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CMA No. 917 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 05-06-2025**

CORAM

**THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI**

**CMA No. 917 of 2023**

**AND**

**CMP NO. 8461 OF 2023**

1. The Divisional Manager  
The New India Assurance Co Ltd, DO,  
II Floor, Arcot Road, Woodland  
Complex, No 1, Bharathi Road,  
Cuddalore 607 001.

Appellant(s)

Vs

1. J.Palani  
W/o A.Jayashankar, Res at No 318,  
Arasamarathu Street,  
Thiruvandhipuram, Pathirikuppam,  
Cuddalore Taluk 607 401.

2.Minor J.Mythreyan  
S/o A.Jayashankar, Res at No 318,  
Arasamarathu Street,  
Thiruvandhipuram, Pathirikuppam,  
Cuddalore Taluk 607 401. Rep by their  
mother Palani as Guardian and Next  
Friend



3.Minor J.Upendran

S/o A.Jayashankar, Res at No 318,

Arasamarathu Street,

Thiruvandhipuram, Pathirikuppam,

Cuddalore Taluk 607 401. Rep by their

mother Palani as Guardian and Next

Friend

4.A.Dhanam

W/o Adhimoolam, Res at No 318,

Arasamarathu Street,

Thiruvandhipuram, Pathirikuppam,

Cuddalore Taluk 607 401.

5.Adhimoolam

S/o Gopala Gounder, Res at No 318,

Arasamarathu Street,

Thiruvandhipuram, Pathirikuppam,

Cuddalore Taluk 607 401.

6.T.Vignesh

S/o Thiruvarasamoorthy, No 198, South

Street, Sendirakillai, Thatchakasu Post,

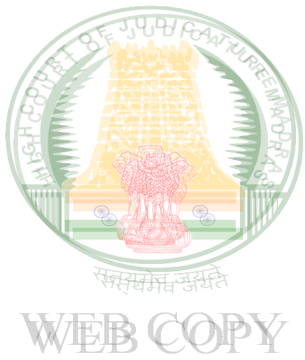
Cuddalore District 608 501.

Respondent(s)

**CMA No. 917 of 2023**

### **PRAYER**

To set aside the Judgement and Decree passed by the tribunal in the above MCOP No.1924 of 2019 on the file of the Motor Accidents Claims Tribunal (1st Additional District and Sessions Judge, FAC) at Cuddalore dated 13.07.2022 and thus render justice.



**CMA No. 917 of 2023**

For Appellant(s): M.Krishnamoorthy

For Respondent(s): M/s. S.C. Vishwanth For R1 To  
R5 R6 - Exparte

**JUDGEMENT**

This Civil Miscellaneous Appeal has been filed to set aside the Judgement and Decree passed by the tribunal in the above MCOP No.1924 of 2019 on the file of the Motor Accidents Claims Tribunal (1 st Additional District and Sessions Judge, FAC) at Cuddalore( in short 'tribunal') dated 13.07.2022.

**2. The brief facts of the case:**

On 03.04.2019 at about 5.45 hours when the deceased was riding his Hero Splendor Motor Cycle bearing registration number TN 31 R 8422 from East to West, at a moderate speed, keeping extreme left opposite to Chetta shop, Pillalithotti, he turned to north after showing proper indicator signals, and at that time, the first respondent's Bajaj Pulsar Motor Cycle Registration number TN91 E 4627 came from East to West, at a great speed in a rash and negligent manner and without making horn and hit against the deceased motor cycle due to which



he sustained fatal injuries. Thereafter, claimant filed MCOP No. 1924 of 2019 before the tribunal claiming Rs.75,00,000/- compensation. On Considering oral and documentary evidence, the tribunal awarded Rs.31,88,000/-. Challenging the quantum of compensation, the insurance company preferred this appeal.

3. The learned counsel for the appellant submits that the tribunal ought to have fixed contributory negligence on the part of the deceased for riding a two wheeler without wearing helmet in contravention of Section 129 of Motor Vehicle Act resulting in sustaining fatal head injuries as evident from Ex.P1/FIR and Ex.P10/Post mortem examination report. So also, excessive award was passed by the tribunal by fixing Rs.20,000/- as monthly income without any proof. Further, he submitted that deceased wife owned separate JCB and Tractor she is having business as there is no loss of income to the family despite the tribunal fixed the compensation. Hence, he prayed to set aside the award.

4. The learned counsel for the claimant/respondent herein submits that they produced the documents before the tribunal which was marked as Ex.P1 to Ex.P16 based on which tribunal fixed Rs. 20,000/- as income. Further, he would submits that JCB and Tractor are stands in the name of his wife but it could be



utilised by her husband alone. Hence, he prays to dismiss this petition.

5. Admittedly, as per the post-mortem report, due to the head injury he was died and travelled without wearing helmet which is contravention to the Section 129 of Motor Vehicle Act. Considering the above, there is a negligence on the part of the deceased. Hence, this Court is inclined to fix 10% contributory negligence on the part of the deceased. The award passed in other heads remains unchanged. Further, the pay and recovery ordered by the tribunal also confirmed.

6. Claimant is entitled to compensation under various head.

| <b>S.No.</b> | <b>Head</b>                         | <b>Compensation awarded by the tribunal</b> | <b>Compensation awarded by this Court</b> |
|--------------|-------------------------------------|---------------------------------------------|-------------------------------------------|
| 1.           | Loss of Income                      | Rs.29,25,000/-                              | Rs.29,25,000/-                            |
| 2.           | Loss of spousal consortium          | Rs.44,000/-                                 | Rs.44,000/-                               |
| 3.           | Loss of Parental consortium         | Rs.88,000/-                                 | Rs.88,000/-                               |
| 4.           | Loss of filial consortium           | Rs.88,000/-                                 | Rs.88,000/-                               |
| 5.           | Funeral expenses and loss of estate | Rs.33,000/-                                 | Rs.33,000/-                               |
| 6.           | Transport charges                   | Rs.10,000/-                                 | Rs.10,000/-                               |
|              | Total                               | Rs.31,88,000/-                              | Rs.31,88,000/-                            |



7. As discussed above, there is a contributory negligence on the part of the deceased. Hence, this Court fix 10% contributory negligence on the part of the deceased. Accordingly, this Court deduct 10% from the total compensation. Thereby, the claimants are entitled to Rs.28,69,200/-. The appellant is directed to deposit a sum of Rs.28,69,200/- to the credit of MCOP No.1924 of 2019 on the file of the Motor Accidents Claims Tribunal (1st Additional District and Sessions Judge, FAC), Cuddalore with interest at the rate of 7.5% per annum from the date of petition till payment within a period of 8 weeks from the date of receipt of copy of this judgment. On such deposit, the claimants are permitted to withdraw the said amount by filing appropriate application before the Tribunal.

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

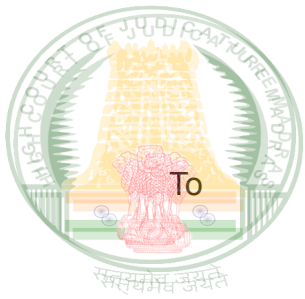
**05-06-2025**

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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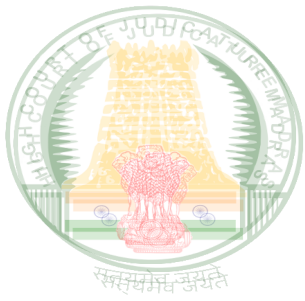
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2. The Section Officer, V. R Section,  
High Court, Madras.

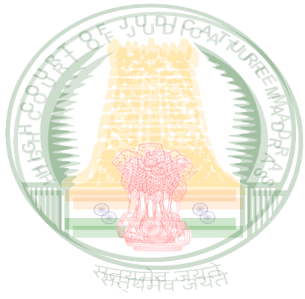
3. The Motor Accidents Claims Tribunal (1 st Additional District and Sessions  
Judge, FAC) at Cuddalore.



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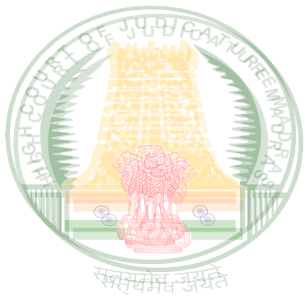
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**T.V.THAMILSELVI J.**  
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