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CMA.No.1614 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Dated 19.03.2025**

CORAM:

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**CMA No.1614 of 2024 and**  
**CMP No. 5280 of 2025**

1. Thangadeepa
2. Hemapriya
3. Gowripriya
4. Sundaram
5. Yashodha

... Appellants

**Vs.**

1. Ethiraj
2. The Manager,M/s United India Insurance Company Limited,  
No.22, P.R.Sundaram Iyer Street,  
Dharmapuri 636 701.

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to enhance the compensation awarded in MCOP No.2440 of 2018, dated 03.03.2023 on the file of Judge No.II, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.



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For appellants : Mr.K.Varadhakamaraj

For Respondents : M/s C.Paranthaman for second respondent

### **JUDGMENT**

Not satisfied with the quantum of compensation awarded by Tribunal, the claimants have come before this court by filing the present appeal.

2. It is not in dispute that the husband of the first claimant, father of the claimants 2 and 3 and son of the claimants 4 and 5 namely Sivakumar died in a road accident that had occurred on 13.03.2018. It was the case of the appellants that the deceased was travelling as pillion rider in a two wheeler in Dharmapuri - Salem road and when the two wheeler of the deceased approached Thoppur Kanavai Anchineyar Koil, a lorry belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the two wheeler on the back side. Therefore, the deceased sustained grievous injuries and subsequently, he died in hospital. Therefore, the dependents of the deceased filed a claim petition



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seeking compensation of Rs.70,00,000/-. Pending claim petition, the 5th claimant/mother of the deceased passed away and her legal heirs namely the claimants 2 to 4 were already on record and they pursued the claim petition along with the first claimant.

3. The first respondent, owner of the lorry remained exparte before the Tribunal and the claim petition was contested by the insurer of the lorry, namely the second respondent herein. It was the case of the second respondent that the accident had occurred only due to the rash and negligent driving of the two wheeler by the deceased. The second respondent denied the averments made in the claim petition regarding age and income of the deceased.

4. Based on the evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the lorry. The amount payable to the claimants was quantified at Rs.25,71,500/- Not satisfied with the quantum of compensation, the claimants have come before this court by way of filing the appeal.



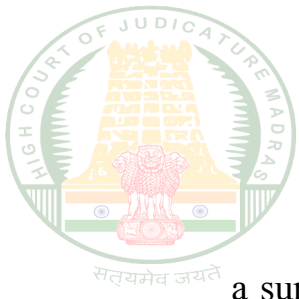
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5. The learned counsel for the appellants/claimants would submit that the deceased was the owner of the lorry and he used to drive the lorry in the absence of drivers and he was earning a sum of Rs.50,000/- per month from his lorry business. However, the Tribunal fixed a sum of Rs.15,000/- as notional income and the same is very much on lower side.

6. The learned counsel for the second respondent would submit that the claimants have not produced any document to prove the income of the deceased and hence, the Tribunal was justified in fixing a sum of Rs.15,000/- as notional income of the deceased.

7. In order to prove the avocation and income of the deceased, the claimants examined PW3, driver of the lorry. He deposed that he worked under the deceased as driver of the lorry and in his absence, the deceased used to drive the lorry and he was earning a sum of Rs.70,000/- per month. In the claim petition, the claimants stated that the deceased was earning a sum of Rs.50,000/- per month through his lorry business. However, PW3 deposed that the deceased was earning



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a sum of Rs.70,000/- per month. In order to prove the income of the deceased, the claimants have not produced any documents. In such circumstances, this court proceeds to fix notional income of the deceased at Rs.16,500/-, by taking into consideration the date of accident and cost of living. Based on the driving license and death certificate Ex.P9 and Ex.P3 respectively, the Tribunal fixed the age of the deceased as 45 years, Therefore, the claimants are entitled to 25% enhancement towards Future Prospects. The applicable multiplier is '14 '. Since there were 5 persons depending on the income of the deceased on the date of death, 1/4 amount shall be deducted towards personal expenses of the deceased. Accordingly, loss of dependency is fixed at Rs.25,98,750/-.  $(16,500 \times 1.25 \times 12 \times 14 \times 3/4)$ .

8. The Tribunal awarded a sum of Rs.1,76,000/- towards loss of consortium for four persons by awarding Rs.44,000/- each. At the time of accident and filing claim petition, the mother of the deceased was alive and pending claim petition, she died leaving behind her legal heirs, who were arrayed as claimants 2 to 4. Therefore, this court proceeds to fix loss of consortium to wife, loss of love and affection to



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children and filial consortium to mother at Rs.40,000/- each, taking into consideration the date of accident, that had occurred within three years from the date of delivering judgment by the Apex Court in ***Pranay Sethi Case*** (i.e. 31.10.2017). The compensation awarded by the Tribunal under the heads loss of estate and Funeral expenses are also reduced to Rs.15,000/-each, as per the law laid down in the above said ***Pranay Sethi Case***.

9. Accordingly, the compensation awarded by the Tribunal is modified as:

| Sl. No | Description        | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|--------|--------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.     | Loss of Dependency | 23,62,500                       | 25,98,750                         | enhanced                               |
| 2.     | Loss of Consortium | 1,76,000                        | 2,00,000                          | enhanced                               |
| 3.     | Loss of Estate     | 16,500                          | 15,000                            | reduced                                |
| 4.     | Funeral expenses   | 16,500                          | 15,000                            | reduced                                |
| 5.     | Total              | 25,71,500                       | <b>28,28,750</b>                  | enhanced by 2,57,250                   |



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10. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.25,71,500/- is hereby enhanced to **Rs.28,28,750/-** together with interest at 7.5% per annum, (*excluding the delay period of 103 days, as per order in CMP No.24651 of 2023, dated 04.06.2024*) from the date of petition till the date of deposit.

11. It is stated by the learned counsel for the second respondent that entire award amount has been already deposited before the Tribunal. Therefore, the **second respondent** is directed to deposit the enhanced compensation amount with proportionate interest, within a period of **six weeks** from the date of receipt of a copy of this judgment.

12. The appellants/ claimants shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn, in same proportion, as per the apportionment made by the Tribunal, by making formal application before the



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Tribunal. There shall be no order as to costs. Connected miscellaneous petition is closed.

19.03.2025

Index: Yes/No  
Internet: Yes/No  
mst

**To**

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



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**S.SOUNTHAR, J.**

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