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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-10-2026

CORAM

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

CMA No. 3326 of 2024

CNR:{HCMA011773992024}

AND

CMA NO. 3328 OF 2024,CMA NO. 3327 OF 2024

Suyan Abitha @ Abitha
No. 40, Rajeev Nagar, Palayakottai Road,
Kangayam, Tiruppur District J.Bakkiamery (Died)

..Appellant(s)

Vs

1. C.T.Shanmugam
   S/o. C.T.S. Chidambaram, No. 5, Balaji Nagar,
   12th Street, Athambakkam, Chennai 88.

2. United India Insurance Co Ltd.
   No. 44, G.S.T. Road, Guindy, Chennai 32

3. United India Insurance Co Ltd.
   No. 2/178, Kumaran Complex, Erode Road,
   Perundurai, Erode Dist.

..Respondent(s)

CMA No. 3328 of 2024

CNR:{HCMA011774002024}

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3. United India Insurance Co Ltd.
   No. 2/178, Kumaran Complex, Erode Road,
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CMA No. 3327 of 2024

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..Respondent(s)

CMA No. 3326 of 2024

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set aside the Award dated 12.07.2024 made in MCOP No.1307 of 2013 on the file of the Exclusive Motor Accidents Claims Tribunal, Tirupur.

CMA No. 3328 of 2024

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set aside the Award dated 12.07.2024 made in MCOP No. 1309 of 2013 on the file of the Exclusive Motor Accidents Claims Tribunal, Tirupur.

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CMA No. 3327 of 2024

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set aside the Award dated 12.07.2024 made in MCOP No. 1310 of 2013 on the file of the Exclusive Motor Accidents Claims Tribunal, Tirupur.

For Appellant(s): D.Rameshkumar
in all the appeals

For Respondent(s): P.Sankaranarayanan
for R 2 & R3 in all appeals

COMMON JUDGMENT

Unsuccessful claimants have preferred these appeals, challenging 50% negligence fixed on the part of the deceased and also seeking enhancement of compensation. CMA.No.3326 of 2024 has been filed aggrieved over the award dated 12.07.2024 made in MCOP.No.1307 of 2013. CMA.No.3327 of 2024 has been filed aggrieved over the award dated 12.07.2024 made in MCOP.No.1310 of 2013. CMA.No.3328 of 2024 has been filed aggrieved over the award dated 12.07.2024 made in MCOP.No.1309 of 2013.

2. All the claim petitions have been filed under Section 166 of the Motor Vehicles Act, 1988, seeking compensation for the death of one Kennedy, Jayarani and their 6 months minor child Anishkumar, who were all died in a road accident. The 1st claimant Suyan Abitha @ Abitha is the daughter of the deceased Kennedy and Jayarani and sister of the deceased Anishkumar, while the 2nd claimant Backiamery is the mother of the deceased Kennedy.

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3. According to the claimants, on 25.05.2013 at about 9.00 p.m., when Kennedy was driving the car bearing Reg.No.TN 07 U 4527 from West to East, near Kallimettupalayam pirivu, on the Coimbatore to Trichy Road, the bus bearing Reg.No.TN 22 BH 2188, driven in a rash and negligent manner from the opposite direction, hit the car resulting in the death of Kennedy, his wife Jayarani and their 6 months old son Anishkumar. The 1st respondent is the owner of the bus, the 2nd respondent is the insurer of the bus ad the 3rd respondent is the insurer of the car. According to the claimants, the deceased Kennedy was aged about 36 years at the time of accident, earning a sum of Rs.10,000/- per month as a welding mechanic and the deceased Jayarani was aged about 35 years, earning a sum of Rs.10,000/- per month working as a Tailor.

4. The 1st respondent / owner of the offending bus was called absent and set *exparte* before the Tribunal.

5. The 2nd respondent / Insurance Company has filed a counter statement, wherein they denied the manner of accident and further stated that only the deceased Kennedy had driven the car in a rash and negligent manner and hit the bus. The driver of the bus did not have effective driving licence.

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6. A joint trial was conducted. Before the Tribunal, on behalf of the claimants, the 1st claimant herself was examined as PW1 and one Justin Vellankanni was examined as PW2 and Exs.P1 to P12 were marked. On the side of the respondent, no witness was examined and Exs.R1 and R2 were marked. On behalf of the witness, Ex.X1 was marked.

7. The Tribunal, upon appreciation of evidence adduced on either side, finds that during the course of cross examination of PW2, who has admitted that the accident occurred in the spot indicated in the Rough Sketch prepared by the police and further admitted that the Observation Mahazar prepared by the police describes the scene of occurrence properly. The Tribunal, on a perusal of Ex.R1-Rough Sketch and Ex.R2 – Observation Mahazar finds that the accident occurred on the centre of the east-west road and if the car had been driven from west to east, on the left extreme of the road, the accident would not have been occurred. This would clearly indicate that both the driver of the bus as well as the driver of the car had driven their respective vehicles at a very high speed in the centre of the road and had collied head on. Hence, the Tribunal fixed 50% negligence on the driver of the bus and 50% on the deceased Kennedy. Accordingly, the Tribunal held that the 2nd respondent / Insurer of the bus shall be liable to pay 50% compensation to the claimants in all the three cases.

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8. With regard to quantum of compensation in MCOP.No.1307 of 2013 pertaining to the deceased Kennedy, the deceased was working as a Welding Mechanic earning a sum of Rs.10,000/- per month, however in the absence of proof of income, the Tribunal has fixed Rs.8,500/- as the notional monthly income of the deceased, added 40% towards future prospects as the deceased was aged about 38 years at the time of accident by relying upon the decision of the Hon'ble Apex Court in ***National Insurance Co., Ltd. V. Pranay Sethi and Others [2017 (2) TNMAC 609],*** deducted 1/4th towards personal living expenses considering the number of dependents and also adopted Multiplier "15" as per the decision of the Hon'ble Apex Court in ***Sarla Verma and Ors. V. Delhi Transport Corporation and Ors. [2009 (2) TNMAC 1],*** and has arrived at the compensation towards Loss of Dependency amounting to Rs.16,06,500/-. The Tribunal has also awarded compensation under various other heads as under:

Heads of Compensation	**Amount awarded by the Tribunal (Rs.)**
Loss of Dependency [8500 + 40%] = 11,900x 12 x 15 x ¾	16,06,500
Funeral Expenses	15,000
Loss of Estate	15,000
Loss of Consortium Parental consortium to 1st claimant and Filial consortium to 2nd claimant (40,000 x2)	80,000
TOTAL	**17,16,500**

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Challenging 50% contributory negligence fixed on the part of the deceased Kennedy and seeking enhancement of compensation, the claimant has preferred CMA.No.3326 of 2024.

9. With regard to the quantum of compensation in MCOP.No.1310 of 2013 pertaining to the deceased Jayarani, at the time of accident she was aged about 35 years working as a Tailor and earning a sum of Rs.10,000/-, however in the absence of proof of income, the Tribunal has fixed Rs.7,000 per month as the monthly notional income of the deceased, added 40% towards future prospects, deducted 1/4th towards personal expenses and applied the multiplier "15" and arrived at a compensation of Rs.13,23,000/- towards Loss of Dependency. The Tribunal has also awarded under various other heads as hereunder:

Heads of Compensation	**Amount awarded by the Tribunal (Rs.)**
Loss of Dependency [7000 + 40%] = 9,800x 12 x 15 x ¾	13,23,000
Funeral Expenses	15,000
Loss of Estate	15,000
Loss of Consortium Parental consortium to 1st claimant	40,000
TOTAL	**13,93,000**

Challenging the 50% contributory negligence fixed on the part of the deceased and seeking enhancement of compensation, the claimant has preferred CMA.No.3327 of 2024.

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10. With regard to the quantum of compensation awarded in MCOP.No.1309 of 2013 pertaining to the deceased Anishkumar, who is 6 months old, the Tribunal has awarded compensation as under:

Heads of Compensation	**Amount awarded by the Tribunal (Rs.)**
Loss of Dependency	2,40,000
Funeral Expenses	15,000
Loss of Estate	15,000
Loss of Consortium Parental consortium to 1st claimant	Nil
TOTAL	**2,70,000**

Challenging the 50% contributory negligence fixed on the part of the deceased and seeking enhancement of compensation, the claimant has preferred CMA.No.3328 of 2024.

11. The learned counsel appearing for the appellant / claimant would submit that the Tribunal failed to appreciate the evidence of PW2, who is an eye witness to the occurrence properly. PW2 deposed about the manner of accident and categorically deposed that the accident occurred due to rash and negligent driving of the driver of the bus, which dashed the car driven by the deceased. The Tribunal ought not to have fixed contributory negligence at 50% on the deceased. The Tribunal failed to consider that there was no documentary and oral evidence adduced on the respondent side to prove contributory negligence and in the absence of oral and documentary evidence, the Tribunal ought not have awarded contributory negligence of 50%, which is erroneous and liable to

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be set aside. The Tribunal has erred in fixing notional income of Rs.8,500/- for the deceased Kennedy, who was doing self employment of welding machine mechanic and earning Rs.10,000/- per month. Similarly, the Tribunal erred in fixing the notional income of Rs.7,000/- for the deceased Jayarani, who was a Tailor earning a sum of Rs.10,000/- per month and the same is to be enhanced.

12. *Per contra*, learned counsel appearing for the 2nd respondent / Insurance Company would submit that upon appreciation of evidence adduced by PW2, who is an eye witness and considering Ex.R1- Rough Sketch and Ex.R2- Observation Mahazar, which would show that the accident had occurred on the centre of the east-west road. If the car had been driven from west to east, on the left extreme of the road, the accident would not have been occurred. This would clearly indicate that both the driver of the bus as well as Kennedy, driver of the car had driven the respective vehicles at a very high speed in the centre of the road and had collied head on. Hence, the Tribunal fixed 50% negligence on the driver of the bus and 50% negligence on the deceased Kennedy and in the absence of proof of income, the notional monthly income arrived by the Tribunal at Rs.8500/- for the deceased Kennedy and Rs.7,000 for the deceased Jayarani appears to be just and proper and does not require any interference.

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13. This Court considered the submissions made on either side and perused the entire materials available on record.

14. According to the claimants, on 25.05.2013 at about 9.00 p.m., when the deceased Kennedy was driving the car bearing Reg.No.TN 07 U 4527 from West to East near Kallimettupalayam pirivu, on the Coimbatore to Trichy Road, at that time, a bus bearing Reg.No.TN 22 BH 2188 driven by its driver in a rash and negligent manner from the opposite direction and hit the car, resulting in the death of the driver of the car / deceased Kennedy, his wife Jayarani and their 6 months old son Anishkumar. In order to prove the said facts, the claimants have relied upon the evidence of PW2, who is an eye witness to the occurrence and in his proof affidavit, PW2 has stated that the accident had occurred when the bus driven in a rash and negligent manner, hit the car which was going from West to East, on the left extreme of the road. PW2 has admitted that the accident occurred in the spot indicated in the Rough Sketch prepared by the police and further admitted that the Observation Mahazar prepared by the police describes the scene of occurrence properly.

15. According to the 2nd respondent / Insurance Company, due to the rash and negligent driving of the deceased Kennedy, the accident had occurred. In order to prove the said fact, neither the driver of the bus nor any independent witness has been examined. It is relevant to note that the burden of proof of a

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particular fact lies on that person, who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. In the case on hand, though the 3rd respondent Insurance Company contended that the deceased Kenney also contributed to the accident and the deceased Kennedy had driven his car rash and negligently, in order to prove the said facts, neither the driver of the bus nor any independent witness has been examined. In such circumstances, the Tribunal merely relied upon Ex.R1 – Rough Sketch and Ex.R2- Observation Mahazar to conclude that the accident had taken place in the centre of the east-west road. If the car had been driven from west to east, on the left extreme of the road, the accident would not have been occurred. In the absence of any oral and documentary evidence on the part of the driver of the bus, the Tribunal ought not to have fixed 50% contributory negligence on the driver of the car, namely the deceased Kennedy. Therefore, the findings of the Tribunal fixing 50% contributory negligence on the deceased Kennedy is liable to be set aside and accordingly, it is set aside.

16. With regard to the quantum of compensation in MCOP.No.1307/2013 pertaining to the deceased Kennedy, the deceased was doing welding mechanic works and earning a sum of Rs.10,000/- p.m., considering the fact that the accident took place on 25.05.2013 and the deceased was aged 36 years at the time of accident, as evidenced from Ex.P5-Postmortem Certificate, the Tribunal fixing a sum of Rs.8,500/- per month as notional monthly income of the

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deceased, appears to be meagre and this Court is inclined to enhance the same to Rs.10,000/- per month. Hence, by adding 40% towards future prospects, applying the Multiplier "15" and deducting 1/3rd towards Personal Living Expenses, the compensation under Loss of Dependency would comes to Rs.16,80,000/-. Since the mother of the deceased / 2nd claimant died during the pendency of the claim petition, Loss of Consortium is granted only to the 1st claimant as parental consortium. This Court is also inclined to award Rs.10,000/- towards Transport charges. Thus, the compensation now determined by this Court is tabulated hereunder:

Heads of Compensation	**Amount awarded by the Tribunal (Rs.)**
Loss of Dependency [10,000 + 40%] = 14,000x 12 x 15 x 2/3	16,80,000
Funeral Expenses	15,000
Loss of Estate	15,000
Loss of Consortium	40,000
Transportation Expenses	10,000
TOTAL	**17,60,000**

17. With regard to the quantum of compensation in MCOP.No.1310/2013 pertaining to the deceased Jayarani, the deceased was doing Tailoring job and earning a sum of Rs.10,000/- p.m., considering the fact that the accident took place on 25.05.2013 and the deceased was aged 38 years at the time of accident, as evidenced from Ex.P6-Postmortem Certificate, the Tribunal fixing a sum of Rs.8,500/- per month as notional monthly income of the deceased, appears to be

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meagre and this Court is inclined to enhance the same to Rs.10,000/- per month. Hence, by adding 40% towards future prospects, applying the multiplier 15 and deducting 1/3rd towards Personal Living Expenses, the compensation under Loss of Dependency would comes to Rs.16,80,000/-. Since the mother -in-law of the deceased / 2nd claimant died during the pendency of the claim petition, Loss of Corsortium is granted only to the 1st claimant as filial consortium. This Court is also inclined to award Rs.10,000/- towards Transport charges. Thus, the compensation now determined by this Court is tabulated hereunder:

Heads of Compensation	**Amount awarded by the Tribunal (Rs.)**
Loss of Dependency [10,000 + 40%] = 14,000x 12 x 15 x 2/3	16,80,000
Funeral Expenses	15,000
Loss of Estate	15,000
Loss of Consortium	40,000
Transportation Expenses	10,000
TOTAL	**17,60,000**

18. With regard to the quantum of compensation in MCOP.No.1309 / 2013, pertaining to the deceased 6 months old Anishkumar, who do not have any independent income and the claimants are sister and grandmother of the deceased, the Tribunal has awarded Rs.2,40,000/- towards Loss of Dependency in terms of Section 163A of the Motor Vehicles Act, 1988 in case of death, which appears to be reasonable and proper and does not require any interference.

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19. In the light of the above, CMA.Nos.3326 and 3327 of 2024 is partly allowed and the compensation awarded by the Tribunal, vide award dated 12.07.2026 in MCOP.Nos.1307 and 1310 of 2013 is modified as above. The 2nd respondent Insurance Company is directed to deposit the enhanced compensation amount now determined by this Court, together with interest @ 7.5 % p.a. from the date of claim petition till the date of deposit, less amount already deposited, if any, within a period of six weeks from the date of receipt of this judgment. On such deposit, the claimant is entitled to withdraw the same, less already within, on filing appropriate application and paying necessary Court fee before the Tribunal. The Tribunal has not awarded interest for the delay period and the same is hereby confirmed. The manner, mode and disbursement of compensation, shall be as per the order of the Tribunal. The CMA.No.3328 of 2024 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

29-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
Jvm
To
1.The Motor Accidents Claims Tribunal,
Tiruppur.

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

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M.JOTHIRAMAN J.

Jvm

CMA Nos. 3326 to 3328 of 2024

29-10-2026

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