IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.01.2025**

CORAM:

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

C.M.A.Nos.2310 of 2024 & 27 of 2025
and
C.M.P.No.212 of 2025

C.M.A.No.2310 of 2024

1.Chinnaponnu

2.Minor Gopika
3.Minor Boomika
4.Minor Vishnupriyan
[minors 2 to 4 represented by their natural guardian, mother, the 1st petitioner Chinnaponnu]

5.Ayammal
6.Muthu ... Appellants

Vs.

1.Sri Hari Process,
78/4, Pannikampalayam, Perundurai Taluk,
Erode – 638 052.

2.M/s.United India Insurance Company Limited,
Branch Office, Puduchampally,
Raman Nagar Post Office, Mettur Dam – 3. ... Respondents

C.M.A.No.27 of 2025

M/s.United India Insurance Company Limited,
Branch Office, Puduchampally,
Raman Nagar Post Office, Mettur Dam – 3. ... Appellant

Vs.

1.Chinna Ponnu

2.Minor Gopika
3.Minor Boomika
4.Minor Vishnupriyan
[2 to 4 represented by their next friend, guardian, mother Chinnaponnu]

5.Ayammal
6.Muthu

7.Sri Hari Process,
78/4, Pannikampalayam,
Perundurai Taluk,
Erode District – 633 452. ... Respondents

Prayer in C.M.A.No.2310 of 2024 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order passed in M.C.O.P.No.59 of 2022 dated 30.04.2024 on the file of the Motor Accidents Claims Tribunal, Mettur, in respect of enhancement of compensation.

Prayer in C.M.A.No.27 of 2025 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.59 of 2022 on 30.04.2024 on the file of the learned Subordinate Court, (Motor Accident Claims Tribunal) at Mettur.

C.M.A.No.2310 of 2024

For Appellants : Mr.M.Venkadesh Kumar
For Respondents : No appearance [R1]
Mr.J.Chandran [R2]

C.M.A.No.27 of 2025

For Appellants : Mr.J.Chandran
For Respondents : Mr.M.Venkadesh Kumar [R1 to R4]

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COMMON JUDGMENT

Both the claimants and the insurance company have filed the present appeals against the award passed by the Motor Accidents Claims Tribunal, Subordinate Court, Mettur in M.C.O.P.No.59 of 2022. The claimants have filed C.M.A.No.2310 of 2024 and the insurance company has filed C.M.A.No.27 of 2025. For brevity, the appellants in C.M.A.No.2310 of 2024 are hereinafter referred to as claimants and the appellant in C.M.A.No.27 of 2025 is hereinafter referred to as insurance company.

2. The appellants/claimants are the husband, daughters, son, mother and father of the deceased Selvam. As per the claim petition, on 30.04.2022, at about 8.00 p.m., the deceased was riding his Splendor Plus motorcycle bearing Regn.No.TN-39-AE-9286 on Bhavani to Mettur Main Road, Kuthiraikal Medu, near Indirani Blue Metal with care and caution on south to north direction. At that time, a private bus bearing Regn.No.TN-45-Q-0399 belonging to the 1st respondent, which was insured with the 2nd respondent, driven by its driver in a rash and negligent manner and hit on the backside of the motorcycle. As a result of which, the deceased fell down on the road and he sustained grievous injuries. Immediately, the deceased was taken to Government Hospital, Bhavani and then shifted to Government Hospital, Erode. Inspite of the treatment given to the deceased, he died on the same day. Therefore, the claimants have filed a claim petition claiming compensation for a sum of Rs.50,00,000/- before the Tribunal in M.C.O.P.No.59 of 2022 for the death of the deceased.

3. Before the Tribunal, the 1st claimant had examined herself as P.W.1

and marked 18 documents viz., Ex.P.1 to Ex.P.18. On the side of the respondents, they have examined one witness viz., R.W.1 and marked 1 document viz., Ex.R.1 and through R.W.1, 2 documents were marked viz., Ex.W.1 and Ex.W.2. After adjudication, the Tribunal allowed the petition and awarded a sum of Rs.38,32,000/- as compensation to the claimants. Challenging the same, both the claimants and the insurance company are before this Court.

4. Learned counsel appearing for the claimants submitted that the claimants 2 to 4, who are the children of the deceased, were mentally challenged and they suffer more because of the death of the deceased. Further, he submitted that, at the time of accident, the deceased was working as a crane operator and earned a sum of Rs.40,000/- p.m., however, the Tribunal has fixed the notional income at Rs.20,000/- and the Tribunal has not added future prospects, which requires to be re-considered by this Court. He further submitted that the compensation awarded under the other heads are on the lower side, which requires to be enhanced. Accordingly, he prays for appropriate enhancement in favour of the claimants.

5. Learned counsel appearing for the Insurance Company submitted that, at the time of accident, the deceased was not wearing a helmet and did not possess a valid driving licence. Additionally, the registration certificate and fitness certificate for the motorcycle were not renewed by the deceased. To support its claim, the insurance company had examined R.W.1, who clearly deposed that, at the time of accident, the deceased was not wearing a helmet and had not mark valid driving licence before the Motor Vehicle Inspector. Furthermore, the registration certificate and fitness certificate had not been acquired from the Motor Vehicle Department. Despite this evidence, no negligence was attributed to the deceased, which is wholly unsustainable. Further, he submitted that though the claimants claimed that the deceased was working as a crane operator earning a sum of Rs.40,000/- per month, at the time of the accident, however, they failed to provide any document to substantiate the same. When such being the case, the Tribunal had fixed a sum of Rs.20,000/- as notional income of the deceased, which is on the higher side. Accordingly, he prays for allowing the appeal filed by the insurance company and dismissal of the appeal filed by the claimants.

6. Heard the learned counsel appearing for the claimants and the learned counsel appearing on behalf of the insurance company and perused the materials available on record.

7. The factum and manner of the accident are not in dispute. Therefore, this Court is not entering into the said aspect. The main grievance of the insurance company is regarding negligence and liability. Insofar as the contention relating to negligence is concerned, the main grievance espoused by the insurance company is that the deceased was not in possession of driving licence and not wearing helmet and the Tribunal has failed to fix contributory negligence with respect to the deceased and, therefore, necessary interference is warranted with the said finding.

8. To prove the above contentions, the insurance company examined one Manoj/Motor Vehicle Inspector as R.W.1, who had deposed that he did not issue any driving licence to the deceased. To counter this, the claimants did not produce the driving licence of the deceased before the Tribunal.

Though the licence is being issued by the Regional Transport Officer, the insurance company had examined R.W.1/Motor Vehicle Inspector, who is not a sufficient witness to hold that the deceased was not possessing a valid driving licence at the time of accident. When there is no material evidencing that the accident had happened due to the negligent act of the deceased, the contention of the insurance company relating to contributory negligence cannot be accepted. Further, to make out an act of contributory negligence, there should be material, which clearly establishes such an act on the part of the deceased and it could not be taken by way of mere inference. Therefore, the said finding on negligence recorded by the Tribunal does not deserve any interference.

9. Once it is held that due to the rash and negligent driver of the offending vehicle, the accident had happened, as a insurer of that vehicle, the insurance company is liable to compensate the claimants. Hence, on that point also, no interference is warranted and the finding recorded by the Tribunal is confirmed.

10. Now, coming to the question of quantum of compensation awarded by the Tribunal in favour of the claimants. To compute the income under the head loss of income, no document in support of proof of the income of the deceased has been filed. However, it is claimed by the claimants that, at the time of accident, the deceased was working as a crane operator and earned a sum of Rs.40,000/- per month. However, this Court is of view that the notional income fixed by the Tribunal is just and reasonable and the same does not require any interference. Since the Tribunal has not added future prospects and deducted personal expenses, this Court is inclined to add future prospects and deduct personal expenses from the notional income. Hence, by accepting the notional income fixed by the Tribunal at Rs.20,000/- 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 total income per month is quantified at Rs.28,000/-. Deducting 1/4th towards the personal expenses of the deceased, the income of the deceased is arrived at Rs.21,000/- per month and the

deceased being aged about 37 years, as evidenced from the records, adopting the multiplier of 15 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.21,000/- * 12 * 15 = Rs.37,80,000/-, which is worked out as follows :-

Loss of Income	**Amount (in Rs.)**
Notional income (Per month)	20,000
Add: Future Prospects (Rs.20,000 x 40%) (Per month)	8,000
	28,000
Less: Personal expenses (1/4th) (Rs.28,000/- x 1/4th) (Per month)	7,000
	21,000
Notional income (per annum) (Rs.21,000/- x 12)	2,52,000
Multiplier	15
Total	**37,80,000**

11. Further, the Tribunal had awarded a sum of Rs.10,000/- towards transport expense; Rs.2,000/- towards damages to clothes; Rs.20,000/- towards funeral expenses; Rs.1,00,000/- towards mental agony and shock and Rs.1,00,000/- towards loss of love and affection.

12. Insofar as the compensation awarded under the heads transport expenses, damages to clothes, mental agony and shock, no compensation can be awarded under such heads as the same are not conventional heads, which attract any compensation. Therefore, the compensation awarded under the said heads are accordingly set aside.

13. Since no compensation has been awarded under the heads loss of consortium and loss of estate, this Court grants a sum of Rs.44,000/- and Rs.16,500/- under the said heads respectively. However, insofar as the compensation awarded under the head funeral expenses, this Court is of the view that the said compensation is on the higher side, and hence, the same is reduced to a sum of Rs.16,500/-. Further, this Court is of the view that the compensation awarded under the head loss of love and affection is on the lower side, and hence, the said compensation is enhanced to a sum of Rs.2,20,000/-.

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

S. No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Loss of income	**36,00,000/-**	**37,80,000/- (enhanced)**
2	Transport expense	**10,000/-**	---
3	Damages to clothes	**2,000/-**	---
4	Funeral expenses	**20,000/-**	**16,500/- (reduced)**
5	Mental agony and shock	**1,00,000/-**	---
6	Loss of love and affection (Rs.44,000/- x 5)	**1,00,000/-**	**2,20,000/- (enhanced)**
7	Loss of estate	---	**16,500/-**
8	Loss of consortium	---	**44,000/-**
	Total	**38,32,000/-**	**40,77,000/-**

15. Accordingly, the impugned Award of the Tribunal is modified, enhancing the compensation amount from **Rs.38,32,000/-** to **Rs.40,77,000/-**. The Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.59 of 2022 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 eight (8) weeks from the date of receipt of a copy of this judgment. The above modified compensation amount shall be apportioned among the claimants as per the apportionment of the Tribunal. On such deposit being made, the Tribunal is directed to transfer the share of the claimants 1, 5 and 6 directly to their bank account 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 by the claimants. The claimants are directed to pay necessary additional Court fee on the enhanced compensation amount. Further, the Tribunal is also directed to deposit the share of the claimants 2 to 4 in an interest yielding fixed deposit with any one of the Nationalised Banks, initially for a period of three years to be renewed at periodic intervals until they attain majority and interest derived from and out of the said deposits shall be paid to the 1st claimant/Chinnaponnu, who is the mother of the minor claimants, every quarter, to be utilised for the welfare of the said minor claimants. After attaining majority, it is open to them to file necessary application to establish their majority, at which point of time, the Tribunal is directed to transfer the amount in the fixed deposits directly to the bank account of the claimants 2 to 4 through RTGS within a period of two (2) weeks thereafter.

16. In the result, the appeal filed by the claimants in C.M.A.No.2310 of 2024 is allowed and the appeal filed by the insurance company in C.M.A.No.27 of 2025 is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

20.01.2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No
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To
The Motor Accidents Claims Tribunal, (Subordinate Court), Mettur.

M.DHANDAPANI,J.,

sp

C.M.A.Nos.2310 of 2024 & 27 of 2025

20.01.2025