



C.M.A.(MD).No.1430 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

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1.Malathy
2.Sugumar
3.Mohana Sundaram
4.Minor Sudhakar
(Minor Represented by his mother
and Natural Guardian the
1st petitioner Malathy)
5.Visalakshi ... Appellants / Petitioners

vs.

1.Senthilkumar
2.Divisional Manager,
United India Insurance Company Ltd.,
Gandhiji Road, L.I.C., Building Complex,
Thanjavur. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 08.09.2021 passed in M.C.O.P.No.495 of 2019 on the file of Motor Accident Claims Tribunal / II Additional District Judge, Thanjavur.

For Appellants : Mr.K.Kumaravel

For 2nd Respondent : Mr.A.S.Mathiyalagan

JUDGMENT



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Aggrieved by the order of dismissal dated 08.09.2021, passed in M.C.O.P.No.495 of 2019 on the file of Motor Accident Claims Tribunal / II Additional District Judge, Thanjavur, the claimants herein, who are the legal heirs of the deceased Mathialagan have preferred this Civil Miscellaneous Appeal.

2. Despite receipt of notice, the 1st respondent neither appeared nor entered through his counsel.

3. Case as set out in the claim petition is given hereunder:

On 28.09.2018 at about 6.15 p.m., while the husband of the 1st claimant herein was proceeding in his motor cycle bearing Reg.No.TN-49-AD-9426 along Tanjore-Nagapattinam National Highways from west to east with pillion Murugan, Kuchipalayam road, near one Saravanan's residence the said Mathialagan hit upon Tata Ace vehicle (Reg.No.TN-45-BC-1976) which was stationed in the no parking area without any indicator lights on, from behind. Due to the said impact, the said Mathialagan suffered injuries on his chest and he died on 08.10.2018 in the hospital. The accident occurred as the Tata Ace Vehicle was left on the National



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Highway in a rash and negligent manner without any indicator lights on and therefore, the owner of the vehicle/1st respondent and the insurer/2nd respondent are liable to pay compensation to the claimants herein.

4. Per contra, it was contended by the 2nd respondent/Insurance Company that the accident did not occur as narrated in the claim petition. The claimants are put to strict proof of age, income and avocation.

5. At trial on the claimants' side, two witnesses have been examined and 15 documents have been marked. The 2nd respondent/Insurance Company side, staff of Insurance Company has been examined and 5 documents have been marked.

6. PW1 is the wife of the deceased. One Murugan was riding as pillion along with the deceased, on the date of accident, has been examined as PW2. It has come on record through the testimony of PW2 that on 28.09.2018, at about 6.15 p.m., while deceased Mathialagan was proceeding in his motor cycle (Reg.No.TN-49-AD-9426) with him along Tanjore-Nagapattinam National Highway



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proceeding from west to eastern side after crossing Kuchipalayam diversion road, when they were going nearby one Saravanan's residence, a Tata Ace vehicle (Reg.No.TN-45-BC-1976) was stationed in no parking area in the middle of the highway road without any indicator lights on, with a load of centering wooden planks and iron pipes. As the vehicle was left in the middle of the road, the rider of the two wheeler Mathialagan hit upon the Tata Ace lorry from behind and he suffered serious injuries and succumbed to the same on 08.10.2018. During cross-examination of PW2, he was posed a question to the effect that he gave a statement to the police that the deceased Mathialagan rode the motor cycle at a high speed and by overtaking a car, he hit on the rear side of the four wheeler which was left due to tyre puncture was answered in negative.

7. No ocular witness was examined on the side of the respondent. From the testimony of PW2, it is pellucid that as the Tata Ace vehicle was stationed on the road without any indicator lights on and therefore, this Court is of the considered view that due to the negligence of the driver of the 1st respondent's vehicle, the accident has occurred. The deceased has also contributed to the



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accident to some extent. In order to meet the ends of justice, relying upon the testimony of PW2, contributory negligence is fixed on the deceased at 25%.

8. FIR is not a substantive piece of evidence. But, it could be used for the purpose of contradiction and corroboration. The statement given on oath by PW2 gets precedence of the FIR. No question was posed by the 2nd respondent side during the cross examination about the parking lights or at the minimum, no question was posed to the effect that the vehicle was stationed with indicators.

9. It is the testimony of PW1 who is the wife of the deceased Mathialagan that her husband was doing centering work and earning a sum of Rs.30,000/- p.m. Date of accident is 28.09.2018. As no document is marked to substantiate the said details, income of the deceased is safely fixed at Rs.15,000/- p.m. In Ex.P2 - Post Mortem Certificate, age of the deceased is mentioned as 45. Therefore, based on the available evidence, age of the deceased is fixed as 45 years.



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10. The Hon'ble Supreme Court has standardised the Future Prospects while computing the income in ***National Insurance Co. Ltd., v. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, for persons who are in the age group between 40 to 50 years, 25% has to be added as future prospects with the income.

11. As per the law laid down by the Hon'ble Supreme Court in ***Smt.Sarla Verma & Ors., v. Delhi Transport Corporation & Another*** reported in ***2009 (2) TN MAC 1 (SC)***, deduction for personal and living expenses as the claimants are 5 in number $1/4^{\text{th}}$ has to be deducted and the relevant multiplier to be selected is 14m. Therefore, the loss of dependency is computed as given hereunder:

$$\text{Rs.15000/-} + 25\% - 1/4 \times 12 \times 14 = \text{Rs.23,62,416/-}$$

12. As per the law laid down by the Hon'ble Supreme Court in ***National Insurance Co. Ltd., v. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, for loss of consortium, as claimants are five in number an amount of Rs.2,00,000/- (Rs.40,000/- each) is granted. For loss of Estate, an amount of Rs.15,000/- is granted. For



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Funeral Expenses an amount of Rs.15,000/- is granted. Thus, the Compensation is tabulated below:

Sl. No	Description	Amount awarded by this Court
1	For Loss of Dependency	Rs.23,62,416/-
2	For Loss of Consortium	Rs. 2,00,000/-
3	For Funeral Expenses	Rs. 15,000/-
4	For Loss of Estate	Rs. 15,000/-
		Rs.25,92,416/-
	Less 25% - Contributory Negligence	Rs. 6,48,104/-
	Total	Rs.19,44,312/-

13. Thus, the compensation is awarded by this Court for a sum of **Rs.19,44,312/-** which would carry interest at the rate of 7.5% per annum.

14. In the result,

- (i) The Civil Miscellaneous Appeal is allowed. No costs.
- (ii) The compensation is awarded for a sum of **Rs.19,44,312/-**.
- (iii) The 2nd respondent / Insurance Company is directed to



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deposit the compensation amount now determined by this Court i.e.,

Rs.19,44,312/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit (except default period) to the credit of M.C.O.P.No.495 of 2019 on the file of Motor Accident Claims Tribunal / II Additional District Judge, Thanjavur, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the 1st appellant/1st claimant is permitted to withdraw the Rs.13,94,312/- and the Appellants 2,3 and 4 /Claimants 2,3 and 4 are permitted to withdraw Rs.1,50,000/- and the 5th appellant/5th claimant is permitted to withdraw Rs. 1,00,000/- along with interest and costs, by making necessary cheque application before the Tribunal. The appellants/claimants are directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimants.

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Index : Yes/No
Speaking / Non-speaking order
ssn



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To:

1. The Motor Accident Claims Tribunal,
II Additional District Judge, Thanjavur.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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