



WEB COPY



CMA.No.366 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 13.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.366 of 2025 and
CMP No.2741 of 2025

The Branch Manager,
The Oriental Insurance Company Limited,
Branch office, 3L, Sithaveerappa Chetti Street,
Dharmapuri Town, Dharmapuri District.

... Appellant

Vs.

1. Jayalakshmi
2. Kanaga
3. Geetha
4. Minor Shalini
minor 4th respondent rep. by her
next friend/mother Jayalakshmi, first respondent

5. Chinnappa
6. Kalaimani

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to set aside the award passed in MCOP No.598 of 2020, dated 20.10.2023 by Principal District Judge, Motor Accident Claims Tribunal, Dharmapuri.



WEB COPY



CMA.No.366 of 2025

For appellant : Mr.M.Krishnamoorthy

For Respondent : Mr.P.M.Jayachandran for respondents 1 to 5

JUDGMENT

This civil miscellaneous appeal is filed by the insurance company, challenging the negligence as well as the quantum of compensation.

2. According to the claimants/respondents 1 to 5, the husband of first claimant, father of claimants 2 to 4 and son of 5th claimant suffered fatal head injury in a road accident that had taken place on 02.11.2019 and subsequently, he died on 03.11.2019. As per the averment made in the claim petition, the deceased was proceeding in a motorcycle bearing registration No.TN 29 L 7062 on Vellichandai-Rayakottai Road and when he approached Jakkasamudram Cross Road, a lorry bearing registration No.TN-46-U-5679 came in the opposite direction in a rash and negligent manner and hit the two wheeler driven by the deceased. As a result of which, the deceased sustained grievous head injury and he was admitted to Government Hospital, Dharmapuri



CMA.No.366 of 2025

WEB COPY

for first aid. Thereafter he was taken to Nimons Hospital, Bangalore and then, the deceased was admitted in Government Hospital, Salem, wherein, he died on 03.11.2019.

3. The claimants filed a claim petition before the Motor Accident Claims Tribunal. The sixth respondent herein, owner of the lorry remained exparte before the Tribunal and the claim petition was contested by the appellant/insurance company, insurer of the lorry. The appellant denied the manner of accident as averred in the claim petition. It was the specific case of the appellant/insurance company that the accident had occurred due to the rash and negligent driving by the deceased. It was also stated that the deceased did not possess valid licence and he did not wear helmet at the time of accident and hence, the deceased also contributed to the accident.

4. Before Tribunal, the first respondent was examined as PW1 and an eyewitness was examined as PW2 and on behalf of the claimants, 13 documents were marked as Ex.P1 to P13. On the side of the respondents, no witness was examined and no document was



CMA.No.366 of 2025

WEB COPY

marked. The Tribunal based on the available evidence, came to the conclusion that the accident had occurred due to the rash and negligence driving of the driver of the lorry, insured with the appellant. The Tribunal fixed notional income of the deceased at Rs.17,000/- per month and applied multiplier '13' relevant to the age of the deceased. Ultimately, the Tribunal concluded that the claimants were entitled to a sum of Rs.27,39,250/- as compensation. Aggrieved by the findings of the Tribunal with regard to the negligence and also quantum of compensation, the appellant/ insurance company has filed the present appeal.

5. The learned counsel for the appellant/ insurance company submits that the deceased sustained head injury during the accident and the death of the deceased had occurred only due to his failure to wear the helmet. Therefore, the deceased also contributed to the cause of death. Hence, he submitted that the Tribunal erred in not fixing any contributory negligence on the part of the deceased. He also submitted that the amount of Rs.17,000/- fixed by the Tribunal towards monthly income of the deceased is on higher side.



CMA.No.366 of 2025

WEB COPY

6. The learned counsel for the respondents/claimants 1 to 5 would submit that based on the evidence of independent eyewitness, viz., PW2, the Tribunal has rightly come to the conclusion that the accident had occurred due to the negligence on the part of the driver of the lorry and hence, the said finding need not be interfered with. He further submits that there is no negligence on the part of the deceased and therefore, the Tribunal was justified in not fixing any contributory negligence on the part of the deceased. He also submits that, as far as the monthly income of the deceased is concerned, the accident had taken place in the year 2019 and therefore, notional income of Rs.17,000/- fixed by the Tribunal is justifiable.

7. In order to prove negligence, an eyewitness was examined as PW2 on the side of the claimants and he clearly deposed that the accident had occurred only due to the rash and negligent driving of the driver of the lorry. The suggestion put to the PW2 regarding negligence on the part of the deceased was denied by him. Therefore, the finding reached by the Tribunal that the accident had taken place due to the rash and negligent driving of the driver of the lorry was

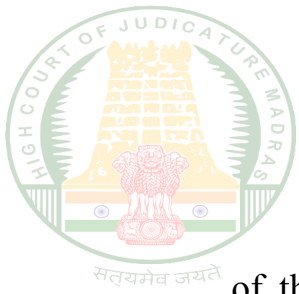


CMA.No.366 of 2025

WEB COPY

based on the evidence of eyewitness to the accident. However, the PW2, in his cross examination, clearly admitted that the deceased did not wear helmet at the time of accident and due to the same he received head injury. A perusal of the Postmortem Certificate, Ex.P2 would reveal that the deceased sustained head injury and he did not wear helmet at the time of accident. Had he worn helmet, probably the fatal accident could have been averted. Therefore, the deceased by his failure to wear helmet, contributed to his death. Therefore, this court feels that it would be appropriate to fix 15% contributory negligence on the part of the deceased for his failure to wear a helmet at the time of accident.

8. In the claim petition, it was averred by the claimants that the deceased was a self employed and he was earning a sum of Rs.30,000/- per month. However, they have not produced any documents to substantiate the monthly income of the deceased. Therefore, taking into consideration the accident had taken place in the year 2019, the Tribunal fixed the monthly income of the deceased at Rs.17,000/-, and the same is reasonable in the facts and circumstances



CMA.No.366 of 2025

WEB COPY

of the case and cost of living. Having regard to the age and other factors, the Tribunal has rightly applied multiplier method and deducted 1/4 amount from the income of the deceased towards personal expenses and also, followed 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)* and included 25% of income towards future prospects. Accordingly, an amount of Rs.24,86,250/- (17,000 + 4250 x 12 x 13 x 3/4) awarded by the Tribunal towards loss of dependency is hereby confirmed.

9. The Tribunal by following the law laid down by the Hon'ble Supreme Court in *Pranay Sethi* case awarded a sum of Rs.44,000/- each towards consortium to the wife; filial consortium to the mother; and love and affection to the three children of the deceased. The Tribunal also awarded a sum of Rs.16,500/- each towards loss of estate and funeral expenses by following the *Pranay Sethi* case stated supra.



CMA.No.366 of 2025

WEB COPY

10. The Tribunal applied 10% enhancement for the amount of consortium, filial consortium and love affection, as specified by the Apex Court in the ***Pranay Sethi case***. But, the above enhancement would apply only to the cases, where the accident had taken place after three years from the date of decision of ***Pranay Sethi case***. In the case on hand, the accident had taken place on 02.11.2019, well within three years from the date of judgment delivered by the Hon'ble Supreme Court in ***Pranay Sethi case*** on 31.10.2017. Therefore, the Tribunal is not justified in enhancing 10% to the compensation awarded under the heads, consortium to wife, filial consortium and love and affection. In view of the above, the amount awarded towards consortium, filial consortium and loss of love affection is reduced to Rs.40,000/- from Rs.44,000/-. Likewise, the compensation of Rs.16,500/- which includes 10% enhancement in Rs.15,000/- awarded by the Tribunal towards Loss of estate and Funeral expenses is also reduced to Rs.15,000/- each.

11. Accordingly, the revised compensation awarded by this Court is tabulated as under:



WEB COPY

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Dependency	24,86,250	24,86,250	confirmed
2.	Loss of consortium (wife)	44,000	40,000	reduced
3.	Loss of love and affection (children)	1,32,000	1,20,000	reduced
4.	Filial consortium to mother	44,000	40,000	reduced
5.	Loss of estate	16,500	15,000	reduced
6.	Funeral expenses	16,500	15,000	reduced
7.	Medical expenses	nil	nil	nil
	Total	27,39,250	27,16,250	reduced
	Less 15% contributory negligence	nil	4,07,437	ordered
		27,39,250	23,08,813	reduced by 4,30,438

12. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.27,39,250/- is hereby **reduced** to **Rs.23,08,813/-**. The claimants are entitled to the said amount together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.



CMA.No.366 of 2025

WEB COPY

13. The first claimant is entitled to Rs.7,08,813/-, the claimants 2 to 4 are entitled to Rs.4,50,000/- each, and the fifth claimant is entitled to Rs.2,50,000/-.

14. The **appellant/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 **four weeks** from the date of receipt of a copy of this judgment. On such deposit, the claimants shall be permitted to withdraw their respective share from the total compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal and satisfying the Tribunal as to the attainment of majority by minor claimant/respondent No.4.

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

13.02.2025

Index:Yes/No
Internet:Yes/No
mst



CMA.No.366 of 2025

WEB COPY

To

1. Principal District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.



WEB COPY



CMA.No.366 of 2025

S.SOUNTHAR, J.

mst

CMA No.366 of 2025

13.02.2025