



CMA.No.33 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.01.2025

CORAM

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

CMA.No.33 of 2025

1. Pattu
2. Bharathraj
3. Bharathi
4. Sundrampal

(The 3rd appellant is suo motu declared as major vide order dated 09.01.2025 in CMA.No.33 of 2025) ...Appellants

Vs.

1. Prabhu
2. The Manager, New India Assurance Company Ltd.,
Ariyalur Micro Office (730906), No.23-A,
Perambalur Main Road,
Ariyalur Taluk and District.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount and fix the entire liability on 2nd respondent made in Judgment and decree dated 29.01.2021 made in M.C.O.P.No.188 of 2019 on the file of the MCOP Tribunal, Additional District Sessions Court, Ariyalur.

For Appellants : Mr.S.P.Yuaraj

For Respondents : Notice dispensed with
vide order dated 18.12.2024

Mr.J.Chandran for R2



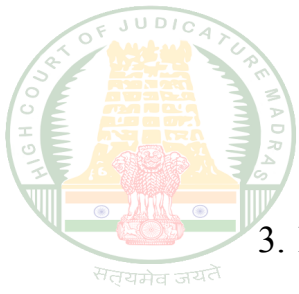
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JUDGMENT

Challenging the judgment and decree dated 29.01.2021 passed in M.C.O.P.No.188 of 2019 on the file of Motor Accident Claims Tribunal, Additional District Sessions Court, Ariyalur, the claimants have filed the above appeal seeking enhancement of compensation.

2. It is the case of the claimants that, on 29.03.2019 at about 8.00a.m, when one Manikandan was travelling in a two wheeler bearing Regn.No.TN 46 P 7819 along with his deceased friends namely Paramasivam and one other, at that time a Tipper lorry bearing Regn.No.TN 46 U 6009 driven by the first respondent insured with the second respondent, in a rash and negligent manner and dashed the motor cycle in which the deceased was travelling, due to which the deceased Paramasivam sustained grievous injuries and succumbed to death. Thereby, the first appellant, who is the wife of the deceased, appellants 2 and 3, who are the son and daughter of the deceased and the third appellant who is the mother of the deceased have filed a claim petition in MCOP.No.188 of 2019 claiming a compensation of Rs.50,00,000/-.



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3. Before the Tribunal, the claimant examined two witnesses viz. P.W.1 to P.W.3 and marked Exhibits P.1 to P.12 and the respondents have examined R.W.1 to R.W.3 and marked Exhibits R.1 to R4. After trial, the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the 1st respondent and awarded a compensation of Rs.10,57,153/- for the death of the deceased after deducting 10% contributory negligence on the part of the deceased for triple riding at the time of accident. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellants/claimants have come up with this appeal seeking enhancement of compensation.

4. Learned counsel for the appellant submitted that the above said accident happened solely due to the rash and negligent driving of the driver of the 1st respondent and the accident is of the year 2019 and at the time of accident, the deceased was aged about 50 years and was earning not less than a sum of Rs.30,000/- per month, however, the tribunal had taken the notional income of the deceased as Rs.7,500/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be interfered with. Further, the compensation



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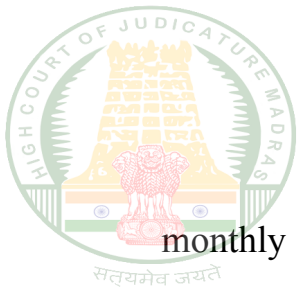
awarded under other heads are also on the lower side and the same needs to be

enhanced. Accordingly, he prayed for appropriate orders.

5. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance Company contended that, when there is no proof of income, the Tribunal by considering all the relevant documents has fixed the notional income of the deceased at Rs.7,500/- and has rightly awarded the compensation of Rs.10,57,153/-, which does not require any enhancement. Moreso, the Tribunal has deducted 10% contributory negligence on the part of the deceased for triple driving which was also confirmed by this Court in a similar case arising out of the very same accident, hence the same may be confirmed. Accordingly, he prays for dismissal of the appeal.

6. The factum and manner of the accident is not disputed by the parties and this Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2019 and at the time of accident, the deceased was aged about 50 years, however, the Tribunal had fixed the notional



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monthly income at Rs.7,500/-, which is on the lower side. Applying 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 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 after adding 25% towards future

prospects, the income is arrived at Rs.21,250/- (17,000/- + 4,250/-). Deducting

1/4th towards the personal expenses of the deceased, the loss of income to the

family is arrived at Rs.15,937/- per month (Rs.21,250/- - Rs.5,313/-) and the

deceased being aged about 50 years, as evidenced from the records, adopting

the multiplier of 13 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.15,937/- * 12 * 13 = Rs.24,86,172/-.

8. A sum of Rs.40,000/- has been awarded under the head “loss of consortium” for all the appellants, however, the wife is only entitled to obtain loss of consortium, this Court grants a sum of Rs.40,000/- under the said head for the first appellant. No amount has been awarded to the appellants 2 to 4 under the head loss of love and affection, hence this Court grants a sum of



Rs.1,20,000/- to the appellants 2 to 4 under the said head. Insofar as the

compensation awarded under the other heads are concerned, this Court is of the view that the compensation awarded under the other heads are just and reasonable and the same does not requires interference of this Court. It is pertinent to note that, the Tribunal has erroneously deducted 10% contributory negligence from the loss of income of the deceased, however, the contributory negligence has to be deducted only from the total compensation. This Court is not inclined to interfere with the fixation of 10% contributory negligence on the part of the deceased for triple driving. Hence the same, is hereby confirmed.

9. 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 income	10,96,836/-	14,86,172/-
Less 10% contributory negligence	1,09,683/-	-
Loss of estate	15,000/-	15,000/-
Funeral expenses	15,000/-	15,000/-
Loss of love and affection	-	40,000/-
Loss of consortium	40,000/-	1,20,000/-
Total	10,57,153/-	16,76,172/-
After deducting 10% Contributory negligence		15,08,555/-



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10. When the claim petition was filed in the year 2019, the third appellant was aged about 17 years. Now, the third appellant should be aged about 25 years and is therefore, major. Though no application has been taken out to declare her 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 third appellant as major and discharges her mother namely Pattu from the guardianship. The Registry shall carry out the necessary amendments.

11. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.188 of 2019 is modified by enhancing the compensation amount from Rs.10,57,153/- to Rs.15,08,555/- after deducting 10% contributory negligence on the part of the deceased. Out of the total compensation, the appellants 1 and 4 are entitled to a sum of Rs.3,01,711/- each and the second and third appellants are entitled to a sum of Rs.4,52,567/- each.

12. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.188 of 2019 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



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awarded by the Tribunal, less, the amount, if any already deposited, within a

period of four (4) weeks from the date of receipt of a copy of this judgment. On

such deposit being made, the Tribunal is directed to transfer the award amount

directly to the bank account of the appellants/claimants through RTGS within a

period of two 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.

09.01.2025

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NCC : Yes/No

Index : Yes/No

Speaking Order : Yes/No

To:

1. MCOP Tribunal, Additional District Sessions Court, Ariyalur.

2. The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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