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CMA No.469 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 07.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.469 of 2025 and
CMP No.3422 of 2025

The Branch Manager,
M/s Cholamandalam MS General
Insurance Company Limited,
Valli Vilas Hospital Campus Inside,
Cuddalore 607 001.

... Appellant

Vs.

1. Padma @ Padmavathi

2. S.Manimegalai

3. M/Akash

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act to set aside the award dated 24.07.2024 passed in MCOP No.1135 of 2022 on the file of the Special District Judge-I, Motor Accident Claim Tribunal, Cuddalore.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Ms.Ramya V Rao for respondents 1 and 2



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JUDGMENT

This appeal has been filed by the insurance company, challenging the award passed by the Tribunal in MCOP No.1135 of 2022, dated 24.07.2024.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. It is the case of the claimants that the son of the first claimant and brother of the second claimant namely Manikandan @ Mani died in a road accident that had taken place on 07.01.2022. According to the claimants, the deceased was travelling as a pillion rider in a motorcycle belonging to the first respondent and insured with the second respondent and the driver of the vehicle had driven the bike in a rash and negligent manner and suddenly applied brake. Therefore, he lost the balance and the driver as well as the deceased fell down. As a result of accident, the deceased received grievous injuries and later died in the hospital. Therefore, the claimants filed a claim petition seeking compensation of Rs.50,00,000/-.



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4. The first respondent, owner of the vehicle remained exparte before the Tribunal and the claim petition was resisted by the appellant/ insurance company by filing the counter mainly on the ground that the death had occurred only due to the failure on the part of the deceased in not wearing the helmet. Age and income of the deceased was also denied in the counter filed by the insurer.

5. Based on the evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the two wheeler by its driver. The amount payable to the claimants was quantified at Rs.33,79,000/-. Aggrieved by the said award, the insurance company has come before this court by filing the present appeal.

6. The learned counsel for the appellant would submit that by his failure to wear the helmet, the deceased himself contributed to his death, however, the Tribunal has not considered the above aspect. He also submitted that the deceased died as a bachelor, however, the Tribunal committed a serious error in deducting only 1/3 amount towards his personal expenses.



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7. A perusal of the counter filed by the second respondent would indicate that there was a specific plea raised by the insurance company regarding failure of the deceased in wearing helmet at the time of accident. However, an eyewitness was examined on the side of the claimants as PW2 and in his proof affidavit, he clearly mentioned that helmet was worn by the deceased at the time of accident and due to the impact of the accident, the said helmet got unlocked and the deceased sustained injury in his head. Though the PW2 was cross examined by the counsel for the insurance company, there was no suggestion put forth to him regarding the failure of the deceased to wear helmet. Therefore, the version of the PW2 in his chief examination remained unchallenged in the cross examination. In such circumstances, this court feels that the deceased had worn the helmet at the time of accident and due to the impact of the accident, helmet got unlocked and he sustained head injuries. Therefore, this court is unable to accept the submission of the learned counsel for the appellant and fix any contributory negligence on the part of the deceased.



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8. According to the claimants, the deceased was a B.Sc. Computer Science Degree holder and he was working in a cell phone shop. Ex.P7 is the provisional certificate issued by the Thiruvalluvar University to the deceased regarding his B.Sc. computer science course. A perusal of the same would indicate that the deceased had passed the Computer Science course in First Class. The accident had occurred in the year 2022. Taking into consideration the date of accident, educational qualification and the prevailing cost of living, this court is inclined to fix a sum of Rs.18,000/- per month as notional income of the deceased as against Rs.17,000/- fixed by the Tribunal. As per Ex.P5 12th Standard Mark Sheet of the deceased, the Tribunal fixed the age of the deceased at 29 years. Therefore, the claimants are entitled to 40% enhancement towards future prospects and the applicable multiplier is '17'. Since the deceased died as a bachelor, 50% shall be deducted towards his personal expenses and hence, the Tribunal was not justified in deducting 1/3 towards personal expenses. Accordingly, loss of dependency is fixed at Rs.25,70,400/- ($18,000 \times 1.4 \times 12 \times 17 \times 1/2$) and to that effect, the compensation awarded by the Tribunal is reduced.



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9. In addition to the above said compensation, the claimants are entitled to Rs.44,000/- each towards loss of filial consortium (first claimant) and loss of love and affection (second claimant). Further the claimants are also entitled to Rs.16,500/- each towards loss of estate and funeral expenses, as per the law settled in the decision of the Apex Court in ***Pranay Sethi Case***. Accordingly, the compensation awarded by the Tribunal under the above said heads are reduced. Further, the amount of Rs.10,000/- awarded towards transportation charges is set aside.

10. Accordingly, the compensation awarded by the Tribunal is modified as under.

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	32,36,868	25,70,400	reduced
2.	Filial consortium & loss of love & affection	96,000	88,000	reduced
3.	Loss of estate	18,000	16,500	reduced
4.	Funeral expenses	18,000	16,500	reduced
5	Transportation charges	10,000	-	set aside
	Total	33,78,868 rounded off to 33,79,000	26,91,400	reduced by 6,87,600



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11. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the total compensation awarded by the Tribunal at Rs.33,79,000/- is hereby reduced to **Rs.26,91,400/-** together with interest at 7.5% per annum, from the date of claim petition till the date of deposit.

12. The appellant is directed to deposit the compensation amount now determined by this court, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment. On such deposit being made, the claimants shall be permitted to withdraw the compensation amount, in the same proportion, as per the apportionment made by the Tribunal, along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal.

There shall be no order as to costs. Connected miscellaneous petition is closed.

07.04.2025

Index:Yes/No
Internet:Yes/No
Neutral citations: Yes/No
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1. The Special District Judge-I,
Motor Accident Claim Tribunal,
Cuddalore.
2. The Section Officer,
V.R.Section, Madras High Court.



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S.SOUNTHAR, J.

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