IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.M.A.Nos.3221 & 3596 of 2019

C.M.A.No.3221/2019 :

1.Manjula
2.Minor Sathiya
3.Minor Srinivasan
4.Palaniyammal ... Appellants

(Minors 2 and 3 rep. by the next friend
Guardian/Mother Manjula)

vs

1.Ramasamy

2.The Oriental Insurance Company Limited,
No.209, Sri Ram Nilayam,
Hospital Road, Ooty,
The Nilgiris District - 643 001. ... Respondents

C.M.A.No.3596/2019 :

The Oriental Insurance Company Limited,
No.209, Sri Ram Nilayam,
Hospital Road, Ooty,
The Nilgiris District - 643 001. ... Appellant

vs

1.Manjula
2.Minor Sathya
3.Minor Srinivasan
4.Palaniammal
5.Ramasamy ... Respondents

(2nd & 3rd minor respondents represented by
their Mother and guardian, 1st respondent herein)

PRAYER : Appeals against the judgment and decree, dated 06.11.2017, passed in M.C.O.P.No.532 of 2015 on the file of Motor Accident Claims Tribunal -cum- Subordinate Court, Sathyamangalam.

For Appellants in C.M.A.No.3221/2019 &
Respondents 1 to 4 in C.M.A.No.3596/2019 :
Mr.Ma.P.Thangavel

For Appellant in C.M.A.No.3596/2019 &
Respondent 2 in C.M.A.No.3221/2019 : Mr.N.Sampath

Respondent 1 in C.M.A.No.3221/2019 &
Respondent 5 in C.M.A.No.3596/2019 : Ex parte

JUDGMENT

(By Dr.G.Jayachandran,J.)

Claim Petition was filed by wife, two minor children, and mother of the deceased - Nagaraj, who died in a road accident, while driving a lorry bearing registration No.TN43 A4009 on 02.08.2015.

2. According to the claimants, the accident occurred when Nagaraj tried to negotiate the oncoming lorry from the opposite side, driven in a rash and negligent manner. To avoid hitting the lorry, he tried to move to the left, but it being a ghat road, the vehicle capsized, due to which Nagaraj came under the lorry and died. Stating that at the time of accident, Nagaraj was earning a sum of Rs.20,000/- per month as driver by profession and he was 44 years old, his wife, two minor children, and mother, who are dependants, had claimed a sum of Rs.20.00 lakhs as compensation before the Tribunal.

3. Insurance company contested the claim on the ground that the accident occurred due to the negligence of the deceased - Nagaraj. He being the tort-feasor, his dependants are not entitled for any compensation.

4. While the claimants relied on the evidence of one Mohanraj, eye-witness to the occurrence, Insurance company examined one of its officers as a defence witness.

5. The Tribunal, relying upon the claimants' side documents, namely, Exs.P-1 to P-20 and the copy of the policy marked as Ex.R-1, awarded a sum of Rs.19,77,400/- towards compensation as under :

Sl.No.	Head	Amount awarded by the Tribunal
1	Loss of dependency	Rs.16,22,400
2	Loss of Consortium	Rs.1,00,000/-
3	Loss of Love & Affection - 2 & 3	Rs.1,80,000/-
4	Loss of Love & Affection - 4	Rs.50,000/-
5	Funeral Expenses	Rs.25,000/-
Total		Rs.19,77,400/-

6. Challenging the liability as well as the quantum, the Insurance company has preferred C.M.A.No.3596 of 2019, whereas the claimants have filed C.M.A.No.3221 of 2019, seeking enhancement of compensation, on the ground that the Tribunal failed to apply proper multiplier and also failed to fix the loss of earning of the deceased appropriately. Being a driver by profession, accident occurred in the course of employment as driver; insurance for the vehicle covers the driver also by payment of additional premium; option to file motor accident claim under the Motor Vehicles Act or under the Workmen's Compensation Act is vested with the claimants. Therefore, the compensation awarded by the Tribunal has to be enhanced.

7. Learned counsel for the insurance company vehemently argued that the evidence would clearly show that the deceased - Nagaraj was the tort-feasor; the F.I.R. as well as the Final Report, which form part of the evidence as Exs.P-1 and P-6, would go to show that the lorry got capsized due to negligence of Nagaraj and, therefore, the insurance company is not liable to pay any compensation to the dependants of the tort-feasor.

8. In support of his argument, the learned counsel relied upon a Division Bench judgment of the Karnataka High Court in G.Nagarathna v. G.Manjunatha in M.F.A.No.2850/2017 (Mv-D), dated 23.11.2024, which has been affirmed by the Hon'ble Supreme Court in an S.L.P., in which the Karnataka High Court, considering the facts of the case, held that when admittedly the accident occurred due to rash and negligent driving of the deceased himself and he being the tort-feasor, the legal heirs cannot be paid any compensation for his death, otherwise, it would amount to a person, who committed breach, getting compensation for his own wrong.

9. Learned counsel for the claimants/appellants in C.M.A.No.3221 of 2019 would submit that the deceased Nagaraj was not a tort-feasor, as contended by the learned counsel for the insurance company; the vehicle got capsized due to rash driving of an unknown lorry by its driver, coming in the

opposite direction, and this fact has been spoken to by the eye-witness P.W.2 - Mohanraj; his evidence is not impeached and, therefore, the contention of the insurance company is not acceptable. The judgment relied upon by the learned counsel for the insurance company is not applicable to the case in hand.

10. This Court, after giving anxious consideration to the evidence available, finds that the judgment relied upon by the insurance company is factually different from the case in hand. There is no admission about the negligence, as alleged by the learned counsel for the insurance company and as in the case cited and relied upon by him. Contrarily, there is a clear ocular evidence by a person, who has seen the accident and attributed negligence on the part of the unknown lorry. Hence, the insurance company cannot escape from liability, after collecting additional premium of Rs.100/-, as admitted by their own witness.

11. In so far as the quantum, this Court finds that the deceased - Nagaraj was a professional driver, holding heavy vehicle licence. The fact that he died while driving a lorry is a proof of his profession. The F.I.R. given by the owner of the lorry also speaks about the employment. The accident occurred in the year 2015. Therefore, fixation of notional income of the deceased by the Tribunal at Rs.10,000/- per month in view of this Court is

lesser and it should be at least Rs.12,000/- per month. If the income of the deceased is fixed at Rs.12,000/- per month with 30% of future prospects, the loss of dependency will be Rs.12,000/- + 3,600 = 15,600/-. Deduction towards personal expenditure must be one-fourth, since the deceased Nagaraj died leaving behind four dependants. Hence, the loss of income is computed at Rs.11,700/- per month. Thus, the total loss of dependency would be Rs.11,700 x 12 x 14 = 19,65,600/-. If the said loss of dependency is assessed as above, applying the judgment in *National Insurance Company Ltd.* v. *Pranay Sethi and Others*, (2017) 2 TN MAC 609 (SC), the compensation under other heads must be as below :-

Loss of Consortium to wife	-	Rs. 40,000/-
Loss of Love & Affection to children & Mother	-	Rs.1,20,000/-
Funeral Expenses	-	Rs. 15,000/-
Transport Charges	-	Rs. 10,000/-

		Rs.1,85,000/-

As such, the total compensation would be Rs.19,65,600 + 1,85,000/- = 21,50,600/-.

12. The award amount is, therefore, modified and enhanced as above. The Insurance company is directed to deposit the award amount with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit along with costs. Of the said amount of Rs.21,50,600/-, appellants/claimants 1 to 3 are entitled to Rs.6,00,000/- each (Rs.18,00,000/-) and appellant/claimant No.4- mother is entitled to the balance amount i.e., Rs.3,50,600/-.

13. Accordingly, C.M.A.No.3221 of 2019, filed by the claimants, is partly allowed and C.M.A.No.3596 of 2019, filed by the insurer, is dismissed. No costs. Consequently, the connected C.M.P.No.20791 of 2019 is closed.

(DR.G.J.,J.) (M.S.K.,J.)
22.10.2025

dixit

To

Motor Accident Claims Tribunal-cum-
Subordinate Court,
Sathyamangalam.

DR.G.JAYACHANDRAN,J.
AND
MUMMINENI SUDHEER KUMAR, J.

dixit

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