



CMA.No.1005 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :08.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.1005 of 2025 and
C.M.P.No.8360 of 2025

The Manager
National Insurance Company Limited
Motor Third Party Cell (Hub)
NO.751, Mount Road, Chennai-600 002

... Appellant

Vs.

1.Mrs.Valliammal
2.Raja
3.P.Venkatesan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to set aside the award passed in MACTOP NO. 48 of 2015, dated 14.11.2024, on the file of the Motor Accident Claims Tribunal, No. 1, Special District Court, Tiruvallur.

For Appellant : M/s.N.B.Surekha

For Respondents: Mr.R.Navaneetha Krishnan for R1 & R2

JUDGMENT

The Civil Miscellaneous Appeal is filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal in MACTOP NO. 48 of 2015.



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2. The respondents 1 and 2/claimants filed a claim petition seeking compensation for the death of their son in a road accident that had occurred on 15-04-2005. According to them, the deceased Manickam, who was a cleaner in a Taras lorry got down from the lorry and enquired about the address to deliver the load of rubber. At that point of time, the lorry bearing registration number TN-30-H-8563 belonged to the 3rd respondent insured with the appellant/Insurance Company came in a rash and negligent manner and hit against the victim. As a result of the accident, the son of the respondents 1 and 2/claimants died on the spot. Hence, the claim petition was filed seeking compensation of Rs.10,00,000/-

3. The 3rd respondent, owner of the lorry remained ex-parte and the claim petition was contested by the appellant/Insurance company on the ground that 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 the accident had occurred only due to the



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negligence on the part of the driver of the lorry belonged to the 3rd respondent and insured with the appellant. The compensation payable to the claimants was quantified at Rs.11,09,600/-. Since the driver of the offending lorry did not possess a valid driving license, the Tribunal also ordered pay and recovery in favour of the appellant. Aggrieved by the quantum, the appellant/ insurance company has come before this court.

5. The learned counsel for the appellant/ Insurance Company submitted that the notional income of Rs.7000/- fixed by the Tribunal is on higher side. Therefore, the compensation quantified by the Tribunal needs to be reduced.

6. The learned counsel for the respondents 1 and 2/ claimants submitted that the Tribunal, by taking into consideration the law laid down by the Division Bench of this Court in *Andal and Others Vs Avinav Kannan and another* reported in *MANU/TN/6368/2018*, , rightly fixed the notional income at Rs.7,000/-. Therefore, the same need not be interfered with.

7. In the claim petition, it was stated by the claimants that the deceased was employed as a lorry cleaner and was earning a sum of Rs.



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10,000/- per month. In order to prove the income and the avocation of the deceased, the claimants have not produced any documentary evidence. However, the Tribunal, by relying on the law laid down in *Andal* case cited supra, fixed notional income at Rs.7,000/-. If the law laid down in *Andal* case is followed for the accident occurred in the year 2005-2006, the notional income shall be fixed only at Rs.5,895/-. However, the Tribunal fixed Rs.7,000/- without any basis.

8. The learned counsel for the appellant relied on the following judgments for the proposition that the appropriate notional income for the accident that occurred in 2004 would be only Rs.4,000/-

- i) The Managing Director, Tamil Nadu State Transport Corporation Limited Vs Maheswari reported in CMA.No.103 of 2009.*
- ii) Govind Yadav Vs The New India Insurance Company Limited reported in AIR OnLine 2011 SC 606.*

9. The Division Bench of this Court in *Andal and Others Vs Avinav Kannan and another reported in 2019 (1) TN MAC 54(DB)*, after relying on the judgment of Hon'ble Apex Court in the case of *Syed Sadiq Vs United India Insurance Company Limited reported in 2014 (1)*



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based on cost of inflation index. If the guidelines issued in *Andal* case is followed for the year 2005-2006, the notional income to be fixed is Rs.5,895/-. In the case laws referred above by the learned counsel for the appellant in reference 1, the learned Single Judge of this Court without referring to the Division Bench judgment in *Andal* case and based on the facts and circumstances of the case, fixed lesser amount for the accident that had occurred in the year 2005.

10. In *Govind Yadav* case cited supra, the Hon'ble Apex Court fixed only Rs.4,000/- for the accident that occurred on 14.11.2004. A close scrutiny of the above said judgment would indicate that in that case, the claimants themselves stated that the salary of the deceased was only Rs.4,000/-. Therefore, taking into consideration the said fact, the Hon'ble Apex Court fixed the notional annual income of the deceased at Rs.36,000/-. In the case on hand, it was stated that the claimant was a lorry cleaner and was earning a sum of Rs.10,000/- per month. The 1st claimant was examined as P.W.1 and she deposed in accordance with the averments in the claim petition. It is also seen from the records that even



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though the accident had occurred on 15-04-2005, the claim petition was filed by the claimants with enormous delay only on 09.07.2012. Taking into consideration all these factors, this Court is inclined to fix the notional income at Rs.5,500/- per month. As per Ex.P2, Post-Mortem report, the Tribunal fixed the age of the deceased at 27 years. Hence, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier is 17. Since the deceased died as a bachelor, 1/2 of the amount shall be deducted towards personal expenses of the deceased. In that case, the loss of dependency would be Rs.7,85,400/-.

$$\text{Rs.5,500} \times 1.4 \times 12 \times 17 \times 1/2 = \text{Rs. 7,85,400/-}$$

11. The amount of Rs.15,000/- each awarded under the heads loss of estate and funeral expenses and the amount of Rs.80,000/- (Rs.40,000/- x 2) awarded under the head loss of consortium to claimants 1 and 2 are in accordance with the law laid down in *Pranay Sethi* case and hence, they are confirmed. In all, the claimants are entitled to Rs.8,95,400/-



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12. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:-

Sl • No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	9,99,600/-	7,85,400/-	Reduced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Funeral Expenses	15,000/-	15,000/-	Confirmed
4.	Loss of Consortium	80,000/- (40,000 x 2)	80,000/-	Confirmed
	Total	11,09,600/-	8,95,400/-	Reduced by Rs.2,14,200/-

13. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,09,600/- is hereby reduced to Rs.8,95,400/-. The respondents 1 and 2/claimants are entitled to interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization. The appellant /Insurance company is directed to deposit the award amount to the credit of MACTOP NO. 48 of 2015 on the file of the Motor Accident



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WEB COPY Claims Tribunal No.1, Special District Court, Tiruvallur, along with interests and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this Judgment. The respondents 1 and 2/claimants are permitted to withdraw the same along with interests and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. No costs.

08.04.2025

Index:Yes/No
Internet:Yes/No
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To

1. Motor Vehicle Accidents Claims Tribunal No. 1,
Special District Court, Tiruvallur.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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