



CMA.No.1625 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :14.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTAR

CMA No.1625 of 2021 and
C.M.P.No.8549 of 2021

United India Insurance Co.Ltd
D.No.22-B, Shop No.11 Krishnaveni Complex,
Pallipalayam Post, Thiruchengodu Taluk,
Namakkal District

... Appellant

Vs.

Raju(Deceased)

1. Chellammal
2. Mathiazhagan
- 3.Vasanthi
- 4.Palanisamy
- 5.Umapathy

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the award and decree dated 30/04/2019 made in MCOP No.19/2010 on the file of the MACT, Sub Court, Sankari.

For Appellant : Mr.S.Arun Kumar
For Respondent : No appearance for R1 to R3
R4-Died
R5- Notice returned



CMA.No.1625 of 2021

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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal granting a compensation of Rs.5,00,000/- in favour of respondents 1 to 3/claimants.

2. According to the claimants, the deceased claimant was standing on the left hand side of the Pallipalayam-Sangagiri Main Road on 29.08.2009. The Maruti Omni van, belonged to the 4th respondent insured with the appellant driven by the 5th respondent, came in a rash and negligent manner and hit the injured claimant. As a result of the accident, he got fracture on the left acetabular roof, fracture on left superior and inferior pubic rami, fracture on left shaft of left radius left forearm and injury on head. It is also stated that initially, the claim petition was filed by the injured seeking compensation for the injury suffered by him. Pending claim petition, he died and his legal representatives namely wife and children were brought on record.



CMA.No.1625 of 2021

WEB COPY

3. The claim petition was resisted by the appellant Insurance Company denying involvement of the vehicle insured with it.

4. 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 Maruti Omni van insured with the Appellant Insurance Corporation and fixed liability on the Appellant as well as the owner and driver of the vehicle. The Tribunal quantified the compensation payable to the claimants at Rs.5,00,000/- Aggrieved by the quantum, the insurance company has come before this court.

5. Though the contesting respondents 1 to 3/claimants were served and their names appear in the list, there is no representation for them.

6. Heard the arguments of the learned counsel for the appellant/Insurance Company.



CMA.No.1625 of 2021

WEB COPY

7. The learned counsel for the appellant submitted that in view of the fact that the victim died subsequently due to some other reason, the Tribunal committed an error in granting Rs.3,00,000/- under the head disability. The learned counsel further submitted that the amount awarded by the Tribunal under the heads pain and suffering and loss of estate are not tenable in the facts and circumstances of the case. He further submitted that the amount of Rs.50,000/- awarded under the head nutritional expenses is on the higher side.

8. The Tribunal, based on the evidence available on record, came to the conclusion that though the victim suffered grievous injuries in the nature of fractures described above, there was no evidence available on record to show he died due to injuries. In such circumstances, the Tribunal treated the case as the claim for injuries and passed the award. When the victim is not alive, the Tribunal ought not have granted any amount under the head pain and suffering. The compensation under the head pain and suffering is personal to the person who suffered injuries and the dependents of the said person are



CMA.No.1625 of 2021

WEB COPY

not entitled to compensation under the said head. Hence, the amount awarded under the head pain and suffering is set aside. When the person who suffered injury is died of some other reason, the dependents are not entitled to claim any amount under the head disability. Had he been alive, the disability suffered by him would have had an impact on his earning capacity and hence, compensation shall be awarded under the head loss of earning due to disability. In the case on hand, subsequent to the accident, the injured died due to some other reason. In these circumstances, the tribunal was not justified in granting Rs.3,00,000/- under the head disability. However, the estate of the deceased is entitled to compensation under the head loss of earning during treatment period. In the case on hand, the accident had occurred on 29.08.2009. The victim died on 10.01.2011. The medical documents namely Ex.P3 and Ex.P4, discharge summaries, produced by the claimants were dated 03-09-2009 and 14-09-2009. Therefore, it is clear that the injured claimant was in hospital for nearly a fortnight. There is no further evidence on the part of the claimants that the victim was in hospital for treatment after discharge under Ex.P4 dated 14-09-2009.



CMA.No.1625 of 2021

WEB COPY

Taking into consideration the nature of the fracture suffered by him in hip region and the left forearm, this Court feels that it would be appropriate to grant compensation under the head loss of income for a period of 6 months. Accordingly, a sum of Rs.60,000/- is awarded under the head loss of income. The tribunal awarded Rs.50,000/- under the head nutrition expenses. The victim was in hospital nearly for two weeks. Therefore, the amount of Rs. 50,000/- awarded by the tribunal is very much on the higher side. Even after discharge, he would have taken some extra nourishment for a considerable time. Taking into consideration all these factors, a sum of Rs.30,000/- is awarded under the head nutritional expenses. The amount of Rs.5,000/- awarded under the head loss of estate is set aside. The amount awarded by the tribunal under the head medical expenses is based on Ex.P-5, medical bills. Therefore, the same is confirmed. The amount fixed by the tribunal under other heads like attendant charges and transportation are confirmed. In all, the claimants are entitled to Rs.1,60,000/-



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9. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:-

Sl • No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and Suffering	75,000/-	Nil	Set aside
2.	Attender Charges	10,000/-	10,000/-	Confirmed
3.	Nutritional Expenses	50,000/-	30,000/-	Reduced
4.	Transportation Expenses	10,000/-	10,000/-	Confirmed
5.	Disability	3,00,000/-	Nil	Set aside
6.	Medical expenses	50,000/-	50,000	Confirmed
7.	Loss of estate	5,000/-	Nil	Set aside
8	Loss of income	Nil	60,000/-	Granted
	Total	5,00,000/-	1,60,000/-	Reduced by Rs.3,40,000 /-

10. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,00,000/- is reduced to Rs.1,60,000/-.



CMA.No.1625 of 2021

WEB COPY

11. It is stated by the learned counsel for the appellant that the appellant/Insurance company has already deposited 50% of the award amount to the credit of MCOP. No.19/2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari pursuant to the interim order passed by this Court in CMP.No.8549 of 2021. The appellant/insurance company is entitled to withdraw any excess amount in deposit, with accrued interest, if any, by making appropriate application before the Tribunal. The claimants are also permitted to withdraw the modified award amount along with interest and costs at the rate of 7.5% per annum (excluding the delay period, if any) from the date of filing of the claim petition till the date of deposit, with proportionate accrued interest, if any. No costs. Consequently, the connected miscellaneous petition is closed.

14.03.2025

Index:Yes/No
Internet:Yes/No
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CMA.No.1625 of 2021

To

1. Motor Accident Claims Tribunal,
Sub Court, Sankari.
2. The Section Officer,
VR Section,
High Court, Madras.



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CMA.No.1625 of 2021

S.SOUNTHAR, J.

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CMA No.1625 of 2021 and
C.M.P.No.8549 of 2021

14.03.2025