

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.04.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

C.M.A(MD)No. 1291 of 2023

and

CROS. OBJ.(MD)No. 19 of 2025

and

C.M.P(MD)No. 17258 of 2023

C.M.A(MD)No. 1291 of 2023

The Branch Manager,
Reliance General Insurance Company Limited,
No.184/9B/7, V.V.D. Main Road,
Near State Bank of India,
Thoothukudi- 628 008.

... Appellant

-Vs-

1. Shyamala

2. Minor Harish Kumar

3. Minor Harini

4. Kandaraja

... Respondents

[Minor 2nd and 3rd respondents represented through her mother/guardian 1st respondent herein]

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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award passed in M.C.O.P. No. 36 of 2021 on the file of the Motor Accident Claims Tribunal [Principal District Judge] Thoothukudi dated 18.08.2023, and allow the Civil Miscellaneous Appeal.

For Appellant : M/s.K.R. Shivashankari

For Respondents : M/s.I. Robert Chandra Kumar, for R-1 to R-3
R-4 – No appearance

CROS. OBJ.(MD)No. 19 of 2025

1. Shyamala

2. Minor Harish Kumar

3. Minor Harini

... Appellants

[Minor 2nd and 3rd Appellants represented through her mother/guardian 1st appellant herein]

-Vs-

1. The Branch Manager,
Reliance General Insurance Company Limited,
No.184/9B/7, V.V.D. Main Road,
Near State Bank of India,
Thoothukudi- 628 008.

2. Kandaraja

... Respondents

PRAYER: Cross Objection filed under Order 41 Rule 22 of CPC read with Section 173 of Motor Vehicles Act, to set aside the Fair and Decreetal award dated 18.08.2023 passed in M.C.O.P. No. 36 of 2021 on the file of the Motor Accident Claims Tribunal (Principal District Court) Thoothukudi and enhance the same.



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For Appellants : M/s.I. Robert Chandra Kumar
For Respondents : M/s.K.R. Shivashankari, for R-1
R-2 – No appearance

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.

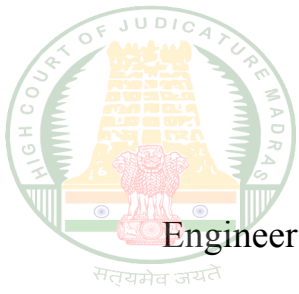
AND

R.POORNIMA, J.

On 27.02.2020 at 02:15 hours, while Rajaguru was riding his two-wheeler from Thoothukudi to Madurai on the highway near the Sterlite railway overbridge, a container lorry bearing registration No.TN-88-B-1045, driven in a rash and negligent manner, collided with his vehicle, resulting in his fatal death. Consequently, a case was registered against the driver of the container lorry. The deceased/Rajaguru's wife and minor children have filed a claim petition seeking compensation of Rs. 50 lakhs.

2. Heard on either side and perused the materials placed on records.

3. As per the claim petition, the deceased was 40 years old at the time of the accident. He possessed an ITI Diploma and was working as Electrical



Engineer in his own workshop named *Eswar Engineering Workshop*, located in Thoothukudi. It was stated that his total monthly income was Rs. 25,000/-, and his sudden death caused a loss of income, consortium, and love and affection. A total sum of Rs. 50 lakhs was claimed against the owner of the container lorry and their insurance company.

4. To substantiate the claim, three witnesses were examined, and 30 exhibits were marked. On appreciation of the evidence, the Tribunal held that the accident occurred due to the rash and negligent driving of the lorry driver. The container lorry was duly insured with the appellant insurance company.

5. The deceased, being a qualified Electrical Engineer, was proven to be working as a contract worker earning Rs. 950/- per day. The Tribunal fixed his notional income at Rs. 23,750/-per month, added 25% towards future prospects, and awarded a total sum of Rs. 34,90,056/- as compensation under various heads.

1.	Loss of income	Rs.33,25,056/-
2.	Loss of estate	Rs. 16,500/-
3.	Loss of Spousal Consortium	Rs. 44,000/-
4.	Loss of parental consortium	Rs. 88,000/-
5.	Funeral expenses	Rs. 16,500/-



Total Rs.34,90,056/-

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6. This appeal is preferred by the Insurance company on the ground that the Tribunal has not properly appreciated the evidence regarding negligence. The accident occurred due to the negligence of the deceased, who suddenly stopped his vehicle in the middle of the road without noticing the container lorry proceeding behind him. Further, the quantum of the compensation, accepted based on the statement of witnesses and exhibits which are not been properly corroborated, need to be reconsidered.

7. Per contra, the claimants have preferred a Cross-appeal, wherein it is stated that the deceased, prior to the incident, was working in a foreign country. He was substantially employed there, and after his return, he established his own engineering company and was gainfully employed. The Tribunal, while accepting the daily income as Rs.950/-, erroneously calculated the income for only 225 days in a year instead of 30 days per month, which is not in consonance with the established principles of law.

8. Regarding the allegation of negligence, the Learned counsel



appearing for the claimants submitted that there is no evidence to show that the deceased recklessly stopped his two-wheeler in the middle of the highway. It is also an improbable defence taken by the insurance company to avoid liability. Since the deceased was on the highway and proceeding towards Madurai, there was no reason for him to stop his two-wheeler in the middle of the road.

9. This Court on considering the materials placed before this Court, finds that it is a case of motor accident death duly reported to the SIPCOT Police soon after the accident. The First Information report itself indicates that the accident occurred due to the rash and negligence driving of the container driver. The contention of the Insurance company that due to the negligence of the two wheeler the accident was occurred is not supported by any evidence.

10. The first claimant, the wife of the deceased, has been examined to prove the earning capacity of her husband and her dependency on him. P.W.2 is the eyewitness to the occurrence and the first informant. There is no material elicited in the cross examination to disbelieve the claims. Though, it is contended by the learned counsel for the appellant that the deceased was not wearing helmet and therefore he is contributed to the accident, there is no evidence regarding any



violation of the Motor Vehicle Rules or failure to wear a helmet. In the absence of any positive evidence establishing non-compliance with the Motor Vehicles Rules, the Court cannot presume that the deceased was not wearing a helmet at the time of the accident.

11. Regarding fixation of notional income, this Court finds that the deceased had adequate qualification to earn, and the documents, produced as well as the claim made, substantiate and justifies the fixation of Rs.23,750/-as monthly income. The deceased left behind his wife and two minor children at the age of 40. Hence, the Tribunal, after considering the dictum of Hon'ble Supreme Court in *Sarla verma's* case and *Pranay Sethi's* case, has arrived at a compensation of Rs.34,90,056/-with 7.5% interest, along with costs, to be distributed among the claimants in the following manner:

- (i) the 1st claimant/wife is entitled for a sum of Rs.12,90,056/-.
- (ii) and the minor claimants 2 & 3 are entitled a sum of Rs.11 lakhs, each.

12. In view of the above facts, there is no reason to interfere with the award passed by the Tribunal.

13. Accordingly, this Civil Miscellaneous Appeal and Cross



Objection are dismissed. The claimants are entitled to a sum of Rs.34,90,056/-as compensation with interest at 7.5% p.a., from the date of claim petition till the date of realization along with costs. The appellant/insurance company is directed to deposit the entire award amount, within a period of 8 weeks, from the date of receipt of copy of the Judgment, less the amount, if already deposited. On such deposit being made, the 1st claimant is permitted to withdraw her share as apportionment fixed by the Tribunal, as per Law. The share of the minor claimants shall be deposited in anyone of the Nationalized bank till they attains majority. The interest accrued on the share of the minor claimants shall be paid to the 1st claimant, once in three months. No costs. Consequently, connected miscellaneous petition is closed.

[G.J., J.] & [R.P., J.]

04.04.2025

NCC : Yes / No

Index : Yes / No

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To

1. The Motor Accident Claims Tribunal/
[Principal District Judge],
Thoothukudi
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

KSA

Common Judgment made in
C.M.A(MD)No. 1291 of 2023
and
CROS. OBJ.(MD)No. 19 of 2025

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