

**IN THE COURT OF THE SPECIAL DISTRICT JUDGE,
(TO DEAL WITH MCOP CASES), ERODE.**

Present: Tmt. K.R. LEELA, B.A.,B.L.,
Special District Judge, Erode.

Wednesday, the 30th day of April 2025

MCOP No.78 / 2023
CNR.No.TNED17-000469-2022

Rathinajothi, aged about 44 years, wife of Ilanchezhiyan, residing at D.No.7-3-40A, MGR Nagar, Pattiveeranpatti, Nilakottai, Dindugal District-624 211.

..... Petitioner

/ Vs. /

- 01) Anbulakshmi, dauter of Thirumudi, residing at D.No.64/7-3-44C, MGR Nagar, Pattiveeranpatti, Dindigul District-624 211.
- 02) Palraj, son of Thirumudi, residing at D.No.30B, Chamber Street, MGR Nagar, Nilakottai Taluk, Dindigul District-624 211.
- 03) The United India Insurance Company Limited, No.54.54-A, Mythili Nivas, Palani Road, Dindigul-624 001.
- 04) The United India Insurance Company Limited, Muthia Complex, No.1170, Floor No.2, Mettur Road, Erode – 638 011.

.....Respondents.

This petition came up before me on 24.04.2025 for final hearing in the presence of Thiru. C.Paraneedharan counsel for Petitioner; the 3rd respondent appeared through Advocate Tmt. L.Nirmala Devi; the respondents 1 and 2 appeared through Advocate Tmt. S.Pavithra, filed

counter, but during evidence failed to appear before this Court and they were called absent and set exparte; upon perusing the material records and hearing the arguments of both side counsels and having stood over for consideration till this day, this court delivered the following:

ORDER

Date of Petition	:	18.04.2022.
Award amount	:	Rs.8,07,000/-
Interest on the award amount	:	7.5% p.a. from the date of petition till the date of realization of award amount.
Interest to be paid from which date?	:	18.04.2022.
<u>Details of Cost.</u> 1. Court fee paid along with the petition - 2. Balance Court fee to be paid - 3. Vakalath Stamp - 4. Stamp on documents - 5. Batta charges - 6. Batta preparation fee - 7. Advocate fee -	<u>Rs.</u> 1,000 6,443 17 60 158 10 15,070	Rs.22,758/-
Compensation amount deposited (if any)	:	- Nil -
Court fee paid along with petition	:	Rs.1,000/-
Additional Court fee paid (if paid on any orders)	:	- Nil -
Balance court fee to be paid by the petitioner	:	Rs.6,443/-
Proportionate cost	:	Rs.22,758/- (including the balance court fee of Rs.6,443/- to be paid by the petitioner.)
Last date for payment of court fee	:	09.05.2025.
Default period	:	- Nil -

Petitioner's Income Tax Permanent Account No.(PAN card No.)	: AHZPR4561M
---	--------------

The petitioner has filed this petition u/s.166 of the Motor Vehicles Act to pass an award to direct the respondents to pay jointly and severally a sum of Rs.25,00,000/- with interest as compensation for the death of Sagunthala in the accident which occurred on 07.10.2021.

2) The averments in the petition in brief:

On 07.10.2021 at about 03.30 PM the deceased Sagunthala was travelling as a pillion rider in the TVS Jupiter moped Reg. No. TN 57 BZ 3189 ridden by the 1st respondent, on the left side of the Theni to Dindigul bypass road, near Naveen Bakery towards Pattiveeranpatti. At that time, the 1st respondent rode the Jupiter moped in a rash and negligent manner and applied sudden brake. Due to that the deceased fell down on the road and sustained grievous injuries on her head, blood injuries and abrasion in many parts of the body. Soon after the accident, she was taken to Government Hospital, Vathalakundu for first aid, but the doctor declared her as dead. The accident occurred solely due to the rash and negligent manner of the 1st respondent. The Batlagundu Police, Dindugal registered a case in FIR.No. 1121/2021 u/s.174 Cr.P.C and the same was filed before the JM Court, Nilakkottai.

3) The deceased was aged about 60 years and hale and healthy at the time of accident. She was running a fancy store in the name of "Thirumudi Store" and was earning a sum of Rs.20,000/- per month. The petitioner is the daughter of the deceased. Although Palraj and Anbulakshmi are also the

legal-heirs of the deceased, Anbulakshmi being the rider of the offending vehicle and Palraj as the owner, they were added as the respondents 1 and 2. The respondents 3 and 4 are the insurer and local branch office of the insurer of the TVS Jupiter moped Reg. No. TN 57 BZ 3189. Therefore, the respondents 1 to 4 are jointly and severally liable to pay compensation to the petitioner. The claim may be allowed with interest and cost.

4) The averments in the counter filed on behalf of the respondents 1 and 2 in brief:

The petition is false, frivolous, vexatious, and not maintainable, either in law or on facts. The manner of accident stated by the petitioner is denied as false. The alleged accident was directly attributed to the injured by her willful disobedience of the safety precautions and measures and in these circumstances the 1st respondent is not liable to pay any compensation to the petitioner. The vehicle was insured with "The United India Insurance Co., Ltd, in Policy No.0907033121P103061641 for the period from 04.07.2021 to 03.07.2022 and the 1st respondent was having valid and effective Driving License on the date of accident. The age and monthly income of the deceased are denied as false. The petition may be dismissed against this respondent.

5) The averments in the counter filed on behalf of the respondents 3 and 4 in brief:

The petition is false, frivolous, vexatious, and not maintainable, either in law or on facts. The manner of accident stated by the petitioner is admitted by this respondent. The respondents 1 and 2 are none other than the daughter and son of the deceased Sagunthala and the petitioner is also

another daughter of the deceased. So the petition is filed collusively with connivance of the petitioner and the respondents 1 and 2. The petitioner is aged about 44 years and living separately along with her family members and so she was not dependent on the deceased. The 1st respondent and the deceased both were not wearing helmet on the date of accident. The 1st respondent was about to stop the vehicle and in the meanwhile, the deceased carelessly without any grip, herself fell down on the road and invited the accident. The 1st respondent rode the TVS Jupiter moped Reg. No. TN 57 BZ 3189 carrying her mother Sagunthala on the pillion on the Theni to Dindigul bypass road, near Naveen Bakery. So this is not an accident and only an incident and the M.V Act is not attracted to the present claim proceedings. The age, occupation and income of the deceased are denied as false. The compensation claimed under various heads are excessive. Therefore, this respondent prays to dismiss the petition with cost.

6) On consideration of the petition and counter, the points for consideration are:

- 1) Whether the accident occurred due to the rash and negligent driving of the 1st respondent in riding the TVS Jupiter moped Reg. No. TN 57 BZ 3189 or due to the contributory negligence of the deceased?
- 2) Whether the respondents are liable to pay compensation to the petitioner?
- 3) If so, to what amount of compensation the petitioner is entitled to and from whom?

7) On the Petitioner's side PW1 was examined and Ex.P1 to Ex.P12 were marked. On the side of respondents, no witness was examined and no document was marked.

8) The respondents 3 and 4 filed a petition u/s.170 of M.V.Act in I.A.No.8/2025 and the same was allowed on 24.04.2025.

9) Heard both sides. Documents perused.

10) Point No.1.

The claim is for the death of Sagunthala in the accident which happened on 07.10.2021 at about 03.30 PM on the Theni to Dindigul bypass road near Naveen Bakery. The petitioner claims that the deceased was travelling as a pillion rider in the TVS Jupiter moped Reg. No. TN 57 BZ 3189 ridden by the 1st respondent on the left side of the said road in a rash and negligent manner, and that the 1st respondent had suddenly applied brake, due to which the deceased fell down and sustained fatal injuries.

11) The respondents 1 to 4 are said to be the rider, owner, insurer and local branch office of the insurer of the only vehicle involved in the accident. The respondents 1 and 2 filed counter statements separately denying negligence on the part of the 1st respondent and also alleging that the accident was directly attributed to the injured by her willful disobedience of the safety precautions and measures. The respondents 3 and 4 have also filed counter statement denying negligence on the part of the 1st respondent and also alleging that when the 1st respondent was about to stop the vehicle, the deceased carelessly without any grip fell down on the road and invited the accident.

12) The fact of accident, date, time, place of accident, identity, the involvement and the direction of the vehicle is not disputed. Only the negligence aspect is disputed.

13) In order to prove the negligence aspect the petitioner has deposed as PW1 in lines with the petition averments. She was not an eyewitness to the occurrence and therefore her hearsay evidence does not help in deciding the negligence aspect. She has produced the FIR and the Postmortem Certificate as Ex.P1 and P2 respectively. The FIR was registered u/s.174 of Cr.P.C (Accidental fall). But it was registered in relation to the incident which occurred on the public road, involving a motor vehicle in motion and the occurrence had resulted in fatal injuries to the pillion rider. Therefore, the occurrence falls under the purview of the MVI Act, and the issue of negligence may be determined for the purpose of computing the compensation amount.

14) The insurer of the only vehicle involved in the occurrence has mentioned in the counter statement that the petitioner and the respondents 1 and 2 are all the children of the deceased pillion rider. The said contention was admitted by the petitioner also. Therefore, the vehicle was owned by the son of the deceased; it was driven by one of the daughters at the time of occurrence; the claim has been filed by the other daughter of the deceased. The rider and the owner of the vehicle had filed a joint counter statement contending negligence on the part of the deceased pillion rider who was none other than their mother. But during enquiry the respondents 1 and 2 failed to contest the case and they were set exparte. Therefore, the evidence of PW1 regarding the manner of occurrence remains undisputed by the

rider of the offending vehicle. Nor has the 1st respondent/rider been examined as a witness on the respondents' side, to deny any negligence on her part. Therefore, adverse inference is drawn against her. Further, there is no rebuttal evidence on the side of the contesting respondent. Moreover, as per Ex.P5 Postmortem Certificate, the deceased does not appear to have solely due to head injury; no question was put to PW1 that the failure on the part of the deceased to wear a helmet was the cause for the fatal injury. Hence, there is nothing on record to indicate any contribution on the part of the deceased for the fatal accident. Therefore, based on the above facts and circumstances, it is held that the 1st respondent was the sole tort-feasor and also that there was no contributory negligence on the part of the deceased. Point No.1 is answered accordingly.

15) Point No.2:

As per Ex.P1 FIR, the 1st respondent is the rider of the offending TVS Jupiter moped Reg. No. TN 57 BZ 3189 and as per Ex.P3 Insurance policy the 2nd respondent was the owner and the offending two-wheeler was covered by a package policy with the 3rd respondent, which would cover the risk of the pillion rider also. The 4th respondent is said to be the local branch office of the 3rd respondent insurance company. As the owner of the vehicle, the 2nd respondent is vicariously liable to pay the compensation for the accident caused by his driver. Since the vehicle was covered by a policy of insurance under package policy, and there is no violation of policy conditions, the 3rd respondent has the statutory liability to indemnify the vehicle owner for the compensation payable by him towards the death of the pillion rider. It is therefore held that the respondents 3 and 4 are

liable to pay the entire compensation on behalf of the 2nd respondent.

16) It was objected on the part of the contesting insurer that the rider, owner and the claimant are all the children of the deceased and that they were all blood relatives and therefore not entitled to invoke the benefit of indemnification under the policy of insurance. No doubt all the said persons are blood relatives; but under law each and every person is a separate legal entity, notwithstanding their blood relationship. Therefore, the close blood relationship between the claimant and the rider and the owner of the offending vehicle and the deceased would not defeat the claim by itself. Nevertheless the learned counsel for the respondents 3 and 4 would submit that the said parties had taken advantage of their blood relationship and colluded together to lay the claim and therefore the claim may be dismissed. But there is no scrap of evidence to indicate any such collusion. Moreover, it is an everyday scenario for a daughter to ride a two wheeler belonging to her brother, while keeping her mother on the pillion; and furthermore the children of the deceased could not have foreseen such an occurrence resulting in the death of their mother. Being siblings, the claimant and the rider and owner of the offending vehicle would have naturally worked together in the legal proceedings. Such a joint activity of the siblings cannot be termed as collusion per se. While so, the allegation of collusion between the claimant and the rider and owner of the offending vehicle cannot be accepted. Consequently it is held that the claim is not vitiated by collusion and therefore it is also held that the respondents 3 and 4 are liable to pay the entire compensation on behalf of the 2nd respondent. Point No. 2 is answered accordingly.

17) Point 3 :

As per Ex.P8 Aadhar card of the deceased, her date of birth is 05.06.1958 which shows that she was aged 63 years on the date of accident i.e., on 07.10.2021. Therefore, the age of the deceased is fixed as 63 years on the date of accident.

18) The petitioner claims that the deceased Sagunthala was running a fancy store in the name of "Thirumudi Store" and was earning a sum of Rs.20,000/- per month. In order to prove the same the petitioner has produced the Professional Tax receipt of a shop paid in the name of the deceased Sagunthala to Pattiveeranpatti Municipality, Dindugal District, which proves her occupation. But her income through the said occupation was not proved by any reliable evidence. Therefore, considering the age of the deceased, her avocation and the year of accident the notional monthly income of the deceased is fixed as Rs.13,000/-.

19) Following the Judgments of the Hon'ble Apex Court in *Smt.Sarala Verma and others -Vs- Delhi Transport Corporation and another (2009(2) TNMAC 1 (SC) and National Insurance Co., Ltd., -Vs- Pranay Sethi and others (2017 (2) TNMAC 609 (SC)* the compensation is calculated as below:-

Notional Monthly income	Rs.13,000/-
Future prospects – Nil as the deceased was aged above 60 years	Nil
Total Income	Rs.13,000/-

20) As per Ex.P7 Legal-heirship certificate, the petitioner and the 1st respondent are the married daughters and the 2nd is the married son of the deceased and also the husband of the deceased is no more. So there are 3 dependents for the deceased at the time of accident. *The petitioner is the major daughter of the deceased and therefore she could not have been a dependant on the deceased. However in the case law reported in 2023 (1) TN MAC 728, the Madurai Bench of Hon'ble High Court of Madras has held that the claimants (major daughter and sons) even though major and not depending on deceased, being legal representatives of the deceased, were entitled to claim compensation.* Hence the petitioner is entitled to claim the compensation. Since there are 3 dependents, 1/3 of the income of the deceased has to be deducted for her personal and living expenses. For the deceased aged 63 years, the appropriate multiplier is no.7. So the petitioner is entitled to compensation as follows:

Towards Loss of Income / Dependency 13,000 X 12 X 7 X 2/3	Rs.7,28,000/-
Compensation Towards loss of parental consortium (as the date of accident was 07.10.2021.)	Rs. 44,000/-
Compensation for Funeral Expenses	Rs. 16,500/-
Compensation Towards Loss of estate	Rs. 16,500/-
Compensation towards damages to clothing and articles.	Rs. 2,000/-
Total	Rs.8,07,000/-

21) As per the findings from Point No. 1 & 2, it is held that the 1st respondent was the sole tort-feasor and as the owner of the offending

vehicle the 2nd respondent has the vicarious liability in relation to the accident caused by his driver. So the respondents 1 and 2 are not eligible to claim compensation for the death of their mother.

22) Thus the petitioner is only entitled to get a total compensation of **Rs.8,07,000/-** along with proportionate interest and cost. As per the findings from Point No.1 and 2, it is held that the respondents 3 and 4 are liable to pay the entire compensation to the petitioner on behalf of the 2nd respondent/owner. Point No.3 is answered accordingly.

In the result, it is ordered

- 01) That this petition is allowed in part with proportionate cost,
- 02) That the respondents 3 and 4 are liable to pay a total compensation of **Rs.8,07,000/- (Rupees Eight lakhs seven thousand only)** along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit of entire award amount along with proportionate cost.
- 03) That the respondents 3 and 4 shall deposit the compensation amount within two months in the Account of this Court – Account of Special District Judge (MACT) Erode **SDJERDUNITED78OF2023 with IFSC Code: SBIN0004266 maintained at State Bank of India, Collectorate Branch, Erode.** The deposit of award amount shall be intimated to this Court through email to erd.adcmcop-tn@indiancourts.nic.in.
- 04) That the petitioner shall be entitled to get her entire share along with proportionate interest and cost immediately after appeal time on filing proper petition.
- 05) That the above said compensation amount of the petitioner shall be transferred from the Court Account to the petitioner's Savings Bank Account No.1194155000324156 IFSC:KVBL0001194 The Karur Vysya Bank Limited, Tiruchengode branch through RTGS.

- 06) That out of the total court fee of Rs.7,443/- for the award amount, after deducting Rs.1,000/- towards the court fee paid along with the petition, the petitioner shall pay the balance court fee of Rs.6,443/- within 10 days from today failing which the petitioner is not entitled to get interest for the said period.
- 07) That the petitioner's side Advocate fee is fixed at Rs.15,070/-

This order is dictated to Steno-Typist typed by her in the computer, taken print through printer, corrected and pronounced by me in the open court, on this the 30th day of April 2025.

**Special District Judge,
(Motor Accident Claims Tribunal Judge)
Erode.**

List of Witness examined on the side of petitioner:

PW1 Tmt. Rathinajothi (petitioner)

Exhibits marked on the side of Petitioner:

Ex.P1	07.10.2021	Downloaded copy of First Information Report.
Ex.P2	22.07.2016	Copy of Registration Certificate of vehicle bearing Reg. No. TN 57 BZ 3189. (xerox)
Ex.P3	03.07.2021	Copy of insurance policy of vehicle bearing Reg. No. TN 57 BZ 3189. (xerox)
Ex.P4	29.11.2006	Copy of Driving License of Anbu Lakshmi. (xerox)
Ex.P5	-	Copy of Postmortem Certificate of Sagunthala.
Ex.P6	19.10.2021	Downloaded copy of Death Certificate of Sagunthala.
Ex.P7	15.12.2021	Downloaded copy of Legal-heir Certificate of Sagunthala. (Digitally signed)
Ex.P8	-	Copy of Aadhar identity card of Sagunthala. (xerox)

List of Witness examined on the side of Respondents:

Exhibits marked on the side of Respondents:

**Special District Judge,
(Motor Accident Claims Tribunal Judge)
Erode.**