



CMA.No.291 of 2023 and 1561 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTAR

CMA.No.291 of 2023 and 1561 of 2022 and
C.M.P.No.2243 of 2023

In CMA.No.291 of 2023

United India Insurance Company Ltd.
Saraswathi Garden,
1/53-1E, Dharmapuri Main Road,
Kaveripattinam,
Krishnagiri – 635112

...Appellant

Vs.

1. Thenmozhi
2.P.Monisha
3.P.Sathish
4.C.Pattu
5.M.Anbukkarasan

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to set aside the Decree and Judgment dated 07.01.2022 made in MCOP.315 of 2018 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Omalur.



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For Appellant : Mr.C.Paranthaman
For Respondent s : Mr.R.Jayaprakash for R1 to R3
R4 & R5-No appearance

In CMA.No.1561 of 2022

1. Thenmozhi
2.P.Monisha
3.P.Sathish ...Appellants

Vs.

1. C.Pattu
2.M.Anbukkarasan
3. United India Insurance Company Ltd.
Saraswathi Garden,
1/53-1E, Dharmapuri Main Road,
Kaveripattinam,
Krishnagiri – 635112 ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act,to enhance the compensation awarded in the Order dated 07-01-2022 made in MCOP No.315 of 2018 on the file of the MACT / Subordinate Judge at Omalur.

For Appellant : Mr.R. Jayaprakash
For Respondent s : Mr..S.Sheik Ismail for R1
Mr.C.Paranthaman fro R3
R2-No appearance



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COMMON JUDGMENT

These two appeals are filed by the insurer of the offending vehicle and the claimants.

2. Since both the appeals are arising out of the same accident, they are taken up for hearing together.

3. CMA.No. 291 of 2023 is filed by the insurer of the offending vehicle challenging the fixation of negligence on the part of the driver of the vehicle insured with the appellant. CMA.No.1561 of 2022 is filed by the claimants seeking enhancement of the compensation.

4. For the sake of convenience, the parties are referred to as per their ranking before the tribunal.

5. It is the case of the claimants that the husband of the first claimant, father of the claimants 2 and 3 namely Palanisamy died in a road accident that had occurred on 22-08-2017 involving scooter bearing registration number TN-24-Q-0804 belonged to the second respondent insured with the third respondent and driven by the first respondent. It is the case that the deceased was riding his bike bearing registration number TN-30-AX-8959 with a pillion rider to purchase



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vegetables. The first respondent had driven the vehicle belonged to the second respondent in a rash and negligent manner and dashed against the two-wheeler of the deceased. As a result of the accident, the deceased sustained severe head injuries and later, died in the hospital after three days. Therefore, the claim petition was filed seeking compensation of Rs.38,00,000/-

6. The respondents filed a counter and resisted the claim petition on the ground that the accident had occurred only due to the rash and negligent driving of the deceased. According to them, the deceased had driven his bike in a rash and negligent manner and dashed against the scooter driven by the first respondent from backside. As a result of the accident, the first respondent also sustained injuries. Therefore, the respondents sought for dismissal of the claim petition on the ground that the deceased himself was a tortfeasor.

7. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred due to the negligence on the part of the first respondent and consequently held that the owner and insurer of the vehicle driven by the first respondent namely



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respondents 2 and 3 were liable to pay the compensation. The amount payable to the claimants was quantified at Rs. 14,99,000/-. Aggrieved by the fixation of negligence on the part of the first respondent, the insurer of the offending vehicle filed CMA.No.291 of 2023. Not satisfied with the quantum of compensation, the claimants filed CMA.No. 1561 of 2022 seeking enhancement of the compensation.

8. The learned counsel for the 3rd Respondent/ Insurance Company submitted that immediately after accident based on the information given by 1st Respondent, FIR was filed against the deceased and the same was marked as Ex.R4. He further submitted that the case filed against the deceased was closed as abated on his death. The Tribunal, without taking into consideration the filing of FIR against the deceased, committed an error in fixing entire negligence on the part of 1st Respondent.

9. The learned counsel for the claimants submitted that the first respondent was working as trainee Sub-Inspector at that point of time. Taking advantage of her official position, based on false information furnished by the first respondent, FIR was filed against the deceased.



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According to the learned counsel that the deceased died after three days. Thereafter, based on information furnished by the first claimant, an another FIR was filed against the first respondent and the same was marked as Exhibit P1. The learned counsel further submitted that the tribunal rightly appreciated the evidence of eyewitness and fixed negligence on the part of the first respondent. He also submitted that the deceased was working as Master at hotel at the relevant point of time and hence, amount of Rs. 12,000/- fixed as notional income by the tribunal is very meager amount.

10. In order to prove the negligence, the claimants examined one eyewitness as PW2. A perusal of the evidence of PW2 would indicate that he clearly deposed that the accident had occurred only due to the negligence on the part of the first respondent. He also withstood the cross examination by the respondents. On behalf of the respondents, the first respondent was examined as RW1. She deposed that the deceased dashed against the vehicle from behind and hence, according to her, entire negligence was on the part of the deceased. The Motor Vehicle Inspection report of scooter driven by first respondent was



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marked as Exhibit P4. A perusal of the same would suggest that the front right side show panel of the scooter driven by first respondent got damaged. The front right side body also got scratched. If the bike of the deceased dashed against the scooter driven by the first respondent from backside, certainly there is no chance for damage in the front right side of the scooter.

11. The learned counsel for the 3rd respondent/Insurance Company submitted that the criminal case filed against the deceased was closed as abated.

12. The case records relating to FIR filed against the deceased was marked as Exhibit R5. The Inspector of Police, who was examined as RW2, in his evidence clearly admitted that before filing final report, RCS notice was not given to the first claimant. Therefore, the final report cannot be pressed into service against the claimants in the absence of RCS notice to challenge the same. Therefore, the Tribunal was justified in relying on unshattered evidence of PW2 in fixing entire negligence on the part of the first respondent. The finding of the Tribunal is affirmed with regard to negligence.



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13. In the claim petition, it was stated by the claimants that the deceased was working as Master in a hotel and was earning a sum of Rs. 20,000/- per month. However, the claimants have not produced any documentary evidence to prove the avocation and income of the deceased. The accident had occurred in the year 2017. Taking into consideration the date of accident and the prevailing cost of living, this court is inclined to fix Rs.15,000/- as notional income for the deceased. The tribunal fixed the age of the deceased at 44 years based on Exhibit P-2, Post Mortem Certificate and Exhibit P3, Legal Heir Certificate. Therefore, the claimants are entitled to 25% enhancement towards future prospects. The applicable multiplier is 14. Since there are three dependents, one-third of the amount shall be deducted towards personal expenses. In that case, the loss of dependency is fixed at Rs. 21,00,000/-

$$15,000 \times 1.25 \times 12 \times 14 \times 2 / 3 = \text{Rs. } 21,00,000/-$$

14. The amount awarded by the Tribunal under the conventional damages like loss of consortium, loss of estate and funeral expenses are in accordance with the law laid down by the Hon'ble Apex Court in



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Pranay Sethi case. Therefore, they are affirmed. The amount of Rs.5000/- awarded under the head transportation expenses is set aside.

In all, the claimants are entitled to Rs.22,50,000/-.

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

Sl No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	13,44,000/-	21,00,000/-	Enhanced
2.	Loss of Estate	15,000/-	15,000/-	Confirmed
3.	Funeral Expenses	15,000/-	15,000/-	Confirmed
4.	Loss of Consortium	1,20,000/-	1,20,000/-	Confirmed
	Total	14,99,000/-	22,50,000/-	Enhanced by Rs.7,51,000/-

16. With the above modifications, the civil miscellaneous appeal in CMA.No.1561 of 2022 filed by the claimants is partly allowed and the compensation awarded by the Tribunal at Rs.14,99,000/- is hereby enhanced to Rs.22,50,000/-.The appellants/claimants are entitled to interest at the rate of 7.5% per annum from the date of filing of the



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04.04.2025

Index:Yes/No
Internet:Yes/No
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To

1. Motor Accident Claims Tribunal,
Subordinate Judge, Omalur.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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