



C.M.A.Nos.477 and 478 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 20.03.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.Nos.477 and 478 of 2025

Mrs.Ramya
D/o.Sankar

... Appellant (in CMA.Nos.477 and 478 /2025)

Mr.Sankar

... Appellant (in CMA.No.477/2025)

vs.

The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai, Chennai – 600 002.

... Respondents (in both CMAs)

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicle Act, 1988, to enhance the compensation amount made in order dated 12.03.2024 made in M.C.O.P.Nos.4267 and 4268 of 2016 on the file of the Motor Vehicle Accident Claims Tribunal, III Small Causes Judge, Chennai) as prayed for with interest and costs.

For Appellants : Mr.U.Chithambaram
(in all CMAs)

For Respondent : Mr.Anton Dhanasekaran
for sole respondent



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COMMON JUDGMENT

These two appeals are arising out of same accident and hence taken up for hearing together.

2.CMA.No.477 of 2025 is arising out of fatal accident and the same is filed by the claimants seeking enhancement of compensation.

3. CMA.No.478 of 2025 is filed by the injured claimant seeking enhancement of compensation.

4. For the sake of convenience, the parties are referred to as per the rank before the Tribunal.

5. It is the case of the claimants that on 24.04.2016, both the deceased claimant and the injured claimant travelled in a two wheeler as pillion riders from Ponneri to Pazhaverkadu. The bus belonged to the



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respondent Corporation came in the opposite direction in a rash and negligent manner and dashed against the two wheeler. As a result of the accident, the claimant in CMA.No.477 of 2025 died and the claimant in CMA.No.478 of 2025 received grievous injuries. Hence, the claim petitions were filed by them seeking compensation of Rs.20,00,000/- (each).

6. The Tribunal which considered both the Original Petitions together awarded a compensation of Rs.15,10,000/- and Rs.84,800/- respectively. Not satisfied with the quantum of compensation, the claimants have come before this Court with these appeals.

7. The claim petition was resisted by the respondent on the ground that the bus was driven by its driver at moderate speed by observing all traffic rules and the accident had occurred only due to the rash and negligent driving of the rider of the two wheeler, in which the deceased and injured claimants travelled as pillion riders. The respondent also denied the age, income etc., of the deceased and injured claimants.

8. Before the Tribunal the injured claimant was examined as



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PW.1, the Doctor who treated her was examined as PW.2. On behalf of the claimants twelve documents were marked as Exs.P1 to P12. On behalf of the respondent, the Investigation Officer was examined as RW.1. On behalf of the respondent, the copy of the sketch was marked as Ex.R1.

9. The Tribunal based on the evidence of PW.1 and the contents of FIR came to the conclusion that the accident had occurred only due to the negligence of the driver of the respondent Corporation bus. The Tribunal also had taken into consideration, the failure of the respondent Corporation to examine it's bus driver, who was competent to depose about the accident. The amount payable to the dependants of the deceased claimant was quantified at Rs.15,10,000/- and the amount payable to the injured claimant was quantified Rs.84,800/-. Not satisfied with the quantum, the claimants have preferred these appeals.

10. The learned counsel appearing for the appellants would submit that the deceased claimant was a vegetable vendor and she was earning a sum of Rs.15,000/- per month. However, the Tribunal fixed only Rs.10,000/- as notional income and the same is very much on the lower



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side. Therefore, he seeks enhancement of the compensation, as far as the claim petition filed by the dependants of the deceased is concerned. The learned counsel further submits that the injured claimant in CMA.No.478 of 2025 was a Tailor by profession and the Doctor who were examined as PW.2 issued a disability certificate fixing the disability at 40% and the same was reduced to 5% by the Tribunal without any justifiable reason. Therefore, he seeks enhancement of compensation under the head disability in respect of the claim petition filed by the injured claimant.

11. The learned counsel appearing for the respondent Corporation would submit that both the claimants travelled as pillion riders in two wheeler driven by 3rd party. Therefore, the claimants have also contributed to the accident and the Tribunal should have fixed the contributory negligence on the part of the claimants. He further submits that the claimants in the death claim have not produced any evidence to prove the income of the deceased and hence the Tribunal was justified in fixation of notional income of Rs.10,000/-. He further submitted that injured claimant failed to submit herself for examination before the Medical Board and hence, the Tribunal was justified in ignoring the evidence of



PW.2 doctor who has not treated the claimant and fixed the disability at 5%.

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12. As far as the negligence is concerned, the injured claimant was examined as PW.1. She clearly deposed about the negligence on the part of the driver of the Corporation bus. The evidence of PW.1 was very well corroborated by FIR marked as Ex.P1. The respondent Corporation for the reason best known to it failed to examine the driver of the bus, the competent person to talk about the accident. Therefore, taking into consideration all these facts, the Tribunal rightly came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the bus. The Supreme Court in *Mohammed Siddique and another vs. National Insurance Co. Ltd. and others* reported in **2020 (1) TN MAC 161 (SC)**, has categorically held that merely because three persons travelled in a two wheeler that by itself cannot be treated as act of negligence unless there is positive evidence to show that the said act contributed to the accident. In this regard, it would be appropriate to refer to the relevant observation of the Apex Court in the above mentioned judgment which reads as follows:-

“13. But the above reason, in our view, is flawed.



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The fact that the deceased was riding on a Motorcycle along with the Driver and another, may not, by itself, without anything more, make him guilty of Contributory Negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the Driver of a Two-wheeled Motorcycle, not to carry more than one person on the Motorcycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for Motorcycle Drivers and Pillion Riders. Therefore, the fact that a person was a Pillion Rider on a Motorcycle along with the Driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of Contributory Negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim.

... .. ”



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13. Therefore, it is clear merely because two victims travelled as pillion riders in a two wheeler driven by a 3rd party, we cannot assume the contributory negligence on their part, unless there is a positive evidence to come to a such conclusion. In the case on hand, the respondent failed to show any contra evidence by examining the driver of the bus. Therefore, the arguments made by the learned counsel appearing for the respondent that the claimants have contributed negligence to the accident by travelling in the bike driven by the 3rd party is not acceptable to this Court. The findings rendered by the Tribunal that the accident had occurred due to the negligence on the part of the bus driver is affirmed.

14. The claimant in CMA.No.477 of 2025 had stated in the claim petition that the deceased was a vegetable vendor earning a sum of Rs.15,000/- per month. However, no evidence was produced to prove the income of the deceased. Even if there is no material available on record to suggest the income of the deceased, this Court by taking into consideration the facts and circumstances of the case can fix the notional income. In the

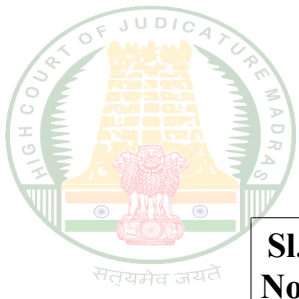


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case on hand, the accident had occurred in the year 2016, taking in to consideration the date of accident and the prevailing cost of living, this Court is inclined to fix Rs.15,000/- as notional income of the deceased. The Tribunal fixed the age of the deceased at 42 based on Exs.P2 and P3 - Copy of the death certificate and death report. Therefore, the claimants are entitled to 25% enhancement towards future prospects. The applicable multiplier is 14. Therefore, the loss of dependency is fixed at Rs.21,00,000/- (Rs.15,000x1.25x12x14x2/3).

15. The amount awarded by the Tribunal under the head of loss of consortium, loss of estate, funeral expenses are in accordance with law in *National Insurance Company Limited vs. Pranay Sethi and others* reported in **(2017) 16 SCC 680** and hence they heads are confirmed.

16. In view of the discussions made earlier, the award passed by the Tribunal in CMA.No.477 of 2025 is modified as follows:



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Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
1.	Loss of dependency	Rs.14,00,000/-	Rs.21,00,000/-
2.	Loss of Consortium	Rs.80,000/-	Rs.80,000/-
3.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
	Total	Rs.15,10,000/-	Rs.22,10,000/-

17. CMA.No.477 of 2025 is allowed and the compensation amount is enhanced to Rs.22,10,000/-. The respondent Corporation is directed to deposit the said amount, less any amount already deposited together with interest with 7.5% per annum from the date of claim petition to the date of realisation, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.4267 of 2016 on the file of the Motor Vehicle Accident Claims Tribunal, III Small Causes Judge, Chennai) within six weeks from the date of receipt of copy of this judgment. On such deposit, the claimants are permitted to withdraw the said amount by filing appropriate application before the Tribunal.

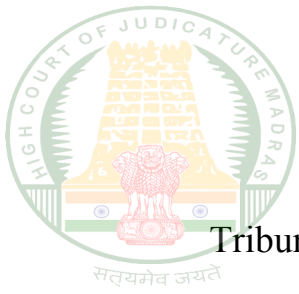
18. As far as CMA.No.478 of 2025 is concerned, as per



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Ex.P5-Discharge summary, the claimant suffered fracture in Frontal Air Sinus, fracture of Pneumolephalus Right Temporal Small ED (5ml), fracture of Superior and Interior Public Ram 1, multiple fractures in Orbit. The claimant was in hospital for 16 days from 24.04.2016 to 09.05.2016, in order to prove the disability, Doctor was examined as PW.2, he issued Ex.P12-disability certificate fixing percentage of the disability at 40. During the course of cross examination, he clearly admitted that he did not treat the claimant and the disability certificate was issued only based on records. The enquiry in the claim petition had taken place in the year 2024 well after direction issued by the Division Bench making the examination by the Medical Board as compulsory. However, for the reasons best known, she failed to appear before the Medical Board and produce disability certificate issued by the competent Medical Board, even the Doctor examined by the claimant is not the one who treated her. In these circumstances, the Tribunal was justified in fixing the disability at 5% ignoring certificate issued by PW.2. When there is no evidence on record to suggest any functional disability, the Tribunal taking into consideration the fracture suffered by the claimant fixed 5% disability and awarded a sum of Rs.25,000/- under the head disability. I do not think the said finding by the



Tribunal requires interference.

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19. As mentioned above, the claimant was in hospital for nearly 16 days, therefore, the amount of Rs.10,000/- awarded under the head pain and suffering is increased to Rs.30,000/-. Taking into consideration, the nature of injury suffered by the claimant, the amount of Rs.10,000/- under the head loss of amenities increased to Rs.30,000/-; the amount of Rs.4,000/- under the head transportation is increased to Rs.10,000/-. The amount of Rs.1,000/- awarded by the Tribunal towards loss of clothes is set aside.

20. Taking into consideration, the period of hospitalisation and nature of injury, this Court feels the claimant would have been out of action for nearly three months. It is stated by the claimant that injured was a Tailor, taking into consideration, the date of accident if the notional income is fixed at Rs.15,000/- per month, the claimant is entitled to Rs.45,000/- under the head loss of earning for the period of treatment (Rs.15,000x3 months). The amount awarded by the Tribunal under the head extra nourishment and attender charges are confirmed. Accordingly, the total



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amount is increased to Rs.1,54,800/- .

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21. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
1.	Disability	Rs.25,000/-	Rs.25,000/-
2.	Pain and suffering	Rs.10,000/-	Rs.30,000/-
3.	Transportation	Rs.4,000/-	Rs.10,000/-
4.	Extra Nourishment	Rs.10,000/-	Rs.10,000/-
5.	Attender Charges	Rs.4,800/-	Rs.4,800/-
6.	Damage to clothes	Rs.1,000/-	Set aside
7.	Loss of amenities	Rs.10,000/-	Rs.30,000/-
8.	Loss of earnings	Rs.20,000/-	Rs.45,000/-
	Total	Rs.84,800/-	Rs.1,54,800/-

22. CMA.No.478 of 2025 is partly allowed and the award amount is enhanced to Rs.1,54,800/-. The respondent/Corporation is directed to deposit the enhanced award amount together with interest at the rate of 7.5% per annum (excluding the delay period of 37 days) from the date of claim petitions to the date of realisation, after deducting the amount



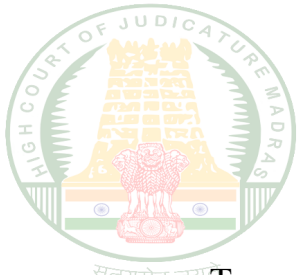
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already deposited, if any, to the credit of M.C.O.P.Nos.4267 and 4268 of 2016 respectively, on the file of the Motor Vehicle Accident Claims Tribunal, III Small Causes Judge, Chennai), within a period of six weeks from the date of receipt of copy of this common judgment. On such deposit, the appellants/claimants are permitted to withdraw their respective award amount by filing appropriate application before the Tribunal.

23. Accordingly, Civil Miscellaneous Appeal in CMA.No.477 of 2025 is allowed as stated above and the appellants are directed to pay the Additional Court Fee for the enhanced award amount and the Civil Miscellaneous Appeal in CMA.No.478 of 2025 is partly allowed. No costs.

20.03.2025

Index :Yes / No
Speaking order :Yes / No
Neutral Citation :Yes / No
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1.The Motor Vehicle Accident Claims Tribunal,
III Small Causes Judge, Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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