



CMA.No.320 of 2025

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 06.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.320 of 2025

1. Sivakodi
2. Nandakumar
3. Nandini

... Appellants

Vs.

1. N.Sivakumar
2. National Insurance Co. Ltd.,
represented by its Deputy Manager,
3rd party claim, HUB, No.9,
Infantry Road, Near Alankar Theatre,
Vellore.
- 3 . K.C.Veeramani
- 4 . The New India Assurance Co. Ltd.,
represented by its Deputy Manager,
3rd party clai, HUB,
Commercial Complex CSI Buildings,
2nd floor, officer's line, Vellore.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to enhance the award amount made in MCOP No.421 of 2018 dated 23.12.2022 on the file of the II Additional Sessions Judge, Vellore @ Tirupattur.



WEB COPY



CMA.No.320 of 2025

For appellants : Mr.F.Terry Chella Raja

For Respondent : Mr.C.Johnson for second respondent

Mr.M.Krishnamoorthy for fourth respondent

JUDGMENT

This appeal has been filed by the claimants seeking enhancement of compensation awarded by the Tribunal.

2. According to the claimants, on 02.10.2018 the husband of the first claimant and father of the claimants 2 and 3, namely Damodaran was on duty as a driver of lorry bearing registration No.TN 83 W 0374 belonging to the third respondent, insured with the fourth respondent. The deceased was driving the lorry carefully and cautiously in the middle lane of the road and at about 4.30 hours on 02.10.2018, when the lorry was nearing Ambur, Kannikapuram Aavin Milk Booth in Chennai-Bangalore High way, the lorry bearing registration No.TN-28-BA-5459 belonging to the first respondent and insured with the second respondent, which was going in front of the lorry driven by the deceased, without following the traffic rules, suddenly changed the lane from the right side and came in the middle lane, just in front of the lorry



CMA.No.320 of 2025

WEB COPY

driven by the deceased. Though the deceased applied sudden brakes, his lorry dashed against the lorry belonging to the first respondent. As a result of the said accident, the deceased received fatal injuries and later he died in hospital. Hence, the claimants filed claim petition seeking compensation of Rs.50,00,000/-.

3. The first respondent, owner of the offending lorry remained exparte. The insurer of the first respondent's lorry, namely the second respondent filed counter and denied the manner of accident, as averred in the claim petition. It was the case of the second respondent that the accident had occurred only due to the negligent driving of the deceased. The second respondent also denied the averments made in the claim petition regarding the age, income of the deceased etc.,

4. The third respondent owner of the lorry driven by the deceased filed counter stating that the driver of the first respondent had driven the lorry in a rash and negligent manner. The fourth respondent, insurer of the third respondent lorry also filed counter and claimed that the accident had occurred only due to the negligence of the driver of the



CMA.No.320 of 2025

WEB COPY

first respondent lorry.

5. Before the Tribunal, the first claimant was examined as PW1 and an eye witness was examined as PW2. An official was examined on behalf of employer of the deceased as PW3. On behalf of the claimants, 14 documents were marked as Ex.P1 to Ex.P14. The Sub Inspector of Ambur Town Police Station was examined as RW1. An official of RTO office, Tiruppathur was examined as RW2 and an official of RTO, Namakkal-North was examined as RW3 and on behalf of the respondents, 14 documents were marked as Ex.R1 to Ex.R14.

6. The Tribunal on the basis of the evidence available on record, came to the conclusion that the deceased also contributed to the accident and fixed 50% negligence on the part of the deceased and the remaining 50% on the part of the driver of the first respondent vehicle. The Tribunal quantified the compensation payable to the claimants at Rs.4,70,600/-, after deducting 50%. Aggrieved by the same, the present appeal has been preferred by the claimants.

7. The learned counsel for the appellants/claimants would submit



CMA.No.320 of 2025

WEB COPY

that the Tribunal without properly appreciating the evidence available on record, erroneously came to the conclusion that the deceased also contributed to the accident and hence, the finding of the Tribunal with regard to the contributory negligence shall be set aside. He further submitted that the notional income at Rs.9,000/- fixed by the Tribunal is very much on lower side and hence, the same shall be increased.

8. The learned counsel for the second respondent / insurance company vehemently contended that the lorry of the first respondent was driven by its driver carefully by following the traffic rules and the deceased, who came from the behind, dashed against the lorry of the first respondent and hence, the Tribunal was justified in fixing 50% contributory negligence on the part of the deceased. The learned counsel further submits that the claimants have not produced any acceptable documentary evidence to prove the income of the deceased and hence, the Tribunal was justified in fixing notional income at Rs.9,000/- per month.

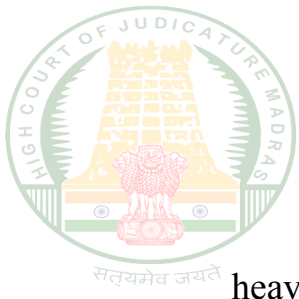
9. In order to prove the negligence on the part of the driver of the



CMA.No.320 of 2025

WEB COPY

first respondent vehicle, the claimants have examined an eyewitness as PW2 and he deposed that the accident had occurred in six lane road and the driver of the first respondent container lorry changed the lane, without signal. The Ex.P1 is an FIR, registered by the police, based on the complaint given by the first claimant's brother. In his complaint, he mentioned that the when deceased was proceeding near Aavin booth U-turn, the accident had occurred. From the evidence of PW2 and Ex.P1, it is clear that the container lorry of the first respondent was proceeding in front of the tipper lorry driven by the deceased. It is also seen from the evidence that the tipper lorry was fully loaded with sand. As per the version of eyewitness and the contents of the FIR, tipper lorry dashed against the back side of the container lorry. The PW1 deposed that the container lorry suddenly changed the lane from left side to right and came in front of the tipper lorry in the middle. The driver of the container lorry has not been examined. In the absence of any contra evidence disputing the version of PW2, it is clear that there is negligence on the part of the container lorry in changing the lane, without proper signal. However, the deceased, who had driven the tipper lorry with the load of sand is expected to drive the fully loaded



CMA.No.320 of 2025

WEB COPY

heavy vehicle with controllable speed. Had he driven the vehicle on optimum speed, on seeing the container lorry changing its lane, he could have applied the brake and averted the accident. Therefore, there is negligent on the part of the deceased also. However, in the light of the clear evidence of PW2 regarding the change of lane by the container lorry belonging to the first respondent, I hold that 60% negligence shall be fixed on the driver of the container lorry and 40% on the deceased. Accordingly, the contributory negligence fixed by the Tribunal on the part of the deceased is reduced to 40%.

10. The Tribunal fixed notional income of the deceased at Rs.9,000/-. The accident had occurred in the year 2018. The claimants had averred in the claim petition that the deceased was employed as a driver in Akalya Transportation Corporation and was earning a sum of Rs.25,000/- per month.

11. The claimants examined the employer of the deceased as PW3 and produced salary certificate Ex.P12 to prove that the deceased received salary of Rs.15,000/- and Rs.23,000/- as allowance. However,



CMA.No.320 of 2025

WEB COPY

the Tribunal rejected those documents as they were not authenticated by any one. Even if there is no acceptable evidence to prove the income, this court can fix notional income by taking into consideration the facts and circumstances of the case and prevailing the cost of living. Accordingly, this court proceeds to fix notional income at Rs.16,500/- per month. Ex.P4 driving licence of the deceased would establish that the deceased was born on 27.12.1969. Therefore, at the time of accident, the deceased was only 49 years old. Hence, as per the law laid down by the Hon'ble Supreme in *National Insurance Company Limited Vs. Pranay Sethi and others reported in AIR 2017 SC 5157(Special Leave Petition (Civil) No.25590 of 2014 dated 31.10.2017)*, the claimants are entitled to 25% enhancement towards future prospects and the applicable multiplier is 13. There were three persons depending on the income of the deceased at the time of accident and hence, 1/3 should be deducted towards his personal expenses. In view of the same, loss of dependency is fixed at Rs.21,45,000/- (16,500 x 1.25 x 12 x 13 x 2/3).

12. The first claimant is wife of the deceased and she is entitled



WEB COPY

to Rs.40,000/- towards loss of consortium and the claimants 2 and 3 being the sons of the deceased also entitled to Rs.40,000/- each towards love and affection. Apart from the above, the claimants are also entitled to Rs.15,000/- each towards loss of estate and funeral expenses.

13. Accordingly, the compensation awarded by the Tribunal is revised 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	8,71,200	21,45,000	enhanced
2.	Loss of consortium to first claimant	40,000	40,000	confirmed
3.	Loss of love affection to the claimants 2 and 3	--	80,000	granted
5.	Loss of estate	15,000	15,000	confirmed
6.	Funeral expenses	15,000	15,000	confirmed
	Total	9,41,200	22,95,000	
	After deducting 40% (Tribunal deducted 50%)	4,70,600	13,77,000	enhanced by 8,99,400

14. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal



CMA.No.320 of 2025

WEB COPY

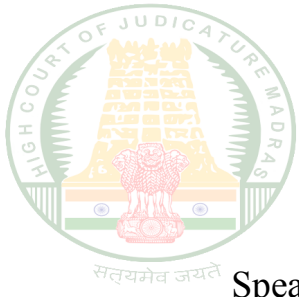
at Rs.4,70,600/- is hereby enhanced to **Rs.13,77,000/-** together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. Connected miscellaneous petition is closed.

15. From the above compensation now determined by this court, the first claimant is entitled to Rs.10,77,000/- and the second and third claimants are entitled to Rs.1,50,000/- each.

16. The second respondent insurance company is directed to deposit the compensation 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. On such deposit, the claimants shall be permitted to withdraw their respective compensation amount along with interest and costs, less the amount if any, already withdrawn by making formal application before the Tribunal. No costs.

06.03.2025

Index : Yes/No



CMA.No.320 of 2025

WEB COPY
Speaking order : Yes/No
Neutral citation : Yes/No
mst

To

1. III Additional Sessions Judge,
Vellore @ Tiruppatur.
2. The Section Officer,
V.R.Section, Madras High Court.



WEB COPY



CMA.No.320 of 2025

S.SOUNTCHAR, J.

mst

CMA No.320 of 2025

06.03.2025