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C.M.A.No.2444 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2025

CORAM:

THE HONOURABLE **Mrs. JUSTICE R.KALAIMATHI**

C.M.A.No.2444 of 2025
and
CMP.No.20655 of 2025

Cholamandalam MS Gen Insurance
Co. Ltd.,
II Floor, Shaw Wallace Building,
154, Thambu Chetty Street,
Parry's Corner, Chennai 600 001.

... Appellant

vs.

Sambandam(Died)
1.Rathinammal
2.K.Vijayakumar
3.S.Nancy Josephine Mary
4.Minor.Satrina Suzan
th
(4 respondent is minor represented
rd
by his mother and next friend 3 respondent)

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in M.C.O.P.No.3500 of 2017 dated 12.11.2024 on the file of the Motor Accident Claims Tribunal, Special District Court No.1, to deal with the MCOP Cases, Cuddalore.



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For Appellant : Mrs.R.Sree Vidhya
For R1 : Mrs.Ramya V.Rao

JUDGMENT

Challenging the quantum, this Civil Miscellaneous Appeal has been preferred by the Insurance Company against the Award dated 12.11.2024 made in M.C.O.P.No.3500 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court No.1, (to deal with the MCOP Cases) Cuddalore.

2. Parties are indicated herein as per the litigative status and ranking before the Tribunal.

3. The case of the claimant is that on 16.07.2017 at about 3.15 p.m., Balamurugan, s/o.Sambandam was proceeding in his motorcycle bearing Reg.No.TN.10J 4534 alone on Kurinjipadi - Bhuvanagiri Main Road from the east to western direction. When he was nearing Kurinjipadi, Lime Kiln, a tipper lorry bearing Reg.No.TN.47 AA 1416 came from the opposite side in a rash and negligent manner and hit upon the above said two wheeler. Due to the said impact, the first and second claimants' son suffered fatal injuries and succumbed to the same immediately after the accident. Due to the rash and negligent

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driving of the driver of the first respondent vehicle, the accident occurred. The owner of the vehicle, the first respondent, and his insurer, the second respondent are jointly and severally liable to pay compensation to the claimants herein.

4. On behalf of the second respondent- Insurance Company, the said details have been counteracted by filing a counter. The details are given in brief :

The claimants are put to strict proof of age, avocation, income and the manner in which the accident occurred. It is not admitted that due to the rash and negligent driving of the rider of the first respondent's vehicle accident occurred. The amounts claimed under various heads are excessive.

5. At trial, to substantiate the claim petition details, on the claimants' side, two witnesses have been examined and six documents have been marked. On the second respondent's side, no oral or documentary evidence was led in.

6. Upon consideration of oral and documentary evidence and after hearing the arguments advanced by either side, the Tribunal



granted compensation of sum of Rs.32,24,000/- and the details are given hereunder:-

S.No.	Description	Amount awarded by the Tribunal(Rs.)
1	For Loss of dependency	30,24,000/-
2	For loss of consortium in respect of rd 3 respondent	40,000/-
3	For loss of love and affection in respect of claimants No.2 to 4(Rs.40,000 x 3)	1,20,000/-
4	For funeral expenses	15,000/-
5	For Transport Charges	10,000
6	For loss of estate	15,000
	Total	32,24,000

7. The learned counsel for the appellant/Insurance Company would contend that the notional income of the deceased, fixed by the Tribunal is on the higher side. The legal heirs are three in number and the first claimant Sambandan, father of the deceased Balamurugan, has passed away. As per the law laid down by the Hon'ble Supreme Court in **Sarla Varma vs. Delhi Transport Corporation & Another reported in 2009 (2) TN MAC 1 (SC)**, if the dependents are three in number, then 1/3 has to be deducted for personal and living expenses.



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8. The learned counsel for the respondents/claimants would strenuously argue that the deceased Balamurugan was working as a driver and earning a sum of Rs.30,000/- per month. Admittedly, no document is filed to substantiate the income of the deceased Balamurugan. However, the Tribunal has fixed the notional income of the deceased Balamurugan at Rs.15,000/-, and as per the law laid down by the Hon'ble Supreme Court in **National Insurance Company Limited vs. Prenay Sethi and others reported** in 2017(2) TN MAC 609 (SC) for future prospects 40% was added and the income is fixed at R.21,000/-. The learned counsel would further contend that at the time of filing of MCOP, the deceased Balamurugan died leaving behind his father, mother, wife and one child. Therefore, the Tribunal has deducted $\frac{1}{4}$ for personal and living expenses which cannot be said to be incorrect.

9. Heard the arguments of the learned counsel for the appellant and the learned counsel for the first respondent.

10. The date of the accident is on 16.07.2017. Based on Ex.P4 - Driving Licence, the age of the deceased is taken as 31 years.



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Though no document was marked to substantiate the income of the deceased, fixation of monthly income of Rs.15,000/-, taking into consideration of the above said details, is said to be proper and does not warrant any interference by this Court.

11. The Claim Petition was filed by the father and mother of the deceased son. The wife and son of the deceased Balamurugan have been arrayed as respondents No.3 and 4 respectively. During the pendency of the proceedings before the Tribunal, the first claimant Sambandan, S/o.Vishwanathan, father of the deceased Balamurugan passed away. Therefore, as per law laid down by the Hon'ble Supreme Court in ***Sarla Varma and others Vs. Delhi Transport Corporation and others*** reported in ***2009 (2) TN MAC 1 (SC)***, If the deceased was a married person, and if the claimants are three in number, then 1/3rd has to be deducted for personal and living expenses and as the age of the deceased is taken as 31 years, the relevant multiplier to be adopted is 16m. The loss of dependency is computed as follows:-

$$= \text{Rs.15,000/-} + 40\% - 1/3 \times 12 \times 16\text{m}$$

$$= \text{Rs.26,88,000/-}$$



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12. As regards the other heads, the amounts granted by the Tribunal appears to be reasonable and acceptable, and it needs no interference by this Court. The compensation awarded as mentioned supra is reworked and tabulated as given hereunder:

S.No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1	For loss of dependency	30,24,000/-	26,88,000/-	Reduced
2	For loss of consortium rd in respect of 3 respondent	40,000/-	40,000/-	Confirmed
3	For loss of love and affection in respect of 2nd claimant and respondents 3 & 4	1,20,000/-	1,20,000/-	Confirmed
4	For funeral expenses	15,000/-	15,000/-	Confirmed
5	For transport charges	10,000/-	10,000/-	Confirmed
6	For Loss of estate	15,000/-	15,000/-	Confirmed
	Total	32,24,000/-	28,88,000-	Reduced by Rs.3,36,000/-

13. Thus, the compensation awarded by the Tribunal is reduced from Rs.32,24,000/- to **Rs.28,88,000/-** which would carry interest at the rate of 7.5% per annum.

14. In the result,

(i)The Civil Miscellaneous Appeal is partly allowed.



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(ii) The compensation awarded by the Tribunal is reduced from Rs.32,24,000/- to **Rs.28,88,000/-** .

(iii) The Appellant / Insurance Company is directed to deposit the modified compensation amount i.e., **Rs.28,88,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.3500 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court No.I, to deal with MCOP Cases, Cuddalore, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the respondents 1, 3 are at liberty to withdraw the same as per the apportionment made by the Tribunal along with interest and costs after adjusting the amount, if any already withdrawn by filing necessary application before the Tribunal.

(v) The shares of the minor 4th respondent shall be deposited by the Tribunal in any one of the



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nationalised Bank under re-investment scheme till he attains majority. The 4th respondent, who is guardian of the minor, is permitted to withdraw the accrued interest from the deposit of the minor once in three months directly from the said Bank. On attaining the age of majority, the 4th respondent may be permitted to withdraw his share by filing suitable application before the Tribunal. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

24.09.2025

Index : Yes/No
Speaking / Non-speaking order
kkd

To:

The Motor Accident Claims Tribunal,
Special District Court No.1, to deal with the MCOP Cases,
Cuddalore.



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R.KALAIMATHI, J.

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