



CMA NO.3890 OF 2025 AND CROSS OBJ. NO.14 OF 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2026

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CORAM:

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A. NO.3890 OF 2025

AND

CROSS OBJ. NO.14 OF 2026

AND

C.M.P. NO.32851 OF 2025 IN C.M.A. NO.3890 OF 2025

CMA NO.3890 OF 2025

The Branch Manager

Reliance General Ins. Co. Ltd.,

Vellore.

... Appellant /
2nd Respondent

Versus

1.Prasannavathi

W/o. Narasimhaiah

... 1st Respondent /
1st Petitioner

2.Narasimhaiah

S/o. Bandari Krishnappa

Both are residing at

No.3/2, Syndicate Bank Road,

Anekal TQ, Bangalore District – 562 106.

and presently residing at

Phase – II, Sathuvachari,

Vellore – 9.

... 2nd Respondent /
2nd Petitioner

3.Lokesh

S/o. Not known

No.148, Near Railway Gate,

Marasen, Anekal, Bangalore.

... 3rd Respondent /
1st Respondent

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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Fair and Decretal Order dated February 25, 2022 passed in M.C.O.P.No.106 of 2017 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant	:	Mrs.C.Bhuvanasundari
For Respondents 1&2	:	Mr.Ma.Pa.Thangavel for Mr.M.Lokesh
For Respondent-3	:	Insufficient Address

CROSS OBJECTION NO.14 OF 2026

1.Prasannavathi

W/o. Narasimhaiah

2.Narasimhaiah

S/o. Bandari Krishnappa

Both are residing at

No.3/2, Syndicate Bank Road,

Anekal TQ, Bangalore District – 562 106.

Presently residing at

Phase – II, Sathuvachari,

Vellore – 9.

... Cross Objectors /
Respondents 1&2

Versus

1.The Branch Manager

Reliance General Ins. Co. Ltd.,

Vellore.

... 1st Respondent /
Appellant



CMA NO.3890 OF 2025 AND CROSS OBJ. NO.14 OF 2026

2.Lokesh Reddy
S/o. Not known
No.148, Near Railway Gate,
Marasen, Anekal,
Bangalore.

... 2nd Respondent /
3rd Respondent

PRAYER: Cross Objection filed under Order XLI Rule 22 of Code of Civil Procedure, 1908 seeking to allow Cross Appeal by enhancing the compensation awarded vide Award dated February 25, 2022 passed in M.C.O.P.No.106 of 2017 on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Cross Objectors : Mr.Ma.Pa.Thangavel
for Mr.M.Lokesh

For Respondent-1 : Mrs.C.Bhuvanasundari

For Respondent-3 : Insufficient Address

* * *

COMMON JUDGMENT

(Judgment of the Court was made by R.Sakthivel, J.)

Feeling aggrieved by the Award dated February 25, 2022 passed by 'the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore' ['Tribunal' for short] in M.C.O.P. No.106 of 2017, the second respondent therein / insurance company has preferred Civil Miscellaneous Appeal No.3890 of 2025 praying to set aside the Award,



while the petitioners therein have preferred Cross Objection No.14 of 2026 praying to enhance the compensation awarded.

2.This Common Judgment will now decide both, the Civil Miscellaneous Appeal and the Cross Objection.

3.For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Petition.

PETITIONERS' CASE

4.The petitioners are the parents of the deceased - Bharath Bandari. On November 12, 2016, at about 10.30 p.m., the deceased - Bharath Bandari was travelling in an Alto Car bearing Registration No.KA-07-M-1707, owned by first respondent, driven by one Arun Kumar. When the said Arun Kumar attempted to overtake a Mahindra Van bearing Registration No.AP-02-Y-9774, in a rash and negligent manner, he lost control of the car and dashed against the Mahindra Van, as a result of which, the occupants of the Alto Car including the petitioners' son sustained grievous injuries. The petitioners' son was rushed to CMC Hospital, Vellore for treatment, where he succumbed to his injuries on November 13, 2016.



4.1.In connection with the said accident, First Information Report (F.I.R.) in Crime No.171 of 2016 was registered on the file of the Bangarupalem Police Station, for the offences punishable under Sections 279, 337 and 304(A) of the Indian Penal Code, 1860 [I.P.C.], against the driver of the first respondent's car namely Arun Kumar.

4.2.At the time of the accident, the petitioner was aged 28 years and working as Senior Campaign Manager in Skillogic at Bangalore, earning a sum of Rs.29,900/- per month.

4.3.It is the specific case of the petitioners that the accident occurred solely due to the rash and negligent act of the driver of the first respondent's car. The respondents 1 and 2 being the owner and the insurer of the offending car respectively, are jointly and severally liable to compensate the petitioners for the loss of their son. Stating so, the petitioners filed the Claim Petition seeking a compensation of Rs.1,00,00,000/- (Rupees One Crore only).

FIRST RESPONDENT'S CASE

5.First respondent remained absent and was set *ex-parte* by the Tribunal.



SECOND RESPONDENT'S CASE

6.The second respondent filed a counter statement denying the petition averments and disputing the manner of the accident. Apart from the routine grounds raised, it was specifically contended that there was no negligence on the part of the driver of the first respondent's car; the accident occurred solely due to the rash and negligent driving of the said Mahindra Van bearing Registration No.AP-02-Y-9774. In any event, the driver of the Mahindra Van contributed to the accident. As the petitioners failed to implead the owner and the insurer of the said Mahindra Van, the Claim Petition is bad for non-joinder of necessary parties. Further, the driver of the first respondent's car did not possess a valid driving licence at the time of accident. Hence, the petitioners are not entitled to any compensation from second respondent. Accordingly, the second respondent prayed for dismissal of the claim petition.

TRIBUNAL

7.At trial, on the side of the petitioners, the father of petitioner - Mr.Narasimhaiah, who is also the second petitioner, was examined as P.W.1 and one Mr.Puttaraju, one of the occupants of the Alto Car / ocular witness was examined as P.W.2 and Mr.Pradeep Kumar, Relationship Manager, Skillogic Consulting Solutions Private Limited, was examined as



P.W.3 and Ex-P.1 to Ex-P.16 were marked. On the side of the second respondent, Mr.G.Venkatesan, Manager (Legal) of the second respondent / insurance company was examined as R.W.1, and no document was marked.

8.To be noted, initially the second respondent was also set *ex-parte* and eventually an *Ex-parte* Award was passed by the Tribunal on April 16, 2019. Subsequently, *vide* the Order dated March 18, 2021 passed in I.A. No.2 of 2021, the *Ex-parte* Award was revoked and the claim petition was restored at the instance of second respondent / insurance company. The second respondent appeared through Counsel, filed counter and let in oral evidence and presented arguments. Thereafter, the Tribunal passed the Award dated February 25, 2022, which is the Award now under challenge before this Court.

9.In the Award under challenge, the Tribunal, upon a careful consideration of the oral and documentary evidence available on record, based on Ex-P.1 - F.I.R., Ex-P.2 - Charge Sheet coupled with the evidence of P.W.2 who is an ocular witness, found that the accident occurred due to the rash and negligent driving of drivers of both vehicles *viz.*, Alto Car and Mahindra Van and went on to fix contributory negligence of 75% as



against the first respondent's car's driver and 25% as against the Mahindra Van's driver. Further, the Tribunal held that the second respondent being insurer of the Alto Car at the material point of time, is liable to pay compensation to the petitioners and awarded a sum of Rs.43,21,464/- (Rupees Forty-Three Lakhs Twenty-One Thousand Four Hundred and Sixty-Four only) as compensation, as tabulated hereunder:

Sl.No.	Head	Amount
1	Loss of Income	Rs.41,95,464/-
2	Filial Consortium for both the petitioners	Rs.88,000/-
3	Funeral Expenses	Rs.16,500/-
4	Loss of Estate	Rs.16,500/-
5	Transport Expenses	Rs.5,000/-
Total Compensation		Rs.43,21,464/-
6	Less : Contributory negligence @ 25%	Rs.10,80,366/-
Total Compensation Payable		Rs.32,41,098/-

APPEAL

10. Feeling aggrieved by the decision of the Tribunal *qua* negligence and compensation, the second respondent / insurance company has preferred the Civil Miscellaneous Appeal, while the petitioners have filed the Cross Objection to the appeal seeking enhancement of compensation.



ARGUMENTS

11. Heard Mrs.C.Bhuvanasundari, learned Counsel appearing for the appellant in C.M.A. No.3890 of 2025 / first respondent in Cross Obj. No.14 of 2026 / insurance company, and Mr.Ma.Pa.Thangavel, learned Counsel appearing for the Cross Objectors in Cross Obj. No.14 of 2026 / respondents 1 and 2 in C.M.A. No.3890 of 2025 / claimants.

12. Mrs.C.Bhuvanasundari, learned Counsel submits that the driver of the first respondent's Alto Car namely Arun Kumar did not possess a valid driving licence at the time of accident as evident from Ex-P.2- Charge Sheet and Ex-P.3 - Motor Vehicle Inspection Report [M.V.I. Report]. As driving without a valid driving licence is not only a major violation of the terms and conditions of the insurance policy but also illegal, the second respondent is not liable to indemnify the first respondent. She further submits that the Tribunal failed to appreciate the evidence available on record in the right perspective and erred in considering the deceased's monthly income at Rs.29,381/- which is not only baseless but also on the higher side. Further, the Tribunal has not properly deducted income tax despite the deceased's monthly income including future prospects being Rs.41,133/- which is above the tax-free limit. Though the Tribunal held that the driver of the Mahindra Van was



also rash and negligent in driving and contributed to the accident, it fixed only 25% contributory negligence on their part; the Tribunal ought to have fixed 50% contributory negligence instead of 25%. Accordingly, she prays to allow the Appeal, dismiss the Cross Objection and modify the award amount.

13.*Per contra*, Mr.Ma.Pa.Thangavel, learned Counsel submits that the cross objectors are the grieving parents of deceased - Bharath Bandari. The unexpected demise of their beloved son deprived them of the sole breadwinner of their family. They both were completely financially dependent on the deceased. The Tribunal erred in fixing contributory negligence of 25% on the part of the Mahindra Van's driver. Further, the Tribunal failed to note that the deceased is one of the occupants of the Alto Car. Even while assuming that the accident happened due to the rash and negligent driving of both the vehicles viz., Alto Car and Mahindra Van, as far as the deceased is concerned, it would be a case of composite negligence and not contributory negligence. The failure on the part of the Tribunal in not applying the principle of composite negligence, and instead applying the principle of contributory negligence and consequent deduction of 25% compensation, is not only erroneous but also causes great injustice to the petitioners. Accordingly, he prays to allow the Cross



Objection, dismiss the Civil Miscellaneous Appeal and enhance the Award amount.

POINTS FOR CONSIDERATION:

14.This Court has considered both sides' submissions and perused the evidence available on record. The points that arise for consideration in this matter are as follows:

- (i) Whether the accident occurred due to the rash and negligent driving of the Alto Car's driver or that of the Mahindra Van's driver?
- (ii) Whether the second respondent has established any negligence on the part of the driver of the Mahindra Van as alleged ?
- (iii) Whether the Tribunal is right in concluding that it is a case of contributory negligence *qua* deceased and his dependants, and pursuantly, mulcting the petitioners with 25 % deduction for the same ?
- (iv) Whether the driver of first respondent's car namely Arun Kumar, possessed a valid driving licence at the time of accident and if answered in negative, whether on that ground the insurance



company can be absolved of its liability to compensate the petitioners (if any) ?

- (v) Whether the compensation fixed by the Tribunal under various heads are just, fair and reasonable ?

DISCUSSION AND DECISION:

Point Nos.(i) and (ii)

15.In so far as negligence is concerned, the case of the petitioners is that the accident occurred solely due to the rash and negligent driving of the driver of the Alto Car in which the deceased was travelling. According to the petitioners, when the driver of the Alto Car rashly and negligently attempted to overtake the Mahindra Van travelling ahead, he lost control, dashed against the Mahindra Van and caused the accident.

16.On the other hand, the second respondent disputing the manner of accident alleged by the petitioners, contends that the accident occurred due to the rash and negligent driving of the driver of the Mahindra Van. The further case of the second respondent is that in any event, the Mahindra Van's driver also contributed to the accident and hence, if the Court comes to a finding that the driver of the Alto Car is to



be blamed for the accident, then the principle of contributory negligence must be applied.

17. In this case, Ex-P.1 - F.I.R. has been registered against the driver of the first respondent's Alto Car namely Arun Kumar, based on the information given by the Mahindra Van's driver namely D.Ramakrishna. In Ex-P.1 - F.I.R., it has been stated that the Alto Car attempted to overtake the Mahindra Van ahead in a rash and negligent manner, lost control, and dashed against the front right side of the Mahindra Van leading to an accident in which the Alto Car capsized. It is further stated that the Mahindra Van's driver admitted the occupants of the Alto Car in Hospital. The police after investigation filed Ex-P.2 - Charge Sheet against the first respondent's Alto Car's driver namely Arun Kumar under Sections 304-A, 338, 337, 239 of I.P.C. and Section 3 read with Section 181 of the Motor Vehicles Act, 1988 and the same was taken on file as C.C. No.490 of 2016 by 'the Third Additional Judicial First Class Magistrate, Chittoor'. There is no material available on record regarding the final verdict in the criminal case. However, in view of the fact that Ex-P.1 - F.I.R. as well as Ex-P.2 - Charge Sheet stands against the Alto Car's driver and corroborates the petitioners' case *qua* manner of accident, and also considering the fact that the chargesheet was taken on file as a Calendar Case by a Judicial



Magistrate, this Court is of the view that the petitioners have proved the manner of accident as alleged by them by way of preponderance of probabilities.

18.To rebut the petitioners' side evidence, the second respondent examined its Manager (Legal) as R.W.1, who blamed the Mahindra Van's driver for the accident. However, he is not a competent person to depose about the accident as he did not witness the accident and hence, his evidence cannot be taken into account to decide the manner of accident. Further, the second respondent would point out the portion of cross-examination of P.W.2, where he has deposed that the Mahindra Van came in the opposite direction and both the vehicles collided on their front right side, and would contend that even while assuming that the Alto Car's driver is to be primarily blamed for the accident, there is contributory negligence on the part of Mahindra Van's driver. It is to be noted that the version of P.W.2 in his cross-examination is inconsistent with his version in his chief affidavit. In his chief affidavit, he has deposed that the accident occurred due to the negligence of the Alto Car's driver in overtaking the Mahindra Van which was travelling ahead of the car, whereas, in his cross-examination, he has deposed that accident occurred when the Alto Car's



driver rashly and negligently made an overtake and collided with the Mahindra Van coming from the opposite direction.

19. This Court is not convinced with the aforesaid contention. Contributory negligence cannot be presumed or inferred without sufficient materials. The second respondent has not taken any steps to examine the driver of the Mahindra Van, the driver of the Alto Car or any other independent ocular witness. The second respondent has not marked any Rough Sketch drawn by Police nor has let in any other evidence to show that the Mahindra Van was travelling in the opposite direction. Hence, the second respondent has failed to establish that the Mahindra Van was coming from the opposite direction. Even while assuming that the Mahindra Van came in the opposite direction, that mere fact does not mean that its driver caused or contributed to the accident. The Mahindra Van could have travelled in its lane, and the Alto Car could have jumped into the opposite lane in a rash attempt to overtake. The second respondent bears the burden to prove their case of negligence on the Mahindra Van's driver by adducing oral and documentary evidence. As stated *supra*, the second respondent has neither examined the driver of Alto Car, nor that of the Mahindra van, nor any other independent ocular witness. Moreover, though there was an inconsistency with regard to the direction in which the



Mahindra Van was travelling, the evidence of P.W.2 remains that the accident occurred due to the rash and negligence of the Alto Car's driver.

Under such circumstances, the inconsistency in the evidence of P.W.2 alone does not shake the case of the petitioners which is supported by the cogent evidence of Ex-P.1 and Ex-P.2; it only affects the credibility of his evidence. In other words, the deposition of P.W.2 in his cross-examination, though affects the credibility of his evidence, does not affect the entire case of the petitioners *qua* negligence, because preponderance of probabilities still lies in favour of the petitioners de hors the evidence of P.W.2 in view of the pleadings and the cogent evidence in Ex-P.1 and Ex-P.2 *qua* manner of accident. Therefore, this Court concludes that the accident occurred 'solely' due to the rash and negligent driving of the Alto Car's driver. **Point Nos.(i) and (ii) are answered accordingly in favour of petitioners and against the second respondent.**

Point No.(iii)

20.As regards Point No.(iii), the Tribunal seems to have failed to adequately appreciate the difference between contributory negligence and composite negligence. Contributory negligence in the context of motor vehicle accident is when the deceased / injured is themselves a tort-feasor, whose negligent actions contributed partly to the accident and/or the



resultant damage, injuries or death. This would eventually result in a proportional reduction in the compensation awarded. Composite negligence on the other hand is when the accident and/or the resultant damage, injuries or death is a result of combined wrongful act on the part of more than one person, while the victim remains free from any fault. In such situations, the joint tort-feasors would be jointly and severally liable to compensate the claimants and the claimants may claim the entire compensation awarded either from either one of the joint tort-feasors or all of them. In this case, the deceased being a mere occupant of the car and there being no evidence to attribute any negligence on his part (like not wearing seat-belt), the Tribunal is not justifiable in mulcting the petitioners for contributory negligence.

21. In this regard, reference may be made to Judgment of Hon'ble Supreme Court in *T.O. Anthony -vs- Karvarnan*, reported in *(2008) 3 SCC 748*, wherein the distinction between contributory negligence and composite negligence, along with extent of liability and proof of negligence in each case was considered. The factual matrix there is that two buses collided against each other and in a claim petition filed by driver of one of the two buses, the Tribunal held that the accident occurred



due to the contributory and composite negligence of drivers of both the buses. The Hon'ble Supreme Court felt the need to clarify the difference between contributory negligence and composite negligence as hereunder:

"5. The Tribunal assumed that the extent of negligence of the appellant and the first respondent is 50 : 50 because it was a case of composite negligence. The Tribunal, we find, fell into a common error committed by several tribunals, in proceeding on the assumption that composite negligence and contributory negligence are the same. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.

6. "Composite negligence" refers to the negligence on the part of two or more persons. Where



a person is 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."

22.Further, a Full Bench of Hon'ble Supreme Court (Three Judge Bench) in ***Khenyei -vs- New India Assurance Company Limited***, reported in ***(2015) 9 SCC 273***, *inter-alia* considered the concept of



composite negligence and impleadment of all joint tort-feasors, while referring to *T.O. Anthony's Case* [cited *supra*], and various other Judgments of the Hon'ble Supreme Court as well as various Full Bench and Division Bench Judgment of some High Courts. The Hon'ble Supreme Court explained composite negligence, differentiated it from contributory negligence and *inter-alia* held that in case of composite negligence, the claimant(s) is entitled to claim the entire compensation from any one or all of the joint tort-feasors and he not need have impleaded all the joint tort-feasors. Relevant extract reads thus:

"22. What emerges from the aforesaid discussion is as follows:

22.1. In the case of composite negligence, the 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.

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

22.3. 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 the 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 the main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

22.4. 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."

[Emphasis supplied by this Court]

23.From the above judgments, it could be gathered that it is left to the choice of the claimant(s) to implead and claim compensation



from one or all of the joint tortfeasors, for the joint tort-feasors are jointly and severally liable.

24.As held under Point Nos.(i) and (ii), the Tribunal is not justifiable in its finding that the accident occurred due to contributory negligence on the part of both, the Alto Car's driver and Mahindra Van's driver; the accident occurred solely due to the rashness and negligence of the Alto Car's driver in the considered opinion of this Court. Even while proceeding on the assumption that the accident was caused by the contributory negligence on the part of both drivers as held by Tribunal, the deceased being a mere occupant of the Alto Car, is entitled to claim full compensation from owner and insurer of the Alto Car, without impleading owner and insurer of the Mahindra Van, under the principle of composite negligence as explained in Judgments of Hon'ble Supreme Court referred above. Deduction for contributory negligence in this case can only be made when negligence on the part of the deceased is established, but it is no one's specific case that the deceased contributed to the accident nor there is any evidence to even suggest the same. Thus, in any event, the Tribunal is not justifiable in mulcting the petitioners with 25% deduction for contributory negligence of the drivers of the Alto Car and the Mahindra



Van. Point No.(iii) is answered accordingly in favour of petitioners and against the second respondent.

Point No.(iv)

25.As regards the contention that the Alto Car's driver did not possess a valid driving licence at the time of accident and hence, the second respondent is not liable to pay compensation, as per Ex-P.2 - Charge Sheet, the Alto Car's driver did not possess a valid driving licence at the time of accident. Further, as per Ex-P.3 - M.V.I. Report, the driving licence of the Alto Car's driver was not presented at the time of inspection. F.I.R. and M.V.I. Report alone cannot be taken as conclusive evidence to show whether the driver possessed a valid driving licence or not at the material point of time. Merely because the driving licence was not produced before or could not be secured by, the Vehicle Inspector or Investigating Officer as the case may be, it does not mean absence of valid driving licence. When the first respondent is set *ex-parte*, the burden lies primarily upon the second respondent to prove its contention that the first respondent's Alto Car's driver did not possess a valid driving licence. The second respondent ought to have examined the Regional Transport Officer (RTO) concerned or called for documents from them in this regard. At least the Investigation Officer who authored Ex-P.2 - Charge Sheet ought to



have been examined on how he arrived at the conclusion that the Alto Car's driver did not possess a valid driving licence. The Alto Car's driver was also not examined by the second respondent. The second respondent has not let in sufficient evidence to show the absence of a valid driving licence with the Alto Car's driver nor has taken any effective steps in regard. In this regard, reference may be made to ***Narcinva V. Kamat -vs- Alfredo Antonio Doe Martins***, reported in ***(1985) 2 SCC 574***, wherein the Hon'ble Supreme Court held that the insurance company bears the burden to prove that the driver of the vehicle insured under it had no valid driving licence and that the insured had no obligation to produce the driving licence to enable the insurance company to absolve its liability. The Hon'ble Supreme Court further observed that the insurance company could have very well summoned the Transport Authorities to prove its case. Relevant extract reads thus:

"12. ...It is the insurance company which complains that there has been a breach of one of the important terms of the contract of insurance as evidenced by the policy of insurance (the whole of which was not shown to us) and that the second appellant who was shown to be driving the vehicle at the relevant time, did not have a valid driving licence to drive the pick-up van. The insurance company complains of breach of a term of contract which would



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permit it to disown its liability under the contract of insurance. If a breach of a term of contract permits a party to the contract to not to perform the contract, the burden is squarely on that party which complains of breach to prove that the breach has been committed by the other party to the contract. The test in such a situation would be who would fail if no evidence is led. ...

x x x

x x x

x x x

14. The last question is whether he had a valid driving licence. The High Court has not recorded a clear cut finding on this point. The finding of the Tribunal is more evasive than the one by the High Court. Mr Sharma did not dispute that the second appellant had a driving licence. His grievance is that he having failed to produce the same when called upon to do so in the cross-examination, an adverse inference be drawn against him that he did not have a valid licence to drive a pick-up van. The submission fails to carry conviction with us. The burden to prove that there was breach of the contract of insurance was squarely placed on the shoulders of the insurance company. It could not be said to have been discharged by it by a mere question in cross-examination. The second appellant was under no obligation to furnish evidence so as to enable the insurance company to wriggle out its liability under the contract of



insurance. Further the RTA which issues the driving licence keeps a record of the licences issued and renewed by it. The insurance company could have got the evidence produced to substantiate its allegation. Applying the test who would fail if no evidence is led, the obvious answer is the insurance company."

26.The Tribunal has held that post enquiry, the driving licence of the Alto Car's driver was presented along with written arguments on the side of the petitioners. It is very unfortunate that the Tribunal failed to mark the driving licence so presented. The Tribunal could have very well marked it either on consent, or by reopening the petitioners' side evidence and recalling P.W.1 / second petitioner. The approach of the Tribunal in not marking the driving licence, and relying on it in its Award is erroneous.

27.Be that as it may, the second respondent, who bears the burden, failed to prove that the Alto Car's driver did not possess a valid driving licence at the time of accident and thereby breached the insurance policy conditions. Further, the petitioners' side has marked Ex-P.5 - Insurance Policy of the first respondent's Alto Car issued by the second respondent and perusal of the same shows that it is a package policy, that is to say, it covers occupants as well. It was valid upto July 25, 2017 i.e, it



was valid at the time of accident [date of accident is November 12, 2016].

Furthermore, Ex-P.6 - Fitness Certificate and Registration Certificate of the first respondent's Alto Car has also been marked by the petitioners, which was valid upto July 30, 2021. Hence, the second respondent is liable to indemnify the first respondent and pay compensation to the petitioners. The second respondent cannot be absolved of its liability. **Point No.(iv) is answered accordingly in favour of petitioners and against the second respondent.**

Point No.(v)

28.As regards the quantum of compensation under the head of loss of income / dependency, the Tribunal relying on the evidence of Ex-P.9 - Identity Card of the deceased, Ex-P.16 - Appointment Letter of the deceased and P.W.3 - Relationship Manager at Skillogic, Bangalore held that the deceased was employed in the said company as a Senior Campaign Manager.

29.Further relying on Ex-P.10 - Salary Slip of the deceased for the month of October 2016 (accident occurred in November 2016), the Tribunal held that the deceased earned Rs.29,900/- totally as monthly salary and it comes to Rs.29,381/- after statutory deductions (income tax



and professional tax). Here, the Tribunal erred failed to note the well settled law that the salary of an employee includes not only the basic pay but also all other attendant perks and allowances forming part of the regular income. However, allowances such as food allowance and conveyance allowance and other similar payments, which are intended to meet the expenses that an employee would ordinarily incur in the course of employment, are not liable to be included while computing income for the purpose of determining compensation [See: *National Insurance Company Limited -vs- Indira Srivastava*, reported in (2008) 2 SCC 763 and *Divisional Manager, Oriental Insurance Company Limited -vs- Radha Saiprasad*, reported in 2021 (1) TN MAC 414 (DB)]. To put it differently, while considering monthly income, the Tribunal is required to take into account all allowances forming part of the regular income, except those such as food coupon, conveyance allowance or travelling allowance, washing allowance or other allowances directly related to the performance of duties by the injured / deceased. The following components of the deceased's salary could be culled out from Ex-P.10 - Salary Slip:

<i>S.No.</i>	<i>Component</i>	<i>Amount</i>
1.	Basic Pay	Rs.14950/-
2.	Housing Rental Allowance	Rs.5980/-
3.	Conveyance Allowance	Rs.1600/-
4.	Medical Allowance	Rs.1500/-
5.	Special Allowance	Rs.5870/-



CMA NO.3890 OF 2025 AND CROSS OBJ. NO.14 OF 2026

Total	Rs.29,900/-
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30.The component of conveyance allowance in the deceased's salary is intended to meet the expenses that an employee would ordinarily incur in the course of employment and hence, it must be excluded. Accordingly, the deceased's monthly salary would be Rs.28,300/-.

31.Further, the Tribunal has rightly considered his age as 28 years by relying on Ex-P.8 - PAN Card and Ex-P.11 - Bank Passbook, which show that the deceased's date of birth is August 23, 1988, and rightly added future prospects of 40% in tune with the Judgment of Hon'ble Supreme Court in *National Insurance Company Limited -vs- Pranay Sethi*, reported in *(2017) 16 SCC 680*.

32.However, the Tribunal erred in its finding that the annual income of the deceased falls within the tax free limits. Bare reading of Ex-P.10 - Salary Slip would show that the deceased had been charged Rs.319/- towards income tax. This Court fails to understand where such a finding is coming from when the Tribunal itself has recorded that the salary of the deceased is after statutory deductions, which includes income tax, is Rs.29,381/-.



33.For ease of reference, relevant income tax slabs for the

financial year 2016-17 corresponding to assessment year 2017-2018

(accident occurred in November 2016) is given hereunder:

Income Tax Slab	Income Tax Rate	Cess
Income upto Rs.2,50,000/-	Nil	Nil
Income between Rs. 2,50,001/- - Rs. 5,00,000/-	10% of income exceeding Rs. 2,50,000/-	3% of income tax
Income between Rs.5,00,001/- - Rs. 10,00,000/-	20% of income exceeding Rs. 5,00,000/-	3% of income tax
Income above Rs.10,00,000/-	30% of income exceeding Rs. 10,00,000/-	3% of income tax

34. Considering the income of the deceased at Rs.28,300/-

(without statutory deductions) and after addition of 40 % future prospects,

the monthly income of the deceased would be Rs.39,620/- and his annual

income would be Rs.4,75,440/-. When professional tax is subtracted from

the same, it comes to Rs.4,72,940/-. As per the relevant tax slab rates given

above, the deceased would have to pay an income tax of Rs.22,294/- along

with Cess of Rs.669/-, totally Rs.22,963/-. Other than the income tax

deduction, the personal deduction of $\frac{1}{2}$ for the deceased is a bachelor and

the multiplier of 17 for the age of the deceased at the time of accident is 28

years, are all in tune with Judgments of Hon'ble Supreme Court in **Sarla**

Verma -vs- Delhi Transport Corporation, reported in (2009) 6 SCC 121



and **Pranay Sethi's Case** [cited *supra*]. The compensation under the head of loss of income / dependency shall be interfered with only to the extent of non-deduction of income tax. Accordingly, the calculation under the said head can be tabulated as hereunder:

S. No.	Particulars	Calculation	Amount (Rs.)
1	Monthly Salary	-	28,300
2	Add: Future Prospects @ 40%	$28,300 \times 40\%$	11,320
3	Monthly Income (with Future Prospects)	$28,300 + 11,320$	39,620
4	Annual Income	$39,620 \times 12$	4,75,440
5	Less: Professional Tax	$4,75,440 - 2,500$	4,72,940
6	Less: Income Tax Deduction with Cess	$4,72,940 - 22,963$	4,49,977
7	Less: 1/2 Personal Expenses Deduction	$4,49,977 - 2,24,988.5$	2,24,988.5
8	Multiplier of 17	$2,24,988.5 \times 17$	38,24,804.5
Total Compensation		Rs.38,24,805/- (rounded off)	

35.The compensation of Rs.5,000/- towards transportation expenses is justifiable. Further, the Tribunal has erred in awarding 10% enhanced compensation towards conventional heads, while the accident occurred in 2016. As per **Pranay Sethi's Case** [cited *supra*], conventional heads shall be revised with an addition of 10% every three years. When the point of reference is considered as the date of Judgment in **Pranay Sethi's**



Case viz., October 31, 2017, the Tribunal is not right in awarding enhanced compensation under the conventional heads. Thus, the compensation as modified by this Court is tabulated below:

<i>S.No.</i>	<i>Head</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount re-quantified by this Court</i>
1	Loss of Income	Rs.41,95,464/-	Rs.38,24,805/-
2	Filial Consortium for both the petitioners	Rs.88,000/-	Rs.80,000/-
3	Funeral Expenses	Rs.16,500/-	Rs.15,000/-
4	Loss of Estate	Rs.16,500/-	Rs.15,000/-
5	Transport Expenses	Rs.5,000/-	Rs.5,000/-
Total		Rs.43,21,464/-	Rs.39,39,805/-

36.Thus, the Cross Objectors / claimants are entitled to a sum of Rs.39,39,805/- as compensation from the second respondent / insurance company. **Point No.(v) is answered accordingly.**

CONCLUSION

37.The second respondent / Insurance company is directed to deposit the **modified award amount of Rs.39,39,805/- [Rupees Thirty-Nine Lakhs Thirty-Nine Thousand Eight Hundred and Five only]** along with interest at the rate of 7.5% per annum from the date of claim



petition till the date of deposit, to the credit of M.C.O.P. No.106 of 2017 on the file of Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore, less the amount if any already deposited, within a period of two months from the date of receipt of a copy of this judgment. On such deposit being made, the Cross Objectors / claimants are entitled to withdraw the same, by filing proper application. Further, the Cross Objectors / claimants is entitled to proportionate costs throughout. Apportionment shall be proportionate to Tribunal's apportionment. In all other aspects, the Award of the Tribunal shall hold good.

38.In fine,

- (i) The Civil Miscellaneous Appeal filed by the second respondent / Insurance Company in C.M.A. No.3890 of 2025 is dismissed.
- (ii) The Cross Objection filed by the petitioners/claimants in Cross Obj. No.14 of 2026 is allowed in part as detailed above with proportionate costs throughout.
- (iii) Considering the facts and circumstances of the case, there shall be no order as to costs in C.M.A. No.3890 of 2025.



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(iv) Consequently, connected C.M.P. No.32851 of 2025 in C.M.A. No.3890 of 2025 is closed.

[N.S.K., J.] [R.S.V., J.]

05.02.2026

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

To
The Motor Accidents Claims Tribunal
I Additional District and Sessions Court
Vellore.



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N.SATHISH KUMAR, J.
AND
R.SAKTHIVEL, J.

TK

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