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CMA No. 2479 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-08-2025

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 2479 of 2023

AND

CMP NO. 23100 OF 2023

The Oriental Insurance Company Ltd
Office No.134/1, Thiruchengodu Road,
pallipalayam,
Namakkal District Pin-638 006

Appellant

Vs

1. Thangamani

2.Selvam

3.Kandasamy

4.Saroja

5.Ravichandran Alias Settu

K S Thangavelu (Deceased)

6.Praveen Kumar,

Respondents



CMA No. 2479 of 2023

PRAYER

Civil Miscellaneous Appeal filed under Sec.173 of Motor Vehicles Act, praying to set aside the award passed by the tribunal in the above in MCOP No.14/2017 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Mettur at Salem dated 09.12.2022.

For Appellant: Mr.M.Krishnamoorthy

For Respondents: Mr.M.R.Jothimanian For R1, R2
and R4
R3 - Deceased
R5 & R6 - Exparte

JUDGMENT

Challenging the impugned award passed by the Motor Accident Claims Tribunal, Subordinate Judge, Mettur at Salem in MCOP No.14 of 2017, dated 09.12.2022, the appellant/3rd respondent insurance company preferred this Civil Miscellaneous Appeal.

2.The case of the respondents/petitioners 1 to 4 is that on 05.12.2015 at about 09.00 hours. when the deceased Duraisamy returning to his house after completion of his work by riding his two wheeler bearing Regn. No. TN-30 BY-0731 on Nangavalli to Jalagandapuram Main Road, near Sanyasi Muniappan, at

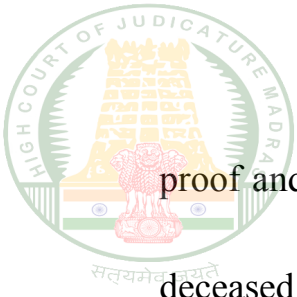


that time, the bus bearing Regn. No. TN-52-D-6677 came in the opposite direction in a rash and negligent manner, dashed the two wheeler and crushed the deceased Duraisamy and caused accident. Due to which, he sustained grievous head injuries and died on the spot. Under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation of Rs.49,03,000/-.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the rider of the 1st respondent. Having come to such a conclusion, the Tribunal fixed the total compensation payable at Rs.26,47,000/- under various heads and the said compensation was directed to be paid with interest at the rate of 7.5% per annum.

4. The Insurance Company aggrieved by the quantum of compensation fixed by the Tribunal has filed the present appeal before this Court.

5. The learned counsel for appellant argues that the tribunal had erroneously fixed the income of deceased as Rs.20,000/- without any income



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proof and also raised objections stating that at the time of alleged accident, the deceased has not wore helmet. So, he has violated the traffic rules, but the contributory negligence on the side of deceased was not considered by the tribunal. Furthermore, the 3rd respondent, who was father of deceased was not considered as his dependant and the deduction for personal expenses has not been properly considered. Hence, he prayed to set aside the findings of tribunal.

6. The learned counsel for respondents 1 to 4 have raised objections stating that tribunal has rightly fixed the income of deceased considering the fact that he is a mechanic of Powerloom and earned a sum of Rs.32,000/- per month and the same was rightly considered by the tribunal, which needs no interference. He would also submit that with regard to contributory negligence, before the tribunal, they have not raised any objections. Hence, he prayed to dismiss this appeal as no merit.

7. Heard and considered rival submissions made by learned counsel for appellant and respondents 1, 2 and 4 and perused materials available on record.

8. Considering both side submissions, the fact reveals that at the time of accident, the deceased was aged about 44 years. According to respondents 1 to



4, the deceased was a Mechanic of Powerloom and earned a sum of Rs.32,000/-.

To that effect, the 1st respondent was examined as P.W.1, but except her oral evidence, there is no income proof produced on their side. The accident was happened in the year 2015, but without any proof, the tribunal had taken income of deceased as Rs.20,000/- and deducted Rs.5000/-. Accordingly, his income is liable to be modified as Rs.15,000/- and 25% of future prospects is to be arrived and also the deduction towards personal expenses is to be arrived as 1/3.

9. Furthermore, the Tribunal has granted only a sum of Rs.1,00,000/- under the head of 'Loss of mental agony, pain and trauma', however, each of the respondents 1 to 4 are entitled for a sum of Rs.40,000/- under this head. Accordingly, the total compensation under this head is fixed at Rs.1,60,000/- (Rs.40,000/- x 4). The compensation that has been fixed under the other heads are reasonable and does not require the interference of this Court.

10. So far as the contributory negligence is concerned, the deceased has not wore helmet at the time of accident. Hence, 10% of contributory negligence is to be arrived for not wearing helmet.



11. In the light of the above discussion, the compensation awarded by the tribunal is modified as follows:

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S.No	Compensation awarded under the head	Amount awarded by the tribunal (in Rs.)	Amount (in Rs.)	Award confirmed or granted or enhanced
1.	For loss of income Rs.15,000/- (add 25% future prospects) = 15000 + 3750 = 18750 18750 x 12 x 14 (multiplier) = 31,50,000 – 1/3 (10,50,000) = 21,00,000	25,20,000	21,00,000	reduced
2.	Loss of mental agony, pain and trauma (Rs.40000 x 4)	1,00,000	1,60,000	enhanced
3.	Funeral expenses	15,000	15,000	confirmed
4.	Transportation expenses	10,000	10,000	confirmed
5.	Damages to cloths	2,000	2,000	confirmed
	Total	26,47,000	22,87,000	reduced
	Less :- 10% of contributory negligence		2,28,700	
	Net compensation		20,58,300	

12. Accordingly, the compensation awarded by the tribunal at Rs.26,47,000/- is reduced to Rs.20,58,300/-. The appellant insurance company is directed to deposit the compensation, less the amount already deposited,



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together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of copy of this judgment. If any excess amount is paid, the appellant is permitted to withdraw the said amount. On such deposit of the compensation amount now determined by this Court, the respondents 1 to 4 are entitled to share the amount proportionately as ordered by the Tribunal and they are permitted to withdraw the award amount along with interest and costs and if any excess amount is already withdrawn, the same is ordered to be returned by them. Insofar as the compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

13. In the result, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

26-08-2025

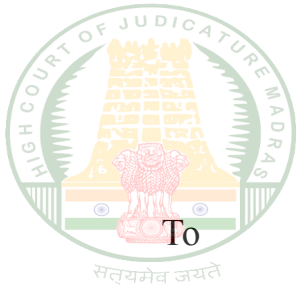
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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CMA No. 2479 of 2023



WEB COPY

1. Motor Accident Claims Tribunal, Sub-Judge, Mettur at Salem.
2. Section Officer, VR Section, Madras High Court.



WEB COPY

CMA No. 2479 of 2023



T.V.THAMILSELVI J.

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