IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23-07-2025**

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA NO. 1321 of 2024

PASAMALAR
W/o.Bakyam @ Bakyanathan, res at
P.Dharmathuppatty and Post, Aandipatti Taluk,
Theni District, and temporally at D/o.13/5,
Ramaiah Colony, East 1st Street, P.N.R.Road,
Tiruppur and 3 Others

Appellant(s)

Vs

MUTHURAJ
S/o.Balasubramaniam, 3/162, Pathrakaliamman
Colony, Sivakasi and 2 Others

Respondent(s)

For Appellant(s):
Mr.K.Sudhakar

For Respondent(s):
Mr.S.V.Shanmuganathan
For R 1
Mr. T.K. Premkumar For R3
R2 - Door Locked

ORDER

Today, the matter is listed under the caption "for being mentioned", at the instance of the learned counsel for the respondents.

2. Mr.K.Sudhakar, learned counsel appearing for the appellants and Mr.S.V.Shanmuganathan, learned counsel appearing for the first respondent and Mr. T.K. Premkumar, learned counsel appearing for the third respondent are present.

3. It is brought to the notice of this Court that some typographical error has been crept in paragraph Nos.13, 14, 15 & 16 of the Judgment dated 19.06.2025. The said paragraph Nos.13, 14, 15 & 16 are to be replaced as follows:

> "13. On considering the submissions of both sides and upon perusal of the records, this Court is inclined to award compensation to the legal heirs of the deceased / appellants. The accident took place on 10.09.2016. Though it was contended by the claimants that the deceased was working as a Head Mason and was earning a sum of Rs.15,000/- per month, in the opinion of this court, in the absence of proof of income, the notional income of the deceased should be fixed at Rs.15,000/- per month. As per the decision of ***the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601,*** 25% should be added towards future prospects. Hence, the

monthly income of the deceased is fixed at Rs.18,750/- (i.e., Rs.15,000 + Rs.3,750 = Rs.18,750). Since the age of the deceased was 42 years on the date of the accident, the proper multiplier to be adopted in the instant case is "14", as per the decision of the ***Hon'ble Apex Court in Sarala Verma and others Vs. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121.*** After deducting 1/5 of income towards personal expenses of the deceased, the loss of dependency is calculated as follows.

Calculation for Loss of dependency

Income + future prospects 25% = Rs.15000 + Rs.3750 = Rs.18750 (Income + future prospects 25%) - 1/4th deduction

= Rs.18750 - Rs.4688= Rs.14,062/-

Loss of dependency= Rs.14,062 x 12m x 14

= Rs.23,62,416/-

14. In addition to the above, as per the decision rendered by the ***Constitution Bench of the Honourable Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others, reported in 2017 (2) TN MAC 601,*** the claimants are each entitled to Rs.40,000/- for "Loss of Consortium" (i.e., Rs.40,000 x 4 = 1,60,000/-). The claimants are also entitled to Rs.15,000 towards "Loss of Estate" and Rs.15,000/- towards

"Funeral Expenses". Thus, the total compensation payable to the claimants is Rs.27,10,000/- , calculated as follows:

Sl.No	Heads	Amount
1	Loss of dependency (14,062 x 12m x 14)	23,62,416
2	Loss of Consortium	1,60,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000
	Total	*25,52,416*

15. Since the deceased had contributed to the accident, 15% is deducted from the total Award amount. Hence, the claimants are entitled to a sum of **Rs.21,69,554/-** (i.e., Rs.*25,52,416* - Rs.3,82,862 = Rs.21,69,554/-). This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

16. In the result,

i) The appeal is allowed. There shall be no order as to costs.

ii) The appellants/claimants are directed to pay the necessary court fee for the compensation amount, within a period of two weeks from the date of receipt of a copy of this order and the Registry is directed to draft the decree, after receipt of necessary court fee.

(iii) The 3rd respondent, Sriram General Insurance Co, Ltd.,Coimbatore, is directed to deposit the compensation amount of **Rs.21,69,554/-** along with interest at the rate of 7.5% per annum, from the date of the claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.2185 of 2016 on the file of the Exclusive Motor Accident Claims Tribunal, Tiruppur.

(iv) Out of the deposited amount, the claimants 1 to 4 are entitled to the compensation amount as apportioned below:

As far as the apportionment is concerned, the claimants 2 & 3, are entitled to a sum of Rs.5,00,000/- each. The 4th claimant, who is minor, is entitled to a sum of Rs.5,00,000/- and the first claimant is entitled to Rs.6,69,554/-.

(v). The 4th appellant / 4th claimant / Ananda Raj, being minor, is directed to have their respective shares of the award amount invested in any one of the Nationalized Banks under a Fixed Deposit Scheme initially **for a period of three years** which shall be renewed periodically until they attain majority. The 1st appellant/1st claimant, being the natural guardian of the minor claimant 4, is permitted to withdraw the interest accrued thereon **once in three months,** and the same shall be utilized for the welfare of the minor claimant No.4.

(vi) The claimants 1 to 3 are permitted to withdraw their respective share of the Award amount, along with interest and costs, and their share be credited to their respective Bank accounts by the Tribunal."

4. Registry is directed to incorporate the above paragraph Nos.13, 14, 15 & 16, quoted above and issue fresh order copy to the parties forthwith.

5. In other respects, the order dated 19.06.2025 shall remain unaltered.

23.07.2025

rri

T.V.THAMILSELVI, J.

rri

CMA NO. 1321 of 2024

23.07.2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19-06-2025**

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA NO. 1321 of 2024

1.Pasamalar
W/o.Bakyam @ Bakyanathan
2.Stella Mary
D/o.Bakyam @ Bakyanathan
3.Saina
D/o.Bakyam @ Bakyanathan
4.Minor Ananda Raj,
D/o.Bakyam @ Bakyanathan

Appellant(s)

Vs

1.Muthuraj

2.Subramanian

3.Sriram General Insurance Co., Ltd.,
Rep. by its Branch Manager, Coimbatore.
2nd Floor, Rear Portion,
No.1076, Nagappa Complex,
Mettupalayam Road,
Coimbatore - 641 601. Respondent(s)

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Award dated 14.03.2024 made in MCOP.No.2185 of 2016 on the file of the Exclusive

Motor Accident Claims Tribunal, Tiruppur.

For Appellant(s):

K.Sudhakar

For Respondent(s):

Mr.V.Shanmuganathan For R 1
Mr.T.K. Premkumar For R3
R2 - The Notice returned with endorsement " Door Locked"

JUDGEMENT

The appellants have filed this appeal to set aside the Award dated 14.03.2024 made in MCOP.No.2185 of 2016 on the file of the Exclusive Motor Accident Claims Tribunal, Tiruppur.

2. The appellants are the claimants in M.C.O.P. No. 2185 of 2016 on the file of the Exclusive Motor Accident Claims Tribunal, Tiruppur. They filed the said claim petition seeking compensation of Rs. 40,00,000/- for the death of one Bakyam @ Bakyanathan, husband of the first claimant and father of claimants 2 to 4.

3. The learned counsel for the appellants are challenging the findings of the Award passed by the Tribunal on the following grounds:

(i) It is submitted that the finding of the Tribunal in dismissing the claim totally on the ground of lack of jurisdiction as well as negligence on the part of deceased, namely Bakyam @ Bakyanathan, is totally against evidence and all probablities of the case.

(ii) It is submitted that the Tribunal is not correct in holding that the deceased was in a drunken mood, as per the wound certificate Ex.P3, issued with respect to one Mr.Subramani, who was pillion rider. Admittedly, there is no document to show that the deceased was in a drunken mood and as per Ex.P7, post-mortem certificate clearly reveals that deceased was not in drunken condition.

(iii) The Tribunal failed to discus about other documents i.e.Ex.P7 (Post Mortem certificate) and mere admission of P.W.2 during the cross that 1st appellant husband was drunken condition, is not correct, as the same is contrary to documentary evidence. Likewise, PW1 also says that deceased had consumed alcohol, but all the documents are against the oral evidence.

(iv) The Tribunal failed to consider even for argument sake that if the deceased had consumed Alcohol, that means he was not is position to drive the vehicle and the same point was considered by this Court in 2016 (1) TN

MAC 854. It is held that mere consuming alcohol, and smell of the alcohol, cannot be concluded that the person lost control of his mind and body. Moreover, in the counter statement of the 1st respondent, it is not stated that the deceased consumed alcohol and there is no pleading in the counter, but some stray admission in the cross need not be looked into.

(v) The Tribunal is not correct in saying that there is lack of territorial Jurisdiction of the Tribunal and the Tribunal had not considered the entire evidence of PW2 and taken few sentence in cross examination of the PW2 and concluded that Tribunal was not having jurisdiction. The Tribunal need not go into more hyper-technical approach for rejecting the compensation to the victims in a road accident case and same point was considered by the Hon'ble Apex Court in 2016 (1) TNMAC 1 (SC). In case on hand, 3rd respondent / Branch office was within the jurisdiction of Tiruppur and the same was explained by P.W.1 in his proof affidavit in Para No.5, but there is no discussion about the same in the judgment. Further, the Motor Vehicles Act is a beneficial Legislation.

(vi) The Tribunal failed to consider that Section 166 of the Motor Vehicles Act, says that the claimant resides, but not state that residence is permanent one or temporary one. Hence, petitioners clearly say that they are residing temporarily in Tiruppur for their avocation to run their life even before accident. Hence, the 1st appellant, and her husband works whereever the job was available and during the life time of the deceased, the appellant resided in the above mentioned Tiruppur Address. Even P.W.1 and P.W.2 in their deposition, clearly say that the appellant's residence was in Tiruppur with their landlord details.

(vii) The Tribunal failed to consider that rough sketch and observation mahazar were marked properly. P.W.1 clearly says that the accident happened on the left side, but small deviation may happen.

(viii) The Tribunal failed to consider P.W.3's evidence in the proper manner, who clearly speaks about the appellant's residence.

ix) The Award of the tribunal is against the several dictums of the Hon'ble Apex Court as well as this Court.

4. The learned counsel for the respondents submitted that, at the time of the alleged accident, three persons were riding on the two-wheeler, and the pillion rider had consumed alcohol, which contributed to the accident.

Furthermore, the claim petition was filed before the Tribunal at Tiruppur, while the alleged accident had occurred near Dindigul. Therefore, the Tribunal at Tiruppur had no jurisdiction to decide the case, and the same was rightly observed by the learned Trial Judge, which requires no interference. Additionally, it was submitted that the rider of the two-wheeler did not possess a valid driving licence, and there was contributory negligence on the part of the two-wheeler as well. Hence, he prayed for dismissal of the appeal as devoid of merits.

5. In response, the learned counsel for the appellants argued, relying on the ratio laid down in **2016 (1) TNMAC 1 SC**, ***Malati Sardar Vs. National Insurance Co. Ltd., & Others,*** in which stated as follows:

> *" 14. The provision in question, in the present case, is a benevolent provision for the victims of accidents of negligent driving. The provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidnets. Hyper-technical approach in such matters can hardly be appreciated. There is no bar to a claim petition being filed at a place where the Insurance company, which is the main contesting parties in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice. Moreover, in view of categorical decision of this*

Court in Mantoo Sarkar (Supra), contrary view taken by the High Court cannot be sustained. The High Court failed to notice the provision of Section 21, C.P.C."

6. Though the deceased was a native of Theni, he had settled in Tiruppur for employment purposes at the time of the accident. Therefore, the claim petition filed before the Exclusive Motor Accident Claims Tribunal,Tiruppur was within the jurisdiction of that Tribunal. However, the Tribunal failed to appreciate this aspect, despite the deposition of P.W.3, who clearly stated that the deceased was residing in Tiruppur.

7. The Tribunal dismissed the case on the ground of lack of territorial jurisdiction, observing that the claimants failed to produce documentary evidence to prove that the deceased was residing in Tiruppur. However, as per the above-cited ratio, the issue of territorial jurisdiction is deemed to be a hypothetical issue. Moreover, considering that the insurance company had its head office in Coimbatore, which is close to Tiruppur, the jurisdiction of the Tribunal at Tiruppur is well established.

8. It is also an admitted fact that, at the time of the accident, the

vehicle (a car) involved was insured with the 3rd respondent. The 2nd respondent was the owner of the vehicle, and the 1st respondent was the driver. Therefore, relying on the legal precedent and considering the beneficial object of the Motor Vehicles Act, which aims to provide remedy to accident victims, this Court is inclined to set aside the findings of the Tribunal.

9. As regards the manner of the accident, it was revealed that on the date of the incident, the deceased was riding the two-wheeler along with two others. As per the FIR, the accident occurred due to the rash and negligent driving of the opposite car by its driver.

10. The learned counsel appearing for the 1st respondent/driver submitted that the driver of the two-wheeler was allegedly in a drunken state and drove the vehicle in a rash and negligent manner. Thus, the accident was due to his own fault, and no negligence could be attributed to the driver of the car. According to the FIR, the deceased was driving the two-wheeler, while the pillion rider was under the influence of alcohol.

11. P.W.2, the wife of the deceased, deposed that her husband was not in the habit of consuming alcohol. However, it is admitted that three persons were riding the two-wheeler, which is a clear violation of the traffic Rules. Furthermore, the deceased, who was driving the two-wheeler, did not establish that he possessed a valid driving licence. Due to the injuries sustained, he died on the spot. Based on these facts, a contributory negligence of 15% is fixed on the deceased.

12. The car involved in the accident was insured with the 3rd respondent. Hence, the remaining 85% of the liability is fastened upon the 2nd and 3rd respondents. As the vehicle was insured, the 3rd respondent/Insurance Company is bound to pay the compensation accordingly.

13. On considering the submissions of both sides and upon perusal of the records, this Court is inclined to award compensation to the legal heirs of the deceased / appellants. The accident took place on 10.09.2016.

Though it was contended by the claimants that the deceased was working as a Head Mason and was earning a sum of Rs.15,000/- per month, in the opinion of this court, in the absence of proof of income, the notional income of the deceased should be fixed at Rs.15,000/- per month. As per the decision of ***the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601,*** 25% should be added towards future prospects. Hence, the monthly income of the deceased is fixed at Rs.18,750/- (i.e., Rs.15,000 + Rs.3,750 = Rs.18,750). Since the age of the deceased was 42 years on the date of the accident, the proper multiplier to be adopted in the instant case is "14", as per the decision of the ***Hon'ble Apex Court in Sarala Verma and others Vs. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121.*** After deducting 1/5 of income towards personal expenses of the deceased, the loss of dependency is calculated as follows.

Calculation for Loss of dependency

Income + future prospects 25% = Rs.15000 + Rs.3750 = Rs.18750

(Income + future prospects 25%) -1/5th deduction = Rs.18750 - Rs.3750= Rs.15,000/-

Loss of dependency= Rs.15,000 x 12m x 14 = Rs.25,20,000/-

14. In addition to the above, as per the decision rendered by the ***Constitution Bench of the Honourable Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and others, reported in 2017 (2) TN MAC 601,*** the claimants are each entitled to Rs.40,000/- for "Loss of Consortium" (i.e., Rs.40,000 x 4 = 1,60,000/-). The claimants are also entitled to Rs.15,000 towards "Loss of Estate" and Rs.15,000/- towards "Funeral Expenses". Thus, the total compensation payable to the claimants is Rs.27,10,000/- , calculated as follows:

Sl.No	Heads	Amount
1	Loss of dependency (15,000 x 12m x 14)	25,20,000
2	Loss of Consortium	1,60,000
3	Loss of Estate	15,000
4	Funeral Expenses	15,000
	Total	*27,10,000*

15. Since the deceased had contributed to the accident, 15% is deducted from the total Award amount. Hence, the claimants are entitled to a sum of Rs.23,03,500/- (i.e., Rs.*27,10,000* - Rs.4,06,500 = Rs.23,03,500).

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

16. In the result,

i) The appeal is allowed. There shall be no order as to costs.

ii) The appellants/claimants are directed to pay the necessary court fee for the compensation amount, within a period of two weeks from the date of receipt of a copy of this order and the Registry is directed to draft the decree, after receipt of necessary court fee.

(iii) The 3rd respondent, Sriram General Insurance Co, Ltd.,Coimbatore, is directed to deposit the compensation amount of Rs.23,03,500/- along with interest at the rate of 7.5% per annum, from the date of the claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.2185 of 2016 on the file of the Exclusive Motor Accident Claims Tribunal, Tiruppur.

(iv) Out of the deposited amount, the claimants 1 to 4 are entitled to the compensation amount as apportioned below:

As far as the apportionment is concerned, the claimants 2 & 3, are entitled to a sum of Rs.5,00,000/- each. The 4th claimant, who is minor, is entitled to a sum of Rs.5,00,000/- and the first claimant is entitled to Rs.8,03,500/-.

(v). The 4th appellant / 4th claimant / Ananda Raj, being minor, is directed to have their respective shares of the award amount invested in any one of the Nationalized Banks under a Fixed Deposit Scheme initially **for a period of three years** which shall be renewed periodically until they attain majority. The 1st appellant/1st claimant, being the natural guardian of the minor claimant 4, is permitted to withdraw the interest accrued thereon **once in three months,** and the same shall be utilized for the welfare of the minor claimant No.4.

(vi) The claimants 1 to 3 are permitted to withdraw their respective share of the Award amount, along with interest and costs, and their share be credited to their respective Bank accounts by the Tribunal.

19.06.2025

Index:Yes/No
Speaking/non Speaking order
Neutral Case citation: yes/no
rri

To

1. The Exclusive Motor Accident Claims Tribunal,
   Tiruppur.

2. The Section Officer, V.R. Section, High Court, Madras.

T.V.THAMILSELVI, J.

rri

CMA NO. 1321 of 2024

19.06.2025