

C.M.A.(MD).No.1496 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.(MD).No.1496 of 2024

1.Ashapriya
2.Durga
3.Logeshwari

... Appellants / Petitioners
vs.

1.R.Anbazhagan

2.The Branch Manager,
M/s.The New India Assurance Co. Ltd.,
DO 710500, 1st Floor, East Coast Chambers,
G.N.Chetty Road,
Chennai-600 017.

...Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 03.10.2023 in M.C.O.P.No.502 of 2020 on the file of the Motor Accident Claims Tribunal / Special District Judge to deal with MCOP Cases, Thrichirappalli.

For Appellant : Mr.N.Sudhagar Nagaraj

For 1st Respondent : No Appearance

For 2nd Respondent : Mrs.K.R.Shivashankari

JUDGMENT

The legal heirs of deceased Manivannan have preferred this Civil Miscellaneous Appeal against the award dated 03.10.2023 passed in M.C.O.P.No.502 of 2020 by the Motor Accident Claims Tribunal, Trichy for



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enhancement of compensation.

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

3. Heard the arguments of the learned counsel for the appellant/claimant and the learned counsel for the 2nd respondent.

4. The claim petition was filed under Section 166 of Motor Vehicles Act, claiming compensation of Rs.30,00,000/- for the death of Manivannan, who died in the road traffic accident that occurred on 22.10.2019.

5. At trial, to substantiate the details of claim petition, on the petitioner's side two witnesses were examined and thirteen documents were marked. On the 2nd respondent/Insurance Company side, one witness was examined through whom Exs.X1 to X3 were marked.

6. The appeal is focused mainly on two grounds, one as to the fixation of contributory negligence upon the deceased and fixation of notional income of the deceased was less. PW2 is ocular witness. It has come on record through the evidence of PW2, Tr.Srinivasan that on 22.10.2019 at about 11.30 a.m., while he was proceeding in his two



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wheeler along Madras-Trichy NH, when he was nearing the road junction, a TVS XL rider was proceeding ahead of him with a pillion and Ford echo sport Car bearing Reg.No.TN-81-D-4725 proceeded from north to south came in a rash and negligent manner and hit upon the TVS-XL from behind. On the 2nd respondent side, one Tr.Sathasivam has been examined as RW1 and his evidence reflects the fact that the charge sheet was laid against the driver of the Car.

7. It is relevant to note that the deceased was riding as a pillion in a TVS-XL two wheeler.

8. The Tribunal has observed that while the rider of the two wheeler was crossing the road, the accident occurred and as the rider of the two wheeler has also contributed to the negligence and hence, 10% was fixed upon the deceased who was riding pillion in the said two wheeler.

9. Whether fixation of 10% upon the pillion is justifiable is a moot question. The doctrine of identification or imputation are the well known principles in the law of torts. It is to the effect that the defendant can plead the contributory negligence of the plaintiff or of an employee of the plaintiff, where the employee is acting in the course of employment.

10. The above said principle was not applicable. It was held in Mills



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case that the above said principle is not spoken to the passenger in a vehicle in the sense on negligence of the driver of the vehicle in which the passenger is travelling cannot be imputed to the passenger.

11. In the above said case, it was held that even if the navigators of the ship 'Bushire' were negligent, the navigators' negligence could not be imputed to the deceased who was travelling in the ship. This principle has been applied, in latter cases to Passenger travelling in a motor vehicle whose driver is found guilty of contributory negligence. The object behind the principle is that there cannot be a fiction of the passenger sharing a "right of control" of the operations of the vehicle nor is there a fiction that the driver is an agent of the passenger. The law is well settled that the contributory negligence on the part of the driver of the vehicle involved in the accident cannot be vicariously attached to the passengers in order to refuse the compensation awarded to the passengers or their legal heirs.

12. Based upon the aforestated legal principles, the contributory negligence cannot be imputed against the deceased who was a pillion rider in a two wheeler. More so, there is no evidence available on record against the rider of the two wheeler. Therefore, the finding of the Tribunal that contributory negligence to the tune of 10% is fixed upon the pillion has to be interfered with and the said finding stands set aside.



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13. The next grievance of the appellants/claimants is that fixation of notional income of the deceased at Rs.9,000/- p.m., is inadequate. It is the evidence of PW1 who is the wife of the deceased that the deceased was earning a sum of Rs.20,000/- p.m., by doing bricks production work through brick kiln. No document is marked to substantiate the said details by the claimants side.

14. Relying upon Ex.P2 post-mortem certificate, age of the deceased is safely fixed at 50 years at the relevant point of time. Date of the accident is 22.10.2019.

15. As held in ***National Insurance Co. Ltd., v. Pranay Sethi and others*** reported in ***2017 (2) TN MAC 609 (SC)***, the details of future prospects was standardised by the Hon'ble Supreme Court. For person who is self employed or on a fixed salary for the age group between 50 to 60 years, 25% has to be added with the monthly income while computing loss of dependency.

16. In consideration of the above said facts, notional income of the deceased is fixed at Rs.17,000/- p.m. As there are 3 claimants, wife and



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two children as per the law laid down by the Hon'ble Supreme Court in

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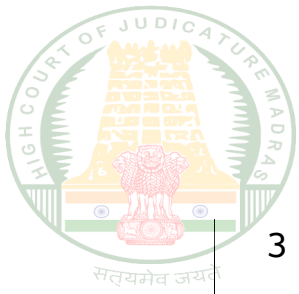
Smt.Sarla Verma & Ors., v. Delhi Transport Corporation & Another

reported in **2009 (2) TN MAC 1 (SC)**, deduction for personal and living expenses, $1/3^{\text{rd}}$ has to be deducted and the relevant multiplier to be adopted is 13m. Therefore, for computing the loss of dependency, the following formula emerges:

$$\text{Rs.17,000/-} + 25\% - 1/3 \times 12 \times 13 = \text{Rs.22,10,052/-}$$

17. The Tribunal has granted Rs.2,34,000/- for future prospects. Loss of dependency was computed by taking into account the future prospects. Therefore, the claimants are not entitled for future prospects as awarded by the Tribunal. As regards other heads, the amount awarded by the Tribunal is reasonable and hence it needs no interference. The compensation awarded by the Tribunal is reworked and tabulated as given hereunder:

Sl.No.	Description	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Loss of Dependency	Rs.9,36,000/-	Rs.22,10,052/-	Enhanced
2	Future Prospects	Rs.2,34,000/-	NIL	Rejected



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3	Loss of Consortium	Rs. 40,000/-	Rs. 40,000/-	Confirmed
4	Loss of Parental Consortium	Rs. 80,000/-	Rs. 80,000/-	Confirmed
5	Funeral Expenses	Rs. 15,000/-	Rs. 15,000/-	Confirmed
6	Loss of Estate	Rs. 15,000/-	Rs. 15,000/-	Confirmed
	Total	Rs.13,20,000/-	Rs.23,60,052/-	
	Less 10% Contributory Negligence	Rs. 1,32,000/-	-	
	Total	Rs.11,88,000/-	Rs.23,60,052/-	
	Rounded off as		Rs.23,60,000/-	

18. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.11,88,000/-** to **Rs.23,60,000/-** which would carry interest at the rate of 7.5% per annum.

19. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The Compensation awarded by the Tribunal is enhanced from **Rs.11,88,000/-** to **Rs.23,60,000/-** .

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.23,60,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per



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anum from the date of numbering of petition till the date of deposit to the credit of M.C.O.P.No.502 of 2020 on the file of the Motor Accident Claims Tribunal / Special District Judge to deal with MCOP Cases, Trichirappalli, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellants/claimants are at liberty to withdraw the same as per the apportionment made by the Tribunal, along with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal. The appellants/claimants are directed to pay the Court fee for the enhanced 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 claimant.

28.02.2025

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

To:

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1. The Motor Accident Claims Tribunal,
Special District Judge to deal with MCOP Cases,
Trichirappalli.

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2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

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