

C.M.A.(MD)No.340 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.340 of 2024

and

Cros.Obj(MD)No.32 of 2024

and

C.M.P.(MD)No.4660 of 2024

C.M.A.(MD)No.340 of 2024:-

The General Manager,
Tamil Nadu State Transport Corporation,
Mettupalayam Branch,
Ooty Unit,
Nilgris District.

... Appellant

Vs.

1.Kaliammal

2.Pothumani

3.Murugan

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.42 of 2022 dated 18.08.2023, on the file of the Motor Accident Claims Tribunal/Principal District Court, Dindigul.

For Appellant : Mr.P.Prabhakaran
For Respondents : Mr.R.T.Arivukumar



C.M.A.(MD)No.340 of 2024

Cros.Obj.(MD)No.32 of 2024:-

WEB COPY

1.Kaliammal

2.Pothumani

3.Murugan

... Appellants

Vs.

The General Manager,
Tamil Nadu State Transport Corporation,
Mettupalayam Branch,
Ooty Unit,
Nilgris District.

... Respondent

PRAYER : Cross Objection filed under Order 41 Rule 22 r/w. Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.42 of 2022 dated 18.08.2023, on the file of the Motor Accident Claims Tribunal/Principal District Court, Dindigul.

For Appellants : Mr.R.T.Arivukumar
For Respondent : Mr.P.Prabhakaran

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/insurance company, challenging the award passed by the learned Motor Accident Claims Tribunal (Principal District Judge), at Dindigul, in M.C.O.P.No.42 of 2022, dated 18.08.2023. The Cross Objection has been filed by the claimants, seeking enhancement of the award amount.



C.M.A.(MD)No.340 of 2024

WEB COPY

2.For the sake of convenience, the parties are arrayed herein as per the ranking in M.C.O.P.No.42 of 2022.

3.The factual matrix of the present case, briefly stated, are as under:-

The claimants are legal heirs of the deceased, namely, Raja. The respondent is the transport Corporation, who is the appellant herein. On 04.11.2021, at about 08.15 a.m., when the deceased Raja was proceeding in his two wheeler bearing Registration No.TN-57-BD-0587 from Madurai - Dindigul from south to north near Panjampatti, the driver of the respondent transport Corporation who drove the bus bearing Registration No.TN-43-N-0846 in the same direction in a great speed, has dashed from the backside of the two wheeler, as a result of which, the said Raja sustained serious injuries. Following which, he was admitted in Dindigul Government Hospital and for further treatment, he was taken to Meenakshi Mission Hospital, Madurai and thereafter admitted in Rajiv Gandhi Government Hospital, Madurai, as inpatient from 04.11.2021 and died on 09.11.2021. The Ambathurai Police Station has registered FIR in Crime No.441 of 2021, under Sections 279 and 337 IPC r/w. 279 and 304(A) of IPC as against the driver of the respondent. Seeking to



C.M.A.(MD)No.340 of 2024

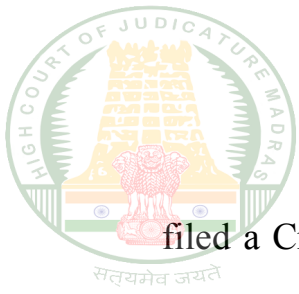
compensate the death of the Raja, his legal heirs have laid the M.C.O.P.

WEB COPY

4.The learned Tribunal has examined two witnesses and 8 documents were marked on the side of the petitioners/claimants and one witness was examined and no document was marked on the side of the respondent. On the basis of the arguments, evidence deposited and documents marked, the learned Tribunal has proceeded to pass an award of Rs.18,03,600/- to the petitioners/claimants. Challenging the same, this Civil Miscellaneous Appeal is filed.

5.The learned counsel appearing for the appellant submitted that the learned Tribunal failed to go into the merits of the case properly and without considering the fact that the deceased Raja had no driving license at the time of accident and that the accident had happened because of the serious head injuries sustained by him, since he had driven the two wheeler without helmet. Hence, he insisted that the learned Tribunal ought to have fastened atleast nominal percentage of contributory negligence on the deceased and pressed for allowing the Appeal.

6.Per contra the learned counsel for the claimants submitted that he has



C.M.A.(MD)No.340 of 2024

filed a Cross Objection, seeking enhancement of compensation. Since the loss of dependency is not properly calculated, for which, he relied upon the judgment of this Court in the case of ***K.A.Manigandan and others v. Raghu RN and another*** in C.M.A.No.2336 of 2021 dated 09.03.2021, in which the Hon'ble Division Bench of this Court for an accident which had happened in the year 2018, had fixed a monthly income of Rs.12,000/- for a daily wager employee. In the instant case, the deceased was skilled labourer undertaking tiled works. Considering the fact that the accident had happened in the year 2023, the learned Tribunal ought to have enhanced a compensation under loss of dependency. That apart, he also pointed out that the loss of love and affection for the parents has been awarded Rs.15,000/- each and pressed for modifying the award accordingly.

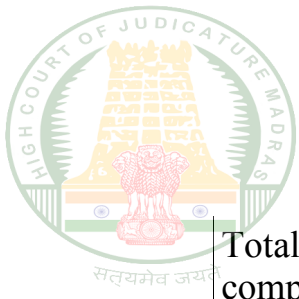
7.Heard the learned counsel for the appellant, the learned counsel for the respondents and carefully perused the materials available on record.

8.As rightly pointed out, the accident had happened during the year 2021 and in a similar case of ***Selvi and others v. V. Sumathy and others*** in C.M.A.Nos.1947 of 2020 and 206 of 2021 dated 03.02.2021, this Court has fixed a monthly income of Rs.14,000/- for a daily wager. Adopting the same, I



am of the considered view that the monthly income of the deceased should also have been fixed as Rs.14,000/-. The future prospects is 40% and after adding future prospects, the monthly income would be Rs.19,600/- $[(14,000 \times 40\% = 4600) 14,000 + 4600]$. 1/3rd of the monthly income has to be deducted towards personal expenses and then the monthly income would be calculated as Rs. 13,067/- $[(19600 \times 1/3 = 6533) 19600 - 6533]$. After adopting the multiplier '17', the loss of dependency is calculated as Rs.26,65,668/- $(13067 \times 12 \times 17)$. This Court is inclined to enhance the head of loss of love and affection to the petitioners 2 and 3 as Rs.40,000/- each. The compensation would be Rs. 28,05,668/-.

Head	Compensation awarded before learned Tribunal	Compensation awarded before this Court	Reduced/Enhanced/ Confirmed
(i) Loss of Dependency:	Rs.17,13,600/-	Rs.26,65,668/-	Enhanced
(ii) Loss of love and affection for the petitioners 2 & 3:	Rs.30,000/- each	Rs.40,000/- each	Enhanced
(iii) Transportation Expenses:	Rs.5,000/-	Rs.5,000/-	Confirmed
(iv) Funeral Expenses:	Rs.15,000/-	Rs.15,000/-	Confirmed
(v) Loss of Consortium:	Rs.40,000/-	Rs.40,000/-	Confirmed



C.M.A.(MD)No.340 of 2024

Total
compensation
awarded:

Rs.18,03,600/-

Rs.28,05,668/-

Enhanced

9. Accordingly, as far as the claim of the appellant/insurance company is concerned, the contributory negligence ought to have been fastened on the deceased. No doubt, at the time of accident, the deceased did not have any driving license. For which, this Court is inclined to fasten 15% of contributory negligence on the deceased. Hence, the total compensation would be Rs. 23,84,818/- (2805668x15%). In view of the same, the Civil Miscellaneous Appeal is partly allowed. The Cross Objection is also partly allowed.

10. The respondents/claimants are entitled to a sum of Rs.23,84,818/- with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The appellant/insurance company is directed to deposit the aforesaid amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the respondents/claimants are permitted to withdraw their respective shares, as per apportionment made by the learned Tribunal, after deducting any amount received by them earlier. The respondents/claimants are not entitled for



C.M.A.(MD)No.340 of 2024

interest for the default period, if there is any. The respondents/claimants are

directed to pay the additional Court fee on enhanced compensation, if any.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

- 1.The Motor Accidents Claims Tribunal,
(Principal District Judge), Dindigul.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.340 of 2024

L.VICTORIA GOWRI, J.

Mrn

C.M.A.(MD)No.340 of 2024

25.03.2025