



CMA.No.388 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 25.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.388 of 2025

1. Jayalakshmi
2. Minor Prithima
3. Minor Samritha
4. Minor Dhikshan
5. Minor Dharshan
(appellants 2 to 5 minors are represented by their
mother natural guardian first petitioner)

6. Pushparani

... Appellants

Vs.

- 1.Kasambu
2. National Insurance Company Ltd.,
rep. by its Branch Manager,
having office at No.9, Infantry Road,
next to Alangar Theater, Vellore-1.
3. ICICI Lombard General Insurance Company Ltd.,
rep. by its Divisional Manager,
No.142, ECR Road, Kottupalayam,
Pondicherry

... Respondents



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to enhance the award against the judgment and decree dated 8.11.2023 made in MACTOP No.154 of 2018 on the file of Subordinate Judge, Motor Accident Compensation Claims Tribunal, Gudiyatham, Vellore District.

For appellants : Mr.F.Terry Chella Raja

For Respondents : Mr. S.Senthilkumar, for second respondent
Mr.D.Hari Krishnan for third respondent

JUDGMENT

Not satisfied with the quantum of compensation and challenging the fixation of contributory negligence on the part of the deceased Adhiyaman, the claimants have come before this court by filing the present appeal.

2. The first respondent remained exparte before the Tribunal and hence, notice to him is dispensed with.



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3. It is not in dispute that the husband of the first appellant/ first claimant and father of the claimants 2 to 5 and son of the sixth claimant namely Adhiyaman died in a road accident that had occurred on 06.05.2018. According to the claimants, the deceased was travelling in a two wheeler bearing registration No.TN 23 CX 2840 proceeding from Paradarami to Gudiyattam. When he was nearing Ramapuram Village, a lorry belonging to the first respondent, insured with the second respondent came in the opposite direction in a rash and negligent manner and hit against the two wheeler of the deceased. As a result of which, he sustained fatal injuries and died on the spot. The claimants filed a claim petition before the Tribunal seeking compensation of Rs.40,00,000/-. The Tribunal, based on the evidence available on record, fixed 50% contributory negligence on the part of the deceased and awarded a compensation of Rs.12,82,100. Aggrieved by the fixation of contributory negligence at 50% on the deceased and also quantum of compensation, the claimants have come before this court.



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4. Before the Tribunal, the first respondent/owner of the lorry remained exparte. The second respondent/insurer of the lorry alone resisted the claim petition by denying the manner of accident as narrated in the claim petition. It was the specific case of the second respondent that the accident had occurred due to the negligence on the part of the deceased. It was also stated by the second respondent that FIR was filed against the deceased and after completion of investigation, final report was also filed against the deceased and hence the second respondent sought fixation of contributory negligence on the part of the deceased.

5. Before the Tribunal, the first claimant/wife of the deceased was examined as PW1 and the complainant in the FIR was examined as PW2. Further, one Murugan was examined as RW1 and an official of the second respondent insurance company was examined as RW2 and the official of the third respondent insurance company was examined as RW3. The Sub Inspector of Police, who conducted investigation was examined as RW4. On the side of the claimants 10 documents were marked as Ex.P1 to Ex.P10 and on the side of the respondents, 6



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documents were marked as Ex.R1 to Ex.R6. On appreciation of evidence, the Tribunal fixed 50% contributory negligence on the part of the deceased.

6. The learned counsel for the appellants would submit that the complainant in FIR was examined as PW2 and he clearly deposed that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, belonging to the first respondent. However, the Tribunal, ignoring the evidence of PW2, fixed the contributory negligence at 50% on the part of the deceased. He further submits that the accident had occurred in the year 2018, but the Tribunal fixed notional income only at Rs.12,000/- which is very much on lower side.

7. The learned counsel for the second respondent would submit that the investigation officer was examined as RW4 and he clearly deposed that the accident had occurred only due to the negligence on the part of the deceased. Therefore, by taking into consideration the entire evidence available on record, the Tribunal was justified in fixing 50% contributory negligence on the part of the deceased.



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8. In order to prove the negligence on the part of the driver of the first respondent, the first claimant was examined as PW1, however, she was not an eyewitness to the accident. The informant to the first information report was examined as PW2 and he was an eyewitness to the accident. Though in the FIR it was stated that the accident had occurred due to the negligence on the part of the deceased, in his evidence as PW2, the de-facto complainant clearly deposed that the accident had occurred only due to the rash and negligent driving of the driver of the lorry belonging to the first respondent and insured with the second respondent. He also deposed in his evidence that after enquiry, the police obtained his signature in white blank papers on the promise that the statement made by him would be written in the signed white papers.

9. The learned counsel for the second respondent vehemently contended that the PW2 gave information before the police to the effect that the accident had occurred due to the negligence on the part of the deceased. However, the said stand was rebutted during his evidence as PW2 before the Tribunal. He clearly deposed that the accident had



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occurred only due to the rash and negligent driving of the driver of the lorry. It is well settled law that the statement on oath made by the witness shall prevail over his alleged information to police

10. In order to counter the evidence of PW2, the second respondent/ insurance company failed to examine the driver of the lorry. However, after investigation, final was report filed against the deceased, as seen from the evidence of Investigating Officer and Final Report (Ex.R6) It is seen from the evidence of PW2 that the accident had taken place in a narrow bridge. Taking into consideration the fact that the lorry involved in the accident is a heavy vehicle and the vehicle driven by the deceased is a two wheeler, this court feels that it would be appropriate to fix 75% negligence on the part of the driver of the heavy vehicle namely lorry and 25% negligence on the part of the deceased. Accordingly, the contributory negligence fixed by the Tribunal on the part of the deceased at 50% is reduced to 25%.

11. As far as the quantum of compensation is concerned, the accident had taken place in the year 2018. Though in the claim petition



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it was stated by the claimants that the deceased was running a xerox shop and earning a sum of Rs.15,000/- per month, they have not produced any documentary evidence to prove the avocation and income of the deceased. However, taking into consideration the year of accident and the prevailing cost of living, this court feels that it would be appropriate to fix notional income of the deceased at Rs.15,000/-. The accident had occurred in the year 2018. Hence, as per the law laid down by the Hon'ble Supreme Court 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)***, 40% enhancement should be given towards future prospects. The deceased was aged about 38 years on the date of accident and the same was not disputed by the respondent insurance company. Therefore, the proper multiplier to be adopted in this case is 15. There were six persons depending on the income of the deceased at the time of accident and hence, 1/4 should be deducted towards personal expenses of the deceased. Accordingly, loss of dependency is fixed at Rs.28,35,000/- (15,000 x 1.4 x 12 x 15 x 3/4).



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12. The compensation awarded by the Tribunal towards loss of consortium to the first claimant is confirmed. Further, as per the ratio laid down in *Pranay sethi case* cited supra , the claimants 2 to 5 are entitled to Rs.40,000/- each towards love and affection and hence, the compensation awarded by the Tribunal towards love and affection is enhanced from Rs.60,000/- to Rs.1,60,000/-. Likewise, the sixth claimant is also entitled to Rs.40,000/- towards filial consortium.

13. The amount awarded by the Tribunal under the heads Funeral expenses, loss of estate and transportation charges are confirmed.

14. 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	24,19,200	28,35,000	enhanced
2	Loss of consortium	40,000	40,000	confirmed
3	Love and affection	60,000	1,60,000	enhanced
4.	Loss of Estate	15,000	15,000	confirmed



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5.	Funeral Expenses	15,000	15,000	confirmed
6.	Filial consortium	-	40,000	granted
7	Transportation	15,000	15,000	confirmed
5	Total	25,64,200	31,20,000	5,55,800
	Deduct: contributory negligence	12,82,100	7,80,000	
	Compensation	12,82,100	23,40,000	enhanced by 10,57,900

15. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,82,100/- is hereby enhanced to **Rs.23,40,000/-** together with interest at 7.5% per annum (excluding the delay period of 309 days, as per the order in CMP No221/2025) from the date of petition till the date of deposit.

16. From the above compensation now determined by this court, the first claimant/wife is entitled to Rs.9,40,000/-. The claimants 2 to 5/children are entitled to Rs.3,00,000/- each and the sixth claimant/mother is entitled to Rs.2,00,000/-.



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17. The **second respondent** 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.

18. The first appellant/ first claimant and the sixth claimant/ mother of the deceased shall be permitted to withdraw their respective shares from the total compensation amount along with interest and costs, less the amount if any, already withdrawn, by making formal application before the Tribunal.

19. The claimants 2 to 5 being minors, their respective shares are directed to be invested in anyone of the Nationalized Banks under a Fixed Deposit Scheme **for a period of three years** which shall be renewed periodically until they attain majority and the 1st appellant/first claimant, being the Natural Guardian of the minor claimants 2 to 5, is permitted to withdraw the interest accrued thereon,



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once in three months and the same shall be used for the welfare of the minor children.

There shall be no order as to costs.

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Index:Yes/No
Internet:Yes/No
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To

1. The Subordinate Judge,
Motor Accident Compensation Claims Tribunal,
Gudiyatham, Vellore District.



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S.SOUNTHAR, J.

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