



C.M.A.No.393 of 2025

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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**DATED : 10.03.2025**

**CORAM**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**C.M.A.No.393 of 2025**

1.Anbu

2.Kumari @ Rajakumari

... Appellants

vs.

1.Nithyananthan

2.United India Insurance Co. Limited,  
No.134, Greams Road,  
Chennai 600 006.

3.Chetan Kothari

4.National Insurance Company Limited,  
No.751, Anna Salai,  
Chennai 600 002.

... Respondents

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award passed by the Motor Accidents Claim Tribunal, Chennai in the V Court of Small Causes, Chennai on 16.02.2023 in M.C.O.P.No.5164 of 2015.

For Appellants : M/s.Subhalaxmi Samanta  
for M/s.Samanta and Ston

For R2 : Mr.S.Dhakshnamoorthy

For R4 : M/s.N.B.Surekha



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For R1 and R3 : Notice Dispensed With

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### **JUDGMENT**

Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai in M.C.O.P.No.5164 of 2015, dated 16.02.2023, the claimants have come by way of this appeal.

2. It is not in dispute that minor child Kavin Malar aged about 4 months died in a road accident that had occurred on 01.05.2015. It is the case of the claimants that claimants along with their minor child-Kavin Malar aged about 4 months travelled in a car belonging to the 3<sup>rd</sup> respondent insured with the 4<sup>th</sup> respondent on 01.05.2015. The car was driven by the 1<sup>st</sup> claimant moving towards Manivakkam from Madurandagam in south to north direction. At that point of time, the Van belonging to the 1<sup>st</sup> respondent insured with the 2<sup>nd</sup> respondent came in a rash and negligent manner in the opposite direction and dashed against the car. As a result of which, the minor child died. Therefore, a claim petition was filed seeking compensation of Rs.10,00,000/-.



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3. Before the Tribunal, the 1<sup>st</sup> appellant/1<sup>st</sup> claimant was examined as PW.1 and 2<sup>nd</sup> appellant/2<sup>nd</sup> claimant was examined as PW.3. On behalf of the claimants, 52 documents were marked as Exs.P1 to P52. On behalf of the respondents 2 and 4/Insurance Companies, no witnesses were examined and no documents were marked. The Disability Certificate issued by the Regional Medical Board to PW.1 was marked as Ex.C1.

4. The Tribunal on appreciation of evidence available on record, came to the conclusion that primary negligence was on the part of the driver of the 1<sup>st</sup> respondent's vehicle and hence, fixed 70% negligence on the part of the driver of the van belongs to the 1<sup>st</sup> respondent. The Tribunal also fixed 30% contributory negligence on the part of the driver of the 3<sup>rd</sup> respondent's car. The negligence fixed by the Tribunal has become final and respondents have not filed any cross appeal questioning the same. Not satisfied with the quantum of compensation awarded by the Tribunal at Rs.2,50,000/-, the claimants have come by way of this appeal.

5. Both the learned counsel appearing for the appellants as well as learned counsel appearing for the respondents 2 and 4/Insurance Companies



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have not advanced any arguments on the question of negligence and liability aspects. Therefore, facts necessary for deciding those questions are not discussed in this judgment. Hence, the appeal is confined only to the question of quantum.

6. The learned counsel appearing for the appellants/claimants would submit that the amount of Rs.2,50,000/- awarded by Tribunal under the head loss of dependency is very much on lower side and the same needs to be enhanced.

7. The learned counsel appearing for the respondents 2 and 4/Insurance Companies would submit that deceased was aged about 4 months and the accident had occurred due to rash and negligent manner of driving by the driver of the 3<sup>rd</sup> respondent's car. By taking into consideration these factors, the Tribunal was justified in fixing Rs.2,50,000/- towards loss of dependency.

8. The Apex Court in case of death of boy aged 7 years in ***Kurvan Ansari alias Kurvan Ali and others vs. Shyam Kishore Murmu and others***



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reported in (2022) 1 SCC 317 : MANU/SC/1068/2021, awarded a sum of

Rs.3,75,000/- towards loss of dependency by fixing annual income at Rs.25,000/- and applying multiplier of 15. In addition to that, the Apex Court awarded Rs.55,000/- under conventional head.

9. In the present case, the age of the child is 4 months. In ***Kurvan Ansari alias Kurvan Ali*** case, the accident had occurred in the year 2004, the Supreme Court applied multiplier method and fixed notional income at Rs.25,000/-. In the case on hand, the accident had occurred in the year 2015. Therefore, taking into consideration the age of the child and other factors this Court feels it would be appropriate to fix Rs.35,000/- as notional income and applied 15 multiplier. In that case, the loss of dependency would be Rs.5,25,000/-.

10. Since this Court is inclined to fix Rs.35,000/- as notional income liberally for a child aged about 4 months, no amount is awarded under conventional head. Therefore, the claimants are entitled to Rs.5,25,000/-. Accordingly, the award passed by the Tribunal is modified as follows:-



| Sl. No. | Description        | Compensation awarded by the Tribunal | Compensation awarded by this Court | Remarks                          |
|---------|--------------------|--------------------------------------|------------------------------------|----------------------------------|
| 1       | Loss of Dependency | 2,50,000/-                           | Rs.5,25,000/-                      | <b>Enhanced</b>                  |
|         | Total              | Rs.2,50,000/-                        | Rs.5,25,000/-                      | <b>Enhanced by Rs.2,75,000/-</b> |

11. In view of the discussions made earlier, the compensation awarded by the Tribunal is enhanced to Rs.5,25,000/- from Rs.2,50,000/-. The respondents 2 and 4/Insurance Companies are directed to deposit the enhanced award amount of Rs.5,25,000/-, together with interest at the rate of 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.5164 of 2015 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of copy of this judgment. On such deposit, the appellants/claimants are entitled to withdraw the award amount by making formal application before the Tribunal.

12. The respondents 2 and 4/Insurance Companies are liable to pay the said amount as per the proportion fixed by the Tribunal.



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13. With the above direction, the Civil Miscellaneous Appeal is partly

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allowed. It is made clear that the appellants/claimants are not entitled to claim any interest for the delay period of 298 days as per the order made in C.M.P.No.19733 of 2024 in C.M.A.SR.No.113968 of 2024, dated 30.01.2025. No costs.

**10.03.2025**  
**(1/2)**

Index :Yes / No  
Speaking order :Yes / No  
Neutral Citation :Yes / No  
dm

To

1.The Motor Accidents Claim Tribunal, Chennai,  
V Court of Small Causes, Chennai.

2.United India Insurance Co. Limited,  
No.134, Greams Road,  
Chennai 600 006.

3.National Insurance Company Limited,  
No.751, Anna Salai,  
Chennai 600 002.

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



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**S.SOUNTHAR, J.**

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