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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 1906 of 2025
AND
CMA NO. 346 OF 2025,CMP NO. 2583 OF 2025

1. Geetha
W/o. late.Pannerselvam, D.No.216/5-93, Modern Builders and colony, Fairlands, Salem Dt.

2. Minor. Baranitharan
S/o. late. Pannerslevam, D.No.216/5-93, Modern Builders and colony, Fairlands, Salem Dt.

3. Minor. Gowtham
S/o. Late. pannerselvam, D.No.216/5-93, Modern Builders and colony, Fairlands, Salem Dt.
(Minors are rep by their N.F.G. Mother/Geetha)

4. Alamelu
W/o. Mariappan, D.No.216/5-93, Modern Builders and colony, Fairlands, Salem Dt.

Appellant(s)

Vs

1. Gobibalakrishnan
S/o. natarajan, No.149/1, Venkateshapuram, Salem.

2.United India Insurance Co.Ltd., Ranga Building, No.2, Peramanur Main Road, Near Four Roads, Peramanur, Salem.

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Respondent(s)

CMA No. 346 of 2025

1. United India Insurance Co. Ltd.,
Ranga Building, No.2, Peramanur Main
Road, Near Four Roads, Peramanur,
Salem District.

Appellant(s)

Vs

1. Geetha

2.Minor.Baranitharan
S/o. Late Panneerselvam,
Minors are rep. by their next friend and
guardian - mother Geetha, 216/5-93
Modern Builders and colony Fairlands
Salem

3.Minor. Gowtham
S/o. Late Panneerselvam, Minors are
rep. by their next friend and guardian -
mother Geetha, 216/5-93 Modern
Builders and colony Fairlands Salem

4.Alamelu
216/5-93 Modern Builders and colony
Fairlands Salem

5.Gobi Balakrishnan
No 149/1 Venkateshapuram, Salem

Respondent(s)

CMA No. 1906 of 2025

PRAYER
To enhance the compensation amount made in the fair order dated 01-04-2024 made in MCOP.No.348 of 2022, on the file of the MCOP Tribunal, Spl.Dist.Court, Salem.

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CMA No. 346 of 2025

PRAYER

To set aside the final award dated 01.04.2024, passed in MCOP No.348 of 2022, by the Motor Accidents Claims Tribunal (Special District Court), at Salem.

CMA No. 1906 of 2025

For Appellant(s): Mr.S.P.Yuaraj

For Respondent(s): Mr. J.Michael Visuvasam For R2
Mr.R.Asokan For R1

CMA No. 346 of 2025

For Appellant(s): Mr. J.Michael Visuvasam

For Respondent(s): Mr.S.P.Yuaraj for R1 to R4
Mr.R.Asokan For R5

COMMON JUDGEMENT

Challenging the liability fixed upon the first respondent, whose lorry was insured with the second respondent, the second respondent has preferred the CMA.No.346 of 2025.

2. The learned counsel for the appellant submitted that at the time of the accident, the deceased was riding a two-wheeler without wearing a helmet and had attempted to overtake the lorry on the left side. In doing so, he lost control, and sustained injuries, and subsequently he died. Thus, the accident occurred solely due to his own negligence. The Tribunal failed to consider the aspect of contributory negligence on the part of the deceased and erroneously fixed the entire liability upon the insurance company, which is illegal and liable to be set aside.

3. In support of the above contentions, the learned counsel for the appellant relied upon the Motor Vehicle Inspection Report. As per the said

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report, the two-wheeler ridden by the deceased, sustained damages on the right side, including the right-side front indicator and bumper, indicating that all damages were on the right side of the vehicle. This supports the case of the appellant that the deceased attempted to overtake the lorry from the left side and thereby, contributed to the accident.

4. This Court finds force in the submissions made on behalf of the appellant. Furthermore, it is admitted that the deceased was not wearing a helmet at the time of the accident.

5. However, the learned counsel for the respondents/claimants contended that the deceased was indeed wearing a helmet at the time of the accident. He further submitted that the appellant failed to produce any proof to establish that the deceased died due to head injuries or that he was not wearing a helmet. Considering the facts and circumstances of the case, this Court is inclined to fix 20% contributory negligence upon the deceased. **Accordingly, C.M.A. No. 346 of 2025 is allowed in part.** There shall be no order as to costs.

6. As observed by the Tribunal, at the time of the accident, the lorry did not possess a valid fitness certificate. However, the Tribunal had granted liberty to the Insurance Company to “pay and recover,” which is rightly pointed out by

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the learned counsel for the appellant and is found acceptable. Therefore, the insurance company is directed to pay 80% of the total compensation amount to the claimants, with liberty to recover the same from the owner of the lorry, Gobi Balakrishnan, as per the principle of pay and recovery.

7. In C.M.A. No. 1906 of 2025, the learned counsel for the appellant submitted that the deceased, aged about 36 years, was employed as a Carpenter and he died in the road accident. The Tribunal had erroneously assessed a lower monthly income, contrary to the settled principles, and therefore prayed for enhancement of compensation.

8. PW1, the wife of the deceased, deposed that the deceased was working as a Carpenter, by profession. The accident occurred in the year 2020. Considering the nature of his employment, the age of the deceased, and the year of the accident, this Court is inclined to fix the notional income at Rs.18,000/- per month, with an addition of 40% towards future prospects. Applying the multiplier of 15 and deducting one-fourth towards personal expenses, the loss of dependency is re-calculated accordingly as follows:

<u>Calculation:</u>

Notional Income = Rs.18,000/-
40% Future Prospects = 18,000 + 7,200 = 25,200/-
After 1/4 deduction = 25,200 – 6,300 = Rs.18,900/-

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Loss of dependency
= Rs.18,900 x 12m x 15
= Rs.34,02,000/-

Additionally, the amount awarded by the Tribunal under the heads of loss of consortium is enhanced to Rs.44,000/- and under the head of Funeral expenses, it is reduced to Rs.16,500. Further, this Court is inclined to award a sum of Rs.16,500/- towards loss of estate. In respect of all the other heads, the impugned Award passed by the Tribunal remains unchanged. The contributory negligence of 20% fixed upon the deceased, shall stand confirmed.

9. The following tabular column sets out the amounts awarded by the Tribunal and the enhanced amounts awarded by this Court under various heads:

Sl. No	Heads	Amount (in Rs.) awarded by the Tribunal	Amount (in Rs.) awarded by the High Court
1.	Loss of Income / dependency	13,50,000	34,02,000
2.	Loss of Consortium (spouse)	40,000	44,000
3.	Loss of Love and affection	80,000	80,000
4.	Funeral Expenses	25,000	16,500
5.	Loss of Estate	Nil	16,500
	Total	14,95,000	35,59,000
	Less 20% Contributory negligence		7,11,800
	Total	**14,95,000**	**28,47,200**

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Thus, the compensation awarded by the Tribunal is enhanced from Rs.14,95,000/- to Rs.28,47,200/-, which shall carry interest at the rate of 7.5% per annum.

10. **In the result:**

i. The Civil Miscellaneous Appeal No.1906 of 2025 is partly allowed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

ii. The compensation awarded by the Tribunal is enhanced from Rs.14,95,000/- to Rs.28,47,200/-.

iii. The claimants are directed to pay the Court fee for the enhanced compensation amount, if any. The Registry is directed to draft the decree only after the receipt of the Court fee.

iv. The United India Insurance Company Ltd., Salem, is directed to deposit the enhanced compensation amount, i.e., Rs.28,47,200/- (after deducting the amount already deposited), together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit, to the credit of M.C.O.P. No. 348 of 2022 on the file of the Motor Accident Claims Tribunal / Special District Court, Salem, within a period of eight weeks from the date of

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receipt or uploading of a copy of this order, in the first instance. Thereafter, the Insurance Company is at liberty to recover the same from the owner of the vehicle namely Gobi Balakrishnan, under the same cause of action.

v. On such deposit being made by the Insurance company, the first and fourth claimants are at liberty to withdraw their respective shares as per the apportionment made by the Tribunal. The second and third claimants, who are minors, and represented by their mother / the first claimant, and their respective shares of compensation amount payable to claimants 2 and 3 shall be deposited in any one of the nationalized Banks in India until each of them attains the age of majority. The interest accrued thereon shall be utilized for the welfare of the minor claimants 2 and 3.

vi. The claimants shall not be entitled to claim interest for the period of delay, if any, in filing this appeal.

30-07-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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To

1.Gobibalakrishnan
S/o. natarajan, No.149/1,
Venkateshapuram, Salem.

2.United India Insurance Co.Ltd.,
Ranga Building, No.2, Peramanur Main
Road, Near Four Roads, Peramanur,
Salem.

3.The Motor Accidents Claims Tribunal
(Special District Court), Salem.

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T.V.THAMILSELVI J.
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