



C.M.A.No.145 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.01.2025**

CORAM:

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

C.M.A.No.145 of 2025

1.Krishnappa
2.Bagayamma
3.Archana

... Appellants

Vs.

1.M.Thennarasu
2.L.Manivanna Narayanan
3.The Branch Manager,
The Oriental Insurance Company Limited,
AA Bhavanam 1st Street, 1st Floor, No.3/11,
Indian Bank Colony, Narayanapuram,
Madurai – 625 014.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, challenging the order dated 02.11.2023 made in M.C.O.P.No.453 of 2019 on the file of the MACT Tribunal, Additional District Court, Hosur.



C.M.A.No.145 of 2025

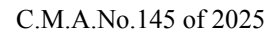
For Appellants : Mr.S.P.Yuaraj

For Respondents : Notice dispensed with [R1 &R2]
Mrs.R.Rathna Thara [R3]

JUDGMENT

The claimants are before this Court seeking an enhancement of the compensation and to fix the entire liability on the 2nd respondent made in order dated 02.11.2023 made in M.C.O.P.No.453 of 2019 on the file of the MACT Tribunal, Additional District Court, Hosur.

2. The appellants/claimants are the father, mother and sister of the deceased Anil Kumar. On 12.05.2019 at about 14.30 hours, when the deceased was riding the two-wheeler Bajaj Pulsar bearing Regn.No.TN-70-AA-8583 along with one pillion rider on Bagalur to Housr Road, at that time, the 1st respondent/driver of the Eicher lorry bearing Regn.No.TN-59-BD-0120 belonging to the 2nd respondent, which was insured with the 3rd respondent coming from Bagalur towards Hosur in front of the two-wheeler and he drove the same in a rash and negligent manner and applied sudden brake, the two-wheeler in which the deceased was travelling hit on the right



3. Before the Tribunal, the claimants examined 4 witnesses viz., P.W.1 to P.W.4 and marked 30 documents viz., Ex.P.1 to Ex.P.30. On the part of the respondents, no witnesses were examined, but marked 3 documents viz., Ex.R.1 to Ex.R.3. After adjudication, the Tribunal partly allowed the petition and awarded a sum of Rs.17,68,576/- as compensation to the claimants after deducting 50% towards contributory negligence. Aggrieved by the same, the claimants/appellants have preferred the present appeal.

4. Learned counsel appearing for the appellants submitted that the accident had happened solely due to the rash and negligent driving of the 1st respondent, for which, the FIR came to be registered as against the 1st



C.M.A.No.145 of 2025

WEB COPY

respondent. Further, he submitted that the accident is of the year 2019 and at the time of accident, the deceased was only aged about 26 years and was working as Junior Executive, Shahi Exports Pvt. Ltd., Bangalore and was earning a sum of Rs.30,255/- per month, however, the Tribunal had fixed a sum of Rs.10,750/- as notional income of the deceased, 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 reconsidered by this Court and the compensation awarded under other heads are also on the lower side and the same needs to be enhanced.

5. Further, he submitted that the Tribunal had fixed 50% contributory negligence on the part of the deceased solely on the ground that, three persons have travelled in the two wheeler in which the deceased was travelling at the time of accident, which is wholly unsustainable and the same is contrary to the decision of the Hon'ble Apex court in the case of ***Mohammed Siddique & Another Vs. National Insurance CO. Ltd., & others*** reported in ***2020 (1) TN MAC 161 (SC) (C.A.No.79 of 2020***



C.M.A.No.145 of 2025

WEB COPY

(SLP.(C).No.9618 of 2018 dated 08.01.2020)) and thereby, the same has to

necessarily be set aside. Accordingly, he prayed for appropriate orders.

6. Per contra, the learned counsel appearing for the 3rd respondent/Insurance Company contended that, at the time of accident, three persons have travelled in the motorcycle in which the deceased Anil Kumar was the rider, which is a clear violation of policy condition and the same is also strictly prohibited under the Motor Vehicles Act. Thereby, the Tribunal, after careful consideration of all the above said facts had rightly fixed 50% contributory negligence on the part of the deceased, and the same does not warrant any interference of this Court. Further, the compensation awarded by the Tribunal is already on the higher side and the same does not require any further enhancement. Accordingly, he prayed for dismissal of this appeal.

7. Heard the learned counsel appearing for the appellants and the



C.M.A.No.145 of 2025

WEB COPY

learned counsel appearing on behalf of the second respondent and perused the materials available on record.

8. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The main issue arises for consideration in this appeal is whether the Tribunal is right in fixing 50% contributory negligence on the part of the deceased on the ground that at the time of accident, three persons have travelled in the two-wheeler is right or not ?

9. In this context, this Court perused the decision of the Hon'ble Apex court in the *Mohammed Siddique's case (Stated supra)* relied upon by the learned counsel for the appellants, wherein the Apex Court has held as follows :-

“13. But the above reason, in our view, is flawed. The fact that the deceased was riding on a Motorcycle along with the Driver and another, may not, by itself, without anything more, make him guilty of contributory negligence and at the most it would make him guilty of being a party to the violation of the law and Section 128 of



C.M.A.No.145 of 2025

WEB COPY

the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeler/motor cycle, not to carry more than one person on the motor cycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked.”

10. In respect of the very same accident, in C.M.A.No.3523 of 2024,



C.M.A.No.145 of 2025

by placing reliance on the above judgment, this Court had considered the entire issue on the question of contributory negligence and had held as under

:

“13. In the case on hand, it is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. Therefore, the finding relating to contributory negligence on account of more than two persons riding in the motor cycle is highly erroneous. Therefore, in the absence of any evidence to show that the wrongful act on the part of the deceased victim contributing either to the accident or to the nature of the injuries sustained, the victim could not have been held guilty of contributory negligence. Hence the reduction of 50% towards contributory negligence, is clearly unjustified and the same deserves to be set aside.

14. In such view of the matter, this Court finds that the contributory negligence of 50% fixed on the deceased is without any proper material and therefore, the same cannot be sustained. Hence, this Court fixes the entire negligence on the part of the 1st respondent/driver of the Eicher lorry and thereby, the 3rd respondent/insurance company is liable to pay the entire compensation in favour of the appellants.”



C.M.A.No.145 of 2025

WEB COPY

11. In the view of the above fact, the above decision is squarely applicable to the case on hand. Accordingly, this Court fixes the entire negligence on the part of the 1st respondent/driver of the offending vehicle belonging to the 2nd respondent and as insurer of the offending vehicle, the 3rd respondent/insurance company is liable to pay the entire compensation in favour of the appellants.

12. Now, coming to the question of quantum of compensation awarded by the Tribunal. In order to prove the income of the deceased, the appellants have filed Ex.P.17, Ex.P.18, Ex.P.28 and Ex.P.29 and claimed that, at the time of accident, the deceased was working as Junior Executive in Shahi Exports Pvt. Ltd. and earned a sum of Rs.24,255/- p.m., however, the Tribunal had fixed the notional income of the deceased at Rs.22,367/-, which is not sustainable, since the appellants have proved the income of the deceased by placing relevant materials before the Tribunal. Hence, the notional income of the deceased is fixed at Rs.24,255/- and by adding future



C.M.A.No.145 of 2025

prospects at 50%, since the deceased had a permanent job at the time of accident, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others*** reported in **2017 (16) Supreme Court Cases 680**, the total income per month is quantified at Rs.36,383/-. Deducting 50% towards the personal expenses of the deceased, since the deceased was a bachelor, the income of the deceased is arrived at Rs.18,192/- per month and the deceased being aged about 26 years, as evidenced from the records, adopting the multiplier of 17 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.18,192/- * 12 * 17 = Rs.37,11,168/-, which is worked out as follows :-

Loss of Income	Amount (in Rs.)
Notional income (Per month)	24,255
Add: Future Prospects (Rs.24,255/- x 50%) (Per month)	12,127.5
Rounded off to	12,128
	36,383



C.M.A.No.145 of 2025

Loss of Income	Amount (in Rs.)
Less: Personal expenses (50%) (Rs.36,383/- x 50%) (Per month)	18,191.5
	18,191.5
Rounded off to	18,192
Notional income (per annum) (Rs.18,192/- x 12)	2,18,304
Multiplier	17
Total	37,11,168

13. Further, the Tribunal had awarded a sum of Rs.80,000/- towards parental consortium; Rs.5,000/- towards transportation; Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. This Court finds that the compensation awarded under the heads parental consortium, funeral expenses and loss of estate are just and reasonable and the same is confirmed.

14. Insofar as the compensation awarded under the head transportation, no compensation can be awarded under such head as the said head can be awarded only in the case of injury, however, the present case is



C.M.A.No.145 of 2025

fatal. Therefore, the compensation awarded under the said head is set aside accordingly.

15. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

S. No.	Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Loss of dependency	34,22,151/-	37,11,168/- (enhanced)
2	Parental consortium	80,000/-	80,000/-
3	Transportation	5,000/-	---
4	Funeral expenses	15,000/-	15,000/-
5	Loss of estate	15,000/-	15,000/-
	Total	35,37,151/-	38,21,168/-
	50% contributory negligence	17,68,576/-	-
	Net compensation	17,68,576/-	38,21,168/-

16. Accordingly, the Civil Miscellaneous Appeal is allowed and the impugned Award of the Tribunal is modified, enhancing the compensation



C.M.A.No.145 of 2025

WEB COPY

amount from **Rs.17,68,576/-** to **Rs.38,21,168/-**. The third respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.453 of 2019 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 eight (8) weeks from the date of receipt of a copy of this judgment. The above modified compensation amount shall be apportioned among the appellants as per the apportionment of the Tribunal. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellants. The appellants/claimants are directed to pay necessary additional Court fee on the enhanced compensation amount. It is made clear that the appellants/claimants will not entitled to any interest for the delay period, if any. No costs.



C.M.A.No.145 of 2025

27.01.2025

WEB COPY

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

sp

To

The Motor Accident Claims Tribunal, Additional District Court, Hosur.



WEB COPY



C.M.A.No.145 of 2025

M.DHANDAPANI,J.,

sp

C.M.A.No.145 of 2025

27.01.2025