



C.M.A(MD)No.1250 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.03.2025**

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A(MD)No.1250 of 2024
and
Cros.Obj(MD)No.52 of 2024
and
C.M.P(MD)No.13124 of 2024

C.M.A(MD)No.1250 of 2024:

The Divisional Manager,
New India Assurance Company Ltd.,
Door No.105/1, 1st Floor,
Madurai Road, Virudhunagar.

... Appellant/2nd Respondent

Vs.

1.Karuppasamy

2.Krishnan

3.Allithangam

4.Karmegam

5.Malar

6.Chandra Sekar

... Respondents/Petitioners

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the award, dated 21st June, 2024 passed in



C.M.A(MD)No.1250 of 2024

M.C.O.P.No.150 of 2021 on the file of the Motor Accident Claims Authority (Additional District Judge) of Virudhunagar.

WEB COPY

For Appellant : Mr.V.Sakthivel

For R1 – R5 : Mr.V.Balasundarakumar

For R6 : No Appearance

Cros.Obj(MD)No.52 of 2024:

1.Karuppasamy

2.Krishnan

3.Allithangam

4.Karmegam

5.Malar ... Cross Appellants/Respondents 1-5

Vs.

1.The Divisional Manager,
New India Assurance Company Ltd.,
Door No.105/1, 1st Floor,
Madurai Road, Virudhunagar. ... Respondent/Appellant

2.Chandrasekar ... Respondent/6th Respondent

Prayer: Cross Objection is filed under Order 41 Rule 22 of Code of Civil Procedure, to enhance the award amount to Rs.7,93,000/-.

For Appellants : Mr.V.Balasundarakumar

For R1 : Mr.V.Sakthivel



WEB COPY



C.M.A(MD)No.1250 of 2024

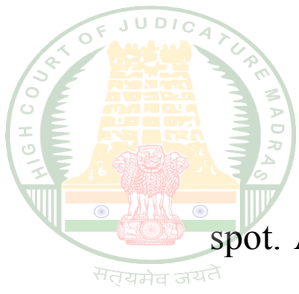
For R2 : No Appearance

JUDGMENT

Challenging the award passed in M.C.O.P.No.150 of 2021 on the file of the Motor Accident Claims Tribunal/ Additional District Judge, Virudhunagar, dated 21.06.2024, this appeal is filed by the Insurance Company. The claimants have also filed a cross appeal seeking enhancement of the award.

2. For the sake of convenience, the parties herein are referred to as per the ranking before the learned Tribunal.

3. The legal heirs of the deceased are the claimants before the Tribunal. The 1st respondent is the owner of the four wheeler involved in the accident and the 2nd respondent is the Insurance Company. On. 06.08.2021, at about 11:30 a.m., the deceased Ponnusamy was sitting near Amma Sports Park, T.Chettikulam Village. By that time, a lorry bearing registration number TN-64-D-8429 owned by the 1st respondent, was being driven in a rash and negligent manner, moving backwards. As a result of which, the said lorry run over Ponnusamy and he died at the



C.M.A(MD)No.1250 of 2024

spot. An accident case was registered in Crime No.111/ 2021 on the file of Kariyapatti Police Station. Seeking for compensation to the death of their father, the claimants have laid a M.C.O.P before the learned Tribunal.

4. The learned Tribunal examined two witnesses on the side of the petitioners as P.W.1 and P.W.2 and marked Exhibits P.1 to P.22 on the side of the petitioners and examined one witness on the side of the respondents as R.W.1 and marked Exhibits R.1 and R.2. On the basis of the arguments made by the respective parties, the evidence deposed and the materials available on record, the learned Tribunal proceeded to pass an award of Rs.3,17,000/-. Challenging the same, claiming that the Tribunal ought to have passed an award on the principle of pay and recovery considering the fact that the vehicle involved in the accident was bereft of permit on the date of accident, the Insurance Company is before this Court. Seeking enhancement of award on various grounds, the claimants are also before this Court.

5. The learned counsel for the Insurance Company submitted that the lorry bearing Registration Number TN-64-D-8429 was transferred to



C.M.A(MD)No.1250 of 2024

the name of one Gautham from the 1st respondent and the permit for the public carriage was surrendered on 18.08.2020, precisely before one year from the date of accident, which had happened on 06.08.2021. One of the officials of RTO office was examined as R.W.1 and while cross examination, he had admitted that, on the date of accident, the 1st respondent was the owner and the vehicle was having fitness certificate, but the same was not having permit for public carriage i.e., the same was bereft of a valid permit on the date of accident. Pointing out the same, the learned counsel for the Insurance Company categorically submitted that, the award should have been directed to be made by following the principle of pay and recovery.

6. Per Contra, the learned counsel for the Claimants submitted that, the learned Tribunal had fixed the notional monthly income of the deceased as Rs.6,000/- which is extremely less. The learned Tribunal ought to have followed the dictum of *M.Selvi & Others Vs. D.Selvam & Another* reported in **2023 (2) TNMAC 490** and *M. Elanthenral Vs. Mathiyalagan & Others* in **C.M.A.No.14 of 2025**, dated 10.01.2025 and should have fixed a notional income of Rs.12,000/-. It should have been just and reasonable for calculation of the head loss of income. That apart,

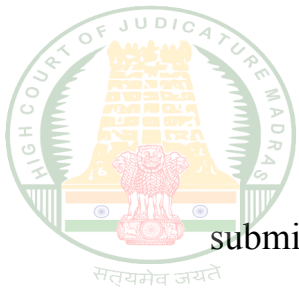


C.M.A(MD)No.1250 of 2024

the claimants being 5 in numbers, the learned Tribunal on the head of consortium, has awarded Rs.44,000/-. However, each of the claimants are separately entitled for consortium to a tune of Rs.44,000/- each on the basis of *Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others* reported in *2018 (2) TNMAC 452 SC* as well as *Pranay Sethi* dictum and insisted for enhancement of compensation.

7. Heard the learned counsel on either side and carefully perused the materials available on record. Despite the name of the owner printed in the cause list, none appeared on behalf of the owner.

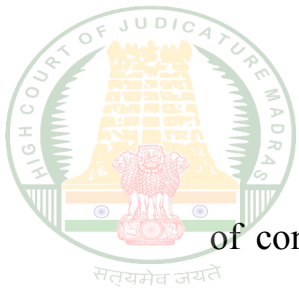
8. The plight of the claimants is that despite the deceased being an agricultural coolie, the learned Tribunal had fixed an extreme low notional income. However, the learned counsel for the Insurance Company drew my attention to the F.I.R in CrimeNo.111 of 2021 registered by the Kariyapatti Police station on 06.082021, which was marked as Exhibit P.1, in which the defacto complainant had specifically stated that the deceased was one of the beneficiary of Mahatma Gandhi National Rural Employment Scheme and on that basis, he categorically



C.M.A(MD)No.1250 of 2024

submitted that the notional income of Rs.6,000/- need not be interfered and the same is fair and equitable. Though the learned counsel for the claimants insisted for adopting the dictum of *M.Selvi & Others Vs. D.Selvam & Another* reported in *2023 (2) TNMAC 490* and *M. Elanthenral Vs. Mathiyalagan & Others* in *C.M.A.No.14 of 2025*, dated 10.01.2025, I am of the considered view that in those cases, deceased were Agriculturist/Agriculturist Coolie respectively. In the instant case, when the fact proved is that the deceased was only a beneficiary of Mahatma Gandhi National Rural Employment Scheme, and that he is aged 70, I do not find it necessary to interfere with the notional income fixed by the learned Tribunal.

9. However, as far as the parental consortium which has been awarded by the learned Tribunal is concerned, I find it necessary to interfere following the dictum of *Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others* reported in *2018 (2) TNMAC 452 SC*. No doubt all the claimants are the children of the deceased. Following the dictum of **Magma**, each of them are separately entitled to parental consortium for having lost their father. In view of the same, considering the presence of 5 claimants, I hereby modify the head



C.M.A(MD)No.1250 of 2024

of consortium as Rs.44,000/- x 5 = Rs.2,20,000/-. The total amount of compensation is tabulated as follows:

S.No.	Description	Tribunal	High Court	Award confirmed or enhanced
1.	Loss of dependency	Rs.2,40,000/-	Rs.2,40,000/-	Confirmed
2.	Loss of estate	Rs.16,500/-	Rs.16,500/-	Confirmed
3.	Consortium	Rs.44,000/-	Rs.2,20,000/-	Enhanced
4.	Funeral expenses	Rs.16,500/-	Rs.16,500/-	Confirmed
Total compensation awarded		Rs.3,17,000/-	Rs.4,93,000/-	Enhanced

10. The award is modified to the extent as stated above. Accordingly, the Cross Objection filed by the claimants is allowed. As far as the appeal of the Insurance Company is concerned, no doubt, the vehicle involved in the accident was bereft of a valid permit on the date of the accident in view of the specific admission made by R.W1, an official of the RTO office in his evidence. Accordingly, the award is modified that the compensation shall be paid by the Insurance Company with accrued interest and the same shall be recovered from the owner of the vehicle. The apportionment of the award will be as per the apportionment made by the Tribunal. The claimants shall deposit the additional Court fee, if any before drafting of decree.



C.M.A(MD)No.1250 of 2024

11. In view of the above, both Civil Miscellaneous Appeal and

Cross Objection stand allowed. No costs. Consequently, connected Civil

Miscellaneous Petition is closed.

03.03.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

gbg

To

1.The Motor Accident Claims Authority
(Additional District Judge),
Virudhunagar.

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



WEB COPY



C.M.A(MD)No.1250 of 2024

L.VICTORIA GOWRI,J.

gbg

Judgment made in
C.M.A(MD)No.1250 of 2024
and
Cros.Obj(MD)No.52 of 2024

03.03.2025