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CMA.No.169 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2025

CORAM

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

CMA.No.169 of 2025

1. Puttamma
 2. Nanjappa
- ...Appellants

Vs.

1. The Principal, Rural Institute for
Community Education,
Mathagondapalli Model School,
Mathagondapalli Post, Denkanikottai Taluk,
Krishnagiri – 635 114.
 2. The Branch Manager,
The New India Assurance Co. Ltd.,
(Gudiyatham Branch), No.14,
Police Line Street, Thalayatham,
Gudiyatham Post, Tamilnadu – 632 602.
- ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 29.03.2023 made in M.C.O.P.No.1272 of 2020 on the file of the Motor Vehicle Accident Claims Tribunal, Special District Judge, Krishnagiri.

For Appellants : Mr.S.P.Yuaraj

For Respondents : Notice dispensed with [R1]
Mrs.Rathna Thara for R2



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JUDGMENT

Challenging the judgment and decree dated 29.03.2023 passed in M.C.O.P.No.1272 of 2020 on the file of the Motor Vehicle Accident Claims Tribunal, Special District Judge, Krishnagiri, the claimants have filed the above appeal as against the quantum of compensation and the negligence fixed on the part of the deceased.

2. In view of the judgment being passed, notice to the first respondent is dispensed with.

3. It is the case of the appellants / claimants that, on 13.01.2020 at about 07.15 hours, when the deceased was riding a two wheeler bearing Regn.No.Ka 01 EA 7584, at that time a bus bearing Regn.No.TN 70 M 4278 belonging to the first respondent driven by its driver came in a rash and negligent manner and dashed the deceased, due to which, the deceased sustained grievous injuries all over his body and succumbed to death. Thereby, the appellants, who are the parents of the deceased have filed a claim petition in MCOP.No.1272 of 2020 claiming a compensation of Rs.50,00,000/-.



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4. Before the Tribunal, the claimants examined two witnesses viz. P.W.1 and P.W.2 and marked Exhibits P.1 to P.7 and the second respondent examined R.W.1 and marked Exs.R1 to R5. 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's Bus and awarded Rs.17,33,800/- after deducting 15% contributory negligence on the part of the deceased for non-possession of valid driving licence. Being not satisfied with the quantum of compensation awarded by the Tribunal and the negligence fixed on the part of the deceased, the claimants have come up with this appeal.

5. Learned counsel for the appellants / claimants submitted that though the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent's vehicle, however, the Tribunal has fixed 15% contributory negligence on the part of the deceased for not having valid driving licence at the time of accident which is highly excessive. Hence the same may be reduced.



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Moreso, the accident is of the year 2020 and at the time of accident, the deceased was a Carpenter, earning not less than a sum of Rs.25,000/- per month, however, the tribunal had erroneously taken the notional income of the deceased as Rs.12,000/-, 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 awarded under other heads are also on the lower side and the same needs to be enhanced. Accordingly, she prayed for appropriate orders.

6. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance Company contended that, upon appreciating the oral and documentary evidence, the Tribunal has awarded the above compensation, which does not require any interference. Accordingly, he prays for dismissal of the appeal.

7. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

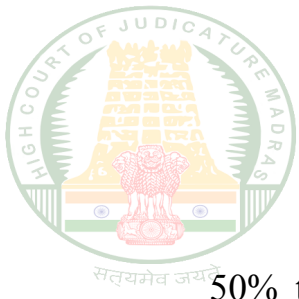


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8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievance of the Appellants/claimants is with regard to the quantum of compensation awarded by the Tribunal and the 15% negligence fixed as against the deceased.

9. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2020 and at the time of accident, the age of the deceased was 35 years and was a Carpenter, however, the Tribunal had fixed the notional income at Rs.12,000/-, 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.16,000/- 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 income per month is quantified at Rs.22,400/- (16,000 + 6,400) and after deducting



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50% towards personal expenses, the monthly income of the deceased would be at Rs.11,200/- (Rs.22,400 – 11,200) and as per the Judgment of the Hon'ble Apex Court in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC), the right multiplier to be adopted is '16' and hence, the loss of dependency would be at Rs.21,50,400/- (Rs.11,200 x 12 x 16).

10. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation awarded under other heads are just and reasonable and the same does not require interference of this Court.

11. As per the provisions of the Motor Vehicle Rules, it is mandatory for the rider to obtain driving licence to drive a motor cycle and for not complying the same, the Tribunal has fixed 15% contributory negligence on the part of the deceased, which is highly excessive. Hence, this Court fixed 10% contributory negligence on the part of the deceased for not having valid driving licence.

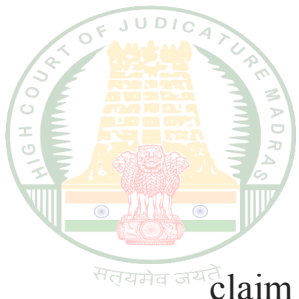


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12. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	16,12,800/-	21,50,400/- (enhanced)
Loss of estate	16,500/-	16,500/-
Funeral expenses	16,500/-	16,500/-
Loss of consortium (P1 & P2) Rs.44,000 x 2 = (Rs.88,000)	88,000/-	88,000/-
Total	17,33,800/-	22,71,400/-
After deducting Contributory Negligence	14,73,730/- (less 15%)	20,44,260/- (less 10%)

13. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.1272 of 2020 is modified by enhancing the compensation amount from Rs.14,73,730/- to **Rs.20,44,260/-** after deducting 10% contributory negligence on the part of the deceased. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.1272 of 2020 along with interest at the rate of 7.5% per annum from the date of



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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 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. The compensation awarded by this Court shall be apportioned among the appellants equally, with proportionate interest and costs. The appellants are not entitled for any interest for the delay period if any. No costs.

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NCC : Yes/No

Index : Yes/No

Speaking Order : Yes/No



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To:

1. Motor Vehicle Accident Claims Tribunal, Special District Judge,
Krishnagiri.
2. The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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