



C.M.A.No.441 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 18.02.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.441 of 2025

1.Kamatchi

2.Velmurugan

3.G.Dhanalakshmi

... Appellants

VS.

1.M/s.Parveen Travels (P) Ltd.,
No.115/6, Shanthavellore Vellore,
S.V.Chathiram, Sriperumbudur Taluk,
Kancheepuram District.
[1st Respondent; remained ex-parte]

2.The New India Assurance Co. Ltd.,
No.45, Moore Street, V Floor,
Chennai – 600 001

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 25.09.2023 made in MACT.O.P.No.6913 of 2014 on the file of the III Small Causes Court (Motor Accidents Claims Tribunal) Chennai and to enhance the compensation of Rs.9,71,800/- as awarded by the lower court to Rs.15,00,000/-.



WEB COPY



C.M.A.No.441 of 2025

For Appellants : Mr.R.Kalai Arasan

For R2 : Mr.R.Neethi Perumal

For R1 : Notice Dispensed With

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, the claimants have come by way of this appeal.

2. It is the case of the claimants that on 21.07.2014, the husband of the 1st claimant and father of the claimants 2 and 3 was sleeping on a road side of the KPK Nagar Main Road, near junction of 1st and 2nd Street, Perungudi, Chennai. At that point of time, the bus owned by the 1st respondent insured with the 2nd respondent, which was parked on the road, was moved by its driver in a rash and negligent manner in the reverse direction, without seeing the person sleeping behind the vehicle and ran



C.M.A.No.441 of 2025

over him. Therefore, the deceased died on the spot. The claimants preferred a claim petition claiming compensation of Rs.15,00,000/- for the fatal accident.

3. The 1st respondent remained *exparte* before the Tribunal and the 2nd respondent filed counter affidavit denying negligence on the part of the driver of the 1st respondent's vehicle and it was claimed by the 2nd respondent that the accident had occurred only due to the negligence of the deceased in sleeping behind the bus.

4. Before the Tribunal, the 1st appellant/1st claimant was examined as PW.1 and an eye-witness-R.Sabarinathan was examined as PW.2. On the side of the appellants/claimants, 14 documents were marked as Exs.P1 to P14 and no one was examined on the side of the 2nd respondent-Insurance Company.

5. The Tribunal on appreciation of evidence available on record came to the conclusion that accident had occurred due to the rash and negligent driving by the driver of the 1st respondent's bus. However, the Tribunal



C.M.A.No.441 of 2025

fastened 20% contributory negligence on the part of the deceased.

WEB COURT Ultimately, the Tribunal awarded a sum of Rs.9,71,800/- as compensation to the claimants after deducting 20% towards contributory negligence. Aggrieved by the same, the claimants have come by way of this appeal.

6. The learned counsel appearing for the appellants submitted that it is the duty of the driver of the vehicle to take necessary caution before taking the vehicle in the reverse direction. In the case on hand, the driver of the 1st respondent's vehicle had taken the vehicle on reverse direction without noting a person sleeping in the backside of the vehicle. Therefore, the entire negligence shall be fixed on the driver of the bus. The learned counsel further submitted that accident had occurred in the year 2014 and the notional income of the deceased was fixed at Rs.11,000/- per month and is very much on the lower side.

7. The learned counsel appearing for the 2nd respondent would contend that deceased contributed to the accident by sleeping behind the parked vehicle and therefore, the Tribunal was justified in fastening 20% towards contributory negligence on the part of the deceased. The learned



C.M.A.No.441 of 2025

counsel further submitted that the claimants have not produced any documents to prove the avocation or income of the deceased and therefore, the Tribunal was justified in fixing Rs.11,000/- per month as notional income of the deceased.

8. In order to prove the accident, the claimants examined one eyewitness-R.Sabarinathan as PW.2. The Tribunal based on the evidence of eyewitness, came to the conclusion that the negligence was on the part of the driver of the bus owned by the 1st respondent. However, it is clear from the averments found in claim petition that at the time of accident, the deceased was sleeping on the road side of the main road near 1st and 2nd Street Junction, Perungudi, Chennai, that too behind the parked vehicle. Therefore, by sleeping in the road side behind the parked vehicle, the deceased also contributed to the accident. Therefore, the finding arrived at by the Tribunal that the deceased also contributed to the accident is justified and the contributory negligence of 20% fastened on the deceased appears to be fair and reasonable. The said finding requires no interference.



WEB COPY

9. In the claim petition, it was claimed by the claimants that deceased was engaged in Centering Work at the relevant point of the time and he was earning Rs.1,000/- per day. However, claimants have not produced any documents to prove avocation or income of the deceased. In these circumstances, the Tribunal fixed a notional income of the deceased at Rs.11,000/- per month.

10. The accident had occurred in July-2014, if we follow the guideline issued by this Court in *Andal and others vs. Avinav Kannan and others* reported in *MANU/TN/6368/2018* for the years 2014-2015, we can fix notional income of Rs.12,093/-. Therefore, this Court is inclined to fix notional income of the deceased at Rs.12,100/- per month. The deceased was aged about 54 years at the relevant point of time. Therefore, he is entitled to future prospects at the rate of 10%. The applicable multiplier would be 11. Therefore, the claimants are entitled to Rs.11,71,280/- under the head of Loss of Dependency (i.e., $\text{Rs.12,100} \times 1.1 \times 12 \times 11 \times \frac{2}{3} = 11,71,280/-$). The compensation awarded by the Tribunal under various other heads like loss of consortium, loss of estate and funeral expenses are in tune with the law laid down by the Apex Court in *National Insurance*

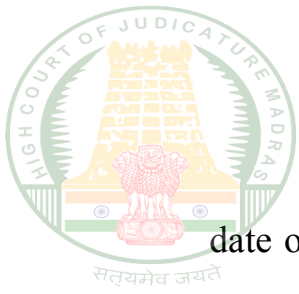


Company Limited vs. Pranay Sethi and others reported in (2017) 16 SCC

680 and hence, the same requires no interference. The finding of the Tribunal in fixing 20% contributory negligence on the part of the deceased is confirmed. Therefore, the award passed by the Tribunal is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
1.	Total loss of dependency	Rs.10,64,800/-	Rs.11,71,280/-
2.	Loss of Consortium	Rs.1,20,000/-	Rs.1,20,000/-
3.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
	Total	Rs.12,14,800/-	Rs.13,21,280/-
	80% of the compensation	Rs.9,71,840/-	Rs.10,57,024/-
	Rounded off	Rs.9,71,800/-	Rs.10,57,000/-

11. In view of the discussions made earlier, the total compensation awarded by the Tribunal is enhanced to Rs.10,57,000/- as against Rs.9,71,800/- as ordered by the Tribunal. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.10,57,000/- together with interest at the rate of 7.5% per annum from the



C.M.A.No.441 of 2025

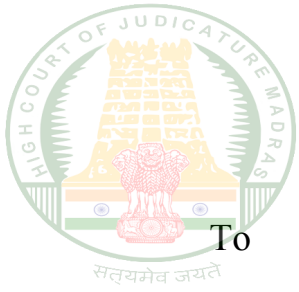
WEB COPY

date of claim petition to the date of realisation, (excluding the delay period i.e., 241 days), after deducting the amount already deposited, if any, to the credit of M.A.C.T.O.P.No.6913 of 2014 on the file of the III Small Causes Court (Motor Accidents Claims Tribunal), 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 now enhanced by this Court after deducting the amount already withdrawn, if any, by making formal application before the Tribunal.

12. With the above direction, the Civil Miscellaneous Appeal is partly allowed. No costs.

18.02.2025

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



C.M.A.No.441 of 2025

To

WEB COPY

- 1.The III Small Causes Court
(Motor Accidents Claims Tribunal),
Chennai.
- 2.The New India Assurance Co. Ltd.,
No.45, Moore Street, V Floor,
Chennai – 600 001
- 3.The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.441 of 2025

S.SOUNTHAR, J.

dm

C.M.A.No.441 of 2025

18.02.2025