



C.M.A.No.350 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2025

CORAM

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

C.M.A.No.350 of 2023 and C.M.A.No.28 of 2023
and C.M.P.No.2897 of 2023

CMA.No.350 of 2023

The Oriental Insurance Co. Ltd.,
Oriental House, II Floor,
New No.216, Old No.115, Prakasam Salai,
Broadway, Chennai - 600 108.

... Appellant

Vs.

1. M. Poonkodi

2. D. Murugan

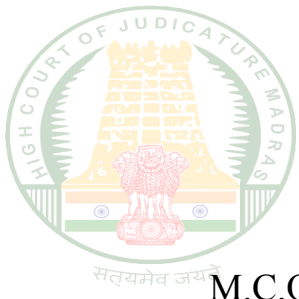
3. M. Sasipriya

4. M. Revathi

5. Dr. M.G.R.Educational Research Insitute,
Periyar EVR Road, N.H. Road,
Maduravoyal, Chennai - 600 095.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award dated 15.06.2022 made in



C.M.A.No.350 of 2023

M.C.O.P.No.3697 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : Ms.Ramya V. Rao
for R1 to R4

C.M.A.No.28 of 2023

1. M. Poonkodi

2. D. Murugan

3. M. Sasipriya

4. M. Revathi

..Appellants

vs

1. Dr. M.G.R.Educational Research Insitute,
Periyar EVR Road, N.H. Road,
Maduravoyal, Chennai - 600 095.

2. The Oriental Insurance Co. Ltd.,
Oriental House, II Floor,
New No.216, Old No.115, Prakasam Salai,
Broadway, Chennai - 600 108.

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award dated 15.06.2022 made in M.C.O.P.No.3697 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai.



WEB COPY



C.M.A.No.350 of 2023

For Appellants : Ms.Ramya V. Rao

For Respondents : Mr.S.Arunkumar
for R2

COMMON JUDGMENT

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

C.M.A.No.350 of 2023 has been filed by the Insurance Company challenging the award dated 15.06.2022 passed by the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai, in M.C.O.P.No.3697 of 2019. C.M.A.No.28 of 2023 has been filed by the claimants seeking enhancement. The Tribunal has awarded a sum of Rs.40,00,240/- as compensation to the claimants for the death of one Dineshkumar, in a road accident that took place on 18.05.2019.

2. The case of the claimants is that on 18.05.2019 at about 16.15 hrs, the deceased was riding a motor cycle bearing Reg.No.TN 76 AA 7431 and proceeding at P.H.Salai Maduravoyal, Opp. to Sony Marble & Granite Shop in left side. At that time, a Water Tank Lorry bearing Reg.No.TN 20 AJ 5671 which was driven by its rider in a rash and negligent manner, tried to overtake the deceased motor cycle and hit the left side hand bar of the motorcycle. Due to which, the rider of the motor cycle fell down on the right side and the lorry ran over the rider of



C.M.A.No.350 of 2023

WEB COPY

the motorcycle and the rider sustained fatal injuries and died on the spot.

The 1st respondent/owner of the lorry and the 2nd respondent/insurer of the lorry, both are jointly and severally liable to pay the compensation.

The claimants claimed a compensation of Rs.80,00,000/- before the Tribunal.

3. The Tribunal has awarded a sum of Rs.40,00,240/- to the claimants along with 7.5% interest from the date of petition till the date of realisation.

4. The Insurance Company has challenged the Award on the ground of negligence and quantum. Learned counsel appearing for the Insurance Company would state that the deceased drove the motor cycle in a rash and negligent manner and tried to over take the lorry and hence, the accident had occurred and hence, the rider equally contributed to the accident. However, the Tribunal failed to consider the same and fixed the negligence on the part of the driver of the water tank lorry. Learned counsel would further state that in the absence of any documents to prove that the deceased was paid Rs.16,800/- as salary per month, the fixation of monthly salary of the deceased as Rs.16,800/- by the Tribunal is erroneous. Learned counsel would further state that the deceased was



C.M.A.No.350 of 2023

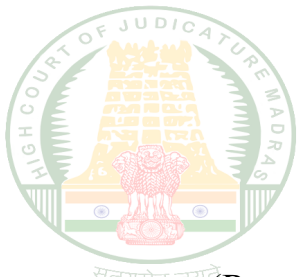
WEB COPY

24 years at the time of accident and a bachelor and therefore, 50% has to be deducted toward personal expenses of the deceased, however, the Tribunal has erroneously deducted 3/4th only. Therefore, he would pray to set aside the award passed by the Tribunal.

5. Per contra, learned counsel for the claimants would state that only based on the oral and documentary evidence, the Tribunal fixed the negligence on the part of the driver of the lorry and no contra evidence was examined to disprove the same. Learned counsel would further state that the deceased was earning a sum of Rs.27,400/- per month, however, the Tribunal has erroneously fixed the month income of the deceased as Rs.16,800/- per month only. He would further state that the deceased was 24 years at the time of accident and there are four dependents. Thus, the deduction of 3/4th from the salary of the deceased made by the Tribunal need not be interfered with. Therefore, he would pray to enhance the compensation.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. The Tribunal, under the impugned award, directed the Insurance Company to pay the claimants, a compensation of Rs.40,00,240/-



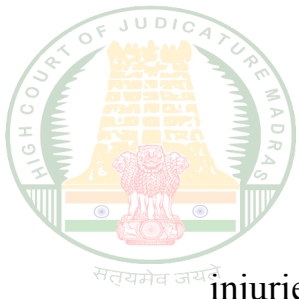
C.M.A.No.350 of 2023

(Rupees Forty Lakhs Two Hundred and Forty only) as detailed
hereunder :

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Loss of income/dependency Rs.23,520x12x18x3/4	38,10,240
Loss of estate	15,000
Loss of consortium (Rs.40,000 each x 4)	1,60,000
Funeral expenses	15,000
Total	40,00,240

8. According to the claimants, the deceased was aged 24 years at the time of accident and was a B.Tech Engineer, completed his graduation in Anna University and was working in JINTECH Engineering Pvt.Ltd., Gunduperumbedu Village, Sirperumbudur Taluk, Kanchipuram District. He is the only son was earning a sum of Rs.27,400/- per month at the time of accident. The claimants/respondents are mother, father and two unmarried sisters respectively.

9. Insofar as the contention of the learned counsel for the appellant with regard to negligence is concerned, a perusal of Ex.P1-First Information Report would prove that the deceased had sustained fatal



C.M.A.No.350 of 2023

WEB COPY

injuries due to the accident. The evidence of PW1, PW2 and the contents in the FIR-Ex.P1 clearly proves that the accident had occurred only due to the rash and negligent driving of the driver of the Lorry. The Tribunal, considering the evidence of PW2 and Ex.P1/F.I.R., fixed the negligence on the part of the driver of the Lorry. We find no error in the said finding of the Tribunal.

10. Further, it is seen from the records, that the take-home salary of the deceased for the month of February, 2019 reflected in the statement dated 08.03.2019 was Rs.27,400/- which included project incentive of Rs.8,400/-. On 11.02.2019, the salary credited is Rs.26,634/- and the net pay for March, 2019 is Rs.18,774/- which is reflected in the statement dated 11.04.2019. Therefore, considering the variations in the salary, the tribunal ought to have fixed Rs.21,000/- as the monthly salary of the deceased instead of Rs.16,800/-. Further, the deceased was aged 24 years and unmarried. Therefore as per the decision of the Hon'ble Apex Court in *Sarala Verma and Pranay Sethi case*, deduction of 50% towards personal expenses would be proper.

11. Therefore, taking the monthly salary as Rs.21,000/- and adding 40% towards future prospects and applying the multiplier 18, as the age



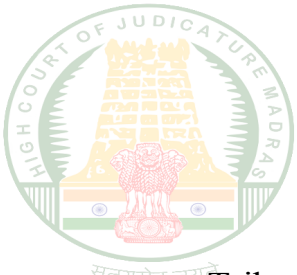
WEB COPY

of the deceased at the time of accident was 24 years and deducting 1/2 towards personal expenses, Rs.31,75,200/- (29,400 x12x18x1/2) is assessed as loss of income/dependency. Accordingly, a sum of Rs.31,75,200/- is awarded under the head of loss of income/dependency, instead of Rs.38,10,240/- as awarded by the Tribunal. Further, We are of the view that the amount awarded under other heads has to be confirmed and accordingly, confirmed.

12. In the light of the above, the compensation awarded by the Tribunal is hereby modified as under:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency (29,400 x12x 18x 1/2)	38,10,240	31,75,200	Reduced
2.	Loss of Estate	15,000	15,000	Confirmed
4.	Loss of consortium	1,60,000 (40,000 x 4)	1,60,000 (40,000 x 4)	Confirmed
5.	Funeral expenses	15,000	15,000	Confirmed
	Total	Rs.40,00,240	Rs.33,65,200/-	Reduced by Rs.6,35,040/-

13. In the result, the C.M.A.No.350 of 2023 is partly allowed and C.M.A.No.28 of 2023 is dismissed. The compensation awarded by the



C.M.A.No.350 of 2023

WEB COPY

Tribunal at Rs.40,00,240/- is hereby reduced to Rs.33,65,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The modified compensation shall be apportioned among the claimants in the same ratio as ordered by the Tribunal. 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.3697 of 2019 on the file of the Motor Accident Claims Tribunal, Chief Judge, Court of Small Causes, Chennai. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs. consequently, connected miscellaneous petition is closed.

(J.N.B, J.) (R.S.V., J.)
07.01.2025

vsi

To

The Motor Accident Claims Tribunal,
Chief Judge, Court of Small Causes, Chennai.



WEB COPY



C.M.A.No.350 of 2023

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

vsi

C.M.A.No.350 of 2023 and
C.M.A.No.28 of 2023

07.01.2025