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CMA.No.1144 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.1144 of 2025

Priya

... Appellant

Vs.

1. S.Sridharan

2. ICICI Lombard General Insurance Company Limited,
T.P.Cell: No.83 & 84, Wall Tax Road,
Chennai 600 003.

3. Kuppu

4. Mani

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to allow this appeal by enhancing the award passed by the Tribunal in MCOP No.1151 of 2017, dated 04.11.2022 on the file of the Special Sub Court-I, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For appellants : Mr.S.Udhayakumar

For Respondents : Mr.A.Salomi for second respondent



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JUDGMENT

Not satisfied with the quantum of compensation awarded by the Tribunal and also the fixation of contributory negligence as against the deceased, the first claimant has come before this court by filing the present appeal.

2. It is the case of the claimants that the husband of the appellant/ first claimant and son of the 2nd and 3rd claimants/ respondents 3 and 4 herein, namely Rajesh died in a road accident that had occurred on 14.01.2017. According to them, the deceased was riding his motorcycle from Chennai to Pondicherry and when he came near Mugaiyur bus stop at East Coast road, a car belonging to the first respondent, insured with the second respondent came in the opposite direction and dashed against the two wheeler. As a result of accident, the deceased sustained grievous injury and died on the spot. Therefore, the claimants filed a claim petition seeking compensation of Rs.45,00,000/-.



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3. The first respondent, owner of the car remained exparte before the Tribunal and the claim petition was opposed by the insurer of the car by filing counter on the ground that the accident had occurred due to the negligence on the part of the deceased, who was under the influence of alcohol at the relevant point of time. Hence, the insurer sought for dismissal of the claim petition.

4. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the car, insured with the second respondent, however, fixed 10% contributory negligence on the part of the deceased. The compensation payable to the claimants was quantified by the Tribunal at Rs.20,40,200/-, after deducting 10% contributory negligence on the part of the deceased. Aggrieved by the quantum of compensation, the claimants have filed the present appeal.

5. The learned counsel for the appellants/claimants submits that the Tribunal fixed only a sum of Rs.10,500/- as notional income of the deceased and the same is meager one.



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6. The learned counsel for the second respondent, insurer of the car would submit that the deceased was under the influence of alcohol at the time of accident and hence, the insurer of the car was not liable to pay compensation. He further submits that in the absence of any documentary evidence to prove the avocation and income of the deceased, the notional income fixed by the Tribunal is reasonable one.

7. In order to prove the negligence aspect, the first claimant was examined as PW1 and one eyewitness to the accident was examined as PW2. The Tribunal, based on the evidence of PW2, the contents of the FIR marked as Ex.P1, and the final report, marked as Ex.P2, came to the conclusion that the accident had occurred due to the negligence on the part of the driver of the car.

8. It is not in dispute that criminal case was registered against the driver of the car under Ex.P1 and Ex.P2. The Tribunal also noted that as per Ex.P3, postmortem report, 300 ml of Brownish coloured fluid was found in the stomach of the deceased with the smell of alcohol. Therefore, based on the postmortem report, the Tribunal came to the



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conclusion that the deceased was under the influence of alcohol and fixed 10% contributory negligence on him. However, mere finding of 300 ml Brownish coloured fluid in the stomach of the deceased with the smell of alcohol, we cannot come to the conclusion that the deceased was under the influence of alcohol. It is the matter of common knowledge that the normal food content, after fermentation, will produce alcohol. However, in the case on hand, it was noted in the postmortem report that 300 ml Brownish coloured fluid with the smell of alcohol was extracted from the stomach of the deceased. Therefore, based on the said fact alone, we cannot safely come to the conclusion that the deceased was under the influence of alcohol. Whether the percentage of alcohol contained in the blood was within the permissible units is the relevant question and the answer to the same is not found in the report. It is pertinent to note that due to the death of victim, blood sample could not be taken for testing alcohol content. In any event, consumption of alcohol by the deceased can be inferred to some extent. In such circumstances, I am not inclined to disturb the finding of the Tribunal, fixing 10% contributory negligence on the part of the deceased.



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9. In the claim petition, it was stated by the claimants that the deceased was a carpenter and was earning a sum of Rs.30,000/- per month. However, to prove the income of the deceased, the claimants have not produced any documentary evidence. Even if there is no documentary evidence to prove the avocation and income of the deceased, considering facts and circumstances of case and also the year of accident, this court can fix notional income. In the case on hand, the accident had taken place on 14.01.2017 and hence, this court proceeds to fix notional income of the deceased at Rs.15,000/- per month. As per Ex.P3, Postmortem Report, the Tribunal fixed the age of the deceased at 25 years. Therefore, the claimants are entitled to 40% enhancement towards future prospects. The applicable multiplier is 18. At the time of accident, there were three persons depending on the income of the deceased and hence, $\frac{1}{3}$ shall be deducted towards his personal expenses. Accordingly, loss of dependency is fixed at Rs. 30,24,000/- $(15,000 \times 1.4 \times 12 \times 18 \times \frac{2}{3})$

10. The Tribunal awarded a sum of Rs.40,000/- each towards loss of consortium and filial consortium to the first claimant and the



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claimants 2 and 3 respectively. Further, the Tribunal granted a sum of Rs.15,000/- each towards loss of estate and funeral expenses. The above said compensations are in accordance with the law settled by the Apex court in *Pranay Sethi Case* and hence, the same are confirmed.

11. Accordingly, the revised compensation awarded by this Court is tabulated as under:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	21,16,800	30,24,000	enhanced
2.	Loss of consortium to the 1st claimant and filial consortium to the claimants 2 and 3	1,20,000	1,20,000	confirmed
3.	Loss of estate	15,000	15,000	confirmed
4.	Funeral expenses	15,000	15,000	confirmed
	Total	22,66,800	31,74,000	enhanced
	Less 10% contributory negligence	2,26,680	3,17,400	confirmed
	Compensation	20,40,120	28,56,600	enhanced
	Total	rounded off to 20,40,200	28,56,600	enhanced by Rs.8,16,400

12. With the above modifications, this Civil Miscellaneous



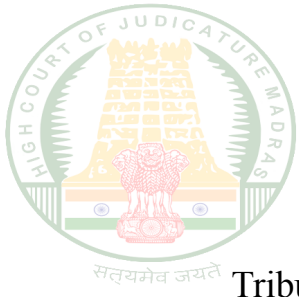
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Appeal is allowed and the compensation awarded by the Tribunal at Rs.20,40,200/- is hereby enhanced to **Rs.28,56,600/-** together with interest at 7.5% per annum from the date of claim petition till the date of deposit. The appellant is directed to pay necessary court fees on the enhanced compensation amount now determined by this court.

13. From the said compensation, now determined by this court, the first claimant/wife is entitled to Rs.22,56,600/- and the claimants 2 and 3/ parents are entitled to Rs.3,00,000/- each.

14. The **second respondent** is directed to deposit the compensation amount now determined by this Court to the credit of MCOP No.1151 of 2017 on the file of the Special Sub Judge-I, MACT, Court of Small Causes, Chennai, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment. On such deposit being made, the claimants shall be permitted to withdraw their respective compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the



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There shall be no order as to costs.

23.04.2025

Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
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To

1. The Special Sub Judge-I,
Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section, Madras High Court.



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S.SOUNTCHAR, J.

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