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C.M.A.(MD)No.1378 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.02.2026

Pronounced on : 09.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.1378 of 2024

and

C.M.P(MD)No.14929 of 2024

The Branch Manager,
M/s.The Oriental Insurance Company Limited,
Through its Regional Manager,
No.16, North Veli Street,
Madurai.

... Appellant/2nd Respondent

Vs.

1. Mariselvi W/o.Late.Selvakumar,
Door No.32, Karuthammal Compound,
Oothukkinaru,
Backside of Sathunavu Office,
Thirupparankundram Taluk,
Madurai District.
2. Minor. Sabarikani S/o.Late.Selvakumar,
Door No.32, Karuthammal Compound,
Oothukkinaru,
Backside of Sathunavu Office,
Thirupparankundaram Taluk,
Madurai District.
3. Minor Mathi D/o.Late.Selvakumar,
Door No.32, Karuthammal Compound,
Oothukkinaru,
Backside of Sathunavur Office,
Thirupparankundram Taluk,
Madurai District.

...Respondents 1 to 3/Petitioners



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4. Soundararajan S/o.Vajravan,
Door No.4/76,
Vijayanagaiyapuram,
Peraiyur Taluk,
Madurai District.

...4th Respondent/1st Respondent

*(Minors 2 & 3 respondents are represented through
her mother 1st respondent Mariselvi herein)*

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Tribunal of MACT cum Special District Court, Madurai made in M.C.O.P.No.1749 of 2022, dated 15.03.2024 and allow the appeal with costs

For Appellant	: Mr.C.Jawahar Ravindran
For R1 to R3	: Mr.R.Gowri Shankar
R4	: Given up vide in E.B

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the Award, dated 15.03.2024 passed in M.C.O.P.No.1749 of 2022 by the Motor Accident Claims Tribunal/Special District Court, Madurai.

2.The second respondent in M.C.O.P.No.1749 of 2022 is the appellant herein. The petitioners/claimants are the respondents 1 to 3 herein, who filed the claim petition and the 1st respondent in the claim petition is the 4th respondent herein.



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3. For the sake of convenience, the parties as arrayed in M.C.O.P.No.1749 of 2022 are adopted hereunder.

4. The brief facts of the case:

On 05.08.2022 at about 5.30 p.m., the deceased Selvakumar was riding a two wheeler bearing registration No.TN 07 AR 1833 along the Virudhunagar to Thirumangalam NH road from south to north and while he was riding near Kallikudi Naira petrol bunk, the 1st respondent's lorry bearing registration No.TN 52 3308, driven by its driver in a rash and negligent manner, hit behind the rear of the two wheeler. Due to the impact, the rider, Selvakumar, sustained fatal injuries and died on the spot. A case was registered in Crime No.115 of 2022 U/s.279 and 304(A) of the IPC against the driver of the 1st respondent's lorry by Kallikudi Police Station. At the time of death, the deceased Selvakumar was working as an Assistant in a Driving School and was earning Rs.1,000/- per day. The petitioners 1 to 3 are the wife and the children of deceased Selvakumar and they were dependent on the income of the deceased Selvakumar. The offending vehicle was insured with the second respondent. Hence, the petitioners filed a claim petition seeking compensation of Rs.30,00,000/-.



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5.The first respondent remained ex-parte before the Tribunal.

6.The 2nd respondent/Insurance Company objected to the claim petition by contending that the deceased Selvakumar had ridden the two wheeler without wearing a helmet in a rash and negligent manner and dashed behind the lorry. The driver of the lorry was not responsible for the accident. The deceased Selvakumar was alone responsible for the accident. Hence, the 2nd respondent is not liable to pay any compensation to the petitioners.

7.Before the Tribunal, both sides adduced oral and documentary evidence. The petitioners examined three witnesses as P.W.1 to P.W.3 and marked 13 documents as Ex.P.1 to Ex.P.13. On the second respondent's side, two witnesses were examined as R.W.1 & R.W.2, but no exhibit was marked. However, Ex.X.1 and Ex.X.2 were marked.

8.After hearing both sides and after considering the evidences, the Tribunal has held that the accident took place due to the negligence on the part of the driver of the 1st respondent's driver and has awarded compensation of Rs.34,04,948/-, out of which the 1st petitioner is entitled to



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Rs.22,04,948/- and the petitioners 2 and 3 are entitled to Rs.6,00,000/- each with interest and cost, by its order, dated 15.03.2024.

9.Aggrieved by the said award, the 2nd respondent/Insurance Company has preferred this Civil Miscellaneous Appeal.

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

11.The learned counsel appearing for the appellant/Insurance Company has mainly argued that the deceased Selvakumar died of a head injury, which proves that he did not wear a helmet. The Tribunal has not discussed about this aspect. The deceased drove his two wheeler and dashed behind the lorry. So, some contributory liability has to be fixed upon the deceased Selvakumar.

12.The learned counsel for the petitioners/claimants stated that the lorry hit behind the two wheeler, which was admitted by R.W.2 and the lorry driver, who was examined as R.W.1, has admitted that the police registered FIR against him and also laid a charge sheet against him after investigation. Therefore, the Tribunal has rightly fixed liability.



13.On perusal of records, the petitioners have pleaded in the claim petition that the deceased was wearing a helmet and the petitioners' side witnesses have also deposed in support of the said version. The learned counsel for the appellant/Insurance Company has submitted that the Tribunal has not considered the evidence of R.W.1 and R.W.2. On perusal of the evidence of R.W.1 and R.W.2, they have not stated that the deceased did not wear a helmet. The police laid a charge sheet against the driver of the lorry, which was admitted by R.W.1, the lorry driver. R.W.2 also admitted that the two wheeler would have been damaged due to being hit from behind by a lorry. The first respondent's driver has not lodged any police complaint against the deceased, as if he rode the two wheeler in a rash and negligent manner. On perusal of the award, the Tribunal has rightly appreciated the evidence of eye witness P.W.2 and other exhibits and correctly concluded that the accident happened due to the negligence on the part of the driver of the 1st respondent's lorry.

14.So far as contributory negligence is concerned, as per decisions in various cases taken by the Hon'ble Supreme Court and by this Court, contributory negligence would not be fixed until it is proved that the accident took place due to the rash and negligent conduct on the part of the rider. The appellant/Insurance Company failed to prove that the accident happened



due to the deceased's negligence. Hence, this contention is untenable.

Therefore, this Court is of the considered view that the negligence concluded by the Tribunal is sustainable and there is no need to interfere with it.

15.The next contention raised by the appellant/2nd respondent Insurance Company is that the Tribunal has fixed the income of the deceased as Rs.25,000/- on the basis of Ex.P.8. The petitioners produced a salary certificate as Ex.P.8. The petitioners have not examined the author of Ex.P.8, to substantiate that the issuer of Ex.P.8 was running Sakthi Driving School. Therefore, as per the price index, the income of the deceased has to be fixed at only Rs.17,000/- p.m. Hence, the compensation awarded by the Tribunal has to be set aside.

16.It is submitted by the petitioners/claimants' side that the Tribunal has correctly fixed the income at Rs.25,000/- by taking into consideration Ex.P.8 and evidence of P.W.3.

17.On perusal of the records and on hearing the argument, the appellant/Insurance Company admits the income would be Rs.17,000/- according to the price index. The petitioners have stated that the deceased was working in Sakthi Driving School and produced Ex.P.8 - Salary



Certificate. The appellant/Insurance Company examined an official from RTO as R.W.2 and there is no evidence from R.W.2 that there is no such Sakthi Driving School or that the deceased was not working in that school. Therefore, in the absence of any contrary evidence, there is no error in fixing the income of the deceased as Rs.25,000/- p.m. with 25% future prospects totaling Rs.31,250/- p.m. in view of the settled proposition of law in **Pranay Sethi Case reported in 2017 (2) TNMAC 609 (SC)**. The deceased was a family man with a wife and children, so the Tribunal has correctly deducted $\frac{1}{3}^{\text{rd}}$ of the income towards his personal expenses. After deduction, the loss of income is Rs.20,833/- p.m. (Rs.31,250/- less Rs.10,417 (which is $\frac{1}{3}$ of Rs.31,250/-)). The multiplier '13' adopted by the Tribunal is the correct one, considering the age of the deceased. So, the loss of income of the dependents is $\text{Rs.20,833/-} \times 12 \times 13 = \text{Rs.32,49,948/-}$. On perusal of the award, the Tribunal awarded Rs.15,000/- towards loss of estate; Rs.15,000/- towards funeral expenses. The Tribunal has awarded Rs.40,000/- each towards the consortium to the petitioners. There is no dispute on both sides. Thus, this Court holds that the order 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.



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18.In the result, this Civil Miscellaneous Appeal is dismissed and the award, dated 15.03.2024 passed in M.C.O.P.No.1749 of 2022 by the Motor Accident Claims Tribunal/Special District Court, Madurai is confirmed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

09.04.2026

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

To

- 1.The Motor Accident Claims Tribunal/
Special District Court,
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
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