



C.M.A(MD)No.927 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 29.08.2023

PRONOUNCED ON: 12 .09.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**C.M.A(MD)No.927 of 2025
and
C.M.P.(MD)No.14055 of 2025**

The Branch Manager,
Cholamandalam M/s General Insurance
Company Ltd.,
No.35/1, Vadakkuratha Veethi,
Sangarankovil,
Tirunelveli District – 627 756. : Appellant/2nd Respondent

Vs.

1.Palani : 1st Respondent/1st Petitioner
2.Selvi : 2nd Respondent/2nd Petitioner
3.Karpagaraja : 3rd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the order made in M.C.O.P.NO.1851 of 2019, dated 05.09.2023, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Madurai.



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C.M.A(MD)No.927 of 2025

For Appellant : Mr.N.Shyllappakalyan

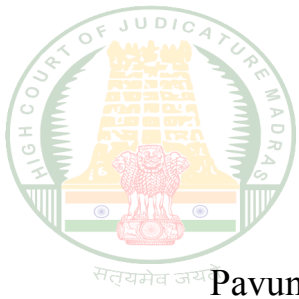
JUDGMENT

This Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.1851 of 2019, dated 05.09.2023, on the file of the Motor Accident Claims Tribunal / Special District Court to deal with MCOP cases, Madurai.

2. The appellant/Insurer who was mulcted with the liability to pay compensation of Rs.16,27,000/- with interest at 7.5% per annum to the respondents 1 and 2/claimants for the death of Pavun Selvam, consequent to an accident occurred on 04.04.2019, challenged the liability mulcted on it and also the quantum of compensation awarded at by the Tribunal.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking before the trial Court.

4. The case of the claimants is that their son Pavun Selvam came to the native place to attend Panguni Pongal festival on 04.04.2019, that



C.M.A(MD)No.927 of 2025

WEB COPY

Pavun Selvam proceeded in Appachi two wheeler bearing Registration No.TN-30-BK-07309 from Periyakattalai to Usilampatti, at about 09.30a.m., and while he was proceeding in Peraiyur to Usilampatti road opposite to Balagurunathar temple in Alligundam kanmoikarai, a lorry bearing Registration No.TN-69-BZ-3692 which came in the same direction in a rash and negligent manner, had dashed against the two wheeler and as a result of which, Pavun Selvam sustained multiple grievous injuries and he was taken to Usilampatti Government Hospital through 108 Ambulance and after first aid treatment, he was sent to Meenakshi Mission Hospital, Madurai for further treatment, that the injured Pavun Selvam despite treatment, succumbed to the injuries and the the accident was occurred only due to the rash and negligent driving of the lorry driver. It is the further case of the claimants that the deceased was aged about 21 years at the time of accident and he studied Micro Biology course and that the claimants being the parents are entitled to get compensation.

5. The defence of the first respondent is that on 04.04.2019, when the first respondent's driver was driving the vehicle, the claimants' son who rode the two wheeler in a rash and negligent manner had dashed



C.M.A(MD)No.927 of 2025

WEB COPY

against the lorry and invited the accident and that since the deceased was responsible for the accident, the first respondent is not liable for the claim.

6. The defence of the second respondent is that the accident was occurred only due to the rash and negligent driving of the deceased and that since the first respondent's driver was not responsible for the accident, the second respondent is not liable for the claim.

7. During enquiry, the claimants examined themselves as P.W.1 and P.W.2 and examined one Chinnasamy as P.W.3. The respondents adduced neither oral nor documentary evidences. The learned trial Judge, upon considering the evidences both oral and documentary and on hearing the arguments of both sides, passed the impugned order dated 05.09.2023, holding that the first respondent's driver was responsible for the accident, directed the second respondent to pay compensation of Rs.16,27,000/- with interest and costs. Aggrieved by the impugned order, the Insurer had preferred the present appeal.



C.M.A(MD)No.927 of 2025

WEB COPY

8. The points for consideration are:

(1) Whether the Tribunal erred in deciding that the accident was occurred only due to the rash and negligent driving of the first respondent driver, despite showing that the first respondent's vehicle was not at all involved in the accident?

(2) Whether the quantum of compensation awarded at by the Tribunal is just and reasonable and is in accordance with law?

9. The learned Counsel for the appellant/Insurer would mainly contend that the first respondent's vehicle bearing Registration No.TN-69-BZ-3692 was not at all involved in the accident and the jurisdictional police registered a criminal case in Cr.No.54/2019, on the file of the Sedapatti Police Station for the offences under Sections 279, 337 and 304(A) I.P.C., and subsequently altered into for the offences under Sections 279 and 304(A) I.P.C., against unknown vehicle and that subsequently without any basis, implicated the first respondent's vehicle as if the said vehicle driver had caused the accident. He would further submit that the motor vehicle inspection report of the lorry under Ex.P.15 show that there was no damages to the first respondent's vehicle. As rightly contended by the learned Counsel for the claimants, just because



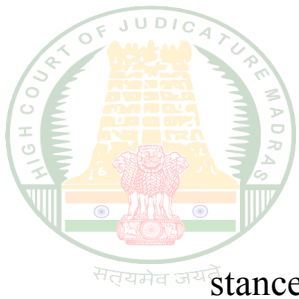
C.M.A(MD)No.927 of 2025

WEB COPY

there were no damages to the first respondent vehicle, that by itself is not sufficient to say that the said vehicle was not involved in the accident. Moreover, the first respondent's vehicle had dashed against the two wheeler and not against any other four wheeler or heavy vehicle.

10. At the outset, as rightly pointed out by the learned Counsel for the claimants, the second respondent / Insurer in their counter statement, has nowhere pleaded that the first respondent vehicle was not at all involved in the accident, nor taken part in the trial with the said defence. It is pertinent to note that such a defence is taken for the first time in the appellate stage before this Court and as rightly contended by the learned Counsel for the claimants, in the absence of any pleadings and evidence, the said plea cannot be gone into at this stage.

11. Notably, the first respondent, owner of the four-wheeler, filed a counter statement specifically defending that the deceased's rash and negligent driving of the two-wheeler caused the accident, exonerating their driver. The second respondent/Insurer also took a similar stand, attributing the accident to the deceased's negligence. As rightly contended by the learned counsel for the claimants, having taken this



C.M.A(MD)No.927 of 2025

WEB COPY

stance and participated in the trial, the second respondent is estopped from later claiming that their insured vehicle was not involved in the accident.

12. The claimants, in order to prove the mode of accident, examined P.W.3 – occurrence witness, who deposed about the manner of the accident, attributing it to the rash and negligent driving of the first respondent's driver. In cross-examination, P.W.3 would say that he was proceeding on his two-wheeler behind the first respondent's vehicle at a distance of 25 feet, and there was a distance of 10 feet between the four-wheeler and the two-wheeler ridden by the deceased. P.W.3 would further state that the four-wheeler, after crossing his vehicle, proceeded further and dashed against the two-wheeler, and he attempted to send the injured to the hospital. Despite cross-examination by the second respondent, nothing favorable to them was elicited. Notably, despite taking a stand that the first respondent's driver was not at fault, the second respondent chose not to examine the driver or any other witnesses to the accident and did not adduce any evidence. In the absence of any contra evidence, considering the evidence available on record, including P.W.3's testimony as an occurrence witness, the Tribunal's decision that the accident



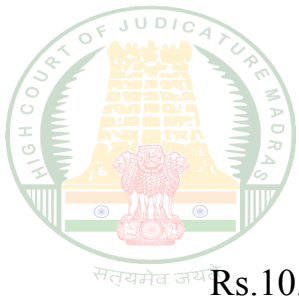
C.M.A(MD)No.927 of 2025

WEB COPY

occurred due to the rash and negligent driving of the first respondent's driver is justified and cannot be faulted.

13. Now turning to the quantum of compensation, the learned Counsel for the Insurer would submit that the Tribunal failed to notice that the deceased was a student at the time of accident and was not an earning person. He would further submit that the Tribunal erroneously awarded Rs.15,12,000/- for loss of dependency, Rs.15,000/- for loss of estate, Rs.5,000/- for medical expenses and Rs.15,000/- for funeral expenses, which are against the judgments of the Hon'ble Supreme Court.

14. The claimants have produced the mark sheets issued by the VYSYA College to the deceased Poun Selvam. According to the claimants, he was studying in the first year of Micro Biology Course at that time. The Tribunal taking note of the Aadhar card, has fixed the age of the deceased as 19 years at the time of accident and the same was not disputed by the other side. The Tribunal, relying on the judgment of this Court in *Chinnaraj and others Vs. Sureshkumar and another* reported in **2019(1) TNMAC 189 (DB)** and taking note of the college certificates in Exs.7 and 8, has fixed the notional monthly income of the deceased as

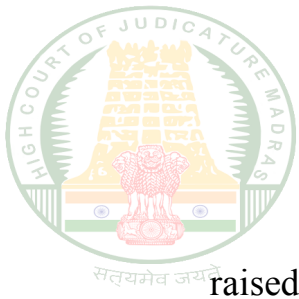


C.M.A(MD)No.927 of 2025

WEB COPY

Rs.10,000/- per month. Considering the fact that the deceased was a college student at that time and also the fact that the accident was occurred in the year 2019, the notional income fixed by the Tribunal is reasonable and cannot said to be excessive.

15. The Tribunal, as per the judgment of the Hon'ble Supreme Court in *National Insurance Co., Ltd., Vs. Pranay Sethi and others* reported in **2017(2) TNMAC 609(SC)**, taking note of the age of the deceased, has rightly added 40% of the income towards future prospects. As per the decision of the Hon'ble Supreme Court in *Smt.Sarlar Verma and Others Vs. Delhi Transport Corporation and another* reported in **2009(5) LW 561**, the Tribunal has rightly applied the multiplier of “18” and taking note of the fact that the deceased was a bachelor, rightly deducted 50% of the income towards personal and living expenses of the deceased and arrived the loss of dependency at Rs.15,12,000/-. The Tribunal has awarded Rs.40,000/- each to the claimants towards filial consortium and Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate under the conventional heads. Hence, the total compensation arrived at Rs.16,27,000/- is just and reasonable and the same does not warrant any intereference. The second respondent / Insurer has not



C.M.A(MD)No.927 of 2025

WEB COPY

raised any other ground to impugn the award. Hence, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.

16. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, the connected Civil Miscellaneous Petition is also dismissed. The parties are directed to bear their own costs.

12.09.2025

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1.The Motor Accident Claims Tribunal/
Special Subordinate Court, Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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C.M.A(MD)No.927 of 2025

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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12.09.2025