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CMA.No.1099 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.04.2025

CORAM:

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**CMA No.1099 of 2025**

1. Pechiyammal
2. Pandey
3. Kannammal

... Appellants

**Vs.**

The Managing Director,  
Metropolitan Transport Corporation Ltd.,  
Pallavan House, Mount Road,  
Pallavan Salai, Chennai 600 002.

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to set aside the 20% contributory negligence fixed on the part of the deceased and to enhance the compensation awarded in MCOP No.3431 of 2020 dated 03.11.2023 on the file of the Special Sub Judge No.II, Motor Accident Claims Tribunal, Court of Small Causes, Chennai with interest at 9% and cost by allowing this appeal.

For appellants : Mr.M.Lokesh

For Respondent : Mr.M.Murali Vinodh.



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## **JUDGMENT**

Aggrieved by the fixation of 20% contributory negligence on the part of the deceased and also seeking enhancement of compensation awarded by the Tribunal, the claimants have come before this court by filing the present appeal.

2. It is the case of the claimants that the husband of the first claimant, father of the second claimant and son of the third claimant, namely Shanmugam @ Shanmugapandiyan died in a road accident that had occurred on 16.03.2020. According to the claimants, the deceased was travelling in a bus belonged to the respondent corporation and the driver of the bus stopped the bus at Egmore Railway station opposite to Impala hotel and without noticing the deceased alighting from the bus, started the bus. Therefore, he fell down on the road and received multiple injuries and died in the hospital. Hence, the claimants filed claim petition seeking compensation of Rs.49,00,000/-.

3. The respondent filed counter and resisted the claim petition on the ground that the deceased was under the influence of alcohol and he



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got down from the bus, even before the bus was completely halted.

Therefore, according to the respondent, the accident had occurred only due to the negligence on the part of the deceased.

4.The Tribunal, based on the evidence available on record, came to the conclusion that primarily the accident had occurred due to the negligence on the part of the driver of the bus. However, the Tribunal fixed 20% contributory negligence on the part of the deceased and 80% on the part of the driver of the bus. The amount payable to the claimants was quantified by the Tribunal at Rs.16,20,000/- and after deducting 20% towards contributory negligence, directed the respondent to pay a sum of Rs.12,96,000/- to the claimants. Aggrieved by the same, the claimants have come before this court by filing the present appeal.

5. The learned counsel for the appellants confined his arguments only to the question of quantum. According to him, the deceased was a painter and the notional income of Rs.10,500/- fixed by the Tribunal is meager one and the same requires enhancement.



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6. The learned counsel for the respondent Corporation would submit that the claimants have not produced any documentary evidence to prove the income and avocation of the deceased and hence, the Tribunal was justified in fixing notional income at Rs.10,500/- per month.

7. It is seen from the award passed by the Tribunal that the accident had occurred just opposite to the passengers shelter meant for bus stop. Further, the PW2, eyewitness to the accident deposed about the negligence on the part of the driver of the bus. However, in the First Information Report, it was mentioned that the deceased was under the influence of alcohol at the relevant point of time. Taking into consideration the entire facts and circumstances of the case, the Tribunal fixed primary negligence on the part of the driver of the respondent corporation and ultimately fixed 20% contributory negligence on the part of the deceased and 80% contributory negligence on the part of the driver of the bus. The said clarification reached by the Tribunal appears to be reasonable.



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8. In the claim petition, it was stated by the claimants that the deceased was a painter and was earning a sum of Rs.25,000/- per month. However, the claimants have not produced any documentary evidence to sustain the above said plea. Even if there is no proof of income, taking into consideration the date of accident and also the prevailing cost of living, this court can fix the notional income. Accordingly, this court proceeds to fix notional income of the deceased at Rs.16,500/- per month. The Tribunal fixed the age of the deceased as 42 years, based on the Ex.P4, Death Certificate. Therefore, the claimants are entitled to 25% enhancement towards future prospects. The applicable multiplier is 14. Since there were 3 dependents, on the date of accident, 1/3 shall be deducted towards personal expenses of the deceased. Accordingly, loss of dependency is fixed at Rs.23,10,000/- ( $16,500 \times 1.25 \times 12 \times 14 \times 2/3$ ).

9. The first claimant is entitled to Rs.40,000/- towards loss of consortium, and the 2nd claimant is entitled to Rs.40,000/- towards loss of love and affection and the third claimant is entitled to Rs.40,000/- towards filial consortium. Therefore, the amount of Rs.1,20,000/- awarded by the Tribunal is in accordance with the law settled by the



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Apex Court in *National Insurance Company Limited Vs. Pranay Sethi and others reported in AIR 2017 SC 5157* and hence, the same is confirmed. Further, the compensation awarded by the Tribunal under the heads loss of Estate and Funeral expenses are also as per the decision of the Apex Court in *Pranay Sethi case* and hence, the same are confirmed.

10. Accordingly, the compensation awarded by the Tribunal is revised as under:

| Sl. No | Description                                                                                                                  | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|--------|------------------------------------------------------------------------------------------------------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.     | Loss of Dependency                                                                                                           | 14,70,000                       | 23,10,000                         | enhanced                               |
| 2.     | Loss of consortium to first claimant, loss of love and affection to 2nd claimant loss of filial consortium to third claimant | 1,20,000                        | 1,20,000                          | confirmed                              |
| 3.     | Loss of estate                                                                                                               | 15,000                          | 15,000                            | confirmed                              |
| 6.     | Funeral expenses                                                                                                             | 15,000                          | 15,000                            | confirmed                              |
|        | <b>Total</b>                                                                                                                 | <b>16,20,000</b>                | <b>24,60,000</b>                  | <b>enhanced</b>                        |
|        | <b>Less 20% towards contributory negligence</b>                                                                              | <b>3,24,000</b>                 | <b>4,92,000</b>                   | <b>confirmed</b>                       |
|        | <b>Compensation</b>                                                                                                          | <b>12,96,000</b>                | <b>19,68,000</b>                  | <b>enhanced by Rs.6,72,000</b>         |



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11. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,96,000/- is hereby enhanced to **Rs.19,68,000/-** together with interest at 7.5% per annum from the date of claim petition till the date of deposit.

12. The **respondent** is directed to deposit the compensation amount now determined by this Court to the credit of MCOP No.3431 of 2020 on the file of Special Sub Judge No.II, MACT, Court of Small Causes, Chennai, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment. On such deposit being made, the claimants shall be permitted to withdraw their respective compensation amount along with interest and costs, less the amount if any, already withdrawn, in the same proportion, as per the apportionment made by the Tribunal, by making a formal application before the Tribunal. There shall be no order as to costs.

Index : Yes/No  
Speaking order : Yes/No  
Neutral citation : Yes/No  
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**To**  
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1. The Special Sub Judge-II  
Motor Accident Claims Tribunal,  
Court of Small Causes, Chennai.
2. The Section Officer,  
V.R.Section, Madras High Court.



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**S.SOUNTHAR, J.**

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