



CMA.No.160 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.160 of 2025

1. Sivagami
 2. Ganesan
- ...Appellants

Vs.

1. N.Vadivel
 2. The New India Assurance Co.Ltd.,
Rep. by its Manager,
New India Centre,
1st Floor, 17-A, Cooperage Road,
Mumbai, Maharastra State – 400 001.
- ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.04.2023 made in M.C.O.P.No.1310 of 2021, on the file of MCOP Tribunal, Special District Court, Krishnagiri.

For Appellants : Mr.S.P.Yuaraj

For Respondents : Mr.J.Chandran for R2
Notice Dispensed with for R1 vide order dated 08.01.2025.



CMA.No.160 of 2025

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JUDGMENT

Challenging the decree and judgment dated 20.04.2023 made in M.C.O.P.No.1310 of 2021, on the file of Motor Accident Claims Tribunal, Special District Court, Krishnagiri, the claimants have filed the above appeal.

2. Mr.J.Chandran, learned counsel takes notice on behalf of the 2nd respondent.

3. In view of the judgment being passed, notice to the first respondent is dispensed with.

4. It is the case of the claimants that, on 23.08.2021 at about 13.45 hours., when the deceased was riding a two wheeler bearing Regn.No.TN 29 CZ 3406, at that time a Tata Goods Carrier Lorry bearing Regn.No.TN 24 AW 4740 belonging to the first respondent driven by its driver came in the opposite direction in a rash and negligent manner and dashed the deceased, due to which the deceased sustained grievous injuries and succumbed to the same. Thereby, the appellants, who are the parents of



CMA.No.160 of 2025

the deceased filed a claim petition in MCOP.No.1310 of 2021 claiming a compensation of Rs.50,00,000/-.

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5. Before the Tribunal, the appellants examined P.W.1 and P.W.2 and marked Exhibits P.1 to P.10 and on the side of the respondents they examined R.W.1 and R.W.2 and examined Exs.R1 and R2. After trial, the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the 1st respondent's vehicle and awarded Rs.16,45,090/- after deducting 15% contributory negligence on the part of the deceased for non-possession of valid driving licence and held that the 1st and 2nd respondents are jointly and severally liable to pay the above compensation. Being not satisfied with the quantum of compensation awarded by the Tribunal and the negligence fixed on the part of the deceased, the appellants/claimants have come up with this appeal seeking enhancement of compensation.

6. Learned counsel for the appellants / claimants submitted that though the above said accident happened solely due to the rash and



CMA.No.160 of 2025

negligent driving on the part of the driver of the 1st respondent's vehicle, however, the Tribunal has fixed 15% contributory negligence on the part of the deceased for non-possession of valid driving licence at the time of accident which is highly excessive. Hence the same may be reduced. Moreso, the accident is of the year 2021 and at the time of accident, the deceased was a Motor Mechanic, earning not less than a sum of Rs.30,000/- per month, however, the tribunal had erroneously taken the notional income of the deceased as Rs.12,000/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be interfered with. Further, the compensation awarded under other heads are also on the lower side and the same needs to be enhanced. Accordingly, he prayed for appropriate orders.

7. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance Company contended that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.



CMA.No.160 of 2025

WEB COPY

8. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievance of the Appellants/claimants is with regard to the quantum of compensation awarded by the Tribunal and the 15% negligence fixed as against the deceased.

10. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2021 and at the time of accident, the deceased was aged about 21 years and he was working Motor Mechanic, however, the Tribunal has fixed the notional monthly income at Rs.12,000/-, which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, and also considering the age of the deceased as also the claimants, fixing a



CMA.No.160 of 2025

WEB COPY

notional income of Rs.17,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in ***2017 (16) Supreme Court Cases 680***, the income per month is quantified at Rs.23,800/- (17,000 + 6,800). Since the deceased died as a bachelor, 50% has to be deducted towards personal expenses. After deducting 50% towards personal expenses, the monthly income of the deceased would be at Rs.11,900/- (Rs.23,800 – 50% of Rs.23,800) and as per the Judgment of the Hon'ble Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation* and another reported in 2009 (2) TN MAC 1 (SC), the right multiplier to be adopted is '18' and hence, the loss of income would be at Rs.25,70,400/- (Rs.11,900 x 12 x 18).

11. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation awarded under other heads are just and reasonable and the same does not require interference of this Court.

12. As per the provisions of the Motor Vehicle Rules, it is



CMA.No.160 of 2025

mandatory for the rider to obtain driving licence to drive a motor cycle and for non-possession of the same, the Tribunal has fixed 15% contributory negligence on the part of the deceased, which is highly excessive. Hence, this Court fixes 10% contributory negligence on the part of the deceased for not having valid driving licence.

13. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	18,14,400/-	25,70,400/- (enhanced)
Loss of estate	16,500/-	16,500/-
Funeral expenses	16,500/-	16,500/-
Loss of consortium (P1 & P2) Rs.44,000 x 2 = (Rs.88,000)	88,000/-	88,000/-
Total	19,35,400/-	26,91,400/-
After deducting Contributory Negligence	16,45,090/- (less 15%)	24,22,260/- (less 10%)

14. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.1310



CMA.No.160 of 2025

WEB COPY

of 2021 is modified by enhancing the compensation amount from Rs.16,45,090/- to **Rs.24,22,260/-** after deducting 10% contributory negligence on the part of the deceased. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No.1310 of 2021 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. The compensation awarded by this Court shall be apportioned among the appellants equally. The appellants are not entitled for any interest for the delay period if any. No costs.

27.01.2025

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NCC : Yes/No

Index : Yes/No

To:



CMA.No.160 of 2025

WEB CONTENT

1.MCOP Tribunal, Special District Court, Krishnagiri.

2. The Section Officer,
V.R. Section, High Court, Madras.

M.DHANDAPANI, J.



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CMA.No.160 of 2025

rap

CMA.No.160 of 2025

27.01.2025