



WEB COPY



CMA.No.1112 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.1112 of 2025

1. Minnoli
2. Kamini
3. Sushmitha
4. Minor Nithya
5. Minor Thaarun

... Appellants

Vs.

1. P.Rajkamal
2. United India Insurance company ltd.,
Rep. by its Branch Manager,
branch office at No.4 & 5, Kandasamy Mudali Street,
Ranipet, Vellore 632 401.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to enhance the compensation amount and fix the entire liability on the 2nd respondent in MCOP No.1021 of 2023, dated 01.02.2025 on the file of the Special District Judge, Motor Accident Claims Tribunal, Krishnagiri.

For appellants : Mr.S.P.Yuaraj

For Respondents : Mr.J.Chandran for second respondent



CMA.No.1112 of 2025

WEB COPY

JUDGMENT

Not satisfied with the quantum 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 and father of claimants 2 to 5 namely Margandan died in a road accident that had occurred on 24.02.2023 involving a lorry. According to the claimants, the deceased was riding his motorcycle slowly and steadily by observing traffic rules on the extreme left side of the road from Chennai to Krishnagiri National Highway and when he came near Bargur Bye Pass Seenivasan Coconut Mundy, a lorry belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the motorcycle of the deceased. As a consequence, the deceased sustained injuries and died. Therefore, the claimants filed a claim petition seeking compensation of Rs.50,00,000/-.

3. The first respondent remained exparte before the Tribunal and



CMA.No.1112 of 2025

WEB COPY

the claim petition was resisted only by the second respondent, insurer of the offending lorry by stating that the accident had occurred only due to the negligence on the part of the deceased. The insurance company also claimed that the deceased had driven the vehicle without R.C., insurance and driving licence and hence, sought for dismissal of the claim petition.

4.The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the lorry by its driver. However, taking into consideration that the deceased failed to produce valid driving licence, R.C. and insurance, the Tribunal fixed 20% contributory negligence on the part of the deceased and after deducting the amount towards contributory negligence, directed the 2nd respondent to pay a sum of Rs.16,06,400/- to the claimants. Aggrieved by the quantum of compensation and also the fixation of contributory negligence on the part of the deceased, the claimants have come before this court by filing the present appeal.

5. The learned counsel for the appellant would submit that



CMA.No.1112 of 2025

WEB COPY

failure to have valid driving licence *per se* cannot be taken as a ground for fixing contributory negligence on the part of the deceased. In support of his contention, he relied on the judgment of the Hon'ble Apex Court in ***J.Dinesh Kumar Vs. National Insurance Co. Ltd. and others reported in CDJ 2017 SC 1416***. The learned counsel for the appellant further submits that the notional income of Rs.12,000/- fixed by the Tribunal is meager one and the same requires enhancement.

6. The learned counsel for the 2nd respondent/ insurance company would submit that the claimants have not produced any documentary evidence to prove the avocation, income and age of the deceased and hence, the Tribunal was justified in fixing notional income at Rs.12,000/- per month. He also supported the findings of the Tribunal in fixing contributory negligence on the part of the deceased for his failure to produce valid driving licence.

7. It is not in dispute that the claimants failed to produce driving licence of the deceased. However, mere failure to produce driving licence cannot be taken as a ground to fix negligence on the part of the



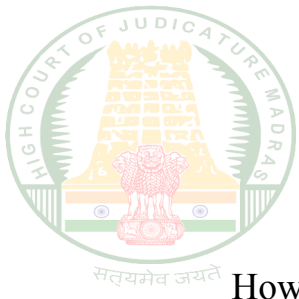
CMA.No.1112 of 2025

WEB COPY

deceased. The Hon'ble Apex Court, in the case of ***Sudhir Kumar Rana Vs Surinder Singh and Others*** reported in ***(2008) 12 SCC 436***, categorically held that mere failure to have valid driving licence *per se* is not a ground to fix contributory negligence, unless there is a positive evidence on record to show that the deceased also contributed to the accident. The said decision in ***Sudhir Kumar case*** was subsequently affirmed by the 3 Members Bench of the Apex Court in ***Dinesh Kumar*** case, cited *supra*.

8. In the case on hand, absolutely, there is no evidence to suggest that the victim by his negligence, contributed to the accident. Therefore, the Tribunal committed an error in fixing contributory negligence on the part of the deceased for his failure to produce valid driving licence, R.C., etc. It is also pertinent to mention that in view of the law laid down by the Apex Court, cited *supra*, the finding rendered by the Tribunal on the contributory negligence is set aside.

9. It is stated in the claim petition that the deceased was a lorry driver and was earning a sum of Rs.30,000/- to Rs.40,000/- per month.



CMA.No.1112 of 2025

WEB COPY

However, in order to prove the income of the deceased, the claimants have not produced any documentary evidence. The heavy vehicle driving licence of the deceased was marked as Ex.P13. Therefore, it is clear that the deceased was authorised to drive heavy vehicle. Taking into consideration that the deceased was qualified to drive heavy vehicle and also the fact that the accident had occurred in the year 2023, this court is inclined to fix a sum of Rs.18,000/- per month as notional income. The Tribunal fixed the age of the deceased as 50 years, based on the Ex.P13, driving licence. Therefore, the claimants are entitled to 25% enhancement towards future prospects. The applicable multiplier is 13. Since there were 5 dependents, on the date of accident, 1/4 shall be deducted towards personal expenses of the deceased. Accordingly, loss of dependency is fixed at Rs.26,32,500/- (18,000 x 1.25 x 12 x 13 x 3/4).

10. Since the accident had occurred after 3 years from the date of delivery of the judgment by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others reported in AIR 2017 SC 5157*** on **31.10.2017**, the claimants are entitled to 10%



WEB COPY

enhancement on the conventional heads. Accordingly, the Tribunal rightly awarded a sum of Rs.44,000/- each to the claimants 1 to 5 towards loss of consortium and loss of love and affection and a sum of Rs.16,500/- each towards loss of estate and funeral expenses. Hence, the same are confirmed.

11. 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	17,55,000	26,32,500	enhanced
2.	Loss of consortium to first claimant, loss of love and affection to claimants 2 to 5	2,20,000	2,20,000	confirmed
3.	Loss of estate	16,500	16,500	confirmed
6.	Funeral expenses	16,500	16,500	confirmed
	Total	20,08,000	28,85,500	enhanced
	Less 20% towards contributory negligence	4,01,600	--	set aside
	Compensation	16,06,400	28,85,500	enhanced by Rs.12,79,100

12. With the above modifications, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at



CMA.No.1112 of 2025

WEB COPY

Rs.16,06,400/- is hereby enhanced to **Rs.28,85,500/-** together with interest at 7.5% per annum from the date of claim petition till the date of deposit. The claimants are directed to pay applicable court fee on the enhanced compensation amount now determined by this court.

13. From the above compensation now determined, the first claimant/wife is entitled to Rs.15,35,500/-, claimants 2 to 4/daughters are entitled to Rs.2,50,000/- each and the 5th claimant/minor son is entitled to Rs.6,00,000/-.

14. The **second respondent** is directed to deposit the compensation amount now determined by this Court to the credit of MCOP No.1021 of 2023 on the file of the Special District Judge, Motor Accident Claims Tribunal, Krishnagiri. 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.

15. It is seen from the cause title of the award copy that the 4th claimant namely Nithya was 17 years at the time of filing claim petition in the year 2023 before the Tribunal and hence, she should have



CMA.No.1112 of 2025

WEB COPY

attained majority at the time of passing the award. Therefore, on such deposit being made by the second respondent, the claimants 1 to 4 shall be permitted to withdraw their respective compensation amount along with interest and costs, less the amount if any, already withdrawn, by making a formal application before the Tribunal.

16. Since the 5th claimant being a minor, his share shall be deposited in any one of the nationalized banks initially for a period of 3 years and the same shall be renewed periodically till his attainment of majority. The first claimant is entitled to withdraw the accrued interest thereon once in six months and the same shall be used for the welfare of the minor/5th claimant. There shall be no order as to costs.

17.04.2025

Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
mst

To

1. The Special District Judge,
Motor Accident Claims Tribunal,
Krishnagiri.



CMA.No.1112 of 2025

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

WEB COPY



WEB COPY



CMA.No.1112 of 2025

S.SOUNTCHAR, J.

mst

CMA No.1112 of 2025

17.04.2025