



C.M.A.No.361 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 29.04.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.361 of 2025
and C.M.P.No.2683 of 2025

Chittaya (Since Died)

(The 1st and 2nd Appellants are the legal heirs)

1.Duraisamy

2.Chanthiramathi

... Appellants

*(Cause title accepted vide Court order dated 05.12.2024
made in C.M.P.No.27892/2024 in CMA.SR.No.144433/2024)*

VS.

1.Chellamuthu

2.Kousic & Co. Blue Metals,
SF 561/C2, Kalanthanpalayam,
Kodumudi – Muthur Road,
Pandilingapuram Post,
Karur – 636 151

3.United Insurance Co. Ltd.,
1171, Muthiah Complex,
Mettur Road,
Erode – 638 011

... Respondents



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation awarded in M.C.O.P.No.103 of 2019, dated 23.08.2023 on the file of the learned Special District Judge (To deal with MCOP cases), Erode.

For Appellants : Mr.C.Santhosh Kumar

For R3 : M/s.R.Rathna Thara

For R1 and R2 : Notice Dispensed With

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Special District Judge (To deal with MCOP cases), Erode in M.C.O.P.No.103 of 2019, dated 23.08.2023, the claimants have come by way of this appeal seeking enhancement.

2. According to the appellants/claimants, the husband of the 1st claimant, father of the claimants 2 and 3 namely Muniyappan died in a road



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accident that had occurred on 14.03.2019. According to the claimants, the said Muniyappan was riding his bicycle in Erode to Modakurichi Road from north to south direction on the extreme left side of the road. The lorry bearing Registration No.TN 33 BQ 0747 belonged to the 2nd respondent insured with the 3rd respondent was driven by the 1st respondent in a rash and negligent manner and dashed against the bicycle. As a result of the accident, the deceased sustained fatal injuries and later, died. Therefore, the claim petition was filed seeking compensation of Rs.10,00,000/-.

3. The respondents 1 and 2 remained *exparte* before the Tribunal and claim petition was opposed only by the insurer of the lorry by denying manner of accident as prescribed in the claim petition. The 3rd respondent also denied the age, occupation and income of the deceased.

4. Before the Tribunal, the 2nd claimant was examined as PW.1 and an eye-witness was examined as PW.2 and 17 documents were marked as Exs.P1 to P17 on behalf of the claimants. On behalf of the respondents, no witness was examined and no document was marked.



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5. The Tribunal based on the evidence available on record, came to the conclusion that accident had occurred only due to the rash and negligent driving of lorry by 1st respondent. Accordingly, the liability was fastened on respondents 2 and 3 also who are all the owner and insurer of the lorry. The compensation payable to the claimants was quantified at Rs.6,54,000/-. Not satisfied with the quantum of compensation, the claimants have come before this Court.

6. The learned counsel appearing for the appellants/claimants would submit that the Tribunal fixed very meagre amount of Rs.9,000/- as notional income and the same requires enhancement. The learned counsel also submitted that in order to prove the avocation of the deceased, the claimants have produced the Membership Identity Card issued by Government of Tamil Nadu, Agricultural Labourer – Farmers Social Security and Welfare Scheme in C.M.P.No.2683 of 2025 as additional evidence and if the same is taken into consideration, the Court can fix higher sum as income of the deceased.



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7. The learned counsel appearing for the 3rd respondent-Insurer would submit that claimants have not produced any documentary evidence to prove the avocation and income of the deceased before the Tribunal and hence, the Tribunal was justified in fixing Rs.9,000/- as notional income. The learned counsel also submitted that even if the Membership Identity Card issued by the Government is taken up for consideration, the same will not help the claimants to prove the income of the deceased. Therefore, he prayed for dismissal of the same.

8. Since the claimants failed to produce any documentary evidence, the Tribunal fixed notional income at Rs.9,000/-. In the claim petition, it was stated by the claimants that the deceased was an agricultural coolie and he was earning Rs.15,000/- per month. In order to substantiate the said claim, the claimants have filed C.M.P.No.2683 of 2025 seeking to raise additional evidence.

9. The additional evidence produced by the claimants is the xerox copy of the Membership Identity Card issued by the Government and the same is signed by Special Tahsildar, Social Security Scheme. When a



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specific question was put to the learned counsel appearing for the appellant, how a xerox copy had been filed as additional evidence, the learned counsel produced the original Membership Identity Card before the Court. The original Membership Identity Card produced before the Court is compared with the xerox copy filed along with C.M.P.No.2683 of 2025 and the same is found as true copy of the original Membership Identity Card. Therefore, this Court is inclined to allow the C.M.P.No.2683 of 2025 as it is useful to form an opinion with regard to the avocation of the deceased. The additional evidence namely the xerox copy of the Government Identity Card issued to the deceased is marked as Ex.P18 in this appeal.

10. If Government Identity Card issued to the deceased is taken into consideration, the avocation of the deceased as agricultural coolie stands proved. However, there is no documentary evidence to prove the income of the deceased. Taking into consideration that the agricultural coolies are belonging to unauthorised sector, this Court feels that it would be very difficult to produce the documentary evidence to prove the income of the deceased. Therefore, this Court is inclined to fix notional income by taking into consideration the facts and circumstances of the case.



11. In the case on hand, the accident had occurred in the year 2019.

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Therefore, taking into consideration the date of accident, cost of living and the plea raised by the claimants in the claim petition, this Court is inclined to fix Rs.15,000/- as notional income for the deceased. The Tribunal fixed the age of the deceased at 65 years based on Ex.P9-Aadhaar Card. Therefore, the claimants are not entitled to any enhancement towards future prospects. The applicable multiplier is 7. Since there are three dependents, 1/3rd of the amount shall be deducted towards his personal expenses. Therefore, the loss of dependency is fixed at Rs.8,40,000/- (Rs.15000 x 12 x 7 x 2/3).

12. The Tribunal awarded conventional damages like loss of consortium to 1st claimant, loss of parental consortium to claimants 2 and 3 and funeral expenses and loss of estate as per the law declared by the Apex Court in *National Insurance Company Limited vs. Pranay Sethi and others* reported in (2017) 16 SCC 680. Therefore, they are affirmed. The head loss of parental consortium to claimants 2 and 3 are modified as loss of love and affection.



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WEB COPY 13. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Loss of Dependency	Rs.5,04,000/-	Rs.8,40,000/-	Enhanced
2.	Loss of Consortium to wife	Rs.40,000/-	Rs.40,000/-	Confirmed
3.	Loss of love and affection	Rs.80,000/-	Rs.80,000/-	Confirmed
4.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
Total		Rs.6,54,000/-	Rs.9,90,000/-	Enhanced by Rs.3,36,000/-

14. Therefore, the total compensation payable to the claimants is enhanced to Rs.9,90,000/-. The 3rd Respondent-Insurance Company is directed to deposit the enhanced award amount of Rs.9,90,000/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, to the credit of M.C.O.P.No.103 of 2019 on the file of the Special District Judge (To deal with MCOP cases), Erode, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the claimants are permitted to withdraw the award amount by making formal application before the Tribunal.



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WEB COPY 15. With the above direction, the Civil Miscellaneous Appeal is partly allowed. It is made clear that the claimants are not entitled to claim interest for the delay period of 297 days. Consequently, C.M.P.No.2683 of 2025 seeking to produce additional evidence is allowed. No costs.

29.04.2025

Index :Yes/No
Speaking order :Yes/No
Neutral Citation :Yes/No
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Additional Exhibit marked on the side of the appellants:

Ex.P18 – Xerox Copy of Membership Identity Card issued by the Government of Tamil Nadu, Tamil Nadu Agricultural Labourer – Farmers Social Security and Welfare Scheme 2006.

To

1.The Special District Judge
(To deal with MCOP cases), Erode.

2.United Insurance Co. Ltd.,
1171, Muthiah Complex,
Mettur Road,
Erode – 638 011

3.The Section Officer,
VR Section, High Court,
Madras.

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S.SOUNTHAR, J.

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