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CMA.No.2569 of 2021 & Cross Obj.No.2 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.2569 of 2021 & Cross Obj.No.2 of 2025

CMA.No.2569 of 2021:

1. Madhammal
2. Subashini
3. Manjusri
4. Sandhiya
5. Kalaiyarasi
6. Sentamilselvi
7. Tamilarasan

(Appellants 5 to 7, *Suo motu* declared as major and their mother 1st appellant Madhammal is discharged from guardianship of the appellants 5 to 7, vide judgment of this Court dated 21.01.2025 made in CMA.No.2569 of 2021 & Cross Obj.No.2 of 2025.) ...Appellants

Vs.

1. C.Murugesan
2. The Divisional Manager,
Oriental Insurance Company Ltd.,
D.No.7, New No.377, Anna Salai,
Teynampet, Chennai – 600 018.

...Respondents



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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and decree dated 20.09.2019 made in MCOP.No.618 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

For Appellants : Mr.S.P.Yuaraj

For Respondents : Mr.J.Chandran, for R2
: Notice dispensed with, for R1

Cross Obj.No.2 of 2025:

The Divisional Manager,
Oriental Insurance Company Ltd.,
D.No.7, New No.377, Anna Salai,
Teynampet, Chennai – 600 018.

...Cross Objector

Vs.

1. Madhammal
2. Subashini
3. Manjusri
4. Sandhiya
5. Minor Kalaiyarasi
6. Minor Sentamilselvi
7. Minor Tamilarasan
(Minors 5 to 7 rep by their Next Friend
Mother Madhammal)
8. C.Murugesan

...Respondents



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Cross Objection filed under Order 41 Rule 22 of CPC, seeking to set aside the decree and judgment passed in MCOP.No.618 of 2018 on the file of the Motor Accident Claims Tribunal (Special District Court) at Krishnagiri.

For Cross Objector : Mr.J.Chandran

For Respondents : Mr.S.P.Yuaraj, for R1 to R7

COMMON JUDGMENT

Since both appeal and the cross objection are arising out of the very same accident, they are disposed of by way of this common judgment.

2. Challenging the liability fastened against the insurance company as well as the quantum of compensation awarded in MCOP.No.618 of 2018 dated 20.09.2019 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri, the insurance company has filed Cross Objection No.2 of 2025. Being dissatisfied with the quantum of compensation awarded by the tribunal, the claimants have filed CMA.No.2569 of 2021.

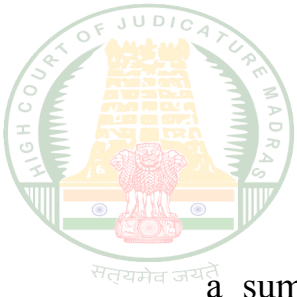


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3. For the sake of convenience, the parties are referred to as per their array in CMA.No.2569 of 2021.

4. It is the case of the claimants that, on 10.02.2016 at about 13.45 hours, when the deceased Balaji was proceeding in the Bajaj Discover Motor cycle bearing Regn.No.TN-29-AE-9932 from Kattinayanapalli Murugan Koil to Oldpet, Krishnagiri along with one Kumaravel as a pillion rider, at that time, a New unregistered Yamaha Saluto Motor cycle owned and driven by the 1st respondent came in a rash and negligent manner and dashed against the above said Bajaj motorcycle, due to which, the deceased Balaji sustained grievous injuries and succumbed to the same. Thereby, the appellants/claimants filed a claim petition claiming a compensation of Rs.40,00,000/-. Before the tribunal, the appellants examined two witnesses viz., P.W.1 and P.W.2 and marked Exs.P1 to P19 and on the side of the 2nd respondent-insurer, two witnesses viz., R.W.1 and R.W.2 were examined and four exhibits viz., Exs.R1 to R4 were marked. After trial, the Tribunal held that the accident had taken place solely due to the rash and negligent driving on the part of the 1st respondent/owner cum driver of the offending vehicle awarded



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a sum of Rs.14,60,800/- towards compensation for the death of the deceased Balaji, payable by the 2nd respondent-insurance company in favour of the appellants/claimants. Aggrieved by the liability fastened as well as the quantum, the insurance company has filed the Cross Objection No.2 of 2025 and the claimants have filed the civil miscellaneous appeal in CMA.No.2569 of 2021 seeking enhancement of the compensation fixed by the tribunal.

5. Learned counsel for the appellants submitted that though the tribunal after careful consideration of the material documents placed before it had rightly fixed the entire negligence on the part of the 1st respondent/owner cum driver of the offending vehicle, however, the accident had taken place in the year 2016 and at the time of accident the deceased was aged about 25 years and was working as a Driver and was earning a sum of Rs.25,000/- per month, however, the tribunal had fixed the monthly income of the deceased at Rs.9,000/- which is very meagre and the compensation awarded by the tribunal under the other heads are also on the lower side and the same has to necessarily be enhanced.



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6. Per contra, the learned counsel appearing on behalf of the 2nd respondent submitted that it is the deceased who drove the vehicle in a rash and negligent manner and caused the above accident, however, the tribunal failed to fix any contributory negligence on the part of the deceased, which is wholly unsustainable. Further, even if it is presumed without admitting that the above said accident had taken place due to the negligence on the part of the 1st respondent/owner cum driver, it is pertinent to note that, the said vehicle driven by the 1st respondent is a unregistered new vehicle and the 1st respondent/owner cum driver did not possess valid driving license, which is a clear violation of policy conditions and necessarily the 2nd respondent-insurer has to be exonerated. Instead, the tribunal had fastened the entire liability as against the 2nd respondent, which cannot be sustained. Learned counsel further submitted that, the compensation awarded by the tribunal under various heads are on the higher side and the same has to necessarily be reduced.

7. Heard learned counsel on either side and perused the materials available on record.



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8. The accident and the manner in which the accident happened are not disputed. The major grievance of the appellants is with regard to the quantum of compensation awarded by the tribunal. It is the claim of the appellants that, the accident is of the year 2016 and at the time of accident, the deceased was aged about only 25 years and he was a Driver by profession, however, the tribunal had fixed the notional income of the deceased as Rs.9,000/-, which is very meagre and the tribunal had erroneously deducted 50% from the notional income of the deceased towards personal expenses instead of 1/3rd without considering the fact that there seven dependents and out of them, some of the dependents are minor and unmarried.

9. In this regard, this Court deems it fit to rely upon the decision of the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, wherein the Apex Court has held as hereunder:

“15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different



principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

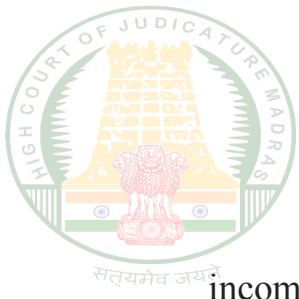


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10. In view of the above decision of the Apex Court, it is implicitly clear that, when the deceased has a widowed mother and large number of younger non-earning sisters or brothers, his/her personal and living expenses may be restricted to one-third. In the present case, it is not in dispute that, the father of the deceased predeceased him and it is not in dispute that, there are six siblings and out of them, some of them are younger unmarried and non-earning. Hence, this Court is of the view that, instead of 50%, 1/3rd has to be deducted from the notional income of the deceased towards his personal expenses, even though the deceased is a Bachelor.

11. Further, as per the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, and also considering the age of the deceased as also the claimants, fixing a notional income of Rs.17,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**, the



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income per month is quantified at Rs.23,800/-. Deducting 1/3rd towards the personal expenses of the deceased as held above, the loss of income to the family is arrived at Rs.15,866.66/- rounded off to Rs.15,867/- per month and the deceased being aged about 25 years, as evidenced from the records, adopting the multiplier of 18 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in (2009) 6 *SCC 121*, the loss of income to the family is arrived at **Rs.15,867/- * 12 * 18 = Rs.34,27,272/-**.

12. Insofar as the compensation awarded under the other heads are concerned, a sum of Rs.25,000/- and Rs.40,000/- have been awarded under the head Loss of consortium and Love and affection respectively, which are on the lower side. Hence, this Court awards a sum of Rs.40,000/- and Rs.2,40,000/- respectively under the said heads. At the same time, a sum of Rs.20,000/- has been awarded under the head Loss of Estate, which is on the higher side and thereby, the same is reduced to Rs.15,000/-.



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13. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	13,60,800/-	34,27,272/-
Loss of love and affection	40,000/-	2,40,000/-
Loss of consortium	25,000/-	40,000/-
Funeral Expenses	15,000/-	15,000/-
Loss of estate	20,000/-	15,000/-
Total	14,60,800/-	37,37,272/-

14. Insofar as the negligence fixed by the tribunal is concerned, in order to prove the rash and negligence on the part of the 1st respondent / owner cum driver of the 2nd respondent insured vehicle, the claimants examined an individual eye witness as P.W.2 before the tribunal, who had clearly deposed the manner in which the accident had happened and stated that the accident had happened solely due to the rash and negligent driving on the part of the 1st respondent, however, no contra evidence has



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been adduced either by the 2nd respondent/insurer or by the 1st respondent/owner cum driver in order to disprove the case of the claimants. In the absence of any contra evidence, the Tribunal, after considering the oral and documentary evidences, has rightly fixed the negligence on the part of the 1st respondent/owner cum driver and the said findings of the Tribunal cannot be interfered with. Therefore, this Court confirms the negligence and liability fixed by the tribunal.

15. Insofar as the contention of the learned counsel for the 2nd respondent with regard to ordering of pay and recovery as against the 1st respondent-owner cum driver is concerned, as rightly pointed out by the learned counsel for the 2nd respondent, even though the 2nd respondent had taken a stand that the 1st respondent/owner cum driver did not possess valid driving license and did not wear helmet at the time of accident and also that the vehicle is an unregistered one, however, in order to disprove the same, no contra evidence has been produced by the 1st respondent/owner cum driver either before the trial court or before this Court. Further, the deposition of R.W.1 during the cross examination,



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enures in favour of the 2nd respondent, wherein the said R.W.1 had specifically stated that, the 1st respondent/owner cum driver had paid a fine amount of Rs.8,200/- for several grounds such as Non-registration of the two wheeler, non-possession of valid driving license and for not wearing helmet at the time of accident. In such circumstances, the Tribunal ought to have ordered for pay and recovery, however, without doing so, the Tribunal had fixed the entire liability on the part of the 2nd respondent-insurer which is *per se* unsustainable.

16. When the claim petition was filed in the year 2018, the appellants 5 to 7 were aged about 18 years, 12 years and 12 years respectively. Now, the appellants 5 to 7 should be aged about 23 years, 19 years and 19 years respectively and are therefore, major. Though no application has been taken out to declare them as major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the appellants 5 to 7 as major and discharges their mother namely Madhammal from the guardianship. The Registry shall carry out the necessary amendments in the cause title and other relevant records.



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17. In view of all the above, the Cross Objection No.2 of 2025 filed by the 2nd respondent/insurance company stands disposed of and the Civil Miscellaneous Appeal filed by the Appellants-claimants in CMA.No.2569 of 2021 stands allowed in part and the impugned award dated 20.09.2019 passed by the Tribunal in MCOP.No.618 of 2018 is modified by enhancing the compensation from **Rs.14,60,800/-** to **Rs.37,37,272/-**. The 2nd respondent/Insurance company is directed to deposit the said amount to the credit of MCOP.No.618 of 2018 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment and thereafter, the 2nd respondent-insurer shall recover the said compensation awarded by this Court from the 1st respondent/owner cum driver in the manner known to law. It is open to the 1st respondent/owner cum driver to workout his remedy before the Tribunal if he is in possession of a valid driving license. In the above enhanced amount, the 1st appellant is entitled to a sum of Rs.19,37,272/- and the appellants 2 to 7 are entitled to a sum of



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Rs.3,00,000/- each, with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the compensation amount apportioned by this Court directly to the bank accounts of the appellants through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. It is underscored that the appellants are not entitled to any interest for the default period, if any. No costs. Consequently, the connected Miscellaneous petitions are closed.

21.01.2025

skt

NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

1. The Motor Accidents Claims Tribunal,
Special District Court, Krishnagiri.
2. The Section Officer,
VR Section, High Court of Madras.

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M.DHANDAPANI, J.

skt

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