



C.M.A.No.201 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 28.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.201 of 2025

1. Lakshmi

2. Krishnan

...Appellants

Vs.

1. M.Kulothungan

2. The Branch Manager,
United India Insurance Co. Ltd.,
Dharmapuri.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 30.01.2004 passed in MCOP.No.10 of 1997 on the file of the Motor Accident Claims Tribunal, Sub Court, Dharmapuri.

For Appellants : Mr.M.Selvam

For Respondents : Mr.R.Chandrasekaran, for R1
: Mr.R.Rajesh, for R2



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JUDGEMENT

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Challenging the judgment and decree dated 30.01.2004 made in MCOP.No.10 of 1997 on the file of the Motor Accident Claims Tribunal, Sub Court, Dharmapuri, the claimants are before this Court.

2. It is the case of the appellants/claimants that, on 02.05.1996 at about 5.30 hours, when the deceased Selvam was riding a cycle very slowly on the extreme left of Harur to Salem Main road near Arul Jothi Steel, at the time, a tractor bearing Regn.No.TN-29-A-5830 and trailer bearing Regn.No.TN-29-A-1758 owned and driven by the 1st respondent insured with the 2nd respondent came in a rash and negligent and dashed against the deceased Selvam, due to which, he sustained grievous injuries and died on the spot. Thereby, the appellants, who are the dependents/parents of the deceased Selvam filed a claim petition seeking compensation of Rs.2,00,000/-. Before the tribunal, the claimants examined two witnesses viz. P.W.1 & P.W.2 and marked exhibits P.1 to P.4 and on the side of respondents, one witness viz. R.W.1 was examined and exhibits R.1 to R.4 were marked. After trial, the Tribunal, on appreciation of oral and documentary evidence, though came to a conclusion



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that the accident had taken place solely due to the rash and negligent driving on the part of the 1st respondent, however, awarded a meagre compensation of Rs.1,54,500/- and directed the 1st respondent to pay the compensation in favour of the appellants and dismissed the claim as against the 2nd respondent-insurance company. Challenging the same, the appellants/claimants have come up with this appeal.

3. Learned counsel appearing for the appellants submitted that admittedly, the accident is of the year 1996 and at the time of accident, the deceased was aged about 18 years and was working at petrol Bank and he was the sole bread winner of the family, however, the tribunal had fixed the monthly income of the deceased at Rs.1,000/-, which is very meagre and the compensation awarded under the other heads are also on the lower side and the same has to necessarily be enhanced. Further, at the time of accident, the 1st respondent's tractor and trailer was insured with the 2nd respondent, however, the tribunal had exonerated the 2nd respondent and directed the 1st respondent/owner of the tractor and trailer to pay the compensation, which is not sustainable. Accordingly, he prayed for appropriate orders.



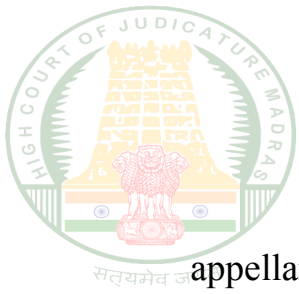
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4. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, the 1st respondent made a own damages claim before the 2nd respondent and the same was rejected on the ground that the 1st respondent failed to produce his driving license and the said fact was elaborately discussed and clearly established before the tribunal and thereby, by considering all the relevant documents and evidences, the Tribunal has rightly passed the awarded exonerating the 2nd respondent and directed the 1st respondent to pay a sum of Rs.1,54,500/- towards compensation in favour of the appellants, which does not require any interference of this Court. Accordingly, he prayed for dismissal of the appeal.

5. On the above said contentions, heard the learned counsel appearing on behalf of the 1st respondent and perused the materials available on record.

6. The factum and manner of the accident is not in dispute and therefore, this Court is not entering into the said aspect and the major grievance of the



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appellants is with regard to the quantum of compensation awarded by the tribunal. Admittedly, the accident is of the year 1996 and at the time of accident, the deceased was aged about only 18 years and it is the claim of the appellants/claimants that the deceased was working in a Petrol bank. However, the tribunal had fixed the notional income of the deceased as Rs.1,000/-, which is very meagre and though the deceased was aged about 18 years as evidenced from the records, the tribunal had wrongly taken the multiplier as 17 instead of 18, which requires to be modified.

7. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, and also considering the age of the deceased as also the claimants, fixing a notional income of Rs.3,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**, the income per month is quantified at Rs.4,200/-. Deducting 50% towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.2,100/- per month and the



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deceased being aged about 18 years, as evidenced from the records, adopting the multiplier of 18 as fixed by the Apex Court in the case of **Sarla Verma and Ors. v. DTC & Ors.** reported in **(2009) 6 SCC 121**, the loss of income to the family is arrived at Rs.2,100/- * 12 * 18 = Rs.4,53,600/-.

8. Insofar as the compensation awarded under the other heads are concerned, the trial court had awarded a sum of Rs.15,000/- and Rs.2,500/- under the heads Loss of love and affection and Funeral expenses respectively, which are very meagre and thereby, the same is enhanced to Rs.40,000/- and Rs.15,000/- respectively and no compensation has been awarded under the head Loss of estate, hence, this Court awards a sum of Rs.15,000/- under the said head.

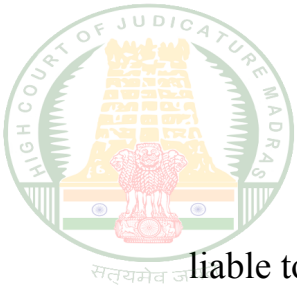
9. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-



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Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of dependency	1,36,000/-	4,53,600/-
Loss of love and affection	15,000/-	40,000/-
Funeral Expenses	2,500/-	15,000/-
Loss of estate	-	15,000/-
Damages to clothes	1,000/-	1,000/-
Total	1,54,500/-	5,24,600/-

10. Insofar as the liability / negligence fixed by the tribunal as against the 1st respondent-owner is concerned, merely because the own damages claim made by the 1st respondent before the 2nd respondent was dismissed on the ground that he failed to produce his Driving license, the same cannot be a ground to exonerate the 2nd respondent-insurer and it is the duty cast upon the 2nd respondent to prove that the 1st respondent did not possess valid Driving license, which led to violation of policy conditions. However, in the case on hand, the 2nd respondent failed to prove that the 1st respondent did not possess valid driving license at the time of accident, and in the absence of any convincing material, the findings of the tribunal exonerating the 2nd respondent is wholly unsustainable. Hence, this Court holds that the 2nd respondent is



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liable to compensate the appellants.

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11. Further, it has been the consistent view of this Court that, an award of interest at 7.5% would be just and reasonable for the accident which has happened in the year 1996 and thereby, the interest of 9% awarded by the tribunal is modified and the compensation fixed by this Court at Rs.5,24,600/- will carry interest at the rate of 7.5% per annum from the date of petition till the date of realization.

12. Accordingly, the appeal stands allowed in part and the impugned award is modified by enhancing the compensation from **Rs.1,54,500/-** to **Rs.5,24,600/-**. The 2nd respondent/Insurance company is directed to deposit the said amount to the credit of MCOP.No.10 of 1997 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. In the above enhanced amount, the appellants are entitled to a sum of Rs.2,62,300/- each, with proportionate interest and costs. On such



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deposit being made, the Tribunal is directed to transfer the same directly to the bank account of the appellants through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. It is underscored that the appellants are not entitled to any interest for the default period, if any. No costs.

28.01.2025

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

The Motor Accident Claims Tribunal,
Sub Court,
Dharmapuri.

M.DHANDAPANI, J.

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