



C.M.A.Nos.1174 and 793 of 2025
and C.M.P.No.9604 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2025

PRONOUNCED ON :02.06.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.Nos.1174 and 793 of 2025
and C.M.P.No.9604 of 2025

C.M.A.No.1174/2025:

United India Insurance Co. Ltd.,
134, Greams Road,
Chennai – 600 006.

... Appellant

VS.

1.M.John

2.J.Arulalbert

3.J.Saleshdavid

4.J.Anandaraj

5.M.Santhikodi

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 18.04.2024 made in M.C.O.P.No.3474 of 2021 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.



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and C.M.P.No.9604 of 2025

For Appellant : Mr.S.Arunkumar
For R1 to R4 : M/s.P.T.Saleem Fathima
For R5 : Notice Dispensed With

C.M.A.No.793/2025:

1.M.John

2.J.Arulalbert

3.J.Saleshdavid

4.J.Anandaraj

... Appellants

vs.

1.M.Santhikodi

2.United India Insurance Co. Ltd.,
No.134, Greams Road,
Chennai – 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award of the Motor Accident Claims Tribunal, IV Judge, Small Causes Court, Chennai made in M.C.O.P.No.3474 of 2021 by order dated 18.04.2024 and to enhance the award.

For Appellants : M/s.P.T.Saleem Fathima

For R2 : Mr.S.Arunkumar



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For R1 : Notice Dispensed With

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COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed challenging the award passed by the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai in M.C.O.P.No.3474 of 2021, dated 18.04.2024.

2. C.M.A.No.793 of 2025 is filed by the claimants seeking enhancement of compensation and C.M.A.No.1174 of 2025 is filed by the Insurer of the offending vehicle challenging the quantum of compensation and also maintainability of claim petition by the claimants, who according to the Insurance Company were not dependents of the deceased.

3. It is not in dispute that the wife of the 1st claimant and mother of the claimants 2 to 4 namely J.Prema died in a road accident that had occurred on 25.06.2021. According to the claimants, the deceased was travelling as a pillion rider in a motorcycle bearing Registration No.TN-12-AF-8014 proceeding from East to West near Sadayappa Kalyana



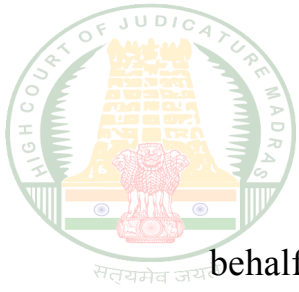
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Mandabam, Nazarathpet. At that point of time, a lorry bearing Registration No.TN-57-BE-9783 belonged to the 1st respondent in C.M.A.No.793 of 2025 and insured with the 2nd respondent/Insurance Company came in a rash and negligent manner and dashed against the Motorcycle. As a result of the accident, the deceased was thrown out and sustained multiple injuries all over the body. Later, she succumbed to the injuries. Hence, a claim petition was filed seeking compensation of Rs.40,00,000/-.

4. The 1st respondent-owner of the lorry remained *exparte* before the Tribunal and the claim petition was contested only by the Insurer of the lorry. It was the case of the 2nd respondent/Insurer of the lorry before the Tribunal that the accident had occurred only due to the negligence on the part of the driver of the two wheeler. The Insurer of the lorry has also disputed the maintainability of the claim petition on the ground that the claimants were not dependents of the deceased person.

5. Before the Tribunal, the 1st claimant was examined as PW.1 and on behalf of the claimants, 10 documents were marked as Exs.P1 to P10. On



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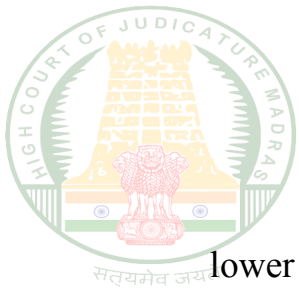
behalf of the Insurance Company, no witness was examined and no document was marked.

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6. The Tribunal based on the evidence available on record, came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the lorry. The compensation payable to the claimants was quantified at Rs.20,42,625/-. Not satisfied with the quantum of compensation, the claimants have filed appeal seeking enhancement of compensation in C.M.A.No.793 of 2025. The Insurer of the lorry filed separate appeal questioning the very maintainability of the claim petition on the ground that the claimants were not dependents of the deceased in C.M.A.No.1174 of 2025.

7. Since both the civil miscellaneous appeals are arising out of same accident, they are taken up together for hearing.

8. The learned counsel appearing for the claimants would submit that the notional income of Rs.12,500/- fixed by the Tribunal is very much on



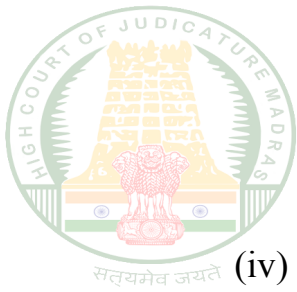
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lower side and the same requires enhancement.

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9. The learned counsel appearing for the Insurer of the lorry would submit that the claimants failed to produce any documentary evidence to prove the avocation and income of the deceased and hence, the Tribunal was justified in fixing Rs.12,500/- as notional income. He further submits that the claimants, who are husband and major sons of the deceased person were not depending on the income of the deceased at the time of accident. Therefore, they cannot be treated as dependents of the deceased and hence, the Tribunal ought not have granted any compensation under the head loss of dependency. In support of his contention, the learned counsel appearing for the Insurance Company relied on the following judgments:-

- (i) ***National Insurance Company Limited vs. Birender and others*** reported in ***CDJ 2020 SC 028 : (2020) 11 SCC 356***.
- (ii) ***The Branch Manager, Oriental Insurance Company Ltd., vs. Arumugam and others*** in ***C.M.A.No.538 of 2021, dated 26.03.2021***.
- (iii) ***Seema Rani and others vs. The Oriental Insuarncce Co. Ltd., and others*** reported in ***2025 INSC 192***.



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CDJ 2018 SC 159 : (2018) 3 SCC 619.

10. In reply, the learned counsel appearing for the appellants/claimants in C.M.A.No.793 of 2025 would submit that the claimants are not having sufficient source of income and hence, they were dependent on deceased at the time of accident. Therefore, according to the learned counsel appearing for the appellants/claimants, the Tribunal was justified in treating the claimants as dependents and granting compensation under the head loss of dependency. In support of her contention, the learned counsel appearing for the appellants/claimants relied on the following judgments:-

- (i) ***P.Palani and others vs. David and others*** reported in ***2024 ACJ 893 : 2023 (2) TNMAC 439.***
- (ii) ***The Regional Manager, Andhra Pradesh State Road Transport Corporation vs. K.Lakshmi and others*** reported in ***2023 (2) TNMAC 115.***
- (iii) ***Chellamuthu vs. S.Periyasamy*** reported in ***2006 (2) TNMAC 70.***



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11. Section 166 of the Motor Vehicles Act, 1988 reads as follows:-

“166. Application for compensation.-(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-

- (a) by the person who has sustained the injury; or*
- (b) by the owner of the property; or*
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or*
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:*

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

[Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.]

[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims



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Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

[(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.]

[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under [section 159] as an application for compensation under this Act.]

[(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.]”

12. A close reading of the above Section would make it clear that in case of death, claim petition can be filed by all or any of the legal representatives of the deceased. In case, claim petition has been filed by any one of the legal representatives of the deceased, the same shall be treated as



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the one for the benefit of all legal representatives of the deceased, who have not been joined as claimants. Therefore, it is clear that a claim petition can be maintained by legal representative of the deceased whether he is dependent or not. Even if a legal representative has got independent source of income and not dependent on the deceased, he is entitled to get compensation under conventional heads. Ofcourse, he may not be entitled to get compensation under the head loss of dependency. In some cases, a legal representative may have an independent source of income and the same may not be sufficient enough to support his decent living. In such cases, he will be partially dependent on the deceased though not fully dependent. In such cases, he is entitled to claim compensation not only under the conventional heads but also under the head loss of dependency. However, the Court has to decide the correct percentage of deduction towards personal expenses of the deceased in that case. While determining the compensation, the Court should also take into consideration a vital fact that the estate of the deceased will certainly go to the benefit of the legal representative notwithstanding their dependency status.

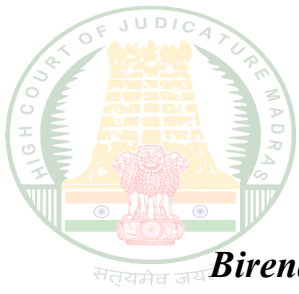


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13. For example, if a mother dies, the benefit of her estate will go to her husband and children notwithstanding the fact that they have got sufficient independent source of income. Any surplus earnings of the deceased (actual income – personal expenses) will be added to her estate as value addition. But for the unfortunate road accident, the deceased victim would have continued to live for some time and her surplus earnings would have become a part of her estate, which will go to the benefit of her legal representatives, who may or may not be her dependents. Therefore, merely because, a legal representative has got independent source of income, we cannot say he or she is disqualified from maintaining a claim petition under Section 166 of the Motor Vehicles Act, 1988.

14. A claim petition filed by a legal representative is certainly maintainable notwithstanding his or her independent source of income. However, the compensation under the head loss of dependency has to be decided carefully by taking into consideration the source of income and sufficiency of the income of the legal representatives/claimants at the time of accident. This position was very well explained by the Apex Court in



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Birender case cited supra, the relevant findings of the Apex Court reads as follows:-

“14. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependant on the deceased, would be still covered by the expression “legal representative” of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. (emphasis supplied by this Court) Notably, the expression “legal representative” has not been defined in the Act. In Manjuri Bera (supra), the Court observed thus:

“9. In terms of clause (c) of subsection (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said subsection makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim



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petition in terms of Section 166 of the Act.

10. *The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.*

11. *According to Section 2(11) CPC, “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).*

12. *As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique [1989 Supp (2) SCC 275 the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who*



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represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression “legal representative”. As observed in Gujarat SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234 a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.”

In paragraph 15 of the said decision, while advertng to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between “right to apply for compensation” and “entitlement to compensation”. The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning. (emphasis supplied by this Court)

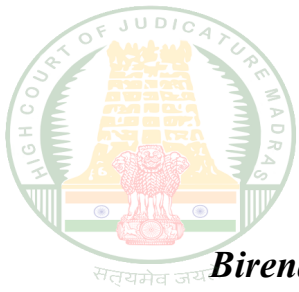


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15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/- and Rs.1,50,000/- per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.” (emphasis supplied by this Court)

15. Hence, it is clear that if a legal representative of deceased (who is major and earning files a claim petition, the Tribunal is bound to consider the same on merits and claim petition shall not be restricted to conventional heads alone. Therefore, following the law laid down by the Apex Court in



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Birender case, I hold that the claim petition filed by the husband and major sons of the deceased is maintainable.

16. Now, we proceed to decide the question whether the Tribunal was justified in awarding compensation under the head loss of dependency after deducting 1/3rd of the amount towards personal expenses of the deceased.

17. In the claim petition, it was stated by the claimants that the deceased was a flower and vegetable vendor and was earning Rs.700/- per day. However, the claimants have not stated anything in the claim petition with regard to the fact whether they have got any independent source of income or they were fully dependent on income of the deceased. The 1st claimant-husband of the deceased was examined as PW.1. In his proof affidavit, he had stated that he was not well and claimants 2 to 4, his sons are not having sufficient income and therefore, they were depending on income of the deceased. In the cross examination, he clearly admitted that the claimants 2 and 3 are married and they are residing separately. Though it was stated in the proof affidavit that the 1st claimant-husband of the



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deceased was suffering from illness, no documentary evidence has been let in to prove his medical condition. The 1st claimant in his evidence has not stated that he is not having any independent source of income. There is no specific plea or evidence with regard to the avocation or income of the 1st claimant. There is a vague statement in the proof affidavit that he is depending on the deceased. As far as claimants 2 and 3 are concerned, they are married, PW.1 clearly admitted that they are living separately. Therefore, it is clear that the claimants 2 and 3 should be having independent source of income.

18. Though in the chief affidavit, it was stated by PW.1 that his sons-claimants 2 to 4 are not having sufficient source of income, there is no specific plea or evidence with regard to the avocation and income of claimants 2 to 4. A reading of proof affidavit would indicate that they are having a source of income but it is not sufficient to meet their living standard and therefore, they had been depending on the deceased. The claimants could have produced evidence to show the alleged source of income and insufficiency of the same to support the claim. However, for the



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reason best known to them, they have not produced any evidence with regard to their avocation and income. The only thing available on record is the statement in the proof affidavit that their source of income was not sufficient and therefore, they were depending on the deceased. Looking at the documentary evidence available on record, Ex.P10 is the copy of the PAN Card of the claimants. Though it was stated by the claimants that they were depending on the income of the deceased, conspicuously the PAN Card of the deceased had not been produced. Since the claimants are having PAN Card in their own names, we can safely come to the conclusion that they are having a decent source of income, which must be sufficient.

19. Ex.P9 is the first page of the Bank Pass Book of the claimants. A perusal of the same would suggest that the 1st claimant is having Saving Bank Account at Canara Bank, Chennai, wherein the occupation of the 1st claimant was mentioned as 'Service'. The 2nd claimant is having Saving Bank Account in UCO Bank, Narasingapuram. Therefore, it is clear that he is living separately. The 4th claimant also having Saving Bank Account in UCO Bank at Narasingapuram, wherein a different address is mentioned.



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Therefore, it is clear that the claimants 2 and 4 are residing in different address and they are not living with the 1st claimant. The 3rd claimant-J.Saleshdavid is having an account in Axis Bank, Chennai-600056. A perusal of Ex.P9 would indicate that all the claimants are having separate saving bank account. However, they have produced only first page of the saving bank account passbook and they failed to produce transaction entries in the pass book. If the transaction entries are produced, we would be in a position to come to a conclusion whether any salary has been credited to their accounts, nature of their income source and sufficiency of the same to support their living. Therefore, the claimants are guilty of suppression of best evidence available with them.

20. A perusal of Ex.P10 would indicate that all the claimants are having PAN Card. It necessarily means that claimants must have a decent source of income. In these circumstances, we can definitely come to a conclusion that the claimants cannot be stated to be fully dependent on the deceased.

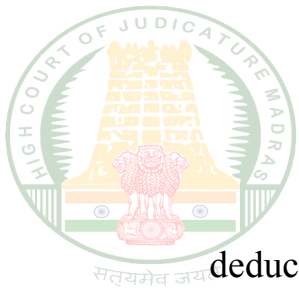


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21. On the other hand, the 1st claimant is the husband of the deceased and the 4th claimant is unmarried son of the deceased. It appears that the claimants 1 and 4 were living with the deceased at the time of accident and the claimants 2 and 3, who are married sons are living separately. Merely because, the claimants are having independent source of income, we cannot come to a conclusion that they are not depending on the income of the deceased in the absence of any evidence to show the sufficiency of the income of the claimants. In these circumstances, taking into consideration the close relationship between the deceased and claimants and the other relevant factors, we can hold that the claimants are partially depending on the deceased.

22. A Division Bench of this Court in *Arumugam* case cited supra, while considering the loss of dependency to the husband, deducted 50% of the amount towards personal expenses of the deceased. Likewise, in *New India Assurance Co. Ltd. vs. Vinish Jain and others* case cited supra, the Apex Court held that major sons having their own source of income and two grand daughters were not dependent on the deceased and ultimately,



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deducted 50% while calculating the loss of dependency. In *Seema Rani* case cited supra, the Apex Court on the facts of that case held that the son of the deceased was working in a Petrol Pump temporarily and hence, he was not self-sufficient or independent from the deceased.

23. In the case on hand, all the claimants produced their PAN Cards. In these circumstances, we cannot come to a conclusion that the claimants are not having source of income to hold that they are fully depending on the deceased. Taking into consideration all these factors, I hold that the claimants, who are all husband and major sons of the deceased cannot be held to be fully dependent on the deceased and hence, 50% of the amount shall be deducted from the compensation amount under the head loss of dependency.

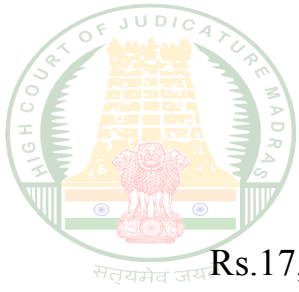
24. In the claim petition, it was stated that the deceased was working as a flower and vegetable vendor and was earning Rs.700/- per day. However, in order to prove the avocation and income of the deceased, the claimants have not produced any documentary evidence. Even if there is no



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evidence to prove the income, this Court by taking into consideration the facts and circumstances of the case, can fix the notional income.

25. In the case on hand, the accident had occurred in the year 2021. Taking into consideration the date of accident and prevailing cost of living, this Court is inclined to fix Rs.18,000/- as notional income of the deceased. As per Ex.P6-Death Certificate, the age of the deceased was fixed by the Tribunal at 49 years. Therefore, the claimants are entitled to 25% enhancement towards future prospects. The applicable multiplier is 13. The Tribunal deducted 1/4th of the amount towards personal expenses of the deceased on the ground that there are 4 dependents. This Court has elaborately considered the question of dependency and held that the claimants, who are all husband and major sons of the deceased are not fully dependent on the deceased. Taking into consideration the said fact, this Court is inclined to deduct 50% of the amount under the head loss of dependency by following the judgment of the Apex Court in ***Vinish Jain*** case and the decision of the Division Bench of this Court in ***Arumugam*** case cited supra. Therefore, the loss of dependency is fixed at



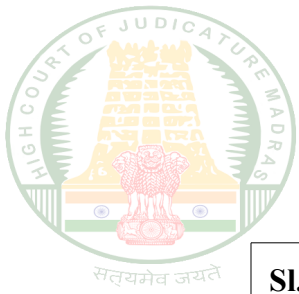
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Rs.17,55,000/- (Rs.18,000 x 1.25 x 12 x 13 x 1/2).

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26. In addition to the amount under the head loss of dependency, the Tribunal awarded Rs.16,500/- each under the head loss of estate and funeral expenses. It also awarded Rs.1,76,000/- towards loss of consortium (Rs.44,000/- towards loss of consortium for the 1st claimant and Rs.44,000/- each towards loss of love and affection for the claimants 2 to 4). The above said sum under conventional heads are in accordance with the law laid down by the Apex Court in *National Insurance Company Limited vs. Pranay Sethi and others* reported in (2017) 16 SCC 680. and hence, the same is affirmed. A sum of Rs.5,500/- awarded by the Tribunal under the head transportation expenses is covered by the amount awarded under the head loss of estate and hence, it is set aside. Therefore, the award passed by the Tribunal is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Loss of Dependency	Rs.18,28,125/-	Rs.17,55,000/-	Reduced
2.	Loss of Estate	Rs.16,500/-	Rs.16,500/-	Confirmed
3.	Funeral Expenses	Rs.16,500/-	Rs.16,500/-	Confirmed

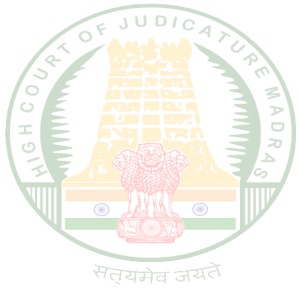


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Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
4.	Loss of Consortium	Rs.1,76,000/-	Rs.1,76,000/-	Confirmed
5.	Transportation Expenses	Rs.5,500/-	-	Set Aside
Total		Rs.20,42,625/-	Rs.19,64,000/-	Reduced by Rs.78,625/-

27. In view of the discussions made earlier, the appeal in C.M.A.No.793 of 2025 filed by the claimants is dismissed and C.M.A.No.1174 of 2025 filed by the Insurance Company is partly allowed by reducing the compensation payable to the claimants to Rs.19,64,000/- from Rs.20,42,625/-.

28. The Appellant/Insurance Company in C.M.A.No.1174 of 2025 is directed to deposit the modified award amount of Rs.19,64,000/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.3474 of 2021 on the file of the Motor Accident Claims Tribunal, Chennai (in the IV Court of Small Causes) Chennai, within a period of four weeks from the date of receipt of copy of this judgment.



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29. Out of the above said award amount, the claimants 2 to 4 are entitled to Rs.2,80,000/- each and the 1st claimant is entitled to remaining amount of Rs.11,24,000/-. On such deposit, the claimants are entitled to withdraw their respective shares by making formal application before the Tribunal. No costs. Consequently, the connected civil miscellaneous petition is closed.

02.06.2025

Index :Yes / No
Speaking order :Yes / No
Neutral Citation :Yes / No

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To

- 1.The Motor Accidents Claims Tribunal,
IV Court of Small Causes, Chennai.
- 2.United India Insurance Co. Ltd.,
No.134, Greaves Road,
Chennai – 600 006.
- 3.The Section Officer,
VR Section,
High Court, Madras.



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C.M.A.Nos.1174 and 793 of 2025
and C.M.P.No.9604 of 2025

S.SOUNTHAR, J.

dm

Pre-delivery Common Judgment made in
C.M.A.Nos.1174 and 793 of 2025
and C.M.P.No.9604 of 2025

02.06.2025