



C.M.A.No.2024 of 2021

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2024 of 2021

1.Rajendhiran

2.Alamelu

...Appellants

Vs.

1.Natarajan

2.The Divisional Manager,

United India Insurance Co. Ltd.,

6, Railway Feeder Road, Near LIC Soolur,

Coimbatore District.

3.Periyasamy

4.Chinnakannu

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.220 of 2015 dated 23.12.2020, on the file of the Motor Vehicle Accidents Claims Tribunal, Principal District Judge, Perambalur.



WEB COPY



C.M.A.No.2024 of 2021

For Appellants : Mrs.Ramya V. Rao

For Respondents : R1 - dismissed as not pressed vide
order dated 09.07.2024

Mr.D.Bhaskaran for R2

Mr.R.Sankarasubbu for R3

R4 – No appearance

J U D G M E N T

This appeal is filed by the appellants challenging the judgment and decree passed by the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur in M.C.O.P.No.220 of 2015 dated 23.12.2020.

2.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The petitioners are the claimants, the first respondent is the owner of the vehicle, the second respondent is the Insurance Company before the Tribunal.



C.M.A.No.2024 of 2021

WEB COPY

4.The brief facts of the case are as follows:

On 09.02.2015 at about 6.15 p.m. from Salem to Athur N.H.Road near Puthiragoundenpalayam 'L' turn, while the deceased was riding a bicycle from North to South and crossed the aforesaid road, at that time an Innova Car bearing Registration No.TN 39 AE 8951 belonging to the first respondent and insured with the second respondent which came in a rash and negligent manner, dashed against the deceased. Due to the accident, the deceased sustained fatal injuries and first aid treatment given at Athur Government Hospital. Thereafter, he was taken to Salem Government Hospital for further treatment and died on the same day. A criminal case was registered in Crime No.77/2015 under Sections 279, 304A of IPC by Yethappur Police. The petitioners filed a claim petition before the Tribunal in M.C.O.P.No.220 of 2015, the Tribunal has awarded a sum of Rs.2,57,750/- as compensation after deduction of 50% from the total compensation. Aggrieved by the same, the present appeal has been filed.



C.M.A.No.2024 of 2021

WEB COPY

5.Learned counsel appearing for the appellants submitted that the the deceased was only a driving bicycle and the accident occurred only due to the rash and negligent driving by the driver of the Innova Car bearing Registration No.TN 39 AE 8951. She further submitted that the Tribunal has awarded very meagre compensation and also awarded 50% negligence on the part of the deceased is not sustainable. Hence, she prayed for appropriate orders.

6.Learned counsel appearing for the second respondent submitted that there was a smell of alcohol was found in the body of the deceased and hence, the Tribunal has rightly awarded 50% negligence on the part of the deceased and no interference is required by this Court. Hence, he prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants, the learned counsel appearing for the second respondent as well as the third respondent and perused the materials available on record.



C.M.A.No.2024 of 2021

WEB COPY

8.Before the Tribunal, the first petitioner was examined as PW1, Mr.Arumugam was examined as PW2 and on the side of the petitioners, 4 documents were marked as Exs.P1 to P4. On the side of the respondents, Mr.Subin Mohan was examined as RW1 and 1 document was marked as Ex.R1.

9.The accident and the manner in which the accident happened are not disputed. This appeal has been filed on the ground of negligence.

10.On perusal of the records, it is seen that the deceased was working as a Tailor and Agriculturist and earning Rs.10,000/- per month at the time of the accident.

11.This Court is of the view that a person consumed alcohol driving any vehicle is prohibited under the Motor Vehicles Act. Though the learned counsel for the second respondent contended that as per Ex.P4, the smell of alcohol has been mentioned, however, in the post mortem report alcohol smell was not mentioned. The Tribunal has



C.M.A.No.2024 of 2021

WEB COPY

categorically given its finding that the consume of alcohol has not been proved. Even assuming that the deceased consumed alcohol, he was only driving a bicycle and the same is not prohibited under the Motor Vehicles Act. The Tribunal has fastened 50% negligence on the part of the deceased is not sustainable. This Court is inclined to set aside 50% negligence passed on the deceased and this Court fixes 100% liability on the second respondent Insurance Company.

12.The Tribunal after elaborately discussing the factual aspects awarded a sum of Rs.4,45,000/- for loss of dependency, Rs.40,000/- for consortium, Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and arrived at a compensation of Rs.2,57,750/- after deduction of 50% compensation with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

13.The amount awarded under the heads loss of estate and funeral expenses, in the opinion of this Court is just and reasonable. The amount awarded under the head loss of dependency, in the opinion of this Court is very meagre and this Court is inclined to enhance the amount awarded



WEB COPY

under the said head. Accordingly, the amount awarded under the head

loss of dependency is enhanced to Rs.7,91,640/- from Rs.4,45,500/-.

The Tribunal has not awarded any amount under the head loss of love

and affection. Accordingly, this Court is inclined to award Rs.1,60,000/-

(4 x Rs.40,000/-) for loss of love and affection. This Court is not inclined

to award any amount for consortium. Loss of dependency works out to

in the following manner: Rs.10,000/- + 10% future prospects =

Rs.11,000/- – 1/3 = Rs.7,330/-; Rs.7,330/- x 12 x 9 = Rs.7,91,640/-.

14. Accordingly, the compensation awarded by the Tribunal is re-assessed as follows:

S.No.	Description	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	Loss of dependency	4,45,500/-	7,91,640/-
2.	Consortium	40,000/-	-
3.	Loss of estate	15,000/-	15,000/-
4.	Funeral expenses	15,000/-	15,000/-
5.	Loss of love and affection	-	Rs.1,60,000/-
	Total	Rs.5,15,500/-	Rs.9,81,640/-
	After deduction of 50% compensation payable	Rs.2,57,750/-	



C.M.A.No.2024 of 2021

WEB COPY

15.The appellants 1 & 2 and the respondents 3 and 4 are entitled to a sum of Rs.9,81,640/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

16.The judgment and decree passed by the Motor Accident Claims Tribunal/Principal District Judge, Perambalur in M.C.O.P.No.220 of 2015 dated 23.12.2020, is modified to the above extent.

17.The second respondent Insurance Company is directed to deposit the modified/enhanced award amount, if not deposited earlier before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellants 1 & 2 and the respondents 3 and 4 are permitted to withdraw their share amount as proportioned by this Court with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The second appellant is entitled to 40% of the compensation, the first



C.M.A.No.2024 of 2021

WEB COPY

appellant and the respondents 3 & 4 are entitled to 20% each of the compensation.

18.The appellants 1 & 2 and the respondents 3 and 4 shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellants 1& 2 and the respondents 3 and 4 are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accident Claims Tribunal/Principal District Judge, Perambalur shall disburse the enhanced amount upon production of certified copy showing proof of payment of Court fee by the appellants 1 & 2 and the respondents 3 and 4.

19.The Civil Miscellaneous Appeal is partly allowed with the above terms. No costs.

02.01.2025

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

pam



WEB COPY



C.M.A.No.2024 of 2021

M.DHANDAPANI, J.

pam

To

- 1.The Motor Accidents Claims Tribunal,
Principal District Judge, Perambalur.
- 2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.

C.M.A.No.2024 of 2021

02.01.2025