

C.M.A.(MD) No.1043 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.1043 of 2024

and Cross Objection No.48 of 2024

and C.M.P(MD) No.10905 of 2024

C.M.A.No.1043 of 2024

The Branch Manager,
United India Insurance Company Limited,
Nagarcoil,
Agastheeswaram Taluk,
Kanyakumari District.

...Appellant / 2nd Respondent

vs.

1. Ayyappan

2. Siva Anandh

3. Muthu Meena

... Respondents / Claimants

4. Afreen

...Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 27.11.2023 passed in M.C.O.P.No.121 of 2021 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Nagarcoil.



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For Appellant : Mr.I.Robert Chandra Kumar
For R1 to R3 : Mr.S.Ramesh
For R4 : Mr.M.Selva Kumar

CROS OBJECTION (MD) No.48 of 2024

1. Ayyappan
2. Siva Anandh
3. Muthu Meena ... Cross Objectors

vs.

1. United India Insurance Company Limited,
Represented by its Branch Manager,
Nagarcoil,
Agastheeswaram Taluk,
Kanyakumari District.

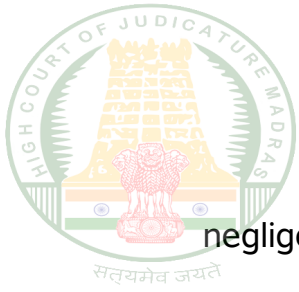
2.Afreen ... Respondents

PRAYER: This Cross Objection is filed under Order 41 Rule 21 of CPC to enhance the compensation.

For Cross Objectors : Mr.S.Ramesh
For 1st Respondent : Mr.I.Robert Chandra Kumar
For 2nd Respondent : Mr.M.Selva Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the insurance company / second respondent against the award dated 27.11.2023 passed in M.C.O.P.No.121 of 2021 by the Motor Accident Claims Tribunal / Principal Sub Court, Nagarcoil on the issue of



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negligence and liability.

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2. Cross Objection (MD) No.48 of 2024 has been filed by the claimants herein for enhancement of compensation.

3. Heard the the learned counsel for the appellant, the learned counsel for the respondents no.1 to 3 / claimants and the learned counsel for the 4th respondent. Perused the relevant records.

4. Claim petition was filed by the claimants herein who are the dependants of the deceased Sundaram under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.41,00,000/- for the death of Sundaram on account of the accident that occurred on 17.07.2019.

5. At trial, to substantiate the claim details, two witnesses were examined and 15 documents were marked. On the side of the respondents, neither any oral evidence let in nor document is marked.

6. Upon consideration, the Tribunal passed an award for sum of Rs.15,85,158/-. The compensation granted by the Tribunal under various heads are given hereunder:



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Sl. No.	Description	Amount awarded by Tribunal
1	For loss of dependency	Rs.1,20,000/-
2	For funeral expenses	Rs.15,000/-
3	For loss of estate	Rs.15,000/-
4	For loss of consortium	Rs.1,20,000/-
5	For Medical Bills	Rs.13,15,158/-
	Total	Rs.15,85,158/-

7. In this case, P.W2 is the only ocular witness. It has come on record through the evidence of P.W2 - Sivaramakrishnan that on 17.07.2019 at about 9.45 a.m., while he was standing in front of photo studio of Sivasakthi and talking with the said Sivasakthi, he saw Tmt.Sundaram Ayyappan of Kulalar Street was coming by walk along the northern side of the road. At that point of time, one Afreen came in a two wheeler in a rash and negligent manner and hit upon the said Tmt.Sundaram from behind. Due to the said impact, Tmt.Sundaram was thrown out and fell on the opposite side and thereafter, he along with said Sivasakthi rushed to the spot and she was sent to the hospital in an ambulance. He came to know that she was in coma stage and she was undergoing treatment and after a year, she succumbed to the injuries. From the cross-examination of P.W2, it is pellucid that the road is not a straight road and it is a east – west road. It is also made clear that while



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she was attempting to cross the road from north to southern direction in the centre of the road the accident occurred.

8. The aforesaid details have been averred in the counter of the 2nd respondent. When a person tries to cross the road, he or she is expected to check both sides and thereafter, one has to cross the road slowly. Of course, the deceased was above 60 years, the Tribunal has observed that while the deceased was crossing road the accident occurred and the 1st respondent could have easily averted the accident. Whether she had a fair chances to avert the accident is not elicited through the cross examination of P.W2. In such a view of the matter, the entire negligence fastened on the 1st respondent is not acceptable. Since because no witness was examined by the respondent side in order to prove the negligence of the deceased Sundaram, the Tribunal concluded that it is because of the 1st respondent rash and negligent driving the accident occurred is also not correct. In the given circumstance, relying upon the evidence of P.W2, contributory negligence at the ratio of 20:80 is fixed upon the deceased Sundaram and the 1st respondent respectively.

9. Whereas in Cross Objection (MD) No.48 of 2024, the claimant herein have filed for enhancement of compensation.



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10. It is the evidence of P.W.1 – Ayyappan that the deceased was an income tax assessee, was hale and healthy, and she was a home maker. It is the evidence of P.W.1 that she was a home maker aged about 66 years and earning a sum of Rs.7,000/- per month, but no details have been given in the claim petition. In this regard, during the cross-examination of P.W1, he would state that she was selling earthen pots. Her income tax return for the year 2017-2018 is Ex.P8 and the annual income is shown as Rs.35,680/-. As regards the income from other sources, namely through rent, no doubt, even after the demise of Smt.Sundaram, the legal heirs would continue to receive the same. As per the details mentioned in Ex.P8, the annual income was fixed at Rs. 36,000/- by the Tribunal cannot be found fault with it. The claimants are three in number. As per the law laid down by the Apex Court in *Sarla Varma and others Vs. Delhi Transport Corporation and others reported in 2009 (2) TN MAC 1 (SC)*, if the claimants are three in number, then 1/3rd has to be deducted for personal and living expenses. As per the medical records, the age of the deceased is fixed as 66 years and as per the above said judgment, the relevant multiplier to be adopted is '5'. For computing loss of dependency, the following formula emerges:

$$\begin{aligned}\text{Loss of dependency} &= (\text{Rs.36,000/-} - 1/3^{\text{rd}} \text{ of Rs.36,000}) \times 5 \\ &= \text{Rs.1,20,000/-}\end{aligned}$$



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11. On conventional heads, for loss of estate, loss of consortium and loss of future expenses, the amounts awarded by the Tribunal appears to be reasonable and hence, it needs no interference. Therefore, the compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For loss of dependency	Rs.1,20,000/-	Rs.1,20,000/-	Confirmed
2	For funeral expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
3	For loss of estate	Rs.15,000/-	Rs.15,000/-	Confirmed
4	For loss of consortium	Rs.1,20,000/-	Rs.1,20,000/-	Confirmed
5	For Medical Bills	Rs.13,15,158/-	Rs.13,15,158/-	Confirmed
	Total	Rs.15,85,158/-	Rs.15,85,158/-	Confirmed
Less 20% towards contributory negligence (Rs.3,17,031/-)			Rs.15,85,158/- – Rs. 3,17,031/- ----- = Rs.12,68,127/- ----- Rounded off to Rs.12,68,000/-	Reduced



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12 . Thus, the compensation awarded by the Tribunal is reduced from Rs.15,85,158/- to Rs.12,68,000/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

(i) In the result, this Civil Miscellaneous Appeal No.1043 of 2024 preferred by the Insurance Company stands partly allowed and Cross-Objection No.48 of 2024 filed by the claimants stands dismissed. There is no order as to costs.

(ii) The Compensation awarded by the Tribunal is reduced from Rs.15,85,158/- to Rs.12,68,000/-.

(iii) The Appellant / Insurance Company is directed to deposit the modified compensation amount i.e.Rs.12,68,000/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of filing of petition till the date of realisation to the credit of M.C.O.P.No.121 of 2021 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Nagarcoil, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the respondents no.1 to 3 / claimants are at liberty to withdraw the same as apportioned by the Tribunal, along with interest and costs, after adjusting the amount, if any



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already withdrawn by filing necessary application before the Tribunal.

Consequently, connected civil miscellaneous petition is closed.

26.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accident Claims Tribunal,
The Principal Sub Court, Nagarcoil.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J.,

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