



CMA.No.61 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :23.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.61 of 2023

Anandha Velu

... Appellant

Vs.

1. The Branch Manager
Cholo Mandalam General Insurance Co.Ltd,
100 Feet Road, (Opp.Mpl Form), Mudaliarpet,
Puducherry.

2.Muniammal
3.Veerappan
4.Rajeswari
5.Vennila
6.Vimala
7.Veerabalan
8.Deivendiri

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Award dated 22.10.2019 made in MACTOP.No.218 of 2014 on the file of the Motor Accidents Claims Tribunal (III Additional District Judge) at Puducherry.

For Appellant : Mr.R.Thiagarajan
For Respondents : M/s.R.Sree Vidhya for R1
Mr.R.Sreedhar for R2 to R8.



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JUDGMENT

Aggrieved by the award passed by the Motor Accident Claims Tribunal/ III Additional District Judge, Puducherry, the owner of the offending vehicle has come before this court by way of this appeal.

2. The respondents 2 to 8 filed a claim petition seeking compensation for the death of husband of the first claimant and father of the claimants 2 to 7 namely Lakshmanan in a road accident that had occurred on 05.08.2013. According to the claimants, the deceased was a pedestrian walking from North to South direction in T.N.Palayam main road, Abhishegapakkam. The Mahindra Maximo vehicle belonged to the appellant and insured with the 1st respondent insurance company came in a rash and negligent manner and hit the deceased from behind. Due to the impact of the accident, he was thrown away, sustained deadly injuries and died. Hence, the claim petition was filed seeking compensation of Rs. 20 lakhs.



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3. The appellant herein filed a counter and resisted the claim petition on the ground that the deceased attempted to cross the road without taking proper precaution and hence, the accident had occurred.

4. The first respondent, insurer of the vehicle also filed a counter and opposed the claim petition on the ground that the accident had occurred due to the negligence on the part of the deceased.

5. 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 vehicle belonged to the appellant. The Tribunal also found that the driver of the offending vehicle did not possess a proper driving license and hence, ordered pay and recovery. The amount payable to the claimants was quantified at Rs.6,39,000/-. Aggrieved by the pay and recovery order passed against him, the owner of the offending vehicle has come before this court.

6. The learned counsel for the Appellant submitted that the age of the deceased was fixed as 65 years by the Tribunal based on the post-mortem report marked as Exhibit P9 and the same is only approximate



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one. The learned counsel further submitted that the Appellant has filed an application in CMP.No.6751 of 2025 to receive birth extract of the 2nd claimant namely Veerappan as additional evidence in the present appeal. According to him, as per the birth extract of 2nd claimant Veerappan, on the date of accident, his age was 44 years. Therefore, the conclusion of the Tribunal that the age of the deceased was 65 years on the date of the accident is improbable. The learned counsel also submitted that the claimants 2 to 7 have already attained majority and they were earning independently. Therefore, according to him, they cannot be treated as dependents of the deceased. Since there was only one dependent namely wife of the deceased, the Tribunal ought not have deducted one-fifth of the amount towards personal expenses.

7. The learned counsel for the first respondent/Insurance Company also submitted that the Tribunal committed an error in deducting one-fifth of the amount instead of one-third.

8. The learned counsel for the respondents 2 to 8/ claimants submitted that the Tribunal fixed notional income of the deceased at Rs.7,500/- and the same is very meagre considering the date of accident.



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9. The Tribunal, based on Exhibit P1, FIR, testimony of eyewitness to the occurrence and Ex.R2, final report came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the appellant's vehicle. P.W.2, eye witness clearly spoke about the negligence on the part of the driver of the vehicle belonged to the appellant. Exhibit P1, FIR was registered against the appellant's driver. The police, after investigation filed a final report against the driver of the appellant's vehicle. In these circumstances, the conclusion of the Tribunal that the accident had occurred only due to the negligence on the part of the driver of the appellant's vehicle is based on proper appreciation of evidence available on record and the same is confirmed.

10. In order to prove the age of the 2nd claimant/ son of the deceased, the appellant filed an application in CMP.No.6751 of 2025 seeking reception of additional evidence namely the birth extract of the 2nd claimant. The learned counsel for the respondents have no serious objection for allowing this application. Therefore, the same is allowed and the birth extract of the 2nd claimant is marked as Exhibit R4 in this



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11.A perusal of the same would suggest that the 2nd claimant was born on 24th November 1968. Therefore, on the date of accident, he was 44 years old.

12. The learned counsel for the Appellant vehemently contended that when the son of the deceased was 44 years old on the date of accident, the deceased should have been more than 65 years. It is his contention that the age mentioned in the post-mortem certificate is not an accurate one. Therefore, in the light of Exhibit R4, additional evidence produced before this Court, this Court should fix the age of the victim as above 65 years. The argument made by the learned counsel for the Appellant is not acceptable to this Court. Even if the age of the 2nd claimant is taken as 44 years on the date of accident, still there is every possibility of deceased getting a son at the age of 21 years. It is seen from additional evidence, the son of the deceased was born in the year 1968. Taking into consideration the social practice that prevailed at that point of time, we cannot rule out the birth of the son at the age of 21 years. Therefore, the submission made by the learned counsel for the



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Appellant that the age of the deceased should be more than 65 years is rejected and the finding of the Tribunal that the age of the deceased was 65 years, which is based on post-mortem report, is confirmed.

13. It is also submitted that the 2nd claimant, who was examined as PW1, clearly admitted that the claimants 2 to 7 had independent source of income and therefore, the Tribunal should not have treated them as dependents and deducted one-fifth of the amount instead of one-third. A perusal of the award would suggest that the Tribunal fixed only Rs.7,500/- as notional income for the deceased. In the claim petition, it was stated by the claimants that the deceased was a Mason. If we follow the guidelines issued by the division bench of this Court in ***Andal and Others Vs Avinav Kannan and another*** reported in ***MANU/TN/6368/2018***, even in cases where there is no evidence for fixing the notional income, the notional income can be fixed easily at Rs.10,000/- taking into consideration that the accident had occurred in the year 2013. In the case on hand, the Tribunal fixed meager amount of Rs.7,500/- as notional income. Since the Tribunal fixed only Rs.7,500 as



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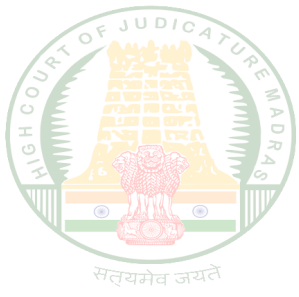
the notional income of the deceased, this court is not inclined to deduct one-third of the amount instead of one-fifth as deducted by the Tribunal. It is to be noted that Tribunal granted only Rs.10,000/- each under the head loss of love and affection to claimants 2 to 7, which is very much on lower side, than the conventional damages as indicated in Pranay Sethi Case. Hence, I am not inclined to interfere with deduction of one-fifth made by the Tribunal. Therefore, I do not find anything to interfere with the award passed by the Tribunal. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs.

23.04.2025

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Index:Yes/No
Internet:Yes/No
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Ex.R4-Birth Extract of 2nd claimant dated 10.01.2023, marked as Exhibit in this appeal as per order passed in CMP.No.6751 of 2025 dated 23.04.2025.



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To

1. Motor Accidents Claims Tribunal
III Additional District Judge, Puducherry.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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