 16 SCC 680, therefore, they are affirmed.



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13. In addition to the above said amount, the claimants are entitled to Rs.15,000/- towards loss of estate. Likewise, the claimants 2 to 4 are entitled to conventional damages at the rate of Rs.40,000/- each. Therefore, a sum of Rs.1,20,000/- shall be added under the head loss of love and affection to the claimants 2 and 4. Therefore, the total compensation amount payable to the claimants would be Rs.4,50,040/- and after deduction of 15% of the amount towards contributory negligence, the claimants are entitled to Rs.3,82,500/-. Accordingly, the award passed by the Tribunal is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Loss of Dependency	Rs.2,21,034/- (after deducting 15% contributory negligence)	Rs.2,60,000/-	Affirmed
2.	Loss of Consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
3.	Loss of love and affection to claimants 2 to 4	Rs.75,000/-	Rs.1,20,000/-	Enhanced
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Loss of estate	-	Rs.15,000/-	Granted
Total		Rs.3,51,034/-	Rs.4,50,000/-	Enhanced
Less 15% Contributory Negligence		Tribunal deducted 15% in loss of dependency alone	Rs.67,500/-	Confirmed
Total		Rs.3,51,034/-	Rs.3,82,500/-	Enhanced by Rs.31,500



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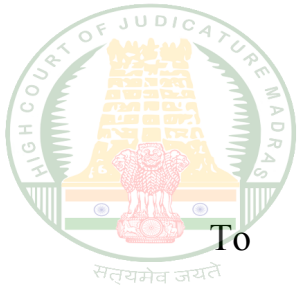
14. In view of the discussions made earlier, the compensation awarded by the Tribunal is enhanced to Rs.3,82,500/-. Out of the above said amount, the claimants 2 to 4 are entitled to Rs.50,000/- each. The 1st claimant is entitled to remaining amount of Rs.2,32,500/-.

15. The 1st Respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.3,82,500/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation (excluding the delay petition of 133 days as per order in C.M.P.No.19736 of 2021), to the credit of M.C.O.P.No.121 of 2014 on the file of the Special District Judge, MCOP Tribunal, Salem, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the award amount by making formal application before the Tribunal.

16. With the above direction, the Civil Miscellaneous Appeal is partly allowed. No costs.

09.04.2025

Index :Yes/No
Speaking order :Yes/No
Neutral Citation :Yes/No
dm



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To

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Salem.
- 2.The Oriental Insurance Company Ltd.,
CBO-I, Siva Complex,
22-C, Sarada College Main Road,
Salem - 16.
- 3.The Section Officer,
VR Section, High Court,
Madras.



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S.SOUNTHAR, J.

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