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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 17.06.2025

PRONOUNCED ON: 29.08.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.832 of 2023

Ranjith @ Ranjith Kumar
(died subsequent to the order)
: deceased Appellant / Petitioner

1.Maheswawri
2.Minor Nainikasri
(The above second appellant
represented through her mother
and natural guardian / next friend
Maheswari, the 1st Appellant herein)

3.Murugesan
4.Vijayalakshmi : Appellants are the legal heirs of the deceased Ranjith @ Ranjith Kumar (died subsequent to the order)

Vs.

1.K.Suresh Kumar

2.The Branch Manager,
Reliance General Insurance Company Ltd.,
having his office at
Door No.10/4/14, 2nd Floor,

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Thaha Plaza, Bye Pass Road,
Vannarapettai South,
Tirunelvei.

3. The Managing Director,
Tamil Nadu State Transport Corporation,
having its office at
Bye Pass Road,
Collectorate Post,
Dindigul Town & District. : Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the order passed in M.C.O.P.No.118 of 2020, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge (To deal with MCOP Cases), Dindigul, dated 28.07.2022, insofar as the finding of fixation of 50% contributory negligence on the part of the deceased appellant/petitioner and to set aside the same by fixing the entire negligence on the part of the first respondent and the second respondent its insurer are liable to pay the entire compensation including the enhanced compensation.

For Appellantx : Mr.A.Saravanan

For Respondents :Mr.V.Sakthivel
for R.2

: Mr.K.A.Thirumalaiappan
for R.3

: R.1 – name printed

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JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.118 of 2020, dated 28.07.2022, on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge to deal with MCOP Casses, Dindigul.

2. The original claimant who was awarded with the compensation of Rs.8,48,000/- with interest at 7.5% p.a., for the disability sustained by him, consequent to an accident occurred on 01.10.2019, died before filing an appeal and the legal representatives, challenged the contributory negligence fixed on the claimant and also the quantum of compensation awarded at by the Tribunal and claimed enhancement of the same.

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

4. The case of the claimant is that on 01.10.2019 at about 12.15p.m., the petitioner was travelling in the third respondent vehicle bearing Registration No.TN-57-N-2242 in Palani to Kodaikanal road and

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at the place near Aalamrathukualam bus stop, one TATA Ace car bearing Registration No.TN-94-A-5601 which came from South to North in a rash and negligent manner without blowing horn hit the bus and as a result of which, the petitioner/claimant sustained injuries in his right hand, that since the claimant was sitting on the side of the window, his right elbow completely broken and suffered permanent disability and that therefore, the TATA Ace vehicle driver alone was responsible for the accident.

5. It is the further case of the claimant that he was immediately admitted at Palani Government Hospital and after first aid, he was admitted in the Government Rajaji Hospital, Madurai and was discharged only on 07.12.2019. It is the further case of the claimant that the claimant was aged about 30 years at the time of accident and he was doing carpentry work and was earning Rs.21,000/- per month.

6. Undisputedly, an FIR in Cr.No.347/2019 was registered under Sections 279 and 337 IPC based on the complaint filed with Palani North Police. It is also undisputed that the first respondent owned the TATA Ace bearing Registration No. TN-94-A-5601, insured with the second

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respondent, while the claimant was a passenger in the third respondent's bus at the time of accident.

7. The defence of the respondents 1 and 2 is that the first respondent driver was not at all responsible for the accident, that the claimant as well as well as the bus driver were responsible for the accident, that the claimant who was sitting near the window side, placed his hand outside the window and voluntarily invited the accident and that since the first respondent driver is not responsible for the accident, the second respondent is not liable for the claim. It is the further defence of the second respondent that the first respondent's driver had no valid driving licence at the time of accident.

8. The defence of the third respondent is that their bus driver was not at all at fault, that the first respondent's driver had driven the van in a rash and negligent and on noticing the same, the bus driver took the bus to the extreme left side of the road and applied sudden break and that due to the over speed of the first respondent's vehicle, the same dashed against the bus which resulted grievous injuries to the claimant.

9. During enquiry, the claimant examined himself as P.W.1 and

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exhibited 8 documents as Exs.P.1 to P.8. The first respondent adduced neither oral nor documentary evidences. The second respondent examined their official as R.W.1 and exhibited two documents as Exs.R.1 and R.2. The third respondent examined its driver as R.W.2. The disability certificate issued by the medical board to the claimant came to be exhibited as Ex.C.1.

10. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, passed the impugned order dated 28.07.2022, holding that the claimant as well as the first respondent's driver were responsible for the accident and fixing the contributory negligence at 50% each, directed the second respondent to pay compensation of Rs.8,48,000/- with interest and costs being 50% of the award amount. After passing of award, the claimant had died. The appellants being the legal representatives of the deceased claimant, have preferred the present appeal challenging the contributory negligence fastened on the claimant and also the quantum of compensation awarded at by the Tribunal.

11. The points for consideration are:

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(1) Whether the Tribunal erred in fixing the contributory negligence at 50% on the claimant despite proving that the accident had occurred only due to the rash and negligent driving of the first respondent's vehicle driver and that the claimant was not at all at fault?

(2) Whether the legal representatives of the deceased injured who laid the claim for the disability sustained by him, can challenge the quantum of compensation awarded at by the Tribunal and claim enhancement of the award?

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

12. At the outset, it is pertinent to note that the original claimant who was injured in the accident, after passing the award and before filing of the appeal had died and the appellants being the legal representatives of the deceased claimant have preferred the present appeal. The learned Counsel for the second respondent would mainly contend that the present appeal itself is not maintainable at the hands of the legal representatives and they cannot seek enhancement of the award.

13. The learned Counsel for the appellants / claimants would rely

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on a decision of the Hon'ble Supreme Court in ***the Oriental Insurance Company Limited Vs. Kahlon Jasmail Singh Kahlon (deceased) through his legal representative Narinder Kahlon Gosakan and others*** reported in ***(2022)13 SCC 494*** and submit that the legal representatives of the deceased injured-claimant are entitled to get compensation under loss of estate. The Hon'ble Supreme Court, after referring to various decisions has observed as follows:

> *"18. .... We are, therefore, of the opinion that while the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal.*
>
> ....
>
> *20. We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's fee, etc. including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased."*

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14. It is pertinent to mention that the Hon'ble Supreme Court has only disallowed the compensation awarded under the head of pain and sufferings, being personal injuries. It is necessary to refer the recent decision of the Hon'ble Supreme Court in ***Meena (Dead) represented through L.Rs., Vs. Prayagraj and Others*** reported in ***MANU/SC/0892/2025***, wherein the Hon'ble Supreme Court by referring to the decision in ***the Oriental Insurance Company Limited Vs. Kahlon Jasmail Singh Kahlon (deceased) through his legal representative Narinder Kahlon Gosakan and others*** reported in ***(2022)13 SCC 494,*** above referred has held that if the legal heirs can pursue claims in case of death, there is no reason to prohibit the legal representatives to pursue claims for loss of a property, akin to estate of the injured, if the injured dies subsequently and observed that the enhancement sought by the original applicant, which if granted before her death would have accrued to her estate or rather compensated the loss of her estate caused by reason of the accident, which the legal heirs are entitled to succeed to.

15. Considering the above, the position is no more res integra as the Hon'ble Supreme Court has authoritatively settled the legal position that the legal representatives of injured claimants are entitled to claim

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compensation under loss of estate.

16. The learned Counsel for the appellants would submit that since there is ample evidence to show that the first respondent's driver was responsible for the accident, just because the claimant was sitting on the side of window and placed his hand on the window, he cannot be mulcted with contributory negligence and that too at 50%. The learned Counsel would rely on the decision of this Court in C.M.A.No.1804 of 2010, dated 27.09.2018, wherein also, while the appellant/claimant was sitting in the window seat on the right of the bus, he sustained grievous injuries on the right hand and the Motor Accident Claims Tribunal by holding that the claimant was responsible and granted compensation at Rs.25,000/- on no fault liability under Section 145 of the Motor Vehicles Act and when the same was challenged by the claimant, a learned Judge of this Court, considering the evidence available on record, has come to a decision that the claimant as well as the driver were responsible for the accident and fixed the contributory negligence at 20% on the claimant and the remaining 80% on the bus driver. In that case also, according to the claimant, the bus driver had driven the bus in a rash and negligent manner and at that time, a lorry which came from the opposite direction,

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hit the claimant's right hand and the claim was made against the TNSTC. In the present case, the Tribunal has given a specific finding that the bus driver was not at all fault and the first respondent's driver was also responsible for the accident along with the claimant. It is pertinent to note that neither the first respondent nor the second respondent has preferred any appeal nor any cross-objection challenging the said finding and the consequential liability mulcted on the second respondent.

17. As rightly pointed out by the learned counsel for the respondents, R.W.2, the bus driver, testified that he and the conductor warned the claimant not to extend his hand beyond the window, but the claimant disregarded the warning. Although respondents 1 and 2 initially alleged the bus driver's responsibility, the Tribunal rejected this claim, and the finding became final. Based on the evidence, this Court apportions contributory negligence at 40% to the claimant and 60% to the first respondent's driver.

18. Now turning to the compensation, the learned Counsel for the claimant would submit that the Tribunal without any basis, fixed the monthly income of the claimant at Rs.10,000/- per month. As rightly

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contended by the learned Counsel for the second respondent, though the claimant has alleged that he was doing carpenter work and was earning Rs.21,000/- per month, he has not produced any iota of evidence to substantiate the same. But the facts remains that the accident was occurred in October 2019.

19. The Hon'ble Supreme Court in ***Syed Sadiq, etc., Vs. Divisional Manager, United India Insurance Co., Ltd.,*** reported in ***2014(1) TNMAC 459 (SC)*** fixed the monthly income at Rs.6,500/- for the vegetable vendor, who sustained injuries in the accident occurred in the year 2008. A Division Bench of this Court in ***Andal and others Vs. Avinav Kannan*** reported in ***2019(1) TNMAC 54***, taking note of the judgment of the Hon'ble Supreme Court in ***Syed Sadiq's case*** has decided to apply the cost inflation index issued by the Central Board of Direct Tax and fixed the notional monthly income of the deceased. As per the above said index, the cost of inflation index for the year 2019-2020 is 289. Hence the income of the claimant is Rs.6500x289/129 = Rs.14,562/-.

20. The learned Counsel for the appellants would submit that the

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Tribunal has failed to add any amount towards future prospects.

21. The Hon'ble Supreme Court in ***National Insurance Company Vs. Pranay Sethi and others*** reported in ***2017(2) TNMAC 609 (SC),*** has specifically held that if the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be warranted, where the deceased was below the age of 40 years. In the case on hand, considering the evidence available on record, the Tribunal has rightly fixed the age of the claimant as 31 years at the time of accident. Since the deceased was aged 31 years at the time of accident, as rightly contended by the learned Counsel for the appellants, 40% of the income is to be added towards future prospects and after such addition, the monthly income would come to Rs.20,386/-(Rs.14,562/- + 40%) and rounded of to Rs.20,400/- per month. The Tribunal has rightly applied the multiplier "16".

22. Now turning to the disability, in Ex.P.2-accident register, the nature of injury is shown as follows:

"right elbow circumferential skin loss around 20cem exposing

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distal arm, elbow joint and upper with exposed muscles and upper radius and ulna with bone loss and loss of elbow."

23. It is further evident that the petitioner was admitted in the Government Rajaji Hospital, Madurai on 01.10.2019 and was discharged on 07.12.2019 and the first surgery was done on 01.10.2019. The Special Medical Board attached to the District Headquarters, Dindigul has stated "side sweap injury(R) upper limp (c) skin grafted (c) nose injury" and they have assessed the disability at 80%. It is pertinent to note that they have assessed permanent physical impairment in relation to the claimant's right upper limb.

24. As rightly pointed out by the learned Counsel for the second respondent, the Tribunal without considering the material aspect that the disability given by the medical board was with respect to upper limp, has fixed the permanent disability at 80%. At this juncture, It is necessary to refer the decision of Honourable Supreme Court in ***Raj Kumar Vs. Ajaykumar and another***, reported in ***(2011) 1 Supreme Court Cases 343*** :

"*Para 12:*

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"12.Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence :

(i) Whether the disablement is permanent or temporary ;
(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based n the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

Para 19:

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19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession,

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occupation or job, age, education and other factors."

25 Considering the above, it is very much clear that in all cases of injury or permanent disablement, the ascertainment of future loss of income or loss of earning capacity is not automatic and that the tribunal is duty bound to take into consideration the various factors such as nature and extent of disablement, avocation of the injured and the impact of the disability on the avocation and that the multiplier method cannot be applied mechanically.

26. As already pointed out, according to the petitioner he was doing carpenter work, but there is no evidence to prove the same. Whatever it is, considering the medical evidence available on record, this Court fixes the functional disability of the claimant at 50%. Hence, the future loss of income of the claimant is Rs.19,58,400/- (Rs. 20,400x16x12x50%).

27. Considering the nature of injuries and the consequent disability sustained, the period of inpatient treatment and other attending circumstances, the Tribunal has rightly awarded Rs.20,000/- for transport

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expenses, Rs.20,000/- for extra nourishment, Rs.5,000/- towawrds damages to clothing and articles, Rs.10,000/- towards attendant charges and Rs.30,000/- towards loss of amenities. As per the dictum laid down by the Hon'ble Supreme Court in ***The Oriental Insurance Company Limited Vs. Kahlon @ Jasmail Singh Kahlon (deceased) through his legal representative Narinder Kahlon Gosakan and another*** reported in ***2021 TNMAC 305***, the compensation awarded under the head of pain and suffering is to be excluded. Considering the above, the total compensation comes to Rs.20,43,400/- as follows:

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Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	For Loss of income	15,36,000	19,58,400	enhanced
2	For Transport charges	20,000	20,000	confirmed
3	For extra nourishment	20,000	20,000	confirmed
4	For damags to clothing and articles	5,000	5,000	confirmed
5	For pain and sufferings	75,000	---	-----
6	For attender charges	10,000	10,000	confirmed
7	For loss of amenities	30,000	30,000	confirmed
	Total	**Rs. 16,86,000**	**Rs. 20,43,400**	**enhanced**

Since this Court fixes the contributory negligence at 60% as against the second respondent, they are liable to pay compensation at Rs.12,26,040/- rounded of to Rs.12,26,000/-

15. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal to the claimant is enhanced from Rs.8,48,000/- to Rs.12,26,000/- along with interest at 7.5%pa., from the date of petition till the date of realization and costs, excluding the default period if any. The second respondent Insurance Company is directed to deposit the entire award amount along with accrued interest

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and costs, to the credit of above said M.C.O.P.No.118 of 2020, on the file of the Motor Accident Claims Tribunal / Special Subordinate Court (To deal with MCOP cases) less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit,the first claimant/first appellant is permitted to withdraw Rs.6,00,000/- along with proportionate interest and costs and the claimants 3 and 4/appellants 3 and 4 are permitted to withdraw Rs.1,25,000/- and Rs.2,50,000/-respectively along with proportionte interest and costs and the second claimant /second appellant is entitled to get Rs.2,51,000/- along with proportionte interest and costs. The share of the minor claimant/second appellant shall be deposited in any one of the Nationalised Banks till the minor attains majority and the first claimant, who is the mother of the minor claimant is permitted to withdraw the interest once in three months directly from the Bank, until the minor attains majority. The parties are directed to bear their own costs.

29.08.2025

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

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To

1. The Motor Accident Claims Tribunal /
   Special Subordinate Court (To deal with MCOP Cases), Dindigul,

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

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K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.832 of 2023

29.08.2025