

C.M.A.No.2404 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.2404 of 2021

1. R. Sankar

2. R. Rajendran

3. R. Periyasamy

... Appellants

Vs.

1. M. Mahendran

2. M/s.United India Insurance Company Ltd.,
No.1019, K.M.S. Complex,
Salem Main Road, Opposite to Udupi Hotel,
Attur, Salem District - 636 102.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 04.12.2019 made in M.C.O.P.No.703 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Court (FAC), Namakkal.



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For Appellant : Mr.Ma.P.Thangavel

For Respondent No.1 : No appearance

For Respondent No.2 : Mrs.I. Malar

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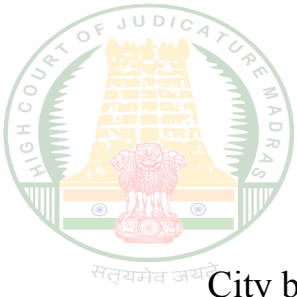
JUDGMENT

*(Judgment of the Court was delivered by **J. Nisha Banu, J**)*

Feeling aggrieved by the Award passed by the Motor Accident Claims Tribunal, Additional District Court (FAC), Namakkal, ['Tribunal' for short] in M.C.O.P.No.703 of 2016, dated December 4th, 2019, the petitioners therein have filed this Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, praying to enhance the compensation.

2. Hereinafter, for the sake of convenience, the parties will be referred to as per their rank before the Tribunal.

3. The case of the petitioner is that on 21.03.2016 at about 6.00 p.m. in front of K.S.Theater in Namakkal to Salem Road, while the deceased Ramasamy was standing on the left side of the road, a TVS Star



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City bike bearing Registration No. TN-28-AX-9974, which was ridden by its rider in a rash and negligent manner from Salem to Namakkal road without observing the traffic rules dashed against the said Ramasamy and thereby caused the accident, as a result of which, the said Ramasamy sustained multiple fractures and grievous injuries on his head, both legs and some other injuries all over his body. He was given treatment in Atchaya Hospital at Namakkal. Despite the treatment, he died on 25.03.2016. Seeking compensation for the death of Ramasamy, his three sons filed a claim petition before the Tribunal, contending that the accident occurred only due to the rash and negligent riding of the rider of the bike bearing Registration No.TN-28-AX-9974 and therefore, the first respondent as the owner and the second respondent as Insurer of the offending bike are jointly and severally liable to pay the compensation to the petitioner.

4. The second respondent/Insurance Company filed counter denying the manner of accident and also disputed the age, avocation, income of the deceased and had also disputed the compensation claimed under various heads.



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5. In order to prove the claim, the first claimant/Shankar was examined as P.W.1 and one Nagaraj (Ocular witness) was examined as P.W.2 and Ex-P.1 to Ex-P.8 were marked. On the side of the respondent, none examined as witness and Ex-R.1 to Ex-R.3 were marked.

6. The Tribunal, based on the evidence of P.W.1 and P.W.2 and Ex-P.1, First Information Report and Ex-P.4, Charge Sheet, concluded that the accident had occurred only due to the rash and negligent riding of the rider of the TVS Star City bike bearing Registration No. TN-28-AX-9974.

7. With regard to quantum, The Tribunal, considering the avocation of the deceased, who was working as a security in a cinema theatre, fixed a sum of Rs.6,500/- as notional monthly income of the deceased. After deducting 1/3rd of the income towards the personal expenses of the deceased, (Rs.6,500/- - Rs.2,166/- = Rs.4,334/-), a sum of Rs.4,334/- was taken as the monthly income of the deceased. Applying multiplier '5' considering the age of the deceased namely, 70, the tribunal awarded a



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sum of Rs.2,60,040/- towards loss of income. In addition to the above, under other heads, the Tribunal also awarded the amount under other heads as tabulated below:-

S.No.	Head	Amount
1	Loss of income (Rs.4,334 x 12 x 5)	Rs.2,60,040
2	Loss of estate	Rs.15,000
3	Funeral expenses	Rs.15,000
4	Medical Expenses	Rs.77,980
	Total	Rs.3,68,020

Totally, the Tribunal awarded a sum of Rs.3,68,020/- with interest at the rate of 7.5% to the claimants, payable by the 2nd respondent Insurance Company. Not satisfied with the quantum of compensation, the claimants are on appeal.

8. The learned counsel for the appellants would state that at the time of the accident, the deceased was only 58 years old (as per Ex-P.3 Postmortem Report) and working as a Security in a Cinema Theatre and earned a sum of Rs.12,000/- per month. However, the Tribunal without considering the rise in the cost of living during the relevant point of time, fixed a meagre sum of Rs.6,500/- as the monthly income of the deceased



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without any basis. Therefore, it requires enhancement. He further submitted that when there is no evidence to prove the age of the deceased, the age of the deceased in the post-mortem certificate has to be given credence for fixing the appropriate multiplier. However, in this case, the Tribunal has presumed the age of the deceased as 70, by taking note of the age of his son/P.W.1. Such approach adopted by the Tribunal is unknown to claims cases. Therefore, the learned counsel submitted that the age of the deceased should be fixed as 58 as per Ex.P.2-Post mortem certificate and consequently, multiplier '9' for computing the loss of income. That apart, he also seeks enhancement under the conventional heads.

9. On perusal of the death certificate, legal heir certificate and postmortem certificate, it is seen that the age of the deceased was mentioned as 58. But, the Tribunal, without considering these documents, has taken the age of the deceased as 70, based on conjecture and surmises. As rightly contended by the learned counsel for the appellants, when there is no proof for age, the entry in the post-mortem certificate has to be taken. Hence, this Court is of the considered view that as per the



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Ex-P.2, Ex-P.5 and Ex-P.6, the age of the deceased at the time of the accident was 58 years.

10. The Tribunal, considering the decision of the Supreme Court in Syed Sadiq case, [AIR 2014 SC 1052] where, a sum of Rs.6,500/- was fixed as monthly income for a vegetable vendor, fixed a sum of Rs.6,500/- as notional monthly income of the deceased, which, in our opinion, is fair and proper. Adding 10% towards future prospects, i.e. Rs.650/- ($\text{Rs.6,500} \times 10/100 = \text{Rs.650}$), the monthly income comes to Rs.7,150/-. After deducting $1/3^{\text{rd}}$ towards the personal expenses of the deceased and by applying multiplier '9' as per the decision rendered in ***Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121***, loss of income works out to Rs.5,14,800/-. The award of Rs.15,000/- each towards loss of estate and funeral expenses respectively cannot be said to be meagre, in view of the decision of the Apex Court in ***National Insurance Co. Ltd., Vs. Pranay Sethi*** reported in ***2017 (16) SCC 680***. Accordingly, the total compensation is modified and apportioned as hereunder:-

S.No.	Head	Amount
1	Loss of income	Rs.5,14,800



S.No.	Head	Amount
	(Rs.7,150 x 12 x9 x 2/3)	
2	Loss of estate	Rs.15,000
3	Funeral expenses	Rs.15,000
4	Medical Expenses	Rs.77,980
	Total	Rs.6,22,780

11. In the result, this Civil Miscellaneous Appeal is partly allowed.

The Insurance Company/second respondent shall deposit the enhanced compensation of **Rs.6,22,780/- (Rupees Six Lakhs Twenty Two Thousand Seven Hundred and Eighty Only)**, along with interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four (4) weeks, from the date of receipt of a copy of this judgment. On such deposit, being made, the claimants are permitted to withdraw their respective share as apportioned by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn, by making necessary application before the Tribunal. No costs.

(J.N.B., J.) (R.S.V., J.)
22.01.2025

asi/nvsri



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The learned Judge, Motor Accident Claims Tribunal,
Additional District Court (FAC),
Namakkal.



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J. NISHA BANU, J.
and
R. SAKTHIVEL, J.

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