



C.M.A.No.289 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2025

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No.289 of 2022
and C.M.P.No.1946 of 2022

United India Insurance Company Ltd.,
Rep. By its Branch Manager,
1st Floor, No.285, Anna Salai,
Kathiyavadi Bus Stop, Melvisharam,
Vellore District, Pin Code-632 509.

... 2nd Respondent/Appellant

-VS-

1. Thulasiyammal
2. Lavanya
3. A.Suresh

... Petitioners

... 1st Respondent/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 23.12.2020 made in M.C.O.P.No.469 of 2019 on the file of the Motor Accident Claims Tribunal (Special District Court), Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For R1 & R2 : Mr.M.Sivakumar

For R3 : No Appearance



WEB COPY



C.M.A.No.289 of 2022

ORDER

(By J.Nisha Banu,J.)

Feling aggrieved by the Award dated December 23, 2020 passed in M.C.O.P.No.469 of 2019 on the file of the Motor Accident Claims Tribunal (Special District Court), Krishnagiri (in short 'Tribunal'), the appellant / Insurance Company preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties herein are referred to as per their array in the Tribunal.

Brief facts put forth by the petitioners/claimants

3. On January 5, 2019 at about 07.55 hours, while the deceased – Ragu was proceeding to his office in his motorcycle bearing Regn.No.TN-24-AM-8545 in Krishnagiri-Hosur Road by adhering to all the rules, a lorry bearing Regn.No.KA-21-6486, belonging to the 1st respondent that was insured with the 2nd respondent, was parked on the National Highway without any parking lights. Though the deceased, upon noticing the wrong parking of the lorry, suddenly applied brake, the motorcycle



C.M.A.No.289 of 2022

dashed against the right side of the lorry, due to which, the deceased sustained grievous injuries and died on the spot. The accident occurred only due to the careless parking of the driver of the 1st respondent's lorry. The 1st respondent is the owner of the vehicle involved in the accident and he remained *ex parte* on 14.02.2020. The 2nd respondent is the insurer of the vehicle. At the time of accident, the deceased was aged about 20 years and he was a Welder in a private company was earning a sum of Rs.36,313/- per month. According to the petitioners/claimants, who are the mother and sister of the deceased, the accident occurred only due to the wrong parking of the driver of the 1st respondent's vehicle without proper indication and the first respondent's vehicle has been insured with the second respondent – Insurance Company; and hence, both the respondents are liable to pay compensation to the petitioners. Accordingly, the petitioners filed the Claim Petition before the Tribunal seeking compensation of Rs.60,00,000/- (Rupees Sixty Lakhs only) along with interest and costs.

The case of the 2nd Respondent in the counter

4. The lorry was parked on the left side of the National Highways Road with necessary signals and it was the deceased, who had



C.M.A.No.289 of 2022

driven the motorcycle in a careless, rash and negligent manner and caused the accident. In the absence of proof of negligence on the part of the driver of the 1st respondent's lorry, the 2nd respondent is not liable to pay compensation to the petitioners/claimants. Further, the owner and insurer of the two-wheeler bearing Regn.No.TN-24-AM-8545 have not been arrayed as parties to the claim petition. The petitioners/claimants have to prove the age, income and occupation of the deceased, besides establishing that they are the only legal heirs of the deceased. Stating that the amount of compensation claimed is unsustainable, the 2nd respondent prayed to dismiss the claim petition.

5. Before the Tribunal, 1st petitioner was examined as P.W.1 and an eye witness to the occurrence, namely, Sathiyaraj was examined as P.W.2 and one Sashank, HR Executive, Katerra India Private was examined as P.W.3. Ex.P1 to Ex.P12 were marked. On the side of the 2nd respondent, neither witness was examined nor document marked.



C.M.A.No.289 of 2022

6. The Tribunal, after considering the evidence available on record, held that the accident had occurred on account of the fault on the part of the driver of the 1st respondent's lorry, who parked the vehicle on the middle of the road as well as the deceased, who had driven the two-wheeler without having a valid license. Accordingly, the Tribunal held that the 2nd respondent / Insurance Company, being insurer of the 1st respondent's lorry, is liable to pay 90% of the compensation to the petitioners/claimants, as 10% was deducted towards Contributory Negligence.

7. With regard to quantum of compensation, since the deceased was an employee in a private company, drawing a sum of Rs.21,337/- as salary in the last month prior to the accident, which had been duly proved through Ex.P12, the said sum was fixed as his monthly salary. The Tribunal, upon considering the age of the deceased and applying multiplier of 18 as per the judgment of the Hon'ble Supreme Court in **Sarla Verma and Others vs. Delhi Transport Corporation and another**, reported in **2009 (6) SCC 121**, computed the compensation as stated below:-



C.M.A.No.289 of 2022

Sl.No.	Head	Amount
1.	Loss of dependency	Rs.43,01,640/-
2.	Loss of Estate	Rs.15,000/-
3.	Funeral Expenses	Rs.15,000/-
4.	Loss of Consortium (P1)	Rs.40,000/-
5.	For P2	Rs.20,000/-
	Total	Rs.43,91,640/-
	After deducting 10% towards Contributory Negligence	Rs.39,52,476/-

8. Feeling aggrieved by the quantum of compensation awarded by the Tribunal, the 2nd respondent / insurance company has preferred this appeal.

9. Learned counsel for the appellant/insurance company would submit that though P.W.3 clearly deposed that the salary of the deceased was Rs.17,293/-, including all allowance, the Tribunal wrongly arrived at the salary of the deceased as Rs.21,337/-, as the salary slip of the particular month contained various allowances, including overtime amount, etc. Further, the Tribunal had deducted 1/3rd towards personal and living expenses of the deceased and since the deceased was a bachelor, one half ought to be deducted towards personal and living expenses. Accordingly, the learned counsel prayed to allow the Civil Miscellaneous Appeal.



C.M.A.No.289 of 2022

10. Per contra, learned counsel appearing for the petitioners/claimants would argue that there is no illegality in arriving at the monthly income of the deceased and there is no reason to interfere with the findings with respect to quantum awarded by the Tribunal. In absence of any infirmity or illegality in awarding the amount of compensation, the appeal will not lie and accordingly, he prayed to dismiss the Civil Miscellaneous Appeal.

11. Heard the learned counsel on either side and perused the evidence and materials available on record.

12. There is no dispute with regard to factum of the accident and involvement of a motorcycle bearing Regn.Nos.TN-24-AM-8545 and a lorry bearing Regn.No.KA-21-6486. The core contention of the 2nd respondent is that the deceased was solely responsible for the accident, who carelessly drove the vehicle in a rash and negligent manner without a valid license. On a perusal of the FIR (Ex.P1), a case under Section 304-A IPC was registered against the driver of the 1st respondent's vehicle, who was



C.M.A.No.289 of 2022

alleged to be the main cause for the accident, which had been corroborated by P.Ws.1 & 2, stating that the driver of the 1st respondent vehicle bearing Regn.No.KA-21-6486 parked the vehicle without any sign board or signal. It is seen that though there was no contra evidence produced to disprove the accident, no copy of license of the deceased was marked before the Tribunal to prove that he is in possession of a valid license at the time of accident. Thus, the Tribunal rightly arrived at a decision that the accident happened due to the mistake committed by the driver of the lorry and also the deceased, by fastening 10% deduction towards contributory negligence.

13. As regards quantum, learned counsel for the appellant / insurance company averred that the regular monthly salary drawn by the deceased was only Rs.17,293/-, whereas the Tribunal, on the basis of the last drawn wages, which was inclusive of various perks along with regular salary, fixed the the monthly salary of the deceased was Rs.21,337/-, which is not the actual salary of the deceased. Further, the deceased is a bachelor and the deduction of 1/3rd towards his personal expenses is contrary to the settled principles of law.



C.M.A.No.289 of 2022

14. A reading of the judgment of the Tribunal discloses that the Tribunal took note of the fact that the deceased had drawn a sum of Rs.17,293/- as salary in the month of November, 2018 as per Ex.P12 / Salary Certificate with observation that he was paid Rs.21,337/- as net pay in the very same month. It is relevant to note that the net pay may be inclusive of various other allowances and the gross income of a person, excluding allowances should be reckoned for the purpose of calculation of monthly salary and therefore, in our view, a sum of Rs.17,293/- is the actual salary of the deceased. Further, the deceased was a bachelor at the time of accident and it would be justified, if 50% of the salary is deducted for his personal expenses. Similarly, the amount awarded under the head 'Loss of Consortium' needs to be modified as per the dictum laid down.

15. Accordingly, the compensation awarded to the petitioners/claimants herein is hereby reduced and they are entitled to get a compensation of Rs.24,52,232/- (Rupees Twenty Four Lakhs Fifty Two Thousand Two Hundred and Thirty Two only). The revised compensation is as detailed below:-



C.M.A.No.289 of 2022

Sl.No.	Head	Amount
1.	Loss of dependency / pecuniary damages (Rs.17,293+40%-1/2x12x18)	Rs.26,14,702/-
2.	Loss of Estate	Rs.15,000/-
3.	Funeral Expenses	Rs.15,000/-
4.	Loss of Consortium (Rs.40,000/- each)	Rs.80,000/-
	Total	Rs.27,24,702/-
	After deducting 10% towards Contributory Negligence of Rs.2,72,470/-	Rs.24,52,232/-

16. Therefore, the appellant / Insurance Company is directed to deposit the modified award amount of **Rs.24,52,232/-** (Rupees Twenty Four Lakhs Fifty Two Thousand Two Hundred and Thirty Two only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P.No.469 of 2019 on the file of the Motor Accident Claims Tribunal (Special District Court), Krishnagiri, less the amount if any already deposited, within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit being made, the the petitioners/claimants herein are entitled to withdraw their respective shares as apportioned by the Tribunal, by filing proper application. Further,



C.M.A.No.289 of 2022

the petitioners / claimants are entitled for proportionate costs and Advocate fees as per Rules.

17. In the result, this Civil Miscellaneous Appeal filed by the appellant / insurance company is allowed in part with proportionate costs as per modified Award passed in detail above. Consequently, connected Miscellaneous Petition is closed.

(J.N.B.J.,) (R.S.V,J.,)
24.01.2025

Index: Yes / No
Internet: Yes / No
Speaking Order/ Non Speaking Order
ar

To:

Motor Accident Claims Tribunal /
Special District Judge,
Krishnagiri.



WEB COPY



C.M.A.No.289 of 2022

J.NISHA BANU,J.,
AND
R.SAKTHIVEL,J.,
ar

C.M.A.No.289 of 2022

24.01.2025