

C.M.A.(MD)No.759 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.06.2025

Pronounced on : 04.09.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.759 of 2022

S.Muniyammal

... Appellant/
Petitioner

Vs.

1.K.Parthasarathy

2.Reliance General Insurance Co. Ltd.,
rep. through its Branch Manager,
1st Floor, Dhasam Tower,
Binny Main Road, Park Road,
Tiruppur 641 601.

... Respondents/
Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the fair and decreetal order dated 12.04.2022 made in M.C.O.P.No.750 of 2019 on the file of Motor Accident Claims Tribunal (IV Additional District Court), Madurai.



WEB COPY



C.M.A. (MD) No. 759 of 2022

For Appellant : Mr.A.Liaketali

For Respondents : Mr.J.S.Murali for R2

Paper publication-R1

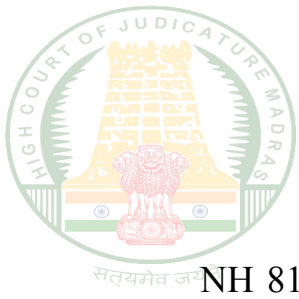
JUDGMENT

The Civil Miscellaneous Appeal is directed against the order passed in M.C.O.P.No.750 of 2019 dated 12.04.2022 on the file of the Motor Accident Claims Tribunal / IV Additional District Court, Madurai.

2. The appellant, who is the petitioner / claimant, laid the claim petition seeking compensation for the death of her son Balamurugan, who died consequent to an accident occurred on 21.06.2018.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.

4. The case of the claimant is that on 21.06.2018 at about 05.45 p.m., the deceased Balamurugan travelled as a pillion rider in the two wheeler bearing Registration No.TN-39-AQ-0625 driven by the first respondent, that when the said motorcycle was coming in Karur to Kovai



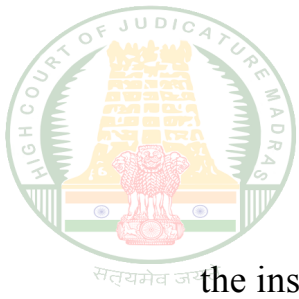
C.M.A. (MD) No. 759 of 2022

WEB COPY

NH 81 road from East to West direction, one car, without displaying any registration number, was going ahead in the said road in a moderate speed and by giving proper indication and signal, turned towards the right side of the road, that the first respondent, who drove the two wheeler in a rash and negligent manner, without noticing the indication given by the car driver, dashed against the car from behind and as a result of which, the pillion rider fell down from the two wheeler and sustained multiple grievous injuries and died on the way to hospital and that the accident was occurred only due to the rash and negligent riding of the two wheeler rider (first respondent).

5. It is the further case of the claimant that the deceased was aged 41 years at the time of accident and he was doing embroidery tailoring work business in the name and style of Annamalai Embroidering Company at Chandrapuram, Tiruppur and was earning Rs.20,000/- per month.

6. The defence of the second respondent is that the rider of the two wheeler was not having any licence to drive the vehicle at the time of accident and thereby the insured has violated the terms and conditions of



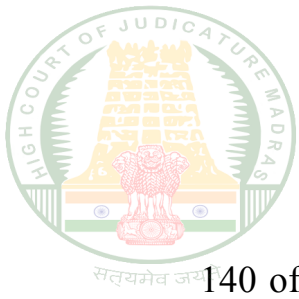
C.M.A. (MD) No. 759 of 2022

WEB COPY

the insurance policy, that the deceased, without caring about his safety and that too without wearing helmet, travelled in the vehicle and as such, he is responsible for his death and that the amount of compensation claimed is highly exorbitant and without any basis.

7. During enquiry, the claimant examined herself as P.W.1 and examined one Senthilkumar as P.W.2 and exhibited 14 documents as Ex.P.1 to Ex.P.14. The first respondent had remained ex-parte. The second respondent has summoned and examined police constable Gunasekaran as R.W.1 and Legal Manager attached to their office Thiru.Venkatesh as R.W. 2 and exhibited 8 documents as Ex.R1 to Ex.R8.

8. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned order dated 12.04.2022 holding that the claimant failed to prove that the accident was occurred only due to the rash and negligent driving of the first respondent and that therefore, the claimant is not entitled to get any relief under Section 166 of the Motor Vehicles Act, granted compensation of Rs.50,000/- on No Fault Liability under Section



C.M.A. (MD) No. 759 of 2022

WEB COPY

140 of the Motor Vehicles Act payable by the respondents 1 and 2 to the claimant. Aggrieved by the impugned order, the claimant has preferred the present appeal.

9. The learned counsel appearing for the claimant would submit that the claimant has produced ample evidence to show that the first respondent had driven the two wheeler in a rash and negligent manner and invited the accident, that the Tribunal has miserably failed to notice an important fact that the deceased was a pillion rider in the two wheeler ridden by the first respondent, that even assuming for arguments sake that the car driver was also at fault, then it can only be considered as a composite negligence and as such, the claimant is entitled to get compensation as the deceased was a third party, that the Tribunal, without considering the evidence in proper perspective, has given an erroneous finding that the first respondent was not responsible for the accident and on that basis, dismissed the claim under Section 166 of the Motor Vehicles Act and that since the Tribunal has granted Rs.50,000/- on No Fault Liability, the impugned order is liable to be interfered with.



C.M.A. (MD) No. 759 of 2022

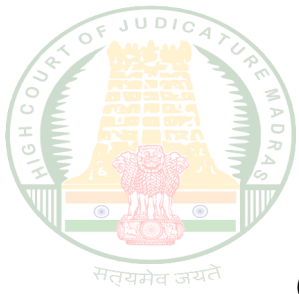
WEB COPY

10. The learned counsel appearing for the second respondent would submit that brother of the deceased alone lodged a complaint before the police stating that the car driver was responsible for the accident, that the police, after registering FIR against the car driver, filed a final report as undetected as the police were not able to trace out the car involved in the accident, that the accident was occurred only due to the rash and negligent driving of the car driver and the first respondent was not at fault and that the Tribunal rightly appreciating the evidence available on record, rejected the claim under Section 166 of the Motor Vehicles Act and granted compensation under Section 140 of the Motor Vehicles Act.

11. The points for consideration are:-

(1) Whether the Tribunal erred in holding that the claimant failed to prove that the accident was occurred due to the rash and negligent riding of the first respondent, despite proving through P.W.2-occurrence witness and police records that the first respondent was responsible for the accident?

(2) Whether the Tribunal erred in dismissing the claim under Section 166 of the Motor Vehicles Act, despite showing that it is a case of composite negligence and the police has filed the final report as undetected as they were not able to trace out the car involved in the accident?



C.M.A.(MD)No.759 of 2022

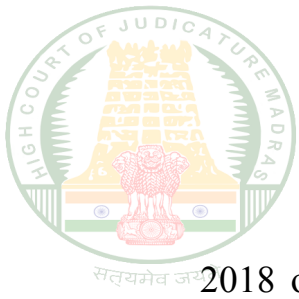
WEB COPY

(3) Whether the claimant is entitled to get compensation under Section 166 of the Motor Vehicles Act? If so to what amount?

12. It is pertinent to note that the accident and the involvement of the two wheeler bearing Registration No.TN-39-AQ-0625 and the car (without displaying the registration number), are not in dispute. It is also not in dispute that the deceased Balamurugan was travelling as a pillion rider in the two wheeler ridden by the first respondent at the time of accident.

13. As already pointed out, it is the specific case of the claimant that the two wheeler rider (first respondent) is responsible for the accident, but whereas, according to the second respondent, the accident was occurred only due to the rash and negligent driving of the car driver and the first respondent was not at fault. Hence, the main point to be decided is whether the two wheeler rider, the car driver or both were responsible for the accident.

14. On the basis of the complaint lodged by one Ramesh Kannan, brother of the deceased, FIR came to be registered in Crime No.108 of



C.M.A. (MD) No. 759 of 2022

WEB COPY

2018 on 22.06.2018 for the offences under Sections 279 and 304A IPC

against the driver of a new Volkswagen car (without registration number).

No doubt, brother of the deceased has alleged that the car driver had driven the vehicle in a rash and negligent manner and while attempting to turn towards right side of the road, stopped the vehicle by applying brake and at that time, the first respondent, who was behind the car, unable to control the speed dashed against the right back side of the car and caused the accident. Admittedly, the said Ramesh Kannan, who lodged the complaint, did not witness the occurrence. The jurisdictional police, after registering FIR, has proceeded with the investigation and since they were not able to trace out the vehicle, filed a final report as undetected. No doubt, the second respondent has summoned and examined a police constable attached to K Paramathi Police Station as R.W.1 and through him exhibited FIR, charge sheet, rough sketch, observation mahazar and motor vehicle inspection report. But R.W.1 would say that he was not working in the said police station during the investigation of the above case and that he joined duty in the said police station 6 months prior to giving his evidence before the trial Court. As rightly pointed out by the learned counsel appearing for the claimant, R.W.1 is not the investigating

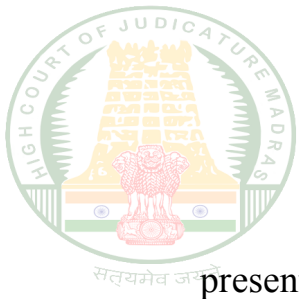


C.M.A. (MD) No. 759 of 2022

WEB COPY

officer or the police, who helped in the investigation and he was not at all working in the said station at that time.

15. As already pointed out, the claimant examined P.W.2 alleged to be the occurrence witness and P.W.2 would depose about the manner of accident. The Tribunal, while rejecting the evidence of P.W.2, has commented that he did not explain the purpose as to why he came to the accident spot. As rightly pointed out by the learned counsel appearing for the claimant, P.W.2 in his chief examination affidavit would say that on 21.06.2018 at about 04.30 p.m., he had taken a patient from Karur hospital in his auto and dropped the patient at Kongunagar Paramathi and while returning, he witnessed the accident. He would say that a white car was proceeding in the front at a distance of 100 feet and while the car after putting indicator light, had taken a right turn and at that time, a two wheeler driven by the first respondent came in a rash and negligent manner and unable to control the speed had dashed against the back side of the car. In cross-examination, he would say that the contents of the affidavit were given by him and that he remained in the occurrence place for about 20 minutes. He would deny the suggestions that he was not



C.M.A. (MD) No. 759 of 2022

WEB COPY

present at the accident place and never witnessed the accident. Since P.W.2 was examined as a witness, he produced copy of his Aadhar Card and driving licence and the same came to be exhibited as Ex.P.12 and Ex.P.13 respectively. During cross-examination of P.W.2, it was not suggested by the other side that he was not an auto driver and that the driving licence produced by him is not genuine. In the absence of any such question or suggestion, the observation of the Tribunal that the claimant failed to exhibit the original driving licence of P.W.2 is unsustainable, as witnesses cannot be expected to submit the original documents in Court, especially when the copy was exhibited without objection.

16. Ex.R.4, the rough sketch, shows the accident spot in the middle of the road, and it is undisputed that both vehicles were traveling in the same direction. The two-wheeler rider's failure to keep to the extreme left remains unexplained. Given the accident's dynamics, it is clear the first respondent did not maintain a safe distance. Notably, Ex.R.3, the motor vehicle inspection report, reveals significant damage to the two-wheeler's front side.



C.M.A. (MD) No. 759 of 2022

WEB COPY

17. The Tribunal rejected the claimant's case, citing non-examination of the deceased's brother, Ramesh Kannan, who lodged the complaint, and the first respondent, the driver. However, Ramesh Kannan did not witness the accident and filed the complaint based on information from others, making his testimony unnecessary. Similarly, the claimant cannot be faulted for not examining the first respondent, as the claim petition was filed against him and his insurer.

18. Considering the evidence, as rightly contended by the learned counsel appearing for the claimant, there is ample evidence to show that the first respondent is responsible for the accident. However, as rightly pointed out by the learned counsel appearing for the the second respondent, the deceased's brother, in the complaint, attributed the accident solely to the car driver's rash and negligent driving. Given the evidence and accident dynamics, it is reasonable to infer that the car driver also shared some responsibility. Since the deceased was a pillion rider, this case warrants consideration of composite negligence. It is essential to distinguish between contributory negligence and composite negligence. The Hon'ble Supreme Court in ***T.O. Anthony Vs. Karvarnan*** reported in **(2008) 3 SCC 748** has dealt with the same and the relevant portions are extracted hereunder:-

“6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is



WEB COPY



C.M.A. (MD) No. 759 of 2022

injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to



WEB COPY

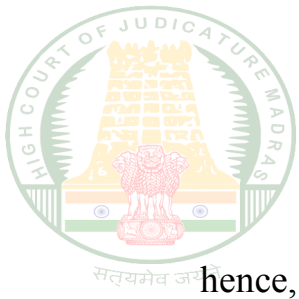


C.M.A. (MD) No. 759 of 2022

consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

19. The learned counsel appearing for the claimant would rely on the judgments of the Hon'ble Supreme Court in ***Pawan Kumar and another Vs. Harikrishan Dass Mohanlal and others*** reported in **2014 (3) SCC 590** and ***Khenyei Vs. New India Assurance Co. Ltd., and others*** reported in **2015 (9) SCC 273**.

20. In ***Pawan Kumar's*** case, the Hon'ble Supreme Court, by referring to ***T.O. Anthony's*** case, has held that the drivers / owners of both the vehicles are jointly and severally liable to pay compensation and



C.M.A. (MD) No. 759 of 2022

WEB COPY

hence, it is open to the claimants to enforce the award against both or any of them. In **Khenyai's** case, the Hon'ble Supreme Court, referring to various decisions of the Hon'ble Supreme Court, has summarized the principles, which are extracted hereunder:-

“(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount



WEB COPY

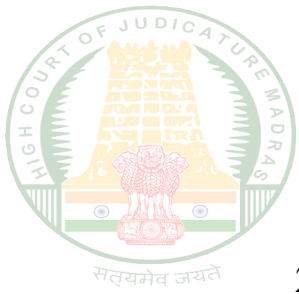


C.M.A. (MD) No. 759 of 2022

from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.”

21. Composite negligence refers to a situation where two or more individuals' combined negligence causes harm to a third party. In that scenario, the injured person can pursue any or all of the negligent individuals, regardless of the individual extent of each wrongdoer's responsibility. Each negligent party is considered jointly and severely liable for the entire damage, meaning the injured can claim the entire compensation from any one of them. To put it in other way, in contributory negligence, injured party themselves has contributed to their own injury through their own negligence and their compensation is reduced in proportion to their degree of fault. But in composite negligence, the injured party is not at fault.

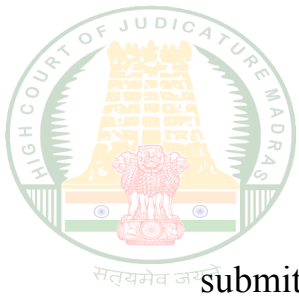


C.M.A. (MD) No. 759 of 2022

WEB COPY

22. Given the deceased's role as a pillion rider, with no contribution to the accident, the liability rests on the two-wheeler driver (first respondent) and the car driver. In composite negligence cases, the claimant can choose between wrongdoers, making non-impleadment of the car's owner and insurer inconsequential. The learned trial Judge erred in finding the first respondent faultless and dismissing the claim under Section 166 of the Motor Vehicles Act. This Court determines that respondents 1 and 2 are liable to pay compensation.

23. Now turning to the compensation, as already pointed out, according to the claimant, her son was doing embroidery tailoring work business and was earning Rs.20,000/- per month. The claimant has produced income tax return for the assessment year 2016-2017 under Ex.P.5 and original PAN card under Ex.P.6. The claimant has also produced the original rental agreement entered into between the deceased Balamurugan and the owner of the building under Ex.P.4. As rightly observed by the learned trial Judge, the claimant has not taken any steps to prove Ex.P.4. Regarding Ex.P.5, it is only an income tax return verification form along with statement of income prepared by the deceased. The claimant has not produced any document to show that Ex.P.5 was



C.M.A. (MD) No. 759 of 2022

WEB COPY

submitted to the income tax department and the same came to be accepted or recorded. As rightly pointed out by the learned counsel appearing for the second respondent, the claimant has not produced the alleged income tax return for previous years and more importantly, the claimant has not produced any iota evidence to prove the contents of Ex.P.5. The claimant has not produced any account books or any other materials to show that the deceased was doing such business and was getting such income. Though P.W.1, the claimant in her cross-examination would say that the avocation and the income of her deceased son can be ascertained only if the persons relating to Ex.P.4 and Ex.P.5 are examined, she has not chosen to examine any person relating to Ex.P.4 and Ex.P.5. Though the deceased brother Ramesh Kannan in the complaint has stated that his deceased brother was doing business with the first respondent jointly, the claimant has not produced any evidence to substantiate the same. P.W.1 in her evidence would admit that she does not know the first respondent. Though P.W.1 would say that her deceased son had engaged 10 to 15 persons for his business, she has not produced any records. In the claim petition, the claimant has stated that her deceased son was earning Rs.20,000/- per month. In the absence of any evidence to show the income of the



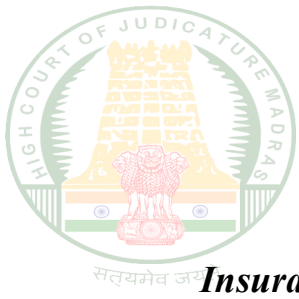
C.M.A. (MD) No. 759 of 2022

WEB COPY

deceased, it is necessary to follow the principles and method of income arrived by the Hon'ble Apex Court in *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TN MAC 459** and also the decision of the Division Bench of this Court in *Andal and others Vs. Avinav Kannan and another* reported in **2019 1 TN MAC 54 (DB)**. In *Syed Sadiq's* case, the Hon'ble Supreme Court has fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. But considering the facts and circumstances of the present case, this Court is taking Rs.7,500/- as basis and by applying cost inflation index for the year 2018-2019 at 280, the income of the deceased would come to Rs.16,279/- ($\text{Rs.7,500/-} \times 280 / 129$) rounded off to Rs.16,300/-. Hence, this Court fixes the monthly income of the deceased at Rs.16,300/-.

24. It is evident from Ex.P.6-PAN card that the deceased is shown to be born on 22.04.1977. Considering the above, this Court fixes the age of the deceased as 41 years at the time of accident.

25. As per the decision of the Hon'ble Supreme Court in *National*



C.M.A. (MD) No. 759 of 2022

WEB COPY

Insurance Company Limited Vs. Pranay Sethi and others reported in **2017 (2) TN MAC 609 (SC)**, considering the age of the deceased, this Court is inclined to add 25% of the income towards future prospects and after such addition, the monthly income would come to Rs.20,375/- {Rs.16,300/- + Rs.4,075/- (25% of the income)}. Since the deceased was a bachelor, 50% of the income has to be deducted towards personal and living expenses of the deceased and after such deduction, it comes to Rs.10,188/- {Rs.20,375/- - Rs.10,187/-}. As per the decision of the Hon'ble Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**, the appropriate multiplier would be 14. Hence, the loss of dependency would be Rs.17,11,584/- {Rs.10,188/- x 12 x 14}.

26. The claimant being the mother is entitled to get Rs.40,000/- towards loss of filial consortium. Moreover, the claimant is also entitled to get Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate under the conventional heads.

27. Considering the above, this Court is inclined to award



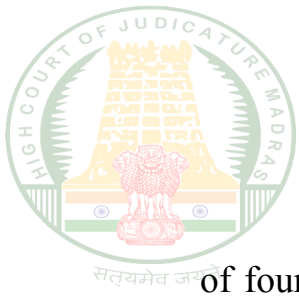
compensation under the following heads which the claimant is entitled to:-

WEB COPY

S. No.	Description	Amount awarded
1.	Loss of dependency	17,11,584
2.	Consortium	40,000
3.	Funeral expenses	15,000
4.	Loss of estate	15,000
	Total	Rs.17,81,584 rounded off to Rs.17,81,600

28. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

29. In the result, this Civil Miscellaneous Appeal stands allowed and the impugned order dated 12.04.2022 is hereby set aside. The respondents 1 and 2 are directed to deposit a sum of **Rs.17,81,600/- (Rupees Seventeen Lakhs Eighty One Thousand and Six Hundred only)** towards compensation with interest at 7.5% per annum from the date of petition till the date of realization excluding the default period, if any, to the credit of M.C.O.P.No.750 of 2019 on the file of Motor Accident Claims Tribunal / IV Additional District Court, Madurai, within a period



C.M.A. (MD) No. 759 of 2022

WEB COPY

of four weeks from the date of receipt of a copy of this judgment and on such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs, on due application before the Tribunal. Parties are directed to bear their own costs. The appellant is **directed to pay the court fee** for the compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

04.09.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm

To:

1. The IV Additional District Judge,
Motor Accident Claims Tribunal,
Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A. (MD)No.759 of 2022

K.MURALI SHANKAR,J.

csn

**Pre-Delivery Judgment made in
C.M.A.(MD)No.759 of 2022**

Dated : 04.09.2025