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CMA No.1972 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

**CMA No. 1972 of 2025 &
CMP.No.17246 of 2025**

1. United India Insurance Co.Ltd.,
Divisional Office, 1st Floor, 104-A,
Ranga Building, Peramanur Main Road,
Salem.

Appellant(s)

Vs

1. Indirani
W/o. late. Duraisamy, 1/72, Vada
Pathirakkaliamman Koil Street,
Kandampatty, Suramangalam, Salem.

2.Sowmiya
D/o. late. Duraisamy, 1/72, Vada
Pathirakkaliamman Koil Street,
Kandampatty, Suramangalam, Salem.

3.Deepika
D/o. late. Duraisamy, 1/72, Vada
Pathirakkaliamman Koil Street,
Kandampatty, Suramangalam, Salem.

4.Siddhesh
S/o. late. Duraisamy, 1/72, Vada
Pathirakkaliamman Koil Street,
Kandampatty, Suramangalam, Salem.



5.T. Manjula
W/o. Siddalingaiah, D.No.10/19, 4T
Cross BTM 1st STG, Maruthi Nagar,
Bangalore, Karnataka.

Respondent(s)

PRAYER: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act praying to set aside the award dated 05.04.2023 passed in MCOP No.289 of 2022 on the file of the learned Motor Accident Claims Tribunal (Special District Judge) Salem.

For Appellant(s): Mr.J.Chandran

For Respondent(s): Mr.S.Ramprabu For
Mr.K.Vasanthanayagan
For R1 To R4

ORDER

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 05.04.2023 passed in MCOP No.289 of 2022 by the learned Motor Accident Claims Tribunal (Special District Judge) Salem.

2. The facts leading to filing of this Civil Miscellaneous Appeal is as follows:-

(i) On 28.03.2021, at about 04.30 p.m., the Duraisamy was proceeding to Panamarathupatty in his TVS XL Super Motorcycle bearing Reg.No.TN 30 L 0299 towards extreme left side of the Salem to Namakkal bypass, when he was waiting to cross the road near Panamarathupatty service branch road, a tempo



traveller bearing Reg.No.KA-05-AD-8095 which came from Salem to Namakkal, driven by its driver in a rash and negligent manner, hit against the said Duraisamy, due to which, he was thrown away from his two wheeler and sustained grievous injury all over the body. Immediately, he was admitted in G.H., Salem for treatment, but he succumbed to injuries on 07.01.2020.

(ii) The 5th respondent herein is the owner of the tempo traveller and the appellant is the insurer of the offending vehicle. .

(iii) Since the accident occurred only due to the rash and negligent driving of the tempo traveller, the 5th respondent-owner of the offending vehicle and the appellant-insurer of the offending vehicle, both are jointly and severally liable to pay compensation to the claimants.

(iv) Hence, the respondents 1 to 4/claimants have made a claim petition before the Special District Judge, MCOP, Tribunal, Salem in M.C.O.P.No.289 of 2022 claiming compensation of Rs.20,00,000/- against the respondents.

(v) According to the claimants, at the time of accident, the deceased was aged 59 years and had been working as security in Meenatchi India Private Ltd., Kandampatty, Salem and was also doing part time job as marriage assembler and was earning Rs.20,000/- per month. Due to the accident, the dependants of the deceased/claimants have lost their only source of income.

(vi) Before the Tribunal, on the side of the claimants, PW1 was examined and exhibits Ex.P.1 to Ex.P.15 were marked. Ex.C.1 and Ex.C.2 on behalf of the court were also marked. On behalf of the respondents, no witness was



examined and Ex.R.1 to R3 were marked. The owner of the offending vehicle remained *exparte* before the tribunal.

(vii) The tribunal, on an appreciation of evidence of witnesses and documents marked as exhibits, awarded a compensation of Rs.9,55,000/-to the claimants along with 7.5% interest from the date of petition till the date of realization. The tribunal directed the owner and insurer of the offending vehicle to pay the above said compensation amount jointly and severally.

(viii) The compensation awarded by the tribunal to the appellant/claimant under various heads is as follows;

<i>Heads</i>	<i>Compensation awarded by the Tribunal (Rs.)</i>
Loss of Income (Rs.10,000 x 12 x 9 = 10,80,000)	Rs. 8,10,000/-
Loss of love and affection (20,000 x 4)	Rs. 80,000/-
Loss of consortium	Rs. 40,000/-
Funeral Expenses	Rs. 25,000/-
Total	Rs.9,55,000/-

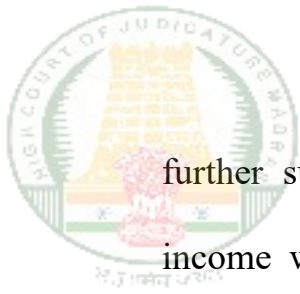
3. Aggrieved against the compensation awarded by the tribunal on the higher side, the insurance company has preferred the present Civil Miscellaneous Appeal on the ground that the compensation is highly excessive.

4. Learned counsel for the appellant/Insurance Company submits that while the deceased was travelling in the motor cycle, he was not wearing



helmet and did not possess valid driving licence. Therefore, there is a negligence on the part of the deceased, but, the tribunal failed to take primary negligence on his part and fixed the contributory negligence on the part of the driver of the tempo vehicle. Further, the learned counsel also submits that the deceased was aged about 70 years as per Ex.R-1 Family Card, but tribunal has mistakenly fixed the age of the deceased as 59 years and applied multiplier of 9 years, instead of 5 years and awarded compensation by deducting 1/4th towards his personal expenses by taking Rs.10,000/- as his monthly income. The salary slip Ex.P.9 was not properly appreciated, therefore, the fixation of Rs.10,000/- per month as his monthly income is on the higher side, hence he prayed to reduce the income fixed for the deceased.

5. By way of reply, the learned counsel for the respondents/claimants submits that at the time of accident, the deceased was having valid driving licence and the same was also marked before the tribunal as Ex.P.8. however he has not worn helmet. He would further contend that as per Aadhar card, the age of the deceased was 59 years, and considering the same, the tribunal has fixed the age of the deceased at 59 years. The deceased was employed as security at Meenatchi India Pvt. Ltd., and was also did his job as a part-time marriage assembler. The accident was occurred in the year 2021. The tribunal without considering the above aspects, erroneously fixed a meager amount of Rs.10,000/- as his monthly income by including his future prospects. He



further submitted that even for an unskilled labour, the notional monthly income was fixed at Rs.18,000/-. Hence, fixation of notional income needs interference of this Court and prayed for enhancement of the compensation.

6. Heard the arguments of the learned counsel appearing for appellant/insurance company as well as the learned counsel appearing for the respondents.

7. On a perusal of Ex.P.9-salary slip, it is seen that the deceased has been getting Rs.11,560/- as his gross monthly salary and he was employed as a part time security at Meenatchi India Pvt. Ltd. It appears that the tribunal has not assigned any reason for fixing Rs.10,000/- as monthly salary of the deceased, however the Ex.P.9- salary slip of the deceased shows that the deceased has received Rs.11,560/- per month as his salary.

8. Perusal of records would also reveal that the accident was occurred in the year 2021 and the deceased was not wearing helmet at the time of the accident, hence, this court fixes 10% as contributory negligence on the part of the deceased.



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9. In respect of other heads such as loss of love and affection, loss of consortium and funeral expenses, the amount awarded by the tribunal under such heads appears to be fair and reasonable. Hence the compensation awarded under the above heads are hereby confirmed.

<i>Heads</i>	<i>Compensation awarded by this Court (in Rs.)</i>
Loss of Income (Rs.11,500 x 12 x 9 = 12,42,000)	Rs. 12,42,000/-
Loss of love and affection (20,000 x 4)	Rs. 80,000/-
Loss of consortium	Rs. 40,000/-
Funeral Expenses	Rs. 25,000/-
Total	Rs. 13,87,000/-

Thus, this Court fixes Rs.13,87,000/- as total compensation to the claimants with interest at the rate of 7.5% per annum. After deducting 10 % of compensation awarded by this court towards fixation of 10% of contributory negligence, the claimants are entitled to the modified compensation amount of Rs.12,48,300/- with interest at the rate of 7.5% per annum. As stated above, this Court awards Rs.12,48,300/- with interest at the rate of 7.5% per annum as compensation.



10. In the result,

- i. The appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.
- ii. The appellant/Insurance company is directed to deposit the compensation awarded by this Court of Rs.12,48,300/- along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, less the amount, if any, already deposited within a period of eight weeks from the date of receipt of a copy of this order.
- iii. On such deposit, the claimants are permitted to withdraw the amount along with proportionate interest and costs, less the amount, if any, already withdrawn.
- iv. The claimants are directed to pay the necessary Court fee on the enhanced award amount.

msr

28-07-2025

Index:Yes/No

Internet:Yes

To

1.Indirani

W/o. late. Duraisamy, 1/72, Vada
Pathirakkaliamman Koil Street,
Kandampatty, Suramangalam, Salem.

2.Sowmiya

D/o. late. Duraisamy, 1/72, Vada



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6. The Motor Accident Claims Tribunal (Special District Judge)
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T.V.THAMILSELVI J.

This civil miscellaneous appeal is posted today under the caption "For Being Mentioned" at the instance of the learned counsel for the appellant insurance company.

2. The learned counsel appearing for the appellant would submit that in the order dated 28.07.2025, there are some errors in the amount of compensation arrived under the Loss of Income and also under other heads. Therefore, para Nos.7 to 10 of the order to be replaced as follows:

“7. On a perusal of Ex.P.9-salary slip, it is seen that the deceased has been getting Rs.11,560/- as his gross monthly salary and he was employed as a part time security at Meenatchi India Pvt. Ltd. It appears that the tribunal has not assigned any reason for fixing Rs.10,000/- as monthly salary of the deceased, however the Ex.P.9- salary slip of the deceased shows that the deceased has received Rs.11,560/- per month as his salary. Therefore, this Court taking into account the salary of the deceased as Rs.11,500/- (rounded off), adding 10% towards future prospects and deducting 1/4th towards personal expenses, the calculation under the head Loss of Income would be Rs.11,500 + 10% future prospects = Rs.12,650/- p.m.



$$(Rs.12,650 \times 12 \times 9) = Rs.13,66,200 \times 3/4 = Rs.10,24,650.$$

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8. Perusal of records would also reveal that the accident was occurred in the year 2021 and the deceased was not wearing helmet at the time of the accident, hence, this court fixes 10% as contributory negligence on the part of the deceased.

9. In respect of other heads, namely Loss of Consortium, each claimant is entitled to Rs.44,000/-. As regards funeral expenses, the amount awarded by the tribunal under the head Funeral Expenses is reduced to Rs.16,500/-. The Tribunal has not granted any amount towards Loss of Estate, which this Court is inclined to grant Rs.16,500/-. Hence the compensation awarded by this Court is tabulated hereunder:

Heads	Compensation awarded by this Court (in Rs.)
<i>Loss of Income</i>	10,24,6500
<i>Loss of consortium</i>	1,76,000
<i>Loss of Estate</i>	16,500
<i>Funeral Expenses</i>	16,500
	12,33,650
<i>Less: 10% Contributory Negligence</i>	1,23,365
Total	11,10,285



Thus, this Court fixes Rs.11,10,285/- as total compensation to the claimants with interest at the rate of 7.5% per annum.

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10. In the result,

- i. The appeal is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.*
- ii. The appellant/Insurance company is directed to deposit the compensation awarded by this Court of Rs.11,10,285/- along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, less the amount, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this order.*
- iii. On such deposit, the claimants are permitted to withdraw the amount along with proportionate interest and costs, less the amount, if any, already withdrawn.*
- iv. The claimants are directed to pay the necessary Court fee on the enhanced award amount.”*



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3. Registry is directed to carryout the above replacements from Paras 7 to 10 and issue fresh order copy to the parties.

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27-03-2026



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