



C.M.A.No.3520 of 2024

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3520 of 2024

and

C.M.P.No.29889 of 2024

The Divisional Manager,
The United India Insurance Co. Ltd.,
No.13-A, SBI Complex, Nethaji Road,
Manjakuppam, Cuddalore – 607 001.

... Appellant

Vs.

1. Kavitha
2. Praveenkumar
3. Pushparaj
4. Karthick

(The 4th respondent is suo motu declared as major vide order dated 06.01.2025 in CMA.No.3520 of 2024)

5. Jayalakshmi
6. S.Vinayagam
7. The Divisional Manager,
The New India Assurance Company Ltd.,
II Floor, Arcot Woodlands Complex,
No.1, Bharathi Road, Cuddalore – 607 001.

8. Vinoth

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award dated 31.08.2023 passed



C.M.A.No.3520 of 2024

in M.C.O.P.No.1094 of 2020 on the file of the Motor Accidents Claims Tribunal, Special District Judge No.1, Cuddalore dated 8.12.2023.

For Appellant : Mr.Krishnamoorthy.M

For Respondents : Mr.Ramya.V.Rao for R1 to R5

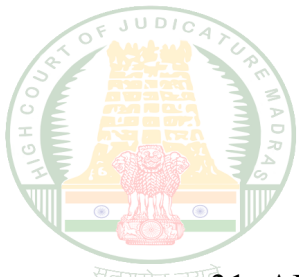
Mr.T.Jayaraman for R7

JUDGMENT

The above appeal is filed by the appellant / Insurance company seeking to set aside the Judgment and Decree dated 08.12.2023 passed in M.C.O.P.No. 1094 of 2020 by the Motor Accidents Claims Tribunal, Special District Judge No.1, Cuddalore

2. For brevity, the appellant is herein after referred to as insurer of the motor cycle (offending vehicle), respondents 6 and 8 are hereinafter referred to as owner of the Tractor and motorcycle and the 7th respondent is referred to as insurer of the Tractor.

3. It is the case of the appellant that, on 05.09.2020 at about 3.00 p.m., when the deceased was riding his two wheeler bearing Regn.No.TN



C.M.A.No.3520 of 2024

WEB COPY

31 AH 7166 by overtaking a tractor belonging to the 6th respondent bearing Regn.No.TN 32 R 4830 tied with a trailer bearing Regn.No.TN 32 R 4830 loaded with sugar cane insured with the seventh respondent / insurer of the Tractor and while proceeding in front of the Tractor, a two wheeler which came in the opposite direction bearing Regn.No.TN 05 BM 0614 driven by the eight respondent, insured with the appellant insurance company dashed the vehicle driven by the deceased. Thereafter, the deceased was thrown out of the vehicle and the tractor which was following the deceased also dashed the deceased, due to which the deceased sustained fatal injuries and died. Thereby, the wife, sons and mother of the deceased / claimants have filed a claim petition claiming a sum of Rs.50,00,000/- for the death of the deceased .

4. Before the Tribunal, the claimants have examined P.W.1 and P.W.2 and marked Exhibits P.1 to Ex.P.12. On the side of the owner and the insurer of the respective vehicles, they have neither examined any witnesses nor marked any exhibits, 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



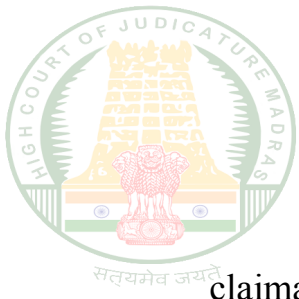
C.M.A.No.3520 of 2024

WEB COPY

on the part of the driver of the Tractor and the Motor Cycle and awarded a sum of Rs.29,87,500/- towards compensation for the death of the deceased and held that the appellant / insurer of the Motor cycle and the 7th respondent / insurer of the Tractor are liable to pay the above compensation. Challenging the same, the above appeal has been filed by the insurer of the motor cycle / appellant insurance company.

5. The learned counsel appearing for the appellant / insurer of the motorcycle submitted that, though the F.I.R. has been registered as against the driver of the Tractor, however, the Tribunal has fastened 50% negligence on the part of the driver of the two wheeler by directing the appellant insurance company to pay 50% of the compensation which is *per se* unsustainable. In the absence of income proof, the Tribunal has fixed the notional income of the deceased at Rs.18,000/- which cannot be sustained. Insofar as the compensation awarded under the other heads are concerned, the same is highly excessive, which warrants interference of this Court.

6. The learned counsel appearing for the respondents 1 to 5 /



C.M.A.No.3520 of 2024

WEB COPY

claimants submits that admittedly the said accident had happened only due to the drivers of the tractor and the motor cycle and in order to prove the negligence the claimants examined P.W.2, who clearly deposed the manner in which the said accident had happened. Hence, the Tribunal upon considering the oral and documentary evidence, had fixed 50% : 50% negligence on the part of the drivers of the two wheeler and the Tractor which does not warrant any interference. Hence, the insurer of the Tractor and the motor cycle are liable to indemnify the claimants for the loss sustained by them due to the death of the deceased.

7. The learned counsel appearing for the seventh respondent / insurer of the Tractor submits that though the FIR is registered as against the driver of the Tractor, it has been the consistent view of Courts that FIR is not an Encyclopedia and need not contain all the details and it is only the final report after investigation of the witnesses which would have a bearing on the issue. Without considering the said aspect, the Tribunal has mechanically fixed 50% negligence as against the insurer of the Tractor, which is wholly unsustainable. Accordingly, he prayed for passing appropriate orders.



C.M.A.No.3520 of 2024

WEB COPY

8. Heard the learned counsel for the appellant, learned counsel appearing for the respondents 1 to 5 and the learned counsel appearing for the 7th respondent and perused the materials placed on record.

9. There is no quarrel that the deceased died as a result of the accident, in which the motorcycle and the tractor, which has been insured with the appellant/insurer of the motor cycle and the seventh respondent / insurer of the Tractor were involved. The Tribunal, considering the materials placed before it has rightly come to the conclusion that it was due to the rash and negligent driving of the drivers of the Tractor and the motorcycle, the accident had happened and therefore, it is the duty of the appellant/ insurer of the motorcycle and the seventh respondent / insurer of the Tractor to compensate the respondents 1 to 5 /claimants. Therefore, on that point, 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, it is borne from the award passed by the



C.M.A.No.3520 of 2024

WEB COPY

Tribunal that, it had rightly taken the notional income of the deceased at 18,000/-, after adding 25% future prospectus, the income of the deceased was arrived at Rs.22,500/- and deducting 1/4th towards the personal expenses of the deceased, the notional income of the deceased is arrived at Rs.16,875/- per month and the deceased being aged about 48 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.16,875/- * 12 * 13 = Rs.26,32,500/-, which does not require any interference.

11. Further, the Tribunal had awarded a sum of Rs.50,000/- towards loss of consortium to the first respondent which is on the higher side and the same is reduced to a sum of Rs.44,000/-; Rs.2,50,000/- towards loss of love and affection which is on the higher side and the same is reduced to a sum of Rs. 1,76,000/- (44,000 x 4) and the same shall be apportioned among the respondents 2 to 5 equally, since loss of consortium for the wife of the deceased was already granted,



C.M.A.No.3520 of 2024

WEB COPY

compensation under the head loss of love and affection for the wife of the deceased is dis-allowed. A sum of Rs.15,000/- has been awarded under the heads “funeral expenses” and “transportation” respectively which is on the lower side and the same is enhanced to a sum of Rs.16,500/- under each heads. A sum of Rs.25,000/- has been awarded under the head “damages to clothes”, which is not sustainable. Hence the same is rejected.

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

<i>S. No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of income	26,32,500/-	26,32,500/-
2	Loss of consortium	50,000/-	44,000/- (reduced)
3	Loss of love and affection	2,50,000/--	1,76,000/- (reduced)
4	Funeral expenses	15,000/-	16,500/- (enhanced)
5	Transportation	15,000/-	16,500/- (enhanced)
6	Damages to clothes	25,000/-	-
	Total	29,87,500/-	28,85,500/-



C.M.A.No.3520 of 2024

WEB COPY

13. When the claim petition was filed in the year 2020, the fourth respondent was aged about 17 years. Now, the fourth respondent should be aged about 22 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 fourth respondent as major and discharges his mother namely Kavitha from the guardianship. The Registry shall carry out the necessary amendments.

14. Accordingly, the Civil Miscellaneous Appeal is allowed in part and the impugned award passed by the Tribunal is modified, reducing the compensation amount from **Rs.29,87,500/-** to **Rs.28,85,500/-**. The appellant/ insurer of the motor cycle and the 7th respondent / insurer of the Tractor are directed to deposit the respective 50% : 50% of the enhanced amount to the credit of M.C.O.P.No.1094 of 2020 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit along with costs as awarded by the Tribunal, less, the



C.M.A.No.3520 of 2024

WEB COPY

amount, already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the share of the respondents 1 to 5 /claimants directly to the their bank account as per the apportionment of the Tribunal, through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

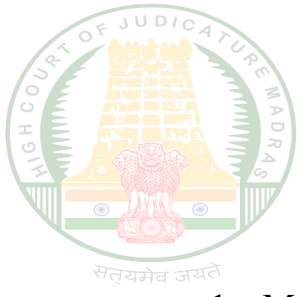
06.01.2025

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
rap

To

10/12

<https://www.mhc.tn.gov.in/judis>



C.M.A.No.3520 of 2024

WEB COPY

1. Motor Accidents Claims Tribunal, Special District Judge No.1,
Cuddalore

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



WEB COPY



C.M.A.No.3520 of 2024

M.DHANDAPANI, J.

rap

C.M.A.No.3520 of 2024

06.01.2025