IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.Nos.354 and 430 of 2025

CMA.No.354 of 2025:

1.Saravanakumar

2.Sharathkumar

3.Chikkaramaiah

4.Muniyamma

... Appellants

Vs.

1.Mr.Prakash V.Reddy

2.The Manager,
HDFC ERGO General Insurance Company Limited,
Branch Office, Bye Pass Road,
Near HDFC Bank, Vasanth Nagar,
Hosur Post, Tamil Nadu – 635 109. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment dated 08.12.2023 passed in MCOP.No.608 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For Appellant :Mr.S.P.Yuaraj

For Respondents :Mr.K.Vinod for R2
Notice Dispensed with for R1

CMA.No.430 of 2025:

1.Saravanakumar

2.Sharathkumar

... Appellants

Vs.

1.Mr.Prakash V.Reddy

2.The Manager,
HDFC ERGO General Insurance Company Limited,
Branch Office, Bye Pass Road,
Near HDFC Bank, Vasanth Nagar,
Hosur Post, Tamil Nadu – 635 109. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment dated 08.12.2023 passed in MCOP.No.600 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For Appellant :Mr.S.P.Yuaraj

For Respondents :Mr.K.Vinod for R2
Notice Dispensed with for R1

COMMON JUDGMENT

Not satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, the appellants/claimants have come before this Court by way of these appeals.

2. According to the appellants/claimants, the father of the claimants 1 and 2 and son of the claimants 3 and 4 in C.M.A.No.354 of 2025 namely Munikrishnaiah and mother of the claimants in CMA.No.430 of 2025 namely Santhosh died in a road accident that had occurred on 30.01.2020. According to them, the above said Munikrishnaiah along with his wife Santhosh proceeded in a Bajaj Pulsar Motor Cycle from Bangalore to D.Kothapalli. When they came near 7th day school in between Anthivadi Diversion Road and Kelamangalam Diversion Road, a Tipper lorry belonged to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the motorcycle. As a result of the accident, the deceased persons received fatal injuries on their vital organs and they died on the spot. Therefore, the claim petitions were filed by the claimants seeking compensation for the death of the deceased persons.

3. The first respondent owner of the Tipper lorry remained ex-parte before the Tribunal and the claim petition was contested by the insurer of the lorry/second respondent. It was the case of the Insurance Company that the driver of the Tipper Lorry had driven the vehicle in a careful manner and the accident had occurred due to the negligence on the part of the rider of the motorcycle. Therefore, claiming entire negligence on the part of the deceased viz., Munikrishnaiah, the insurance company sought for dismissal of the claim petitions.

4. Based on the evidence available on record, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Tipper lorry belonged to the first respondent and insured with the second respondent. The compensation amount payable to the claimants in CMA.No.354 of 2025 was quantified at Rs.16,69,400/- and CMA.No.430 of 2025 was quantified at Rs.9,86,850/-. Not satisfied with the quantum of compensation, the claimants have filed these appeals.

5. The Tribunal also fixed 15% contributory negligence on the part of the driver of the motorcycle and deducted 15% from the compensation arrived at on the ground that the driver of the motorcycle namely the deceased Munikrishnaiah did not possess proper driving licence, RC Book and Insurance at the time of accident. Therefore, after deducting the amount towards 15% contributory negligence, the amount payable to the claimants in CMA.Nos.354 and 430 of 2025 were fixed at Rs.16,69,400/- and Rs.9,86,850/- respectively. Aggrieved by the same, the claimants have preferred these appeals.

6. The learned counsel appearing for the appellants/claimants would submit that the driving licence of the deceased viz., Munikrishnaiah was marked as Ex.P15 and the same has not taken into consideration by the Tribunal. The learned counsel further submits that the notional income at Rs.8,000/- and Rs.12,000/- fixed by the Tribunal for deceased Santhosh and Munikrishnaiah are very meagre and the same requires enhancement.

7. The learned counsel appearing for the 2nd respondent/ Insurance Company submits that driving a vehicle without proper driving

licence, RC book and Insurance are serious violation of Motor Vehicles Act and Rules framed thereunder and hence, The Tribunal was justified in fixing contributory negligence at 15%. He further submits that the claimants have not produced any acceptable evidence to prove the income and therefore, the Tribunal was justified in fixing notional income for deceased Munikrishnaiah and Santhosh at the rate of Rs.12,000/- and Rs.8,000/- per month respectively.

8. As far as the failure to produce the valid driving licence is concerned, the same cannot be a ground for fixing contributory negligence on the part of vehicle belonged to deceased persons. The Apex Court in ***Sudhir Kumar Rana vs. Surinder Singh and others*** reported in ***CDJ 2008 SC 862 = (2008) 12 SCC 436***, while considering non-possession of driving license observed as follows:-

> *"9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at*

that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence."

9. The Tribunal fixed contributory negligence on the deceased Munikrishnaiah on the ground that he did not possess valid driving licence. Non-possession of driving licence *per se* is not a ground to fix contributory negligence on the side of deceased persons, when there was no positive evidence on record to suggest their negligence. In the case on hand, the driving licence of the deceased was marked as Ex.P15 through PW.2. A perusal of Ex.P15 would suggest that the same is not readable and by having a look at the documents, we cannot come to the conclusion that the same was issued to the deceased viz., Munikrishnaiah.

10. In view of the law laid down in ***Sudhir Kumar Rana*** case, failure to produce the driving licence *per se* cannot be the sole ground to fix contributory negligence. In the case on hand, there is no positive evidence indicating negligent driving by Munikrishnaiah. Therefore, the Tribunal committed an error in fixing 15% contributory negligence on the deceased Munikrishnaiah and Santhosh. The said findings by the Tribunal is set aside.

11. As far as CMA.No.430 is concerned, the claimants in the claim petition stated that the deceased viz., Santhosh was a tailor and was having a mini flour mill and was earning Rs.30,000/- per month. However, in order to prove avocation and income, the claimants have not produced any documentary evidence. It is stated by the learned counsel for the appellants that the license issued for flour mill has been marked as Ex.P9. A perusal of the same would suggest that the same was issued to Munikrishnaiah and not to Santhosh. Therefore, the said document is not useful to prove avocation of the deceased Santhosh. Even if there is no proof for avocation and income, taking into consideration the facts and circumstances of the case, this Court can fix notional income. In the case on hand, the accident had occurred in the year 2020. Taking into consideration the year of accident and the prevailing cost of living, this Court is inclined to fix Rs.16,500/- as notional income of the deceased. As per Ex.P10-Aadhar Card, the Tribunal fixed the age of the deceased at 46 years. Therefore, the claimants are entitled to 25% enhancement towards future prospects. The applicable multiplier as 13. Since there are two dependants 1/3rd share of the amount to be deducted towards personal expenses.

Therefore, the loss of dependency is Rs.21,45,000/- (Rs.16,500x1.25x12x13x2/3).

12. The Tribunal has awarded 10% enhancement towards conventional damages under the heads loss of consortium, funeral expenses and loss of estate. The date of accident is very well within 3 years from the date of judgement in ***Pranay Sethi*** case on 31.10.2017. Therefore, Rs.40,000/- each to the claimants 1 and 2 is awarded under the head loss of love and affection and Rs.15,000/- each under the heads loss of estate and funeral expenses are awarded.

13. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
1.	Loss of dependency	Rs.10,40,000/-	Rs.21,45,000/-
2.	Loss of Estate	Rs.16,500/-	Rs.15,000/-
3.	Funeral Expenses	Rs.16,500/-	Rs.15,000 /-
4.	Loss of love and affection	Rs.88,000/-	Rs.80,000/-
	Total	Rs.11,61,000/-	Rs.22,55,000/-
	Less:15% contributory negligence	Rs.1,74,150/-	Set aside
	Total	Rs.9,86,850/-	Rs.22,55,000 /-

14. In view of the discussions made earlier, CMA.No.430 of 2025 is allowed and the award amount is enhanced to Rs.22,55,000/-. The second respondent is directed to deposit the above said amount along with interest and costs from the date of filing of claim petition till the date of deposit (excluding the delay period of 236 days as per order in CMP.No.28766 of 2024), less the amount already deposited, if any, into the credit of MCOP.No.600 of 2021 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri, within a period of six weeks from the date of receipt of this judgment. The claimants are permitted to withdraw their respective share, less the amount already withdrawn, if any, by filing a proper application before the Tribunal.

15. In **CMA.No.354 of 2025**, it was stated by the claimants that the deceased was running a provision store and was earning a sum of Rs.40,000/- per month. However, they have not produced any documentary evidence to prove avocation and income. It is settled law, even if there is no evidence available on record to prove the income, this Court can fix notional income by taking into consideration, the facts and circumstances of the case. In the case on hand, the accident had occurred in the year 2020,

therefore, taking into consideration the year of accident and cost of living, this Court is inclined to fix Rs.16,500/- as the notional income for the deceased. The Tribunal fixed the age of the deceased at 49 years. In Ex.P11-post mortem certificate, the age of the deceased was mentioned as 41 years. However, in the Aadhar card of his wife namely, the above said Santhosh, her age has been mentioned as 46. Taking into consideration the age of his wife, the Tribunal fixed age of the deceased Munikrishnaiah at 49 years and the same appears to be reasonable. Hence, it is confirmed. Therefore, the claimants are entitled 25% future prospects. Since there are four dependants, 1/4th of the amount shall be deducted towards his personal expenses. The relevant multiplier is fixed at 13. Hence, the loss of dependency is fixed at Rs.24,13,125/- (Rs.16,500x1.25x12x13x3/4).

16. The Tribunal has awarded 10% enhancement towards conventional damages under the heads loss of estate, funeral expenses and loss of consortium. The date of accident is very well within 3 years from the date of judgement in ***Pranay Sethi*** case on 31.10.2017. Therefore, Rs.15,000/- each under the heads loss of estate and funeral expenses are awarded. The claimants 1 and 2 are entitled to Rs.40,000/- each towards loss of love and affection and the claimants 3 and 4 are entitled to

Rs.40,000/- each towards loss of filial consortium.

17. In view of the discussions made earlier, the award passed by the Tribunal in MCOP.No.608 of 2021 is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
1.	Loss of dependency	Rs.17,55,000/-	Rs.24,13,125/-
2.	Loss of Estate	Rs.16,500/-	Rs.15,000/-
3.	Funeral Expenses	Rs.16,500/-	Rs.15,000 /-
4.	Loss of filial consortium and loss of love and affection	Rs.1,76,000/-	Rs.1,60,000/-
	Total	Rs.19,64,000/-	Rs.26,03,125/-
	Less:15% contributory negligence	Rs.2,94,600/-	Set aside
	Total	Rs.16,69,400/-	Rs.26,03,125/-

18. In view of the discussion made earlier, CMA.No.354 of 2025 is allowed and the award amount is enhanced to Rs.26,03,125/-. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation, (excluding the delay period of 236 days as per order in CMP.No.28766 of 2024) after deducting the

amount already deposited, if any, to the credit of MCOP.No.608 of 2021, on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the award amount less the amount already withdrawn, if any by filing appropriate application before the Tribunal.

19. With the above directions, both the CMA.No.430 of 2025 and CMA.No.354 of 2025 are allowed. No costs. The appellants are directed to pay the additional Court fee for the amount now enhanced by this Court in both the appeals.

29.04.2025

Index : Yes/No
Speaking order:Yes/No
Neutral Citation:Yes/No
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To
1.The Motor Accident Claims Tribunal
Special District Court, Krishnagiri.

2.The Section Officer
VR Section, High Court, Madras.

S.SOUNTHAR, J.

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CMA.Nos.354 and 430 of 2025

29.04.2025