



C.M.A.No.2965 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

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1. Arokiyamary

2. Minor Franklin Frederick
Represented by next friend natural mother
1st petitioner Arokiyamary

3. Reginamary

... Appellants

-Vs-

1.Sambasivam

2. The Divisional Manager,
The New India Assurance Company Ltd.,
Mochi Complex,
No.179, Jawaharlal Nehru Street,
2nd Floor, Pondicherry - 605 001.

... Respondents

PRAYER : Appeal under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.13 of 2020 dated 21.04.2022 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Cuddalore at Vriddhachalam.

For Appellants : Mrs.A.L.Ganthimathi, Senior Counsel



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for Mr.L.Palanimuthu

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For Respondents : No appearance

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This civil miscellaneous appeal has been directed against the award dated 21.04.2022 made in M.C.O.P.No.13 of 2020 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Cuddalore at Vriddhachalam.

2. Though notice has been served on the respondents and the name and address has been shown in the cause list, none are present before this Court on behalf of the respondents.

3. We have heard Mrs.A.L.Ganthimathi, learned Senior Counsel appearing for the appellants.

4. The accident has taken place on 14.12.2019 when the deceased Francis Xavior was riding a motor bike with Registration No.TN-31-AS-3877 at Cuddalore to Vriddhachalam main road from east to west. When he was



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travelling at Arasakuzhi Kolappakam road to take a right turn, he stopped the vehicle on the left side of the road where the lorry bearing Registration No.TN-31-BB-6757 belonging to the first respondent, which was insured with the second respondent, was driven in a rash and negligent manner and it hit the two wheeler, resultantly, the deceased Francis Xavier sustained serious injuries, who was immediately taken to the hospital at Neyveli, where he was given first aid treatment and for further treatment, he was taken to the hospital at Trichy, however, he died on the way to the hospital.

5. The appellants who is the wife, minor daughter and mother of the deceased joined together and filed the said MCOP seeking a compensation of Rs.1,75,00,000/-.

6. The deceased Francis Xavier was working at Neyveli Lignite Corporation and his monthly salary was Rs.80,000/-. Therefore, based on the said earning capacity of the breadwinner of the family, the claimants / legal heirs of the deceased has made such claim of Rs.1,75,00,000/-.

7. The Tribunal has gone into the evidence adduced before it and had



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fixed the responsibility of the rash and negligence mainly on the part of the lorry driver and also partly on the part of the rider of the two wheeler, who is the deceased.

8. In this context, detailed findings have been given by the Tribunal, as to how it has come to such a conclusion and fixed the contributory negligence at the ratio of 60 : 40 on the lorry driver as well as rider of the two wheeler.

9. After having fixed the contributory negligence and by taking the monthly income of the deceased at Rs.79,589/- by adding future prospects at 30% and deducting 1/3rd towards personal expenses of the deceased by applying the multiplier '13', the Tribunal has come to the conclusion that the total amount of Rs.97,99,946/- would be the 'loss of earnings' with 'future prospects' of the deceased.

10. In fact this amount has been arrived at based on the monthly income after deducting the income tax payable by the deceased.

11. The said amount of Rs.97,99,946/- has been awarded under the head



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'loss of earning' and 'future prospects' and for consortium, Rs.40,000/- was awarded and for 'funeral expenses', a sum of Rs.15,000/-, totally a sum of Rs.98,54,946/- was awarded by the Tribunal. After deducting 40% contributory negligence from the said amount, a sum of Rs.59,12,968/- was awarded as compensation payable by the insurer of the lorry, i.e., second respondent herein to the appellants / claimants.

12. Aggrieved over the quantum fixed by the Tribunal as well as the contributory negligence fixed by the Tribunal at the ratio of 60 : 40, the appellants / claimants have come before this Court by filing the present appeal.

13. We have gone through the impugned award as well as the evidence adduced before the trial Court.

14. Insofar as the rash and negligence that has been found out and fixed mainly on the part of the lorry driver is concerned, we do not want to interfere with the said findings. However, insofar as the finding that has been given to fix the contributory negligence on the part of the rider of the two wheeler, i.e., deceased is concerned, assuming that, had he not stopped the two wheeler suddenly on the left side of the road without a proper speed distance being



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maintained, certainly he would have averted the accident and therefore, to some extent, contributory negligence has to be fastened on the shoulder of the deceased is concerned, though we accept the contributory negligence theory adopted by the Tribunal in this award which is impugned herein, insofar as the fixation of 40% to be shared by the deceased is concerned, we feel that, it is on the higher side.

15. The reason being that, had the lorry stopped by applying the brake and seeing the motorbike which was riding before it stopped to take a right turn maximum extent of the severity of the collusion that has been taken place by hitting the motorbike by the lorry could have been averted. Therefore, the maximum negligence of contributory negligence could have been fixed only on the lorry driver but at the same time non-adhering of safety distance by the rider of the two wheeler, i.e., deceased some extent of contributory negligence can also be fixed. Hence, on the basis of the evidence available before us, we fix contributory negligence at 75% : 25%, i.e., 75% on the lorry driver and 25% on the rider of the two wheeler, i.e., deceased.

16. Coming to the point of fixation of quantum, the Tribunal has taken



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the salary certificate filed by the claimants and a sum of Rs.79,589/- per month

being the salary earned by the deceased has been taken into account by the

Tribunal, and therefore, that does not require any interference. Insofar as the

future prospects is concerned, the Tribunal has correctly added 30% as future

prospects which also does not warrant any interference. The income tax has

been calculated based on the assessment year 2021-22 and a sum of

Rs.1,10,816/- was fixed as income tax payable by the deceased for the financial

year has also to be accepted and the multiplier '13' also has been applied which

has also been correctly applied. Resultantly, the calculation that has been made

by the Tribunal to arrive at a total compensation under the head 'loss of earning'

and 'future prospects' would come to Rs.97,99,946/-. Under the heading 'loss of

consortium' since the widow, daughter and mother are surviving, each will be

entitled to get Rs.40,000/-, totally a sum of Rs.1,20,000/- is awarded under the

said heading. However, insofar as the 'funeral expenses' is concerned, the

Tribunal has correctly awarded Rs.15,000/-. Now, the total calculation would be

Rs.99,34,946/- [97,99,946 + 1,20,000/- + 15,000/-] and after deducting 25%

contributory negligence, the compensation payable would be **Rs.74,51,209/-**

[99,34,946 - 24,83,737] which shall be payable by the second respondent /

Insurance Company to the appellants / claimants with interest at 7.5% as

ordered by the Tribunal through the impugned award. Insofar as the

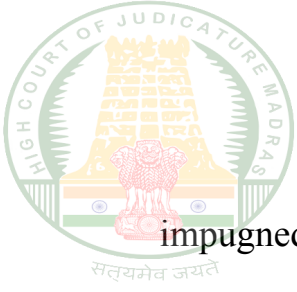


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appportionment is concerned, in view of the enhancement, it requires some modification to the following effect.

17. Now the appportionment would be, the first appellant / wife would get Rs.25,00,000/-, second appellant / daughter would get Rs.35,00,000/-, the remaining amount of Rs.14,51,209/- would go to the mother, i.e., third appellant. The Insurance Company shall deposit this modified / enhanced award amount to the credit of the trial Court within a period of four weeks from the date of receipt of a copy of this judgment after deducting the deposit if any already been made pursuant to the impugned award with 7.5% interest from the date of petition till the date of deposit. On such deposit being made, the appellants 1 and 3 would be at liberty to withdraw their shares. Insofar as the second appellant, i.e., minor share is concerned, that shall be kept in the fixed deposit account of a Nationalised Bank and periodical interest can be withdrawn by the first appellant being the guardian of the second appellant for the education and other expenses to be incurred for the second appellant. After the minor becomes major, it has to be decided by the second appellant to withdraw or otherwise of the entire award amount of her share.

18. With these modification and enhancement of the award which is



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impugned herein, this Civil Miscellaneous Appeal is allowed in part to the

extent indicated above. However, there shall be no order as to costs.

(R.S.K., J.)

(A.D.M.C., J.)

03.03.2025

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

1. The Motor Accidents Claims Tribunal,
III Additional District and Sessions Judge,
Cuddalore at Vriddhachalam.
2. The Section Officer,
V.R. Section,
High Court,
Chennai.



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R.SURESH KUMAR, J.

AND

Dr. A.D.MARIA CLETE, J.

[Order of the Court was made by R. SURESH KUMAR, J.]

This matter is taken up today under the caption “for being mentioned” at the instance of learned counsel appearing for both sides.

2. In our order dated 03.03.2025, in the first line of paragraph 5, in the eighth line from the bottom of page No.7 and in the second line of paragraph 17, it has been mentioned as “*daughter*”, instead, it should be mentioned as “*son*”. Correspondingly, in the last line of paragraph 17, instead of “*her*”, “*his*” shall be replaced.

3. The correct copy of the order be issued to the parties by the Registry.

(R.S.K., J) (A.D.M.C., J)
23.09.2025

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R.SURESH KUMAR, J.
AND
Dr. A.D.MARIA CLETE, J.

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