



C.M.A.No.435 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18.02.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.435 of 2025

1.Fasilath Begum

2.Sanaulla Khan

... Appellants

VS.

1.S.Ganesan

2.The Branch Manager,
The Oriental Insurance Company Limited,
Branch Office, D.No.5/233,
II Gundar Diversion Street,
Narayanapuram, Kamudhi 623 603.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Order dated 27.01.2021 made in M.C.O.P.No.17 of 2020 on the file of the MACT Tribunal, Special District Court, Krishnagiri and to enhance the compensation amount and fix the entire liability on 2nd respondent.

For Appellants : Mr.S.P.Yuaraj

For R2 : Mr.J.Chandran

For R1 : Notice Dispensed With



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J U D G M E N T

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Not satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Special District Court, Krishnagiri, the claimants have come by way of this appeal.

2. It is not in dispute that the father of the claimants aged about 80 years died in a road accident that had taken place on 23.06.2019. According to the claimants, on 23.06.2019 the deceased was travelling in a two wheeler bearing Registration No.TN-70-2540 as a pillion rider. The 2nd claimant rided the two wheeler. When 2nd claimant was proceeding on the left hand side of the road slowly and cautiously by observing all traffic rules, a Ford Car bearing Registration No.TN-63-BA-3372 owned by 1st respondent insured with the 2nd respondent came in the opposite direction in a rash and negligent manner and dashed against the two wheeler driven by the 2nd claimant. As a result of which the deceased sustained fatal injuries and died on the spot. It is claimed by the claimants that the accident had occurred only due to the rash and negligent driving of the car belonging to the 1st respondent insured with the 2nd respondent-Insurance Company.



WEB COPY 3. The 1st respondent remained *exparte* before the Tribunal and the claim petition was opposed by the 2nd respondent mainly on the ground that accident had occurred due to the rash and negligent driving of the two wheeler by the 2nd claimant.

4. Before the Tribunal, the 2nd appellant/2nd claimant was examined as PW.1. On the side of the appellants, 8 documents were marked as Exs.P1 to P8. No one was examined and exhibited on the side of the 1st respondent. One S.Chinnasamy, the Police Officer, was examined as RW.1 and on the side of the 2nd respondent, 4 documents were examined as Exs.R1 to R4.

5. The Tribunal based on the evidence available on record came to the conclusion that the accident had occurred due to the rash and negligent driving of the car owned by the 1st respondent. However, the Tribunal fixed Contributory Negligence of 10% on the part of the driver of the two wheeler on the ground that he did not possess valid driving licence. Ultimately, the Tribunal awarded a sum of Rs.3,00,625/- as compensation to the claimants after deducting 10% towards contributory negligence (Rs.3,34,028 – 10%).



Aggrieved by the same, the claimants have come by way of this appeal.

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6. The learned counsel appearing for the appellants/claimants would submit that the accident had occurred in the year 2019, however, the Tribunal fixed the income of the deceased at Rs.4,000/- per month which is very much on lower side.

7. The learned counsel appearing for the 2nd respondent/Insurance Company would submit that the deceased was aged about 80 years at the time of accident and therefore, the Tribunal was justified in fixing Rs.4,000/- as monthly income of the deceased. He further submitted that the Tribunal committed an error in applying multiplier of 7 instead of 5 as per the law laid down by the Apex Court in *Sarla Verma and others vs. DTC and others* reported in *(2009) 6 SCC 121*.

8. Merely because, the driver of the two wheeler did not possess a valid driving licence, we cannot fix contributory negligence on his part. The contributory negligence can be fastened on the part of the driver only based on the positive evidence available on record. In the case on hand, the 2nd



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claimant, who drove the two wheeler was examined as PW.1 and he deposed about the rash and negligent driving of the car owned by the 1st respondent. However, the driver of the car belonging to the 1st respondent was not examined.

9. Based on the evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to rash and negligent driving of the driver of the car alone. In the absence of any positive evidence to fasten contributory negligence on the part of the driver of the two wheeler of the vehicle, merely because, he did not possess valid driving licence, the Tribunal ought not have fixed 10% contributory negligence on the part of the driver of the two wheeler. Hence, the said finding rendered by the Tribunal is set aside.

10. In the claim petition, it was averred by the claimants that the deceased was Head of Masjid and he was also engaged in seasonal business. However, they have not produced any evidence to prove the avocation or income of the deceased. Even as per their own pleadings, the deceased was engaged as Head of Masjid. It is a matter of common knowledge that in



most of the cases the post of Head of Masjid is a honorary one and the person holding said post will not get any remuneration. In any event, in the case on hand, the claimants have not produced any document to prove that he received a remuneration from the Masjid.

11. Though a plea was raised as if, the deceased was engaged in seasonal business, the claimants have not mentioned the nature of the business in which the deceased was engaged. Hence, the Tribunal taking into consideration the advanced age of the deceased fixed the notional income at Rs.4,000/- per month. However, taking into consideration the date of the accident and the other factors, this Court feels it would be appropriate to fix the notional income of the deceased at Rs.6,000/- per month. As per the law laid down by the Apex Court in ***Sarla Verma and others vs. DTC and others*** reported in ***(2009) 6 SCC 121*** the applicable multiplier is 5 and the Tribunal committed an error in applying multiplier of 7. Therefore, claimants are entitled to Rs.2,40,000/- under the head loss of dependency (Rs.6,000 x 12 x 5 x 2/3). The other amounts awarded by the Tribunal under various heads like loss of consortium, loss of estate and funeral expenses are confirmed. Therefore, the award passed by the Tribunal is modified as



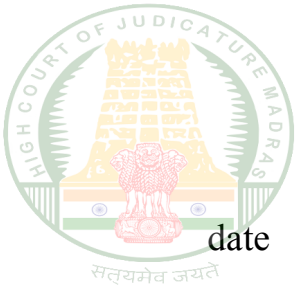
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follows:-

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Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
1.	Loss of Dependency	Rs.2,24,028/-	Rs.2,40,000/-
2.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
3.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
4.	Loss of Consortium	Rs.80,000/-	Rs.80,000/-
	Total	Rs.3,34,028/-	Rs.3,50,000/-
	10% Contributory Negligence	Rs.33,403/-	-
	Total	Rs.3,00,625/-	Rs.3,50,000/-

12. In view of the discussions made earlier, the total compensation awarded by the Tribunal is enhanced to Rs.3,50,000/- as against Rs.3,00,625/- as ordered by the Tribunal. The claimants are not entitled to any interest for the delay period (927 days). The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.3,50,000/- together with interest at the rate of 7.5% per annum from the date of claim petition to the date of realisation (excluding delay period i.e., 927 days), after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.17 of 2020 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri, within a period of four weeks from the



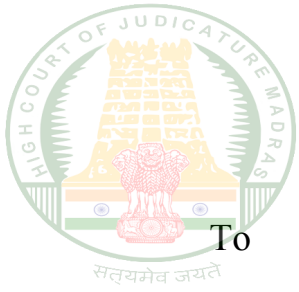
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date of receipt of copy of this judgment. On such deposit, the appellants/claimants are entitled to withdraw the award amount now enhanced by this Court after deducting the amount already withdrawn, if any, by making formal application before the Tribunal.

13. With the above direction, the Civil Miscellaneous Appeal is partly allowed. No costs.

18.02.2025

Index :Yes/No
Speaking order :Yes/No
Neutral Citation :Yes/No
dm



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To

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- 1.The MACT Tribunal,
Special District Court,
Krishnagiri.
- 2.The Branch Manager,
Oriental Insurance Company Limited,
Branch Office, D.No.5/233,
II Gundar Diversion Street,
Narayanapuram, Kamudhi 623 603.
- 3.The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

dm

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