BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24/10/2025

CORAM

THE HONOURABLE MR JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MRS JUSTICE L.VICTORIA GOWRI

CMA(MD)No.1214 of 2025

1.P.Balasri
2.Minor M.Harineesri
3.Minor M.Srisanmati : Appellants/Claimants 1 to 3
(Minors Appellants 2 and 3 are
rep. By their mother/next friend
1st appellant herein)

Vs.

1.The Proprietor,
R.R.Infraa Construction,
Old No.4C, New No.2, Visalatchipuram,
Madurai-625 014.

2.The Divisional Manager,
United India Insurance Company Ltd.,
Having Office at West Veli Street,
Madurai-625 001. : Respondents 1 and 2/R1 and R2

3.S.Balakrishnan
4.S.Saroja : Respondents 3 and 4/
Claimants 4 and 5

(R1 set exparte in the lower court-
notice dispensed with)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation awarded in MCOP No.668 of 2020, dated 06/02/2024 on the file of the Motor Accident Claims Tribunal/VI Additional District Judge, Madurai and pass such further or other orders.

For Appellant : Mr.K.Ravi

For 1st Respondent : Dispensed with

For 2nd Respondent : Mr.I.Robert Chandrakumar

For R3 and R4 : Mr.P.Ganapathi Subramanian

JUDGMENT

(Judgment of the Court was made by the Hon'ble **P.VELMURUGAN J.**)

This Civil Miscellaneous Appeal is filed seeking enhancement of compensation passed in MCOP No.668 of 2020, dated 06/02/2024 on the file of the Motor Accident Claims Tribunal/IV Additional District Judge, Madurai.

2.**The facts of the case in nutshell**:-

On 30/08/2020 at about 04.15 pm, the deceased was riding his Hero Honda Splendor Plus bearing registration No.TN-60-W-5621 on Madurai-Theni road from east to west. When he was nearing Apollo Pharmacy, a tipper lorry bearing registration No.TN-59-BJ-6719 belonged to the 1st respondent, which was driven by its driver in a rash and negligent manner, dashed against the deceased. Due to it, the deceased was thrown away and sustained severe head injuries. Immediately, he was taken to the Government Rajaji Hospital, Madurai, but he succumbed to injuries on the same day. At the time of the accident, the deceased was aged about 37 years and working as Government Teacher in Tirunagar Elementary School, Madurai District and was earning

Rs.65,000/- per month. The deceased was the sole breadwinner of the family. Seeking compensation of Rs.2,00,00,000/- for the death of the deceased, his legal heirs have filed a claim petition before the Tribunal.

3.The 1st respondent remained *ex-parte* before the Tribunal. The Insurance Company filed their counter disputing the manner of the accident, occupation and income of the deceased and its liability to pay the compensation. It was also contended that the claim is excessive and exorbitant.

4.To substantiate the case, on the side of the claimants, 3 witnesses were examined as PW1 to PW3 and marked 26 documents as Exs.P1 to P26. On the side of the 2nd respondent Insurance Company, one witness was examined as RW1 and one document was marked as Ex.R1.

5.The Tribunal, on consideration of the oral and documentary evidence adduced by the parties, came to the conclusion that the accident occurred due to the negligence on the part of the driver of the offending vehicle as well as the rider of the motor cycle and fixed the negligence at the ratio of 90:10 and after deduction 10% towards contributory negligence on the part of the deceased, has awarded compensation of **Rs.81,11,682/-** together with the interest @ 7.5% per annum and directed the 2nd respondent Insurance Company to pay the said amount to the claimants.

6.Not being satisfied with the award of compensation, the appellants/claimants 1 to 3 have filed the present appeal.

7.The learned Counsel appearing for the appellants would submit that though FIR has been registered against the driver of the Tippler Lorry and after investigation, charge sheet was filed against him, trial Court erred in arriving at 10% of contributory negligence on the part of the deceased solely on the strength of the proof affidavit of the driver of Tipper Lorry involved in the accident and there is no independent witness to show that the deceased was not wearing helmet at the time of the accident and that the deduction of 30% for income tax by the Tribunal is not based on the applicable tax structure. He would further submit that the Tribunal erred in awarding quantum of compensation and failed to award a fair compensation and hence, the award of the Tribunal has to be enhanced and the appeal is to be allowed.

8.Per contra, the learned counsel for the 2nd respondent and respondents 3 and 4 would submit that after considering the materials available on record, the Tribunal has awarded a reasonable compensation, which does not call for any interference of this Court and prayed for dismissal of the appeal.

9.Heard the learned counsel appearing on either side and perused the materials available on record.

10.This appeal is filed challenging the quantum as well as the negligence. It is not in dispute that at the time of the accident, the deceased was 37 years and working as Government Teacher in Tirunagar Elementary School, Madurai District and earned Rs.61,961/- per month, as seen from Ex.P25. By relying upon the said document, the Tribunal has fixed the notional income of the deceased at Rs.61,961/-.

11.It is seen that the deceased was working in a Government School as a Teacher which is coming under the Government job, so, 50% towards future prospects has to be add as per the principles laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Ltd., Vs. Pranay Sethi and others reported in 2017 (16) SCC 680**. As per the said decision, the claimants are entitled to 50% of the income towards future prospects. By adding 50% towards future prospects, the Tribunal has calculated the income of the deceased at **Rs.92,941-50/-** (Rs.61,961/- + Rs.30,980-50/-). Accordingly, the annual income of the deceased is calculated at **Rs.11,15,298/-** (Rs.92,941-50/- x 12). Since no document was produced on the side of claimants for IT return Statement, the Tribunal deducted 30% towards income tax and calculated the annual income of the deceased as Rs.7,80,709/- (Rs.11,15,298/- Less Rs.3,34,589/-), which is not correct. After deducting income tax as per the Income Tax slab, this Court calculated the the annual income of the deceased at

Rs.9,68,209/- (Rs.11,15,298/- - Rs.1,47,089/-). After deducting 1/4th towards personal expenses and by applying multiplier 15, the contribution of the deceased to the family comes **Rs.1,08,92,351/-** (Rs.7,26,156.75/- x 15). The Tribunal awarded each Rs. 40,000/- for spousal consortium, parental consortium and filial consortium, which is contrary to the principles laid down by the Hon'ble Apex Court in the case of ***Magma General Insurance Company Ltd., Vs .Nanu Ram and others*** reported in ***2018(1) TN MAC 452(SC).*** Further the Tribunal has awarded **Rs.15,000/-** towards loss of estate and **Rs.15,000/-** towards funeral expenses and the same is confirmed.

12.It is seen that the Tribunal fixed contributory negligence at 10% on the part of the deceased for the reasons that he was not wearing the helmet at the time of the accident. On a perusal of the records, this Court is of the opinion that for non-wearing of helmet, negligence can be fixed at 5% as at the time of the accident, the deceased was not wearing helmet. Hence, this Court fixes **5%** negligence on the part of the deceased. Accordingly, the compensation awarded by the Tribunal is re-calculated as under:-

Head	Amount awarded by the Tribunal	Re-qauntified Amount by this Court	Status
Loss of dependency	87,82,980/-	1,08,92,351/-	Enhanced

Spouse Consortium	40,000/-	40,000/-	Confirmed
Parental Consortium	80,000/-	80,000/-	Confirmed
Filial Consortium	80,000/-	80,000/-	Confirmed
Funeral expenses	15,000/-	15,000/-	Confirmed
Loss of estate	15,000/-	15,000/-	Confirmed
Total	**90,12,980/-**	**1,11,22,351/-**	
90% compensation	**81,11,682/-**	**-**	
95% compensation	**-**	**1,05,66,233/-**	modified

13.Since, this Court fixed 5% negligence on the part of the deceased, the claimants are entitled to **Rs.1,05,66,233/-** (Rs.1,11,22,351/- Less Rs.5,56,118/-)

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14.In such view of the matter, this Civil Miscellaneous Appeal is **partly allowed** and award amount is enhanced to **Rs.1,05,66,233/-** from Rs.81,11,682/-. The 2nd Insurance Company is directed to deposit the modified amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order On such compliance, the major claimants namely 1st appellant and the respondents 3 and 4 herein are permitted to withdraw their share as apportioned by the Tribunal with accrued interests and costs, less already withdrawn. The share of the minor appellants 2 and 3- minor claimants shall be deposited in any one of the Nationalized Banks in a fixed deposit scheme, till they attain majority.

The first appellant/1st claimant being the mother and natural guardian of the minor claimants is entitled to withdraw the interest accrued on the fixed deposit once in three months for the welfare of the minor. The Claimants are directed to pay necessary court fees for the enhanced amount. No costs.

(P.V.,J) **(L.V.G.,J)**
24/10/2025

Index:Yes/No
Internet:Yes/No

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To,

1.The Motor Accident Claims Tribunal,
Special District Judge, Thanjavur.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madura.

P.VELMURUGAN,J.
and
L.VICTORIA GOWRI,J.
vsg

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