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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. 2622 of 2026

CNR: {HCMA012517712025}

1. Manoharan Unnithan

2. Usha M.Unnithan

3. Minor Haritha Lekshmi
   rep. by her father Manoharan Unnithan/1st appellant

..Appellant(s)

Vs

1. S.Viswanathan

2. The Chairman,
   Angammal Educational Trust, Elayampalayam,
   Kumarapalayam.

3. Bajaj Allianz General Insurance Company Ltd.,
   No. 84/1, Perundurai Road,
   Opp. to Erode Collector Office, TTK Complex,
   Erode-638 011.

4. M.Akhil

5. National Insurance Company Ltd
   1st Floor, Municipal Shopping Complex,
   North Paravur, Kerala-683 513.

..Respondent(s)

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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.04.2024 made in M.C.O.P.No.409 of 2019 on the file of the Special District Court (to deal with MCOP Cases), Erode.

For Appellant(s): Mr.Ma.P.Thangavel

For Respondent(s): M/s.M.B.Gopalan Associates for R3
Dr.C.Paranthaman for R5

J U D G M E N T

The unsuccessful claimants/appellants have filed this Civil Miscellaneous Appeal challenging 40% of contributory negligence fixed on the part of the deceased Harikrishnan and seeking enhancement of compensation awarded by the Special District Court, to deal with MCOP Cases, Erode, in M.C.O.P.No.409 of 2019, vide award dated 10.04.2024.

2. According to the claimants/appellants herein, on 29.07.2019 at about 05.45 p.m., the deceased Harikrishnan drove the motorcycle bearing Reg.No.KL 02 BE 8574 with one Adithya Hari travelling as a pillion rider on the left side of Kovai to Salem N.H. road from west to east direction. At that time, near Pallakkapalayam Pirivu, opposite to Excel College, the first respondent drove the bus bearing Reg.No.TN 59 L 6162 in a rash and negligent manner without giving any signal and suddenly crossed the National Highways

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from north to south direction and hit against the motorcycle. Due to the accident, the deceased Harikrishnan sustained multiple grievous injuries and immediately, he was taken to Komarapalayam Government Hospital, but he died on the way to the hospital. According to the claimants, the deceased was aged about 21 years and was studying BBA III year in Karnataka College of Management and Science. He was a very bright student and his future monthly income would be not less than Rs.1,00,000/- per month. The first and second claimants are the parents of the deceased and the third claimant is the younger sister of the deceased. The respondents 1 to 3 are the driver, owner and insurer of the bus bearing Reg.No.TN 59 L 6162 and the respondents 4 and 5 are the owner and insurer of the motorcycle bearing Reg.No.KL 02 BE 8574.

3. The respondent Nos.1, 2 and 4 were called absent and set *ex-parte* before the Tribunal.

4. The third respondent/insurer of the bus has filed a counter statement denying the manner of accident and stated that the accident happened only due to carelessness act of the deceased and the driver of the bus drove the vehicle in a careful manner from north to south direction and after giving proper signal, the first respondent crossed the half road and almost entered into another half of the road. At that time, the deceased drove his motorcycle in a rash and negligent manner with high speed from west to east direction and due to uncontrollable

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speed, he himself hit against the bus and fell down into the road and invited the accident.

5. The fifth respondent has filed a counter statement admitting the manner of accident as alleged in the claim petition.

6. On the side of the claimants, first claimant examined himself as P.W.1 and P.W.2 was examined and Ex.P1 to Ex.P15 were marked. On the side of the respondents, no witness was examined and no document was marked.

7. On appreciation of evidence adduced on either side, the Tribunal found that P.W.2, who is an eye-witness and none other than the owner of the two-wheeler driven by the deceased at the time of accident deposed the manner of accident and in Ex.P2/Rough Sketch, the spot of occurrence is shown in the middle of the northern lane in the highway and admittedly, the bus was coming from north to south direction (ie.,) in the cut road and was proceeding towards the gap in the divider in order to reach the south lane and there afterwards proceed further west. The Tribunal, from the evidence of eye-witness/P.W2 and the rough sketch/Ex.P2 and considering the damages on the two vehicles noted by the Motor Vehicle Inspector, held that both the deceased/rider of the two-wheeler and the bus driver/first respondent had failed to exercise the requisite precautionary method of slowing down and watching out for oncoming traffic

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while crossing the road junction. The Tribunal concluded that the deceased also contributed the negligence to the accident, and fixed 40% of contributory negligence on the part of the deceased and 60% of negligence on the part of the driver of the bus/first respondent. With regard to the quantum of compensation, the Tribunal has fixed a sum of Rs.15,000/- as monthly income of the deceased and added 40% towards future prospects by applying the ratio laid down by the Hon'ble Supreme Court of India in the case of ***National Insurance Company Limited vs. Pranay Sethi and others*** reported in ***2017(2) TNMAC 609 (SC),*** and as per the judgment of the Hon'ble Supreme Court of India in the case of ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***2009 (2) TNMAC 1 (SC),*** since the deceased was a bachelor at the time of accident, 1/2 was deducted towards personal and living expenses of the deceased and the multiplier "18" was adopted, since the age of the deceased was 20 years at the time of accident and thereby, a sum of Rs.22,68,000/- was awarded under the head of loss of dependency and also the following compensation was awarded under the other heads:-

S.No.	Heads	Amount
1	Loss of dependency	Rs.22,68,000/-
2.	Loss of Parental consortium to the claimants 1 and 2	Rs.96,800/-
3	Funeral Expenses	Rs.18,150/-

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4	Loss of estate	Rs.18,150/-
5	Damages to clothing and articles	Rs.2,000/-
	Total	Rs.24,03,100/-
	40% of contributory negligence	Rs.9,61,240/-
	Compensation payable	Rs.14,41,860/-

8. Though the third claimant is the sister of the deceased, since her father is alive, it was held by the Tribunal that the third claimant cannot be held as a dependent of the deceased and thereby, the claim petition was dismissed insofar as the third claimant is concerned.

9. Aggrieved over fixing of 40% of contributory negligence on the deceased and seeking enhancement of compensation, the claimants have preferred this Civil Miscellaneous Appeal.

10. The learned counsel appearing for the appellants/claimants would submit that the accident had happened only due to rash and negligent driving of the driver of the bus and a criminal case was also registered against the driver of the bus. The manner of accident has been clearly deposed by P.W.2, who is an eye-witness to the accident. During the course of cross-examination of P.W.2, nothing elicited against the manner of accident as alleged in the claim petition.

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The driver of the offending vehicle has not even entered into witness box to depose about the manner of accident and to prove that the deceased drove the motorcycle in a rash and negligent manner. In the absence of any evidence, the Tribunal, on mere surmise and conjecture, fixing 40% of contributory negligence on the part of the deceased is not sustainable one.

11. The learned counsel appearing for the appellants would further submit that the deceased was aged about 20 years at the time of accident and was studying BBA Professional Degree in Karnataka College of Management and Science and without considering the same, the Tribunal has fixed only a sum of Rs.15,000/- as monthly income of the deceased which appears to be very meager. To strengthen his contention, the learned counsel relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Meera Devi and another vs. H.R.T.C & Others,*** reported in ***2014(1) TNMAC 456 (SC)*** to show that to prove the contributory negligence, there must be a cogent evidence and in the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied.

12. Per contra, the learned counsel appearing for the third respondent/Insurance Company would submit that the driver of the bus drove the vehicle in a careful manner from north to south direction and after giving proper signal, the first respondent crossed half of the road and almost entered

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into another half of the road. At that time, the deceased drove his motorcycle in a rash and negligent manner with high speed from west to east direction and he himself hit against the bus and invited the accident. In the rough sketch, the scene of occurrence was mentioned as middle of northern lane in the highway with the side road coming from north to south and also shows that there is a gap in the divider in the highway through which the vehicles entered the highway from the cut road and then could proceed to the southern lane in the highway. The bus was coming from north to south direction (ie.,) in the cut road and was proceeding towards the gap in the divider in order to reach the south lane and without noticing the same, the deceased drove the motorcycle in an uncontrollable speed and dashed against the bus. On appreciation of evidence of P.W.2 and the Motor Vehicles Inspection Reports and Rough sketch, the Tribunal has rightly fixed 40% of contributory negligence on the part of the deceased and the compensation awarded by the Tribunal under various heads also appears to be just and reasonable and does not require any interference by this Court.

13. This Court considered the submissions made by both sides and perused the materials available on record.

14. According to the claimants, on 29.07.2019 at about 05.45 p.m., the deceased Harikrishnan drove the motorcycle with one Adithya Hari who was

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travelling as a pillion rider on the left side of Kovai to Salem N.H. road from west to east direction. When the deceased came near Pallakkapalayam Pirivu opposite to Excel College, the first respondent drove the bus in a rash and negligent manner without giving any signal and suddenly crossed the National Highways from north to south direction and hit against the motorcycle. In order to prove the aforesaid facts, the claimants have relied upon the evidence of P.W.2 who is an eye-witness to the accident. It is relevant to note that P.W.2 is none other than the owner of the two-wheeler driven by the deceased at the time of accident and the fourth respondent herein. P.W.2 deposed that he was a college-mate of the deceased and the pillion rider of the motorcycle, namely, Adithya Hari was also another college mate of the deceased. He further deposed that the motorcycle driven by the deceased at the time of accident belongs to him and he himself drove another two-wheeler behind Harikrishnan and that both of them were proceeding slowly and cautiously from west to east direction in the highway keeping to the left side of the road. During the course of cross-examination of P.W.2, he has denied the fact that the deceased drove the vehicle in a rash and negligent manner without noticing the bus entering the highway from the side road and also at a very high speed, due to which, he could not avoid colliding into the bus and thereby, the deceased also contributed to the accident.

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15. Whereas, the third respondent/Insurance Company has taken a stand that the driver of the bus drove the vehicle in a careful manner from north to south direction and after giving proper signal, the driver of the bus crossed half of the road and almost entered into another half of the road. At that time, the deceased drove his motorcycle in a rash and negligent manner with high speed from west to east direction and due to heavy speed, he himself hit against the bus and fell down on the road and invited the accident. In order to prove the aforesaid facts, neither the driver of the bus nor any other independent witness has been examined on the side of the third respondent herein. The motor Vehicle Inspection Reports of the two vehicles were marked as Ex.P4 and Ex.P5, wherein, it has been stated that the motorcycle was damaged on the front side and the bus was also damaged on the front side. In the absence of damages in the middle portion of the body of the bus, it can be held that the motorcycle did not collide into the bus while it was cutting across the highway from north to south. The damages on the front side of both the vehicles clearly indicated that both the vehicles had reached the spot of occurrence at the same time, with the front portions colliding. It is relevant to note that P.W.2 deposed that the driver proceeding on the highway could clearly see the bus coming from the side road. A perusal of rough sketch/Ex.P2 and considering the evidence of P.W.2 and considering the damages on the two vehicles noted by the Motor Vehicle Inspector shows that both the deceased/rider of the motorcycle and the driver of the bus/first respondent had failed to exercise the requisite

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precautionary method of slowing down and watching out for oncoming traffic while crossing the road junction. Further, a perusal of Ex.P2/rough sketch shows that since both the highway and the side road were straight roads with clear visibility of oncoming vehicles, both the drivers had the last opportunity to have avoided the collision.

16. It is relevant to note that mere positions of the vehicles involved in the accident as shown in Ex.P2/Rough sketch, cannot give a definite conclusion as to the rash and negligent driving on the part of the deceased as well as on the part of the driver of the bus. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is proved in any manner**.** To prove the contributory negligence, there must be a cogent evidence. In the instant case, neither the driver of the bus nor any other independent witness has been examined to prove the contributory negligence on the part of the deceased. There is no specific evidence as to prove that the accident had taken place due to rash and negligent act of the deceased. In the absence of any evidence to prove the plea of contributory negligence, this Court is of the considered view that fixation of 40% of contributory negligence on the part of the deceased is not proper. At the same time, the deceased who drove the motorcycle in National highways, had failed to exercise the requisite precautionary method of slowing down and watching out for oncoming traffic while crossing the road junction. Hence, this Court is inclined to fix 10% of

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contributory negligence on the part of the deceased and fix 90% of negligence on the part of the driver of the bus.

17. With regard to the quantum of compensation, the deceased was studying BBA III year in Karnataka College of Management and Science. The appellants have relied upon Ex.P13/Mark sheets which would show that the deceased was a student of BBA Degree in Bangalore University at the time of accident. Considering the fact that the accident took place on 29.07.2019 and that at the time of accident, the deceased was studying BBA III year in Karnataka College of Management and Science and that if he survives, definitely he would have earned considerable amount and that the appellant Nos.1 and 2 are the dependents upon the income of the deceased, this Court is inclined to enhance the monthly income of the deceased from Rs.15,000/- to Rs.17,000/- and accordingly, the Loss of Dependency would be:

Monthly Income	:	Rs. 17,000/-
Add: Future Prospects 40% of Rs.17,000/-	:	Rs. 6,800/-
		Rs. 23,800/-
Annual Income (23,800 * 12)	:	Rs. 2,85,600/-
Less : Personal expenses Rs.2,85,600/- * 1/2	:	Rs.1,42,800/-
		Rs.1,42,800/-

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Multiplier	:	x 18

Loss of dependency	**:**	**Rs.25,70,400/-**
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18. The compensation awarded by the Tribunal under the other heads, namely, 'loss of parental consortium, funeral expenses, loss of estate and damages to clothing and articles" appears to be just and proper and does not require any interference by this Court. Accordingly, the compensation awarded by the Tribunal is modified as under:

S.No	***Head of Compensation***	***Amount awarded by this Court (Rs)***
1.	Loss of dependency	**Rs.25,70,400/-**
2.	Loss of Parental Consortium to the appellants 1 and 2	Rs.96,800/-
3.	Funeral Expenses	Rs.18,150/-
4.	Loss of estate	Rs.18,150/-
5.	Damages to clothing and articles	Rs.2,000/-
	Total	**Rs.27,05,500/-**
	Contributory negligence of 10%	**Rs.2,70,550/-**
	Compensation Payable	**Rs.24,34,950/-**

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19. As held by the Tribunal, the third appellant being the sister of the deceased cannot be held as dependent of the deceased since the father of the third appellant is alive and is not entitled to get any share in the compensation awarded by this Court.

20. In the result, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.14,41,860/- is hereby enhanced to **Rs.24,34,950/-** together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The third respondent is directed to deposit the entire 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.409 of 2019 on the file of the Special District Court to deal with MCOP Cases, Erode. On such deposit, the appellant Nos.1 and 2 are permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any already withdrawn, as per the apportionment fixed by the Tribunal by making proper application before the Tribunal. However, it is made clear that the appellant Nos.1 and 2 are not entitled for interest for the period of delay of 432 days as was ordered by this Court in C.M.P.No.25919 of 2025 vide order dated 20.07.2026. The appellant Nos.1 and 2 are directed to pay necessary Court fee, if any, on the

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enhanced compensation. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. The manner and mode of disbursement of compensation shall be as per the order of the Tribunal. There shall be no order as to costs.

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

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