IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-06-2026

CORAM

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CMA.No.2530 of 2022

1. E.Jayasankar
2. J.Mahalakshmi (Minor)
3. J.Priyadharshini (Minor)
4. J.Kannan (Minor)

(Minor appellants are represented by their natural guardian/father E.Jayasankar, 1st appellant herein) ..Appellants

Vs.

1. K.Kamatchi

2. Reliance General Insurance Co. Ltd.,
6th Floor, No.6, Haddows Road,
Nungambakkam, Chennai - 600 034.

..Respondent(s)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to allow the appeal and enhance the compensation in M.C.O.P.No.3786 of 2016 dated 09.12.2021 on the file of the Motor Accidents Claims Tribunal/II Judge, Court of Small Causes, Chennai.

For Appellants: Ms.Ramya V.Rao

For Respondent(s): Mr.P.Suresh Srinivasan (for R2)
R1 - No Such Person

JUDGMENT

Challenging the award passed by the learned II Judge, II Court of Small Causes, Motor Accident Claims Tribunal, Chennai, in M.C.O.P.No.3786 of 2016 dated 09.12.2021, the claimants have approached this Court with this appeal seeking enhancement of compensation.

2.1 The brief facts leading to the filing of this appeal are as follows:-

2.2 The appellants are the husband, minor daughters and minor son of the deceased Mohana, who died due to fatal injuries suffered in a road accident on 31.12.2012.

2.3 On 31.12.2012, at 6.30 P.M., when the deceased was riding her motorcycle bearing Registration No.TN-21-AB-4189 at Anupuram Township near Indian Bank, proceeding towards Neikuppi via Pongneri, another motorcycle bearing Registration No.TN-19-H-9235, ridden in a rash and negligent manner from Thirukazhukundram towards Sadras, had hit the motorcycle of the deceased. As a result, the deceased sustained severe injuries and died on the spot.

2.4 Alleging that the rider of the motorcycle bearing Registration No.TN-19-H-9235 was responsible for the accident, the Claim Petition was filed by the appellants as the legal heirs of the deceased. They arrayed the first respondent as the owner of the said motorcycle and the second respondent as the Insurance Company with which the motorcycle was insured vide Insurance Policy No.1212422312027474 for the period from 17.10.2012 to 16.10.2013. The appellants alleged that the owner of the vehicle and the Insurance Company are jointly and severally liable to pay them compensation.

2.5 Despite the delivery of intimation and notice to the first respondent, he chose not to appear before the Tribunal. Consequently, he was called, marked absent and set *ex parte* on 02.01.2017.

2.6 The appellants claimed that the deceased was working as a Sales Representative in Walmart Superstore, Canada and was earning a monthly income of Rs.1,68,000/-.

2.7 The second respondent/Insurance Company filed a counter affidavit contesting the Claim Petition on the ground that the deceased was not employed in Canada, that the compensation claimed by the appellants under various heads was highly excessive and that the appellants had to prove beyond reasonable doubt that the deceased sustained fatal injuries due to the road accident.

3. In order to prove their claim, the first appellant examined himself as P.W.1 and marked Exs.P1 to P13. One Desingu, an eyewitness to the occurrence, was examined as P.W.2 and one Ramanujam, the Sub-Inspector of Police at Sadras Police Station, Kancheepuram District, was examined as P.W.3. On the side of the second respondent/Insurance Company, the Area Manager of the Reliance General Insurance Company Limited, was examined as R.W.1 and Exs.R1 to R3 were marked.

4. The Tribunal framed the following points for consideration:-

a. *Who has attributed negligence for the cause of the accident?*

b. *Whether the Petitioners are entitled to compensation?*

c. *If so, which Respondent is liable to pay compensation?*

d. *If so, to what extent and quantum, the eligible petitioners are entitled to compensation?*

5. The Tribunal, after considering the materials available on record, concluded that the rider of the motorcycle bearing Registration No.TN-19-H-9235, insured with the second respondent/Insurance Company, had ridden the vehicle in a rash and negligent manner and hit the deceased, resulting in her death due to head injuries. However, noting that the deceased was not wearing a helmet at the time of the accident, the Tribunal fixed 10% contributory negligence on her.

6. Based on the legal heir certificate marked as Ex.P4, it was established that the first appellant is the husband, the second and third appellants are the minor daughters and the fourth appellant is the minor son of the deceased. Finding that the rider of the offending vehicle insured with the second respondent/Insurance Company did not possess a valid driving license, the Tribunal ordered pay and recovery.

7. Based on Ex.P6 – copy of the passport and Ex.P7 – permanent resident card of Canada, the date of birth of the deceased was established as 10.05.1978. Considering the date of accident as 31.12.2012, the Tribunal fixed the age of the deceased as 34 years at the time of the accident.

8. Furthermore, based on the other documents, the Tribunal concluded that the appellants had not produced any documentary evidence to prove that the deceased was working at Walmart Superstore, Canada. Hence, the Tribunal fixed her notional income at Rs.13,000/- per month. The Tribunal also computed future prospects, deducted personal expenses and awarded compensation for loss of estate, loss of love and affection and funeral expenses, rounding off the total compensation to Rs.24,21,720/-.

9. Aggrieved by the non-grant of just compensation, the claimants have preferred the present appeal.

10. Ms.Ramya V. Rao, learned counsel for the appellants, contended that the deceased was a permanent resident of Canada and was working as a Sales Representative in Walmart Superstore there. She further contended that as per the evidence of P.W.2, the deceased was wearing a helmet at the time of the accident and therefore, the Tribunal erred both in failing to fix the monthly income of the deceased at Rs.1,68,000/- and in deducting 10% towards contributory negligence. She also contended that since there are four legal heirs, including minor children, the Tribunal erred in failing to award Rs.40,000/- each towards loss of love and affection. She emphasized that the children, having lost their mother, are entitled to parental consortium and all the legal heirs are entitled to Rs.40,000/- each under this head. In support of her contentions, she relied upon the judgment of the Hon'ble Supreme Court in ***Magma General Insurance Company Limited Vs. Nanu Ram Alias Chuhru Ram & others*** reported in ***(2018) 18 SCC 130.***

11. The first respondent was set *ex parte* before the Tribunal, and despite service of notice in this appeal, there is no appearance on his behalf.

12. Mr.P. Suresh Srinivasan, learned counsel for the second respondent/Insurance Company, submitted that though the appellants claimed that the deceased was employed as a Sales Representative in Walmart Superstore in Canada, the Tribunal rightly observed that she had resided in Canada for only a short duration and consequently, disbelieved the employment claim. He further submitted that as per the passport (Ex.P6), the deceased was in Canada for only about a month and therefore, the Tribunal was fully justified in discarding the claim of foreign employment and fixing a reasonable notional income of Rs.13,000/- per month.

13. Furthermore, the learned counsel submitted that since the deceased was not wearing a helmet at the time of the accident, she sustained fatal head injuries. As the post-mortem report (Ex.P2) indicated that head injuries were the cause of death, the Tribunal correctly attributed 10% contributory negligence to her. He further submitted that the overall compensation awarded under the conventional heads, including the amounts granted to the children, was just, reasonable, and require no further enhancement.

14. This Court has considered the materials available on record and after perusing and examining the impugned award which is the subject matter of challenge and after hearing the submissions of the respective counsel, observes that the primary question that arises for consideration before this Court is whether the Tribunal was correct in awarding compensation under the various heads.

15. The Tribunal deducted 10% towards contributory negligence on the sole ground that the deceased was not wearing a helmet at the time of the accident. However, a perusal of the records reveals that P.W.2, an eyewitness to the occurrence, has categorically deposed that the deceased was, indeed, wearing a helmet at the time of the accident. It is significant to note that the second respondent/Insurance Company failed to raise the plea of non-wearing of a helmet in its counter-affidavit, nor was the ocular evidence of P.W.2 confronted or shaken during cross-examination on this aspect. Under such circumstances, this Court finds that the conclusion of the Tribunal, holding that the deceased was not wearing a helmet, is unsustainable and 10% deduction towards contributory negligence is not proper.

16. Regarding the income of the deceased, the appellants contended that she was employed as a Sales Representative in Walmart Superstore in Canada, earning Rs.1,68,000/- per month. However, as per the passport (Ex.P6), the deceased had resided in Canada for only a month before returning to India, where she remained until her demise. Therefore, the Tribunal was fully justified in disbelieving the claim of active foreign employment of the deceased and fixing her notional income at Rs.13,000/- per month, requires no interference.

17. Turning to the conventional heads, the deceased is survived by her husband and three minor children. In the light of the judgment in ***Magma General Insurance Company Limited*** *(supra)*, the minor children are legally entitled to parental consortium upon the premature death of a parent. This compensates for the loss of parental aid, protection, affection, society, discipline, guidance, and training. Accordingly, the Tribunal had erred in its omission and each child is entitled to Rs.40,000/- towards parental consortium.

18. Finally, the Tribunal correctly observed that the rider of the offending vehicle did not possess a valid driving license. Since the accident occurred on 31.12.2012, well before the statutory amendments, the Tribunal rightly applied settled legal principles and directed the second respondent/Insurance Company to pay the compensation amount to the appellants first and subsequently, recover the same from the owner of the vehicle/first respondent.

19. In view of the aforesaid observations and findings, the award of the Tribunal is modified as hereunder:-

S.No.	***Heads***	***Amount awarded by the Tribunal***	***Amount awarded by this Court***
1.	Loss of income	Rs.26,20,800/-	Rs.26,20,800/-
2.	Loss of Estate	Rs.15,000/-	Rs.15,000/-
3.	Loss of Love and Affection	Rs.40,000/-	Rs.40,000/-
4.	Loss of parental consortium	Nil	**Rs.40,000 x 3 (each of the children) = Rs.1,20,000/-**
5.	Funeral Expenses	Rs.15,000/-	Rs.15,000/-
	Total	Rs.26,90,800/-	Rs.28,10,800/-
	10% contributory negligence	Rs.2,69,080/-	**Nil**
	Compensation	Rs.24,21,720/-	**Rs.28,10,800/-**

20. In the result,

a. This Civil Miscellaneous Appeal is allowed and the award passed by the Tribunal for an amount of Rs.24,21,720/- is enhanced to Rs.28,10,800/-. No costs.

b. The second respondent/Insurance Company is directed to deposit a sum of Rs.28,10,800/- (less the amount already deposited) with interest at the rate of 7.5% per annum, from the date of claim petition till the date of deposit, within a period of two (2) months from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.3786 of 2016 on the file of the learned II Judge, Court of Small Causes, Motor Accidents Claims Tribunal, Chennai.

c. On such deposit being made, the first appellant is at liberty to withdraw his share as per the apportionment made by the Tribunal, with costs and interest, after filing a proper petition for withdrawal. The share of the minor appellants 2, 3 and 4, as apportioned by the Tribunal and this Court, with costs and interests, shall be deposited in a fixed deposit, in any one of the Nationalized Banks until they attain majority, and the guardian of the minor appellants is permitted to withdraw the interest amount accrued thereon once in three months.

d. The appellants are directed to pay Court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of Court fee.

e. The appellants are not entitled to any interest for the default period in filing the above appeal.

05-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1.The II Judge,
Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai.

2.Reliance General Insurance Co. Ltd.,
6th Floor, No.6, Haddows Road,
Nungambakkam, Chennai - 600 034.

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A.D.JAGADISH CHANDIRA, J.

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