BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **04.02.2026**

Pronounced on : **04.03.2026**

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A(MD)No.599 of 2025

1.Manjula,
W/o.Rathinakumar,
No.13/1, Mariyamman Kovil Street,
Ponmalai, Kottapattu,
Golder Rock,
Tiruchirappalli - 620 004.

2. Minor.R.Sulthiksha,
D/o.Rathinakumar,
No.14, Ayyinapuram Colony,
Manachanallur,
Tiruchirappalli - 621 005.

3. B.Veerasami,
S/o.Bojan,
No.10/20, Colani Kelur,
Rasapalayam Post,
Rajampalayam,
Tiruchirappalli - 621 005. ...Appellants/Petitioners

(2nd minor appellant is represented by her mother/natural guardian and next friend Manjula, the 1st Appellant)

Vs.

1.S.Saravanakumar,
No.12/6A1, South Pallar Street,
Thathaiyangarpettai,
Musiri,
Trichy - 621 214.

2.Iffco Tokio General Insurance Co -Ltd,
Represented by its Branch Manager,
No.19/1, Puthur High Road,
Ramalinganagar, Woraiyur,
Trichy – 17 ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicle Act 1988, to allow this appeal, and to enhance the award amount made in M.C.O.P.No.339 of 2022, dated 27.08.2024 on the file of the Motor Accident Claims Tribunal / Special District Judge No.II to deal with MCOP Cases, Trichy.

For Appellants	: Mr.P.Prabhakaran
For R1	: No Appearance
For R2	: Mr.V.Sakthivel

JUDGMENT

This Civil Miscellaneous Appeal is preferred challenging the Award, dated 27.08.2024 passed in M.C.O.P.No.339 of 2022 by the Motor Accident Claims Tribunal/Special District Judge No.II to deal with MCOP Cases, Tiruchirappalli.

2.The petitioners/claimants in MCOP.No.339 of 2022 have preferred the appeal seeking enhancement of compensation.

3.For the sake of convenience, the parties as arrayed in M.C.O.P.No.339 of 2022 are adopted hereunder.

4.The brief facts of the case:

On 01.01.2022 at about 2.30 p.m., the deceased Rathinakumar was riding a two wheeler bearing registration number TN 48 AM 8344 by wearing helmet from east to west at the Namakkal - Thuraiyur main road opposite to Selvaraj Cycle Shop, Thathangarpet, Annamalai Nagar in moderate speed. At the time, the first respondent's two wheeler bearing registration number TN 48 BZ 1148 was ridden by its rider at a high speed from the opposite direction and dashed against the two wheeler of the deceased. Due to the impact, the deceased Rathinakumar was thrown off from the vehicle, sustained multiple fatal injuries and succumbed to injuries. An FIR in Crime No.1 of 2022 U/s.279, 337 and 304A of IPC was registered against the first respondent's driver by Thathangarpet Police Station, Trichy. The deceased Rathinakumar was 44 years old, and earning Rs.30,000/- p.m. as he was a heavy vehicle driver. The first petitioner is the wife, the second petitioner is the minor daughter and the third petitioner is the father of the deceased Rathinakumar, who are depending on the income of the deceased. The first respondent's vehicle was insured with the second respondent at the time of accident. Hence, the petitioners have filed the claim petition seeking compensation of Rs.50,00,000/-.

5.The first respondent remained exparte.

6.The 2nd respondent/Insurance Company objected to the claim petition by contending that the rider of the first respondent was not holding a valid license at the time of accident. The accident took place due to rash and negligent riding of the deceased Rathinakumar. The deceased had ridden the two wheeler without having a valid driving license and also without wearing a helmet. Hence, the second respondent is not liable to pay any compensation to the petitioners. So, the petitioners are not entitled to claim from the 2nd respondent/Insurance Company.

7.Before the Tribunal, on the petitioners' side, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.10 were marked. On the respondents' side, R.W.1 to R.W.5 were examined and Ex.R.1 to Ex.R.3 were marked. In addition, Ex.X.1 to Ex.X.9 were also marked.

8.After hearing both sides and after considering the evidences, the Tribunal has passed the impugned order, dated 27.08.2024 holding that the deceased and the first respondent's driver contributed to the accident. The Tribunal fixed 20% contributory negligence on the deceased and 80% on the first respondent's vehicle rider. The Tribunal in its award fixed the notional monthly income at Rs.15,900/- p.m. and also took 25% future prospects and awarded a total compensation of Rs.24,07,500/- to the petitioners. After deducting 20% contributory negligence on the part of the deceased the Tribunal awarded total compensation of Rs.19,26,000/- to the petitioners/claimants and that the second respondent was directed to deposit the awarded amount and further directed to recover the same from the first respondent by filing a separate application.

9.Aggrieved by the said award, the petitioners/claimants have preferred this Civil Miscellaneous Appeal.

10. Heard both sides and perused the records in this Civil Miscellaneous Appeal.

11. The learned counsel for the petitioners/claimants has submitted that the deceased Rathinakumar was holding a heavy vehicle license and he was the owner and driver of the vehicle. P.W.3 eye witness clearly deposed that both two wheelers dashed with each other and P.W.2 & P.W.3 corroborated the same. The first respondent remained exparte and his driver was not examined. P.W.2 lodged FIR against the first respondent's rider. The plea of the respondent that the deceased did not wear helmet was not proved, moreover, no head injury was sustained by the deceased, but he has sustained injury in vital organ. The Tribunal fixing 20% contributory negligence upon the deceased Rathinakumar is without any basis and is incorrect. Therefore, the contributory negligence on the part of the deceased has to be set aside.

12. The learned counsel for the 2nd respondent/Insurance Company has submitted that the deceased Rathinakumar was riding the two wheeler without driving license and without wearing helmet. The deceased Rathinakumar was holding only heavy vehicle license. The FIR was registered only against the deceased Rathinakumar and as the deceased Rathinakumar came on the wrong side, the FIR was closed as RCS. The 2nd respondent/Insurance Company examined the Inspectors of Police as R.W.2 and RW3, who clearly deposed the same. The petitioners have not agitated the same. P.W.2 alleged eye witness was brought by P.W.1 and P.W.2 has not stated any explanation regarding FIR, so the evidence of P.W.2 cannot be taken into consideration. The entire file has been marked as Ex.X7. Therefore, the contributory negligence of the deceased Rathinakumar fixed by the Tribunal is correct. Though the Tribunal fixed 80% liability on the first respondent's driver and ordered pay & recovery, the second respondent has not preferred any appeal.

13. On perusal of records, it is clear that Ex.P.1 - FIR was registered against the deceased Rathinakumar. The petitioners have not produced driving licence for riding a two wheeler, except for the heavy vehicle licence. Mere holding of a heavy vehicle driving license does not mean that he was entitled to ride a two wheeler. The respondent produced RCS report in Crime No.1 of 2022 and an online search report for driving license of the deceased Rathinakumar as Ex.X.6 and Ex.X.9, which clearly revealed that the FIR was closed as RCS for the reason that the deceased Rathinakumar's vehicle is offending vehicle which came on the wrong side. This Court has held in various cases that contributory negligence can be fixed from 10% to 50%. It is established that the deceased did not have a valid driving license and was not wearing a helmet. Considering the facts and circumstances of the case, the Tribunal properly appreciated the evidences and correctly fixed contributory negligence at 20% on the part of the deceased. Since there is no appeal preferred by the 2nd respondent/Insurance Company, the contributory negligence of the deceased fixed by the Tribunal is upheld.

14. Next, the petitioners/claimants contended that the deceased was owner cum driver of heavy vehicle and it was proved by Ex.P.6 - Driving license. The deceased earned Rs.20,000/- p.m. So the Tribunal ought to have fixed Rs.25,000/- p.m. as income of the deceased by adding 25% future prospects at Rs.5,000/- plus Rs.20,000/-. The learned counsel for the claimants has not raised objection in respect of the compensation awarded under other heads.

15. The learned counsel for the Insurance Company submitted that the deceased was not the owner of the heavy vehicle, as Ex.P.6 shows only a driving license and that the deceased was not working under any employer, so he could not have earned Rs.25,000/- as claimed by the claimants. Moreover, there is no income proof adduced by the petitioners/claimants.

16. On perusal of the records, there is no material produced by the petitioners/claimants to show the income of the deceased, who was admittedly holding a heavy vehicle driving license. The accident took place on 01.01.2022. In the absence of any income proof, the Tribunal had to fix the notional income as per the guidelines issued by the Hon'ble Supreme Court. The Tribunal has fixed the notional income at Rs.6,500/- as of the year

2007 - 2008 according to decision rendered by the Hon'ble Supreme Court in the **Syed Sadiq /v/ United Indian Insurance** case reported in **2014 (1) TN MAC 459 (SC)** and applied the subsequent cost of inflation index as settled by the Division Bench of this Court in **Andal vs. Avinav Kannan** case reported in **2019 (1) TNMAC 54 (DB)**. Therefore, considering the above, there is nothing wrong in fixing the notional income of the deceased as Rs.15,900/-. (cost of inflation index of 317 in 2022 as held in **2019 (1) TN MAC 54 (DB)** Rs.6500/- x 317/129 = Rs.15,972.86). The age of the deceased was 45 years and he was not a permanent employee, which is not disputed. As per the settled proposition of law in the Pranay Sethi case reported in **2017 (2) TNMAC 609 (SC)**, 25% of the income has to be added towards future prospects in respect of nonpermanent employees. On perusal of the award, the Tribunal has correctly added 25% future prospects. By adding 25%, the income of the deceased is fixed at Rs.19,875/- p.m. (Rs.15,900/- + Rs.3,975/- (25% of Rs.15,900/-). Considering the age of the deceased as 45 years, the Tribunal has correctly deducted 1/3 amount towards personal expenses and the multiplier is '14' as settled principle of Hon'ble Supreme Court in **Sarla Verma** Case. The deceased was a family man, who was having wife, child and father. Hence, the Tribunal has correctly deducted 1/3 towards personal expenses and adopted the multiplier '14'. Thus, the contribution of the deceased to the claimants has been correctly calculated by the Tribunal at Rs.13,250/- (Rs.19,875/- less 1/3 of Rs.19,875/- Rs.6,625/-). Therefore, loss of income due to the death of the deceased Rathinakumar would come to Rs.13,250/- x 12 x 14 = Rs.22,26,000/-, which is correctly arrived at by the Tribunal.

17. While considering the loss of consortium and other heads, the Tribunal has awarded Rs.48,400/- each to the petitioners. As per the dictum laid down by the Hon'ble Supreme Court in **Pranay Sethi case (2017 (2) TNMAC 609 (SC),** each dependent of the deceased is entitled to Rs.40,000/- each towards spousal consortium, parental consortium and filial consortium along with other incidental charges, furthermore, and also there should be an enhancement of 10% on the consortium once in every three years. Hence, the petitioners, being the wife, the child and the third petitioner being the father of the deceased, are entitled to Rs.48,400/- each towards consortium. On perusal of the order of the Tribunal, it has awarded Rs.18,150/- towards funeral expenses and Rs.18,150/- towards loss of estate. This is not disputed by the learned counsel for the respondents. Therefore, this Court holds that the Tribunal has correctly awarded just compensation under the heads of consortium, funeral expenses and loss of estate.

18. The Tribunal has fixed 20% contributory negligence on the part of the deceased for the accident. This Court has also upheld the same as stated supra. Hence, 20% has to be deducted from the total compensation and for the remaining 80%, the 2nd respondent/Insurance Company is liable. The 2nd respondent/Insurance Company has not filed any cross appeal and the Tribunal has ordered it as "pay and recovery". The first respondent remained exparte and has not contested the same. Considering the above facts and circumstances, this Court holds that the award of the Tribunal does not warrant any interference. The apportionment allowed by the Tribunal is correct as there is no irregularity. Therefore, the compensation awarded by the Tribunal is held correct and the same is not liable to be set aside.

19. In the result, this Civil Miscellaneous Appeal is dismissed. The Award dated 27.08.2024 passed in M.C.O.P.No.339 of 2022 by the Motor Accident Claims Tribunal/Special District Judge No.II to deal with MCOP Cases, Tiruchirappalli is confirmed. No costs.

04.03.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

1.The Motor Accident Claims Tribunal/
Special District Judge No.II to deal with MCOP Cases,
Tiruchirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
C.M.A(MD)No.599 of 2025

04.03.2026