



CMA.No.485 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 04.04.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.485 of 2025

- 1.Gowri
- 2.Deepa
- 3.Ashwini

... Appellants

Vs.

- 1.N.Raju

2.The Divisional Manager,
United India Insurance Company Limited,
Gurgoan, Haryana – 122 001 and Branch at Royakottai Fly Over,
Near HDFC Bank, Krishnagiri.

- 3.Dinesh @ Dinesh Kumar

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to enhance the compensation amount and fix the entire liability on 2nd respondent made in Order dated 13.02.2024, made in MCOP.NO.951 of 2020, on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri by allowing this Civil Miscellaneous Appeal.



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For Appellants :Ms.L.Manisha

For Respondents :Mr.D.Venkatachalam for R2
Notice Dispensed with for R1 and R3
as they remained ex-parte before the
Tribunal

J U D G M E N T

This appeal has been filed by the claimants on the questions of quantum as well as fixation of negligence on the part of the 3rd respondent.

2. It is the case of the claimant that son of the first claimant and brother of the claimants 2 and 3 died in a road accident that had occurred on 15.04.2019. According to them, the deceased was travelling as a pillion rider in TVS-Star City two wheeler driven by his brother. It was stated by the claimants that the driver of TVS-Star City two wheeler had driven the vehicle in a rash and negligent manner and dashed against the TVS-Suzuki motorcycle driven by the 3rd respondent. The first respondent owner of the TVS-Star City and the third respondent/owner of TVS-Suzuki remained ex-parte before the Tribunal and the claim petition was resisted only by second respondent insurer of TVS-Star city motor bike.



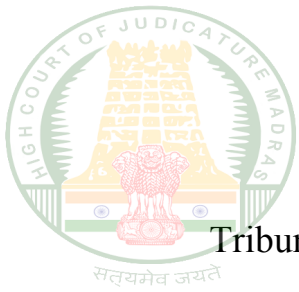
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3. It was the case of the second respondent before the Tribunal that the accident had occurred only due to the negligence on the part of TVS-Suzuki motorcycle. Therefore, it was prayed that the insurer of the TVS-Star city motorcycle [R2], needed to be exonerated.

4. The Tribunal based on evidence available on record came to the conclusion that the accident had occurred only due the rash and negligent driving of the TVS-Suzuki motorcycle by the 3rd respondent. Therefore, the 3rd respondent was directed to pay compensation of Rs.20,69,000/-. Aggrieved by fixation of entire negligence on the part of the 3rd respondent and also quantum of compensation, the claimants have come before this Court.

5. The learned counsel appearing for the appellants vehemently contended that eye witness-Pw2 clearly deposed about the negligence on the part of the first respondent and the same was not properly considered by the Tribunal. Therefore, the Tribunal committed an error in fixation of entire negligence on the part of the 3rd respondent before the Tribunal, owner of TVS Suzuki motor cycle. The learned counsel also submitted that the



Tribunal committed an error in fixing Rs.10,000/- as notional income of the deceased.

6. The learned counsel appearing for the second respondent/Insurance Company would submit that the first respondent, brother of the deceased clearly deposed that entire negligence was on the 3rd respondent and based on his evidence and FIR, the Tribunal rightly fixed entire negligence on the part of the 3rd respondent.

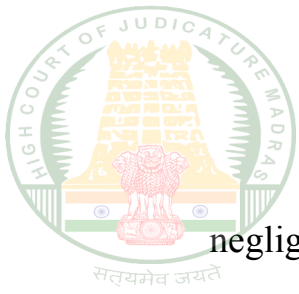
7. It is not in dispute that the deceased travelled in a TVS-Star City two wheeler as pillion rider. The said vehicle was driven by his own brother arrayed as first respondent. Though the first respondent remained ex-parte before the Tribunal, he was examined on summons as RW.3 by the second respondent. In his Chief examination, he deposed that when he was driving TVS-Star City vehicle from Maharajakadai to Varattanapalli Road, the TVS-Suzuki driven by the 3rd respondent came in the opposite direction and both the vehicle dashed against each other. In cross examination suggestion was made by the counsel for the appellant, as if, the accident had occurred only due to his negligence, the said suggestion was categorically denied by him.



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8. Therefore, it is clear, the son of the first claimant and the brother of the deceased deposed before the Tribunal that there was no negligence on his part. Absolutely, there is nothing on the part of the RW.3 to depose against the interest of his own mother who was arrayed as first claimant. It is also seen from the records, after the accident, the first respondent gave the police complaint against the 3rd respondent and based on his complaint, the FIR was registered against the 3rd respondent and the same was marked as Ex.P1.

9. In order to fix the negligence on the part of the 3rd respondent, the claimant examined one eye witness as PW.2. There is no explanation why he had not given any police complaint immediately after the accident. He appears to be a chance witness. When brother of the deceased and son of the 1st claimant appeared as RW.3 and denied suggestion that he was negligent while driving the vehicle, this Court is unable to accept the evidence of PW.2 to fix negligent on the part of the first respondent. Based on the evidence of RW.3, who was a driver of the two wheeler in which the deceased travelled at the time of the accident and the contents of FIR, the Tribunal came to the conclusion that the entire



negligence was on the part of the 3rd respondent. The said finding is based on proper appreciation of evidence available on record and hence it requires no interference.

10. As far as quantum of compensation is concerned, it was stated by the claimant in the claim petition that the deceased was a BSC Chemistry graduate working in a medical shop. The income of the deceased was stated as Rs.25,000/- per month in the claim petition. However, the claimants have not produced any documents to prove his income. In the case on hand, the accident had occurred in the year 2019, therefore, taking into consideration, the date of accident and the cost of living, this Court is inclined to fix Rs.16,500/- as the notional income of the deceased. The age of the deceased was fixed as 26 by the Tribunal based on Ex.P5- Consolidated Grade Card and Ex.P6-Transfer Certificate. Therefore, the claimants are entitled 40% enhancement towards future prospects, the applicable multiplier is 17. Since the deceased died as a bachelor 50% shall be deducted towards the personal expenses. Accordingly, the loss of dependency is fixed at Rs.23,56,200/- $(16,500 \times 1.4 \times 12 \times 17 \times 1/2)$.



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11. The Tribunal granted 10% enhancement towards the conventional damages like loss of estate, funeral expenses, loss of consortium. In this case, the accident had occurred within three years from the date of delivery of judgment in *Pranay Sethi* case which was on 31.10.2017. Therefore, the claimants are not entitled to 10% enhancement. Accordingly, the claimants 1 to 3 are entitled to Rs.40,000/- (each) towards loss of parental consortium and loss of love and affection. In addition to the said amount, they are entitled to Rs.15,000/- (each) towards loss of estate and funeral expenses.

12. 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.19,04,000/-	Rs.23,56,200/-
2.	Loss of income	Rs.16,500/-	Rs.15,000/-
3.	Funeral expenses	Rs.16,500/-	Rs.15,000/-
4.	Loss of parental consortium and love and affection	Rs.1,32,000/-	Rs.1,20,000/-
	Total	Rs.20,69,000/-	Rs.25,06,200/-



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13. In view of the discussions made earlier, the compensation awarded by the Tribunal is enhanced to Rs.25,06,200/-. In the above said amount, the first claimant who is mother of the deceased is entitled to 50% and the claimants 2 and 3 are entitled to 25%(each).

14. The claimants are entitled to 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. On deposit of award amount, the appellants/claimants are permitted to withdraw the said amount by filing appropriate application before the Tribunal. It is made clear, the appellants/claimants are not entitled to claim interest for the delay period 163 days as per the order passed in CMP.No.30115 of 2024, dated 24.01.2025. The appellants are directed to pay an additional court fee for the amount now enhanced by this Court.



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15. With the above directions, the Civil Miscellaneous Appeal

is partly allowed. No costs.

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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.



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S.SOUNTHAR, J.

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