



CMA.No.14 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.14 of 2025

M.Elanthenral

...Appellant

Vs.

1. Mathiyalagan

2. M/s. Chola Insurance Company Pvt. Ltd.,
60A, Mosuvanna Street, EVN Road,
Near LKM Hospital, Erode – 638 009.

3. Kiruthika

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.743 of 2017 dated 01.07.2021 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Salem.

For Appellant : Mr.R.Navaneetha Krishnan

For Respondents : Notice dispensed with, for R1
: Mrs.R.Sreevidhya, for R2
: Mr.P.Thirumoorthy, for R3



CMA.No.14 of 2025

WEB COPY

JUDGMENT

Challenging the judgment and decree dated 01.07.2021 made in MCOP.No.743 of 2017 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Salem, the claimant has come up with this appeal.

2. Mrs.R.Sreevidhya, learned counsel takes notice on behalf of the 2nd respondent and Mr.P.Thirumoorthy, learned counsel takes notice on behalf of the 3rd respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal at the admission stage itself.

3. It is the case of the appellant/claimant that, on 10.12.2015 at about 6.30 hours, when the deceased Muthusamy was riding the TVS XL Heavy duty motor cycle bearing Regn.No.TN-52-B-7116 along with his wife namely Rajammal as pillion rider on Nedungulam to Vellerivelli road near Thittumeadu Mariyamman Kovil, at that time a TATA ACE car bearing Regn.No.TN-33-AU-4513 owned by the 1st respondent insured with the 2nd respondent driven by its driver came in a rash and negligent



CMA.No.14 of 2025

WEB COPY

manner and dashed against the Motor cycle in which the deceased were travelling, due to which the deceased sustained grievous injuries and succumbed to the same. Thereby, the appellant, who is the son of the deceased Muthusamy and Rajammal filed a claim petition claiming a compensation of Rs.50,00,000/-. Before the Tribunal, the appellant examined himself as P.W.1 and marked Exhibits P.1 to P.9 and the 3rd respondent/daughter of the deceased examined herself as R.W.1 and marked Ex.R1. After trial, the Tribunal, on appreciation of oral and documentary evidence, awarded a sum of Rs.5,14,000/- towards compensation for the death of his parents, which is very meagre. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has come up with this appeal.

4. Learned counsel for the appellant submitted that the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent vehicle and thereby, Ex.P1, FIR came to be registered as against the driver of the 1st respondent and due to above accident, the petitioner lost his parents and the accident is of the year 2015, however, the tribunal awarded a total compensation of



CMA.No.14 of 2025

WEB COPY

Rs.5,14,000/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be interfered with. Further, the compensation awarded under other heads are also on the lower side and the same needs to be enhanced. Accordingly, he prayed for appropriate orders.

5. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance Company contended that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. On the above said contentions, heard learned counsel appearing on behalf of the 3rd respondent and perused the materials available on record.

7. The factum and manner of the accident is not disputed by the parties and the parties have not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same.



CMA.No.14 of 2025

WEB COPY

8. Insofar as the quantum of compensation fixed by the tribunal in respect of the deceased Muthusamy/father of the appellant is concerned, the accident is of the year 2015 and at the time of accident, the deceased was aged about 67 years and he was an agriculturist by profession, however, the Tribunal has fixed the notional monthly income at Rs.4,000/-, which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459***, and also considering the age of the deceased as also the claimant, fixing a notional income of Rs.12,000/- would be just and reasonable. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.8,000/- per month and the deceased being aged about 67 years, as evidenced from the records, adopting the multiplier of 5 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is arrived at Rs.8,000/- * 12 * 5 = Rs.4,80,000/-.

9. Insofar as the compensation awarded under the other heads are concerned, the tribunal had awarded a compensation of Rs.40,000/-



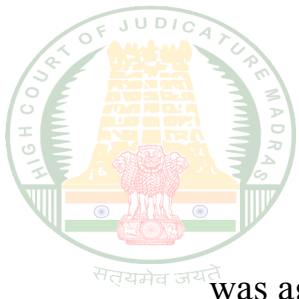
WEB COPY

under the head loss of love and affection, which is on the lower side and thereby, the same is enhanced to Rs.80,000/-, Further, no compensation has been awarded under the heads transport to hospital and loss of estate and thereby, this Court awards a sum of Rs.5,000/- and Rs.15,000/- respectively under the said heads. At the same time, the tribunal has awarded a sum of Rs.25,000/- under the head funeral expenses, which is on the higher side and thereby, the same is reduced to Rs.15,000/-.

10. In the above circumstances, the compensation awarded by the Tribunal in respect of deceased Muthusamy is modified as under :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of income	1,60,000/-	4,80,000/-
Loss of consortium	40,000/-	80,000/-
Transport to hospital	-	5,000/-
Loss of estate	-	15,000/-
Funeral Expenses	25,000/-	15,000/-
Total	2,25,000/-	5,95,000/-

11. Insofar as the quantum of compensation fixed by the tribunal in respect of the deceased Rajammal/mother of the appellant is concerned, the accident is of the year 2015 and at the time of accident, the deceased



CMA.No.14 of 2025

WEB COPY

was aged about 65 years and was doing Milk vending business, however, the Tribunal has fixed the notional monthly income at Rs.5,000/-, which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in *2014 (1) TANMAC 459*, and also considering the age of the deceased as also the claimant, fixing a notional income of Rs.10,000/- would be just and reasonable. Deducting 1/3rd towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.6,666.66/- rounded off to Rs.6,667/- per month and the deceased being aged about 65 years, as evidenced from the records, adopting the multiplier of 7 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in *(2009) 6 SCC 121*, the loss of income to the family is arrived at $\text{Rs.6,667/-} \times 12 \times 7 = \text{Rs.5,60,028/-}$.

12. Insofar as the compensation awarded under the other heads are concerned, the tribunal had awarded a compensation of Rs.40,000/- under the head loss of love and affection, which is on the lower side and thereby, the same is enhanced to Rs.80,000/-, Further, no compensation



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has been awarded under the heads transport to hospital and loss of estate and thereby, this Court awards a sum of Rs.5,000/- and Rs.15,000/- respectively under the said heads. At the same time, the tribunal has awarded a sum of Rs.25,000/- under the head funeral expenses, which is on the higher side and thereby, the same is reduced to Rs.15,000/-.

13. In the above circumstances, the compensation awarded by the Tribunal in respect of deceased Rajammal is modified as under :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of income	2,24,000/-	5,60,028/-
Loss of consortium	40,000/-	80,000/-
Transport to hospital	-	5,000/-
Loss of estate	-	15,000/-
Funeral Expenses	25,000/-	15,000/-
Total	2,89,000/-	6,75,028/-

14. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.743 of 2017 is modified by enhancing the compensation amount from Rs.2,25,000/- to **Rs.5,95,000/-** in respect of deceased Muthusamy and from Rs.2,89,000/- to **Rs.6,75,028/-** in respect of deceased Rajammal.



CMA.No.14 of 2025

WEB COPY

The 2nd respondent Insurance is directed to deposit the said amounts to the credit of MCOP.No.743 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. In the total compensation arrived at by this Court ie., **Rs.12,70,028/-**, the appellant and the 3rd respondent are entitled to a sum of Rs.6,35,014/- each. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant and the 3rd respondent through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. It is underscored that the appellant and the 3rd respondent are not entitled to any interest for the default period, if any. No costs.

10.01.2025

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NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No



WEB COPY



CMA.No.14 of 2025

M.DHANDAPANI, J.

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To:

The Special District Judge,
Motor Accident Claims Tribunal,
Salem.

CMA.No.14 of 2025

10.01.2025