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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-03-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

CMA No. 1743 of 2023

AND

CMA No.705 of 2023

Cause title in CMA No.1743 of 2023:

The Oriental Insurance Company Limited
Rep. by its Divisional Manager,
Nungambakkam-600 034.

..Appellant(s)

Vs.

1. Priya
2. Thilotheiya (Minor)
3. Dheepa (Minor)
4. Sriharini (Minor)
5. Hariharan (Minor)
6. Rajaram
7. Raghupathi

2 to 5 minor respondents are rep. by their
mother and natural guardian Priya

..Respondent(s)

Cause title in CMA No.705 of 2023:

1. Priya
2. Thilotheiya (Minor)
3. Dheepa (Minor)
4. Sriharini (Minor)
5. Hariharan (Minor)
6. Rajaram

2 to 5 minor appellants are rep. by their
mother and natural guardian Priya.

..Appellants



Vs.

1.Raghupathi

2.The Oriental Insurance Company Limited,
Rep. by its Divisional Manager,
Nungambakkam – 600 034.

...Respondents

Prayer in CMA No.1743 of 2023: This appeal filed under Section 173 of Motor Vehicles Act, 1998 against the judgment and decree made in MCOP.No.320 of 2019, dated 07.12.2022 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

Prayer in CMA No.705 of 2023: This appeal filed under Section 173 of Motor Vehicles Act, 1998 seeking to enhance the compensation in the judgment and decree made in MCOP.No.320 of 2019 dated 07.12.2022 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

For Appellant(s):

Mr.M.B.Raghavan
For Ms.C.Harini
For M/s.M.B.Gopalan Associates
in CMA No.1743 of 2023

Mr.S.Harish
For Mr.C.Vidhusan
in CMA No.705 of 2023

For Respondent(s):

Mr.S.Harish
For Mr.C.Vidhusan for R1 to R6
in CMA No.1743 of 2023

Mr.M.B.Raghavan for R2
For M/s.M.B.Gopalan Associates
in CMA No.705 of 2023

No appearance for R1 in CMA No.705 of 2023
No appearance for R7 in CMA No.1743 of 2023



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COMMON JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

C.M.A.No.1743 of 2023 has been filed by the appellant – Insurance Company against the award dated 07.12.2022 made in MCOP No.320 of 2019 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Perambalur.

2.C.M.A.No.705 of 2023 has been filed by the appellants – petitioners, questioning the contributory negligence fixed on the part of the deceased and seeking enhancement of compensation granted by the Tribunal in the award dated 07.12.2022 made in M.C.O.P.No.320 of 2019 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

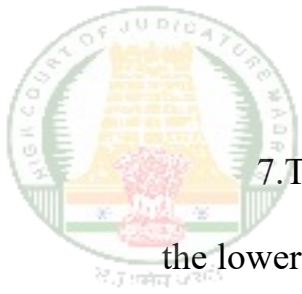
3.Both the appeals arise out of same accident and same award and hence, disposed of by this common judgment.

4.For the sake of convenience the parties are referred to as per their ranks in the claim petition.



5.The petitioners filed M.C.O.P.No.320 of 2019, claiming a sum of Rs.50,00,000/- as compensation for the death of one Selvaraju, who died in the accident that took place on 17.10.2018.

6.According to the petitioners, on 17.10.2018 at about 09.50 p.m. while the deceased R.Selvaraj was proceeding in his motor cycle bearing Reg. No.TN-46-F-9734 at Palakkarai Perambalur from East to West, the lorry bearing Reg. No.TN-46-W-7736 was coming behind him in the same direction, which was driven by its driver in a rash and negligent manner. Due to the same, the lorry dashed on the deceased and he was caught under the left rear wheel, dragged to some distance. In the accident, the deceased sustained fatal injuries all over the body, particularly below left knee and stomach. Immediately after the accident, the deceased was taken to the SRM Hospital, Irungalur and admitted. But soon after the admission, he died on that day itself. The Perambalur Police had registered a case in Crime No.679 of 2018 under Section 279 and 337 of IPC against the 1st respondent's driver. The deceased was stated to be employed as a carpenter at Bahrain for more than 22 years and he earned not less than a sum of Rs.30,000/- per month. Hence, the petitioners filed the said claim petition claiming a sum of Rs.50,00,000/- as compensation against the respondents.



7.The 1st respondent, who is the owner of the lorry remained ex parte in the lower Court.

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8.The 2nd respondent – Insurance Company filed counter affidavit and denied that the accident has occurred due to rash and negligent driving of the driver of the lorry and claimed that the accident occurred only due to the negligent act of the deceased, who drove his motor cycle in a careless and negligent manner and dashed on the rear wheel of the lorry. The place of accident was in the centre of the road. The rough sketch and MVI report clearly prove the manner of accident occurred. The deceased had no driving license and did not wear a helmet at the time of accident. It was therefore contended that the 2nd respondent was not under liability to compensate for the death. The age, income and dependency of the deceased were denied. The compensation amount and interest claimed by the petitioners were stated to be highly excessive and it was prayed that the claim petition should be dismissed against the 2nd respondent.

9.During trial, the 1st petitioner examined herself as P.W.1 and one Vinothkumar, the pillion rider as P.W.2 and marked 11 documents as Exs.P1 to P11. The 2nd respondent – Insurance Company examined the lorry driver Kandasamy as R.W.1 but did not mark any documents.



10.The Tribunal, considering the pleadings and oral and documentary evidence, held that both the driver of the lorry as well as the deceased are equally responsible for the accident and fixed the percentage of contributory negligence on the part of the two wheeler rider / deceased at 50% and also fixed the contributory negligence on the part of the 1st respondent's driver at 50%. Since the 1st respondent is the owner of the lorry and the said vehicle was insured with the 2nd respondent, the 2nd respondent was held liable to pay compensation to the petitioners.

11.Challenging the 50% liability fastened on them, as well as the quantum of compensation granted by the Tribunal in the award dated 07.12.2022 made in M.C.O.P.No.320 of 2019, the 2nd respondent-Insurance Company has filed this appeal in C.M.A.No.1743 of 2023.

12.Not being satisfied with the awarded granted by the Tribunal in the award dated 07.12.2022 made in M.C.O.P.No.320 of 2019 the petitioners have filed the appeal in C.M.A.No.705 of 2023.

13.Heard both sides.



14.The learned counsel for the appellant in CMA No.1743 of 2023 pointed out the averments made in the claim petition that the deceased was employed as a carpenter and that he was earning Rs.30,000/- per month.

15.However, it is the case of the 2nd respondent in CMA No.1743 of 2023 that the deceased was employed in Bahrain as a carpenter and that he was earning a sum of Rs.45,333/- per month. The Tribunal had taken the monthly income at Rs.45,333/-.

16.The learned counsel for the appellant assailed this fact by stating that the Tribunal had proceeded on no evidence while determining the monthly income as Rs.45,333/-. It was also pointed out by the learned counsel that Ex.P5 series, which is the passport of the deceased, showed that the deceased had come over to this country in July 2018 and that his permission to reside in Bahrain had expired in January 2019.

17.We have carefully perused Ex.P5, passport of the deceased, which reflected that quite consistently over the past years, he had been coming over to this country every July and was leaving around December. The accident occurred in the year 2018 within that particular period. If it is taken that his monthly income would be around Rs.45,333/-, there is also no evidence to show that during that leave period of about three months, he was paid salary by his



employer at Bahrain. If we are to go with the averments made that the deceased was earning a sum of Rs.45,333/- during his stay at Bahrain, then he would be earning that amount only for a period of 9 months alone. While taking that factor into consideration, then his income per month would be Rs.30,000/- per month which is the amount stated in the claim petition and in the evidence. We would take that statement at its face value and would not look for further evidence and consider the monthly income at Rs.30,000/-.

18.The learned counsel for the appellant in CMA No.705 of 2023 contended that the contributory negligence determined by the Tribunal requires revisitation. According to him, the accident was caused more by the lorry driver than by the deceased, who was driving the two wheeler.

19.We have given our careful consideration to his arguments and also verified the evidence of PW-2, Vinothkumar, the injured eyewitness, who was the pillion rider and also the evidence of RW-1, the lorry driver. We also take into consideration the fact that the First Information Report had been registered against the lorry driver, who was shown as the primary accused.

20.In view of the above, we would fix the monthly income at Rs.30,000/- and rework the contributory negligence at 25% on the part of the deceased and 75% on the party of the driver of the lorry.



21. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Annual Income	45,333/- + 4,533/- (10% F.P) x 12 =Rs.5,58,392/-	30,000/- + 3,000/- (10% F.P) x 12 =Rs.3,96,000/-	Reduced
2.	After deducting 1/4th	Rs.4,48,794/-	Rs.2,97,000/-	Reduced
3.	Apply multiplier 13	Rs.4,48,794/- x 13 =Rs.58,34,322/-	Rs.2,97,000/- x 13 =Rs.38,61,000/-	Reduced
4.	Loss of Dependency	Rs.58,34,322/-	Rs.38,61,000/- (-) 25% of the contributory negligence of the deceased =Rs.28,95,750/-	Reduced
5.	Consortium	Rs.40,000/-	Rs.40,000/-	Confirmed
6.	Parental Consortium (4x40,000)	Rs.1,60,000/-	Rs.1,60,000/-	Confirmed
7.	Filial Consortium (1x40,000)	Rs.40,000/-	Rs.40,000/-	Confirmed
8.	Loss of Estate	Rs.15,000/-	Rs.15,000/-	Confirmed
9.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-	Confirmed
10.	Total	Rs.61,04,322/- (-)50% of the contributory negligence of the deceased Rs.30,52,161/-	Rs.31,65,750/-	Enhanced by Rs.1,13,589/-



22. In the result, both C.M.A.Nos.705 & 1743 of 2023 are partly allowed.

The compensation awarded by the Tribunal at Rs.30,52,161/- is hereby enhanced to Rs.31,65,750/- together with interest at the rate of 7.5% per annum (excluding the default period if any) from the date of petition till the date of realization. The 2nd respondent – Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.320 of 2019, on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur. On such deposit, the petitioners 1 and 6 are permitted to withdraw their respective share of the award amount now determined by this Court, as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The share of the minor petitioners 2 to 5 are directed to be deposited in anyone of the Nationalized Banks, till the minor petitioners 2 to 5 attains majority. On such deposit, the 1st petitioner being the mother of the minor petitioners 2 to 5 is permitted to withdraw the accrued interest once in three months for the welfare of the minor petitioners 2 to 5. No costs.

(C.V.K.,J.) (K.R.S.,J.)
04-03-2026

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No



To

1.Motor Accident Claims Tribunal, Principal District Court, Perambalur.

2.The Section Officer, VR Section, High Court of Madras.



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CMA Nos. 705 & 1743 of 2



**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

smv

**CMA No. 1743 of 2023
and
CMA No.705 of 2023**

04-03-2026