



CMA.No.506 of 2025

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :21.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

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1.Vasanthi
2.Minor Harikrishnan
3.Minor Dinesh
(Minors are rep. By next friend/Guardian
mother Vasanthi)
4.Chinnamma
5.Kandasamy

... Appellants

Vs.

1. Sadhasivam
2. M/s.National Insurance Company Limited
Salem Divisional No.II, Second floor,
Balaji towers, 11, Ramakrishna road,
Salem-636 007

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to enhance the Compensation amount and fix the entire liability on the 2nd respondent made in Judgment and decree dated 21-08-2023 made in MCOP.No.101/2022 on the file of the MCOP Tribunal, Subordinate Judge, Omalur

For Appellants : Mr.S.P.Yuaraj

For respondents : Mr.J.Chandran for R2

R1-notice dispensed with



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JUDGMENT

The claimants are the appellants. According to the claimants, the husband of the first claimant, the father of the claimants 2 and 3 and the son of the claimants 4 and 5 was travelling in a Hero Super Splendor motorcycle bearing registration number TN-30 AC 4876 in Salem to Dharmapuri National Highway Road. When he came near Samathuvapuram, the driver of the bus bearing registration number TN 30 AY 9939, owned by the first respondent and insured with the second respondent, came in a rash and negligent manner and dashed against the motorcycle driven by the deceased. As a result of which, he sustained grievous injuries and he was taken to Government Hospital, Omalur. After few hours, the deceased was declared dead. The claimants preferred the claim petition seeking Rs.50,00,000/- as compensation for the death of the deceased.

2. The first respondent remained *ex-parte* before the Tribunal and the second respondent filed a counter and contested the claim petition on the ground that the accident had occurred only due to the negligent



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driving of the deceased. The second respondent also disputed the avocation and the income of the deceased and sought for dismissal of the claim petition.

3. Before the Tribunal, the first claimant was examined as PW1 and a third party eyewitness was examined as PW2. On behalf of the claimants, 15 documents were marked as Exhibits P1 to P15. On behalf of the respondents, the Special Sub-Inspector of Police, who conducted investigation was examined as RW1 and final report was marked as Exhibit R1.

4. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred due to the negligence of the driver of the bus owned by the first respondent and insured with the second respondent. After fixing the primary negligence on the driver of the bus, the Tribunal came to the conclusion that the deceased did not possess a valid driving license at the relevant point of time and hence, he also contributed to the accident and fixed 20% contributory negligence on the deceased. Ultimately, after deducting the 20% amount towards contributory negligence, a sum of Rs.18,55,200/- was



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fixed as compensation payable to the claimants. Aggrieved by the same, the claimants have come before this court.

5. The learned counsel for the appellants/claimants submitted that having fixed primary negligence on the driver of the bus, belonged to the first respondent, the Tribunal committed serious error in fixing 20% contributory negligence on the part of the deceased merely on the ground that he failed to produce the driving license. The learned counsel further submitted that the accident had occurred in the year 2022. He also submitted that the deceased was an agriculturalist and he was earning a sum of Rs. 25,000/- at the time of accident. The Tribunal fixed only a sum of Rs.11,000/- per month and the same is very much on the lower side.

6. The learned counsel for the second respondent/ Insurance company submitted that the deceased had driven the vehicle without having valid driving license. Therefore, the Tribunal was justified in fixing 20% contributory negligence on his part. He further submitted that the claimants have not produced any documents to prove the avocation as well as the income of the deceased and hence, the amount



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of Rs.11,000/- fixed by the Tribunal as notional income is justifiable.

7. In order to prove the negligence on the part of the driver of the first respondent vehicle, an independent eyewitness was examined by the claimants as PW2. The Tribunal, based on the evidence of independent eyewitness and the contents of the FIR, came to the conclusion that the negligence was on the part of the driver of the first respondent vehicle. In fact, the Investigation Officer, who was examined as RW1, in his cross-examination, would clearly admit that the final report was filed against the driver of the first respondent vehicle. Therefore, the Tribunal is justified in fixing primary negligence on the part of the driver of the first respondent vehicle.

8. The Hon'ble Apex Court in the case of ***Sudhir Kumar Rana Vs Surinder Singh and Others*** reported in ***(2008) 12 SCC 436*** clearly held that non-possession of driving license is not a ground to fix the negligence on the part of the driver of the vehicle. In order to fix negligence on the deceased, there must be some positive evidence on record to show that he also contributed to the accident. In the case on hand, the evidence of PW2, the contents of FIR and the evidence of



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WEB COPY 1 clearly point to the negligence on the part of the driver of the first respondent. Therefore, the findings of the Tribunal that 20% contributory negligence shall be fixed on the deceased merely because he failed to produce the valid driving license is not sustainable in law and the same is set aside.

9. In the claim petition, it was averred by the claimants that the deceased was an agriculturalist and earning a sum of Rs. 25,000/- per month. However, in order to prove the avocation as well as income of the deceased, the claimants have not produced any documentary evidence. Even if no proof is filed to prove the income of the deceased, this Court, taking into consideration the facts and circumstances of the case, can fix the notional income. In the case on hand, the accident had occurred on 11.06.2022. Having regard to the date of accident and the prevailing cost of living, this Court is inclined to fix Rs.18,000/- as notional income for the deceased. In that case, the claimants are entitled to Rs.34,02,000/- towards loss of dependency which is calculated as follows:-



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Rs.18,000 x 1.4 x 12 x 15 x 3 / 4= Rs.34,02,000/-

10. The Tribunal awarded a sum of Rs.15,000/- each under the heads loss of estate and funeral expenses. Likewise, a sum of Rs.40,000/- towards loss of consortium to 1st claimant and Rs.40,000 each under the head loss of love and affection to claimants 2 to 5. As per the law laid down by the Hon'ble Apex Court in *Pranay Sethi case*, the said amount needs to be enhanced once in three years at the rate of 10%. Therefore, the claimants are entitled to Rs.16,500/- each under the heads loss of estate and funeral expenses. Likewise, they are entitled to Rs.44,000/- each under the heads loss of consortium to 1st claimant and loss of love and affection to claimants 2 to 5. The amount of Rs.10,000/- awarded under the head transportation expenses is confirmed. In view of the discussion made earlier, on the negligence aspect, the deduction of 20% under contributory negligence is set aside. The amount of Rs. 20,79,000/- awarded by the Tribunal under the head loss of future income is enhanced to Rs.34,02,000/- under the head loss of dependency.

11. In view of the same, the award passed by the Tribunal is



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Sl • No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	20,79,000/-	34,02,000/- -	Enhanced
2.	Loss of Estate	15,000/-	16,500/-	Enhanced
3.	Funeral Expenses	15,000/-	16,500/-	Enhanced
4.	Loss of Consortium (1 st claimant)	40,000/-	44,000/-	Enhanced
5.	Loss of Love and Affection (claimants 2 to 5)	1,60,000/-	1,76,000/- (44,000x4) -	Enhanced
6.	Transportation Expenses	10,000/-	10,000/-	Confirmed
	Total	23,19,000/-	36,65,000/- -	Enhanced by Rs.13,46,00 0/-
	Less:20%contributory negligence	4,63,800/-	Set aside	
	Net compensation	18,55,200/-	36,65,000/- -	Enhanced by 18,09,800/- /-



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12. With the above modifications, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.18,55,200/- is hereby enhanced to Rs.36,65,000/-. In view of the order passed in CMP.No.20216 of 2024, the appellants/claimants are not entitled to claim any interest for the delay period of 274 days. The appellants are entitled to interest at the rate of 7.5% per annum excluding the delay period (274 days) from the date of filing of the claim petition till the date of realization. The second respondent /Insurance company is directed to deposit the enhanced award amount together with the interest after deducting any amount already deposited within a period of six weeks from the date of receipt of copy of this Judgment. The appellants/claimants are entitled to award amount as per the ratio fixed by the Tribunal.

13. The 2nd and 3rd appellants/ 2nd and 3rd claimants being minors, their respective share in the award amount is directed to be deposited in anyone of the Nationalized Banks under a Fixed Deposit Scheme initially **for a period of three years**, which shall be renewed periodically until they attain majority. The 1st appellant/1st claimant,



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being the Natural Guardian of the minor 2nd and 3rd claimants, is permitted to withdraw the interest accrued thereon in the said Fixed Deposit Account **once in three months** and the same should be used for the welfare of the minor 2nd and 3rd claimants. The claimants 1, 4 and 5 are entitled to withdraw their share of compensation amount, along with interest and costs, less the amount if any, already withdrawn, by making proper application before the Tribunal. The appellants are directed to pay the additional court fee proportionate to the amount awarded in this appeal. No costs.

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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.SOUNTCHAR, J.

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