



C.M.A.Nos.3193 & 2384 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2025

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.Nos.3193 & 2384 of 2024
and C.M.P.No.26674 of 2024

C.M.A.No.3193 of 2024

The Manager
National Insurance Company Ltd.,
Motor Third Party Cell (Hub),
No.66, First Floor, Murugesu Naicker Complex,
Greens Naicker Complex, Greens Road,
Chennai – 600 006. ... Appellant

Vs.

1. R.Natchatra Mary,
W/o Late Rathinaswamy,
2. R.Alexander,
S/o Late Rathinaswamy

3. R.Berthin Jose,
S/o Late Rathinaswamy

4. M.Periya Nayagam,
W/o Late Mudiappan

5. SRM Construction,
Office at MS Mangalam,
Kaspa Pettai, Erode,
Erode District - 638115

... Respondents



C.M.A.Nos.3193 & 2384 of 2024

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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act 1988 against the judgment and decree passed in MACTOP.No.72 of 2022 dated 22.04.2024 on the file the Motor Accident Claims Tribunal, 2nd Additional District and Sessions Judge, Tiruvallur at Poonamallee.

For Appellant : Ms.Surekha.N.B.

For Respondents : Mr.Varadhakamaraj

C.M.A.No.2384 of 2024

1.R.Natchatra Mary,
W/o Late Rathinaswamy,
2. R.Alexander,
S/o Late Rathinaswamy

3. R.Berthin Jose,
S/o Late Rathinaswamy

4. M.Periya Nayagam,
W/o Late Mudiyaippan

... Appellants

Vs.

1. SRM Construction,
Office at MS Mangalam,
Kaspa Pettai, Erode,
Erode District - 638115

2. The Manager
National Insurance Company Ltd.,
Motor Third Party Cell (Hub),
No.66, First Floor, Murugesu Naicker Complex,
Greens Naicker Complex,
Greens Road, Chennai – 600 006. ... Respondents



C.M.A.Nos.3193 & 2384 of 2024

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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act 1988 against the judgment and decree passed in MCOP.No.72 of 2022 dated 22.04.2024 on the file the Motor Accident Claims Tribunal,(II Additional District and Sessions Judge), Tiruvallur at Poonamallee, and to enhance the award amount..

For Appellants : Mr.Varadhakamaraj

For Respondents : Ms.Surekha.N.B.
For R2

COMMON JUDGMENT

(Judgment of the Court was delivered by J.Nisha Banu, J)

Feeling aggrieved with the award dated 22,04,2024 passed by the Motor Accident Claims Tribunal, Tiruvallur at Poonamalee (II Additional District and Sessions Judge) in MCOP.No.72/2022, the petitioners/ claimants have preferred the CMA.No.2384/2024, while the respondent No.2/Insurance Company preferred the CMA.No.3193/2024 to set aside the award passed by the Tribunal in the aforesaid O.P.

2. For the sake of convenience, the parties will be referred to as per their array before the Motor Accident Claims Tribunal.



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3. The 1st petitioner is the wife, the 2nd and 3rd petitioners are the sons and 4th petitioner is the mother of M.Rathinaswamy. On 27.02.2022 at about 2.30 a.m., the 1st petitioner's husband M.Rathinaswamy, while riding in TVS Star Motorcycle bearing Registration No.TN-13-W-9115 towards south to north on ECR Road and was approaching Abumandhai Toll Gate, the 1st respondent came in a motorcycle in a rash and negligent manner and hit against the deceased vehicle. In the accident, the 1st petitioner's husband sustained multiple severe head injuries and multiple fractures. Despite treatment, the 1st petitioner's husband died in PIMS Hospital, Pondicherry. The accident had happened only due to the negligent driving of the rider of the 1st respondent vehicle. The 1st respondent is the owner of the motorcycle which dashed the 1st petitioner's husband. The 2nd respondent is the Insurance Company of the 1st respondent vehicle. At the time of accident, the deceased was working as a Head Constable in the Tamil Nadu Police and earned a sum of Rs.68,496/- per month. Hence, the petitioners seek compensation of Rs.2,70,00,000/- from the respondents.

4. Before the Tribunal, the 1st respondent did not choose to contest



the petition. Hence, he was called absent and set exparte.

5. The 2nd respondent filed a counter denying the manner of the accident. Further, it was stated that the 1st petitioner's husband drove the motorcycle without having valid driving license and in an imbalance manner, unmindful of the traffic and fell down due to imbalance darts on the road. The accident occurred due to the rash and negligent driving of the deceased. The deceased alone is the sole reason for the accident. The 1st respondent vehicle bearing Registration No.TN-33-W-4388 was not at all responsible for the accident. The First Information Report against the 1st respondent vehicle has been fabricated with the collusion of Police. The 2nd petitioner who has given police complaint against the 1st respondent vehicle is not an eye witness to the alleged accident. There is no criminal proceedings against the 1st respondent rider. Hence, the respondents are not liable to pay the compensation to the petitioners. Therefore, the 2nd respondent prayed to dismiss the claim petition.

6. In order to prove the case of the petitioners, the 1st petitioner was examined as PW1. One Senthilkumar and Rabert were examined as



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Pws. 2 and 3. Ex.P1 to P.31 were marked. On the side of the respondents, no witness and no document was produced. The Tribunal, based on Ex.P1- First Information Report and the evidence of PW1 came to the conclusion that the accident happened due to the rash and negligent driving of the 1st respondent rider. Further, the Tribunal concluded that since the 1st respondent vehicle was insured with the 2nd respondent on the date of accident, the 2nd respondent is liable to pay the compensation to the petitioners. Accordingly, the Tribunal awarded a compensation of Rs.55,44,900/-.

7. Feeling aggrieved, the petitioners/claimants filed CMA.No.2384/2024 seeking enhancement of compensation and the respondent therein filed CMA.No.3193/2024 questioning the liability and quantum awarded by the Tribunal.

8. Mr.Varadhakamaraj, learned counsel for the claimants would argue that the First Information Report was registered against the 1st respondent rider and P.W.3 was examined as an eye witness to the occurrence. The eye witness coupled with First Information Report



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would clearly prove that the 1st respondent is the reason for the accident.

Further, he would submit that the petitioner was working as a head constable. The Tribunal deducted family pension from the monthly salary and fixed a sum of Rs.52,000/- as the monthly income which is against the settled principles of law. He would submit that the family pension and other allowances given to the Government servant cannot be deducted from the monthly income of the deceased while calculating the compensation. Accordingly, he prayed to allow the CMA and thereby enhance the award amount.

9. In response to the above arguments, Mrs.N.B.Surekha, learned counsel appearing for the respondent/Insurance Company would argue that the accident happened due to the rash and negligent driving of the deceased and hence, the 1st respondent did not cause the accident. As regards the quantum, she would submit that the Tribunal failed to deduct the income from the monthly salary of the deceased. Accordingly, she prayed to allow CMA.No.3193/2024 and set aside the award passed by the Tribunal.



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10. This Court has considered both sides submissions.

11. The Tribunal, based on the ocular evidence of PW3 and based on the First Information Report came to the conclusion that the accident happened due to the rash and negligent of the 1st respondent rider of the motorcycle. The insurance side, neither examined any witness nor produced any document to show that the accident has not happened due to the rash and negligent driving of the 1st respondent rider. The FIR and the evidence of P.W.3 had not been controverted by the respondent. Hence, the Tribunal is right in fixing the liability on the respondent's side. There is no infirmity or irregularity in the said conclusion.

12. As regards the quantum, admittedly, at the time of accident, the deceased was working as Head Constable and earned a sum of Rs.68,496/- as per the salary slip. At the time of the death, the deceased was 48 years old. Hence, the relevant multiplier is 13. Since the deceased was a Government servant in Police Department as per paragraph No.59.3 in *National Insurance Company Limited v. Pranay Sethi and others* reported in **2017(2) TANMAC 609 (SC)**, 30% future prospects



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has to be added in the monthly salary, while calculating compensation.

The Tribunal has deducted a sum of Rs.29,000/- as family pension from the salary and fixed the monthly income of the deceased at Rs.40,000/-.

Accordingly, the Tribunal has calculated the compensation. The question whether the family pension is to be deducted or not while computing the compensation is no more *res integra* in view of the following decisions of the Hon'ble Supreme Court.

(i) The Hon'ble Supreme Court in ***Lal Dei -vs- Himachal Road Transport, reported in (2007) 8 SCC 319***, wherein the Hon'ble Supreme Court, following its decision in ***Helen C. Rebello -vs- Maharashtra SRTC, reported in (1999) 1 SCC 90***, held as follows:

'4. ...The Motor Accidents Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In *Helen C. Rebello v. Maharashtra SRTC* AIR 1998 SC 3191: (1999) 1 SCC 90 this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot



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be deducted while calculating the compensation awarded to the claimants. In view of this, the appeal is allowed. The order of deduction of the family pension is set aside. Accordingly, the Appellants would be entitled for an amount of Rs. 10,27,000 as compensation with interest at the rate of 9% from the date of the filing of the petition.'

(ii) Further, the Hon'ble Supreme Court in ***Vimal Kanwar -vs- Kishore Dan, reported in (2013) 7 SCC 476***, relying on Helen's Case (cited supra), held as follows:

'19. ...The aforesaid issue fell for consideration before this Court in Helen C. Rebello (Mrs) and others vs. Maharashtra State Road Transport Corporation & Anr. reported in (1999) 1 SCC 90. In the said case, this Court held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court:

"35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the



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accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could



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such an amount come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual.” ’

(iii) The Hon'ble Supreme Court in ***Sebastiani Lakra -vs- National Insurance Company Limited***, reported in ***(2019) 17 SCC 465*** has held as follows:

'14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered



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by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.'

(iv) From the above, it is clear that law is well settled that the family pension amount cannot be deducted while computing the compensation to the dependants of the deceased. The Tribunal grossly erred in deducting the family pension in this case.

13. The deceased is an income tax assessee and received taxable income. The Tribunal failed to deduct the income tax while calculating the compensation.

Income Tax slab for financial year 2021-2022

Income tax upto Rs.2,50,000	= Nil
5% income tax for Rs.2,50,000 to 5,00,000	= Rs.12,500/-
20% income tax for Rs.5,00,000 to 10,00,000	= Rs.64,890/-
Total tax on income	= Rs.76,890/-
Add: cess 4%	3,075.60
	<u>Rs.79,965.60</u>



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14. Calculation of Loss of Annual Dependency

<u>Sl.No.</u>	<u>Description</u>	<u>Amount(Rs.)</u>
1.	Monthly income of deceased	68,496.00
2.	Annual income (Monthly Income x 12)	8,21,952.00
3.	Add: Future prospects (30%)	2,46,585.60
4.	Annual income after future prospects	10,68,537.60
5.	Less: Professional tax	(2,500.00)
6.	Total annual income (after professional tax	10,66,037.60
7.	Less: Income tax	(79,965.60)
8.	Net annual income (after tax)	9,86,072
9.	Less: 1/3rd deduction for personal expenses	(3,28,690.66)
10.	Loss of annual dependency	6,57,381.34
11.	Multiplier (Rs.6,57,381.34 x 13)	Rs.85,45,957.42
12.	Loss of dependency	Rs.85,45,957.42

15. Further, we find that the Tribunal had granted only Rs.44,000/- towards loss of consortium, we are of the opinion that a sum of Rs.44,000/- each to the dependents would be fair and reasonable. Accordingly, we fix a sum of Rs.1,76,000/- i.e., Rs.44,000 x 4 towards loss of consortium.



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16. As regards the amount awarded towards loss of estate i.e., Rs.16,500/- and for funeral expenses Rs.16,500/- are concerned, the said sum awarded is proper and therefore, we are not interfering with the same. Further, at the time of accident, the deceased did not possess a valid driving licence to drive the two wheeler which is mandatory as per section 3 of Motor Vehicles Act. Therefore, the Tribunal has rightly deducted 10% of the compensation amount towards contributory negligence.

17. Modified compensation awarded by this Court

<u>Sl.No.</u>	<u>Description</u>	<u>Amount(Rs.)</u>
1.	Loss of Dependency	85,45,957.42
2.	Consortium	1,76,000.00
3.	Loss of Estate	16,500.00
4.	Funeral expenses	16,500.00
Total =		87,54,957.42

After deduction of 10% for contributory negligence = **Rs.78,79,462/-**

18. In the result, C.M.A.No.3193/2024 is dismissed and C.M.A.No.2384/2024 is partly allowed. The award of compensation



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passed by the Tribunal at Rs.55,44,900/- is hereby enhanced to Rs.78,79,462/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.72 of 2022 on the file of the Motor Accident Claims Tribunal, (II Additional District and Sessions Judge), Tiruvallur at Poonamallee. The modified compensation shall be apportioned among the claimants in the same ratio as ordered by the Tribunal. The other directions issued by the Tribunal and the mode of payment of compensation ordered by the Tribunal remain unaltered. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B, J.) (R.S.V., J.)
24.01.2025
(½)

vsi

Note:

Registry is directed to issue



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order copy on 07.02.2025

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To

1. The Motor Accident Claims Tribunal,
II Additional District and Sessions Judge,
Tiruvallur at Poonamallee.
2. The Section Officer, VR Section, High Court,
Chennai



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J. NISHA BANU, J.
and
R. SAKTHIVEL, J.

vsi

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24.01.2025



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