



CMA.Nos.1772 of 2021 and 591 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 14.03.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.Nos.1772 of 2021 and 591 of 2023
and CMP.Nos.9459 and 8694 of 2021

CMA.No.1772 of 2021:

The Manager,
United India Insurance Company Limited,
D.No.166, Thambu Chetty Street,
Parrys, Chennai – 600 001.

... Appellants

Vs.

1.Krishnakumari
2.Geetha
3.Reka
4.Sureshkumar
5.New Call Taxi
No.1, 1st Link Street,
CIT Colony, Mylapore,
Chennai – 600 001.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the award dated 14.10.2019 and made in MCOP.No.1130 of 2015, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.



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For Appellant : J.Chandran

For Respondents :Mr.S.P.Yuaraj for R1 to R4
R5-Notice return

CMA.No.591 of 2023:

- 1.Krishnakumari
- 2.Geetha
- 3.Reka
- 4.Sureshkumar

... Appellants

Vs.

1.New Call Taxi
No.1, 1st Link Street,
CIT Colony, Mylapore,
Chennai – 600 001.

2. The Manager,
United India Insurance Company Limited,
D.No.166, Thambu Chetty Street,
Parrys, Chennai – 600 001.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the award dated 14.10.2019 and made in MCOP.No.1130 of 2015, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.S.P.Yuaraj

For Respondents : J.Chandran for R2
R1-vacated



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J U D G M E N T

For the sake of convenience, the parties are referred as per their ranks in the claim petition.

2. These appeals are filed by the claimants as well as Insurance company questioning the quantum of compensation.

3. It is not in dispute that the husband of the first claimant and father of the claimants 2 to 4 namely Thangaraju died in a road accident that had taken place on 10.11.2015 involving Toyota car belongs to the first respondent insured with the second respondent.

4. It is the specific case of the claimants that the driver of the car belonging to the first respondent came in a rash and negligent manner and dashed against the two wheeler driven by the deceased Thangaraj. Therefore, the claim petition was filed seeking compensation of Rs.90,00,000/-.



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5. The claim petition was opposed by the second respondent/Insurance Company by denying the manner of accident as averred in the claim petition. The first respondent/owner of the vehicle remained ex-parte before the Tribunal.

6. Based on the evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent car bearing registration No.TN-06H-7867. The amount payable to the claimants was quantified at Rs.16,45,000/-. Aggrieved by the quantum of compensation, the claimants and the Insurance Company have come by way of these appeals.

7. The learned counsel appearing for the claimants would submit that the deceased was a retired headmaster drawing a pension of Rs.29,485/- at the time of accident and the Tribunal committed an error in fixing only Rs.25,000/- as income of the deceased. Hence, the loss of dependency is to be enhanced.



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8. The learned counsel appearing for the second

respondent/Insurance Company would submit that even after the death of the deceased, the first claimant/wife of the deceased was drawing family pension. Therefore, the Tribunal should have deducted the same from the pension payable to the deceased.

9. The learned counsel further submitted that in the absence of any evidence, the Tribunal fixed Rs.25,000/- as notional income. He further submitted that the claimants 2 and 3 are married daughters and 4th respondent is an employed son. Therefore, they may not be treated as Dependents of the deceased and hence the Tribunal committed an error in deducting 1/3rd.

10. In order to prove the income of the deceased, the Treasury Officer was examined as PW.3 and through her the pension papers of the deceased have been marked as Exs.X1 and X2. A perusal of the evidence of PW.3 along with X1 and X2 would indicate that the deceased was drawing the pension of Rs.29,485/- at the time of accident.



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11. It is stated that after the death of the deceased, the first claimant is entitled to family pension. However, the Apex Court in ***Helan C. Rebello and others Vs. Maharashtra State Road, Transport Corporation and others*** reported in ***Manu/SC/0621/1998*** categorically held that the family pension shall not be deducted, while calculating the loss of dependency. The relevant portion of said judgment reads as follows:

“Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two.”

12. In yet another judgement in ***Sebastiani Lakra and Ors. Vs. National Insurance Company Ltd. and Ors*** reported in ***MANU/SC/1162/2018***. The Apex Court while holding pension shall not be deducted from compensation payable under Motor Accidental Claim, observed as follows:



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12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to 'just compensation' under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

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14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are



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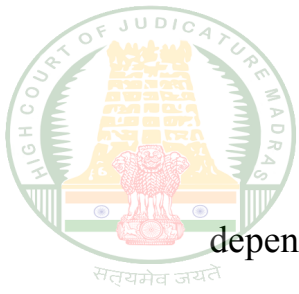


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more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

Therefore, this Court is inclined to fix Rs.29,485/- as the income of the deceased, which is based on concrete evidence available on record.

13. At the time of death, the age of the deceased was 61 years as per Ex.P17 driving licence. Therefore, the claimants are not entitled to any enhancement towards future prospects. The applicable multiplier is '7'. As rightly pointed out by the learned counsel appearing for the second respondent/Insurance Company, the claimants 2 to 4 cannot be treated as Dependents of the deceased. PW.1, in her evidence clearly admitted that her two daughters got married before the death of the deceased and her son was employed as an Engineer in Neyveli. In such circumstances, there is no evidence available on record to show that the claimants 2 to 4 are fully



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depending on the deceased at the time of his death. In these circumstances, for the purpose of calculating loss of dependency, the claimants 2 to 4 cannot be treated as the Dependants. The deceased is a married man and hence $1/3^{\text{rd}}$ of the amount is liable to be deducted towards personal expenses. Therefore, the loss of dependency would be Rs.16,51,160/- ($29485 \times 12 \times 7 \times 2/3$). The amount of Rs.40,000/- awarded under the head loss of consortium, Rs.15,000/- (each) awarded under the head loss of estate and funeral expenses are confirmed.

14. Even though the claimants 2 to 4 who are all the children of the deceased are not fully depending on him at the time of death, as per the law laid down by the Apex Court in *National Insurance Company Limited Vs. Birender and others reported in 2020 (1) TNMAC 182 (SC)*, they are entitled to compensation under the conventional heads. Therefore, claimants 2 to 4 are entitled to Rs.40,000/- (each) under the head loss of love and affection. In all the claimants are entitled to Rs.18,41,160/-.



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15. In view of the discussions made earlier, the award passed

by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of dependency	15,75,000/-	16,51,160/-
2.	Loss of Consortium	40,000/-	40,000/-
3.	Loss of Estate	15,000/-	15,000/-
4.	Funeral expenses	15,000/-	15,000/-
5.	Loss of love and affection	-	1,20,000/-
	Total	Rs.16,45,000/-	Rs.18,41,160/-

16. CMA.No.1772 of 2021 filed by the second respondent/Insurance Company is dismissed.

17. CMA.No.591 of 2023 filed by the claimants is partly allowed and the award amount is enhanced to Rs.18,41,160/-, the second respondent is directed to deposit the enhanced award amount together with interest at the rate of 7.5% per annum in MCOP.No.1130 of 2015, on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur. The 1st claimant/wife is entitled to Rs.16,21,160/-. The



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claimants 2 to 4/children of deceased entitled to Rs.40,000/- (each). The

claimants are permitted to withdraw the amount by making formal application. Consequently, connected miscellaneous petitions are closed.

No costs.

14.03.2025

Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

1. The Motor Accident Claims Tribunal,
Principal District Judge, Perambalur.

2. The Section Officer

VR Section, High Court, Madras.



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S.SOUNTHAR, J.

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