IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.980 of 2025

1.Lakshmi

2.Thangavel

3.Perumal ... Appellants

vs.

1.Selvakumar.D

2.Vasu.R

3.The Branch Manager,
ICICI Lombard General Insurance Co.Ltd.,
Second and Third Nungambakkam High Road,
Chottabal Centre,
Chennai – 600034. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and enhance the compensation amount made in Judgment and Decree dated 10.01.2025 made in M.C.O.P.No.65 of 2020 on the file of the Motor Accident Claims Tribunal and Special District Court for Motor Accident Claims cases, Krishnagiri.

For Appellants : Mr.S.P.Yuaraj

For R3 : Mr.B.Sivakolappan

For R1 and R2 : Notice Dispensed With

JUDGMENT

Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Krishnagiri, Special District Court for Motor Accident Claims Cases, Krishnagiri, in M.C.O.P.No.65 of 2020, dated 10.01.2025, the claimants have come before this Court.

2. It is the case of the appellants/claimants that son of the claimants 1 and 2 and brother of the 3rd claimant namely Murali died in a road accident that had occurred on 21.04.2019. According to them, he was standing on the extreme left side of Mount to Poonthamalli Road in front of Reliance Trends Show Room Bus Stop. ATipper Lorry bearing Registration No.TN-22-AJ-1159 belonged to the 1st respondent as per the RC book and the 2nd respondent as per the insurance policy and insured with the 3rd respondent came in a rash and negligent manner and hit against the deceased. As a result of the accident, the deceased received grievous crush injuries and died. Hence, the claim petition was filed seeking compensation of

Rs.40,00,000/-.

3. The respondents 1 and 2 remained *exparte* before the Tribunal and the claim petition was contested only by the 3rd respondent-Insurer of the Tipper Lorry. It was the case of the 3rd respondent that insurance policy issued to the 2nd respondent was cancelled subsequently due to the non-realisation of cheque issued by the 2nd respondent for payment of premium. Therefore, the insurer prayed for dismissal of the claim petition on the ground that there was no legal relationship between the 3rd respondent and the 2nd respondent on the date of accident.

4. Before the Tribunal, the 2nd appellant/2nd claimant was examined as PW.1 and an eye-witness was examined as PW.2 and 14 documents were marked as Exs.P1 to P14 on behalf of the claimants. On behalf of the respondents 1 and 2, no witness was examined and no document was marked. On behalf of the 3rd respondent/Insurance Company, the Legal Manager of the Insurance Company was examined as RW.1 and 3 documents were marked as Exs.R1 to R3.

5. The Tribunal based on the evidence available on record, came to

the conclusion that accident had occurred only due to the rash and negligent driving of Tipper Lorry by its driver. The Tribunal also held that the 3rd respondent-insurer shall pay the award amount and recover the same from the 2nd respondent-insured on the ground that the cheque issued by the 2nd respondent for payment of premium got dishonoured and based on the same, the policy was subsequently cancelled by the 3rd respondent/insurer. The amount payable to the claimants was quantified at Rs.18,78,600/-. Not satisfied with the quantum of compensation, the claimants have come before this Court.

6. The learned counsel appearing for the appellants/claimants as well as the learned counsel appearing for the 3rd respondent-Insurance Company have not advanced any arguments on the questions of negligence and liability. Therefore, facts necessary to decide those questions are not discussed in this judgment.

7. The learned counsel appearing for the appellants/claimants would submit that the amount of Rs.12,000/- fixed by the Tribunal as notional income was very much meagre and the same requires enhancement.

8. The learned counsel appearing for the 3rd respondent/Insurer would submit that the claimants have not produced any documentary evidence to prove the avocation and income of the deceased and hence, the Tribunal was justified in fixing Rs.12,000/- as notional income of the deceased.

9. In the claim petition, it was stated by the claimants that the deceased was working as a Master in Bakery and was earning a sum of Rs.30,000/- per month. On the other hand, in order to prove the avocation and income of the deceased, the claimants have not produced any documentary evidence. Even if there is no proof for income of the deceased, this Court by taking into consideration the facts and circumstances of the case can fix the notional income. In the case on hand, the accident had occurred on 21.04.2019. Therefore, taking into consideration the date of accident and prevailing cost of living, this Court is inclined to fix R.16,500/- as notional income of the deceased.

10. As per Ex.P12-Passport of the deceased, his age was fixed at 27 years by the Tribunal. Therefore, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier is 17.

Since the deceased died as a bachelor, 50% of the amount shall be deducted towards his personal expenses. Therefore, loss of dependency is fixed at Rs.23,56,200/- (Rs.16,500 x 1.4 x 12 x 17 x 1/2).

11. The Tribunal granted 10% enhancement in respect of the conventional damages. As per the law laid down by the Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***, the claimants are entitled to 10% enhancement once in three years.

12. In the case on hand, the accident had occurred well within three years from the date of delivery of judgment in ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680*** and therefore, the claimants are not entitled to 10% enhancement. Accordingly, the amount awarded by the Tribunal under the heads loss of estate and funeral expenses are reduced to Rs.15,000/- each. The amount awarded by the Tribunal under the head loss of parental consortium to claimants 1 and 2 and loss of love and affection to 3rd claimant is reduced to Rs.1,20,000/-.

13. In view of the discussions made earlier, 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.17,13,600/-	Rs.23,56,200/-	**Enhanced**
2.	Loss of Estate	Rs.16,500/-	Rs.15,000/-	**Reduced**
3.	Funeral Expenses	Rs.16,500/-	Rs.15,000/-	**Reduced**
4.	Loss of Consortium	Rs.1,32,000/-	Rs.1,20,000/-	**Reduced**
Total		**Rs.18,78,600/-**	**Rs.25,06,200/-**	**Enhanced by Rs.6,27,600/-**

14. Accordingly, the award amount payable to the claimants is enhanced to Rs.25,06,200/- from Rs.18,78,600/-. The 3rd Respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.25,06,200/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, to the credit of M.C.O.P.No.65 of 2020 on the file of the Motor Accident Claims Tribunal, Krishnagiri, Special District Court for Motor Accident Claims Cases, Krishnagiri, within a period of six weeks from the date of receipt of copy of this judgment. Out of the said amount, the 1st claimant is entitled to Rs.14,66,200/-, the 2nd claimant is entitled to Rs.10,00,000/- and the 3rd

claimant is entitled to Rs.40,000/-. On such deposit, the claimants are permitted to withdraw the award amount by making formal application before the Tribunal.

15. The Tribunal already ordered pay and recovery on the ground that the cheque issued by the insured was dishonoured. The said finding is affirmed.

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

22.04.2025

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

To

1.The Motor Accident Claims Tribunal and
Special District Court for Motor Accident Claims cases,
Krishnagiri.

2.The Branch Manager,
ICICI Lombard General Insurance Co.Ltd.,
Second and Third Nungambakkam High Road,
Chottabal Centre,
Chennai – 600034.

3.The Section Officer,
VR Section, High Court,
Madras.

S.SOUNTHAR, J.

dm

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