BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12/03/2026

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH
AND
THE HONOURABLE MR JUSTICE P.DHANABAL

CMA(MD)Nos.188 of 2019 and 200 of 2022

(1).CMA(MD)No.188 of 2019:-

ICICI Lombard General Insurance Co.,
Dr.Rajkumar Road,
Bangalore,
Karnataka State
Through its Branch Manager. : Appellant/2nd Respondent

Vs.

1.Muthusamy
2.Visalakshi
3.Lakshmi Rajam
4.Minor Ram Aravind
5.Minor Vijay Aravind ; Respondents 1 to 5/Petitioners
(Minors 4th and 5th respondents through
their Mother and Guardian Lakshmi Rajam
3rd respondent herein)
6.Chikkana : 6th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree, dated 18/04/2018 in MCOP No.43 of 2013 on the file of the Motor Accident Claims Tribunal, Ambasamudram, Tirunelveli District.

For Appellant : M/s.V.Muthukamatchi

For R1, R3 to R5 : Mr.P.Saravanan
for Mr.A.Sivaji

For R2 : Died

For 6th Respondent : Given up

(2).CMA(MD)No.200 of 2022:-

1.Muthusamy
2.Visalkshi
3.Lakshmi Rajam
4.Minor Ram Aravind
5.Minor Vijay Aravind : Appellants/Petitioners
(Minor petitioners 4 and 5 rep.
Through their mother and guardian
Lakshmi Rajam/3rd petitioner herein)

Vs.

1.Chikkana
2.ICICI Lambard,
General Insurance Co.,
Dr.Rajkumar Road,
Bangalore, Karnataka State
through its Branch Manager : Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation award to Rs.5,00,00,000/- (Five Crores) as claimed by the appellants/Petitioners by modifying the fair and decreetal order in MCOP No.43 of 2013, dated 18/04/2018 passed by the Motor Accident Claims Tribunal-cum-Subordinate Judge, Ambasamudram.

For Appellants 1, 3 to 5	:	Mr.P.Saravanan for Mr.A.Sivaji
For 2nd Appellant	:	Died
For R1	:	Tapal return
For R2	:	No appearance

COMMON JUDGMENT

(Common Judgment of the Court was made by the Hon'ble **P.DHANABAL, J.**)

Both the Civil Miscellaneous Appeals have been filed as against the fair and decreetal order passed in MCOP No.43 of 2013, dated 18/04/2018 passed by the Motor Accident Claims Tribunal-cum-Sub Judge, Ambasamudram.

2.The appellants in CMA(MD)No.200 of 2022 and the respondents 1 to 5 in CMA(MD)No.188 of 2019 have filed the claim petition for the death of one Babu Aravind claiming a sum of Rs.5,00,00,000/- as compensation. The Tribunal has awarded a sum of Rs.47,95,000/- with interest at the rate of 7.5% per annum.

3.Aggrieved by the above said fair and decreetal order, the claimants have preferred appeal in CMA(MD)No.200 of 2022 for enhancement of compensation amount, whereas the second respondent Insurance Company has preferred appeal in CMA(MD)No.188 of 2019 as against the award of the Tribunal.

4.Since both the appeals arising out of the same fair and decretal order, this Court heard both appeals together and inclined to pass a common order.

5.The appellant in CMA(MD)No.188 of 2019 herein after referred as **'2nd respondent'** and the appellants in CMA(MD)No.200 of 2022 hereinafter referred as **'claimants'**.

6.The claimants 1 to 5 have filed the claim petition for the death of one Babu Aravind. According to the claimants, the said Babu Aravind was aged about 41 years and was doing granite and blue-metal business and was earning Rs.6,00,000/- per month. On 14/01/2012 at about 03.30 a.m, the said Babu Aravind while travelling with his driver in a Maruthi Desire Car bearing registration No.TN-76-H-1881 on the Chittor main road, at about 05.00 a.m, a Bus bearing registration No.KA-01-D-9353 belonging to the first respondent came in a rash and negligent manner and dashed against the Car from behind and then dashed against the Lorry bearing registration No.TN-25-K-5627. As a result of which, Babu Aravind who travelled in the Car died on the spot.

6.1.The accident took place due to the negligence of the driver of the first respondent. The first respondent vehicle was insured with the second respondent.

6.2.The first petitioner is the father, second petitioner is the mother, third petitioner is the wife and the petitioners 4 and 5 are the children of the deceased. All the petitioners are the legal heirs of the deceased and thereby, they claimed a sum of Rs.5,00,00,000/- towards compensation.

7.The second respondent, who is the insurer of the first respondent vehicle has filed a counter denying the averments made in the claim petition. According to the second respondent, the accident took place due to the negligence on the part of the driver of the Car and there is no negligence on the part of the first respondent's Bus. The driver of the Car also a joint tort-feasor. The owner of the Lorry which also involved in the accident and the insurer of the Lorry are also proper and necessary parties. The second respondent denied the age, income and manner of the accident and the dependents of the deceased. Therefore, prayed for dismissal of the petition as against the second respondent.

8.Based on the above pleadings and on hearing both sides, the Tribunal has framed the following points for determination:-

1.Whether the accident occurred due to rash and negligent act of the driver of the offending vehicle Bus bearing registration No.KA-01-D-9353 of the 1st respondent?

2.Whether both the respondents are liable to pay the compensation to the claimants?

3.What is the quantum and apportionment, the claimants are entitled to?

9.Before the Tribunal, on the side of the claimants, 3 witnesses were examined as PW1 to PW3 and marked 56 documents as Exs.P1 to P56. On the side of the respondents, one witness was examined as RW1 and marked 5 documents as Exs.R1 to R5.

10.After hearing both sides and on appreciation of the evidence, both oral and documentary, the Tribunal has awarded a sum of Rs.47,95,000/- as compensation with interest at the rate of 7.5% per annum from the date of the petition till the date of realization by directing the second respondent Insurance Company to pay the award amount.

11.Aggrieved by the above fair and decreetal order, the second respondent has preferred CMA(MD)No.188 of 2019 on the ground of negligence as well as the quantum. Similarly, not being satisfied with the quantum of the compensation awarded by the Tribunal, the claimants have preferred CMA(MD)No.200 of 2022 for enhancement of compensation.

12.The learned counsel appearing for the claimants would submit that the deceased was aged about 41 years at the time of the accident and was doing granite and blue-metal business and was earning Rs.6,00,000/- per month. In order to prove the income of the deceased, the claimants have produced the income tax returns Exs.P6 to P8. The gross income of the deceased was Rs.2,74,386/- through Ex.P8. For the year 2011-2012, the income of the deceased was shown as Rs.17,277/-. For the year 2010-2011, the income of the deceased was shown as Rs.2,74,386/-. In Ex.P8 the previous year loss has been shown. In fact, the earning of the deceased for the year 2011-2012 is Rs.2,74,386/-. The deceased was earning a sum of Rs.6,00,000/- per month, but the Tribunal has failed to consider the same. As per the income tax return for the year 2010-2011, the annual income is Rs.31,54,980/-. For the year 2011-2012, Rs.53,47,410/- was the income. But the Tribunal failed to consider the same and only awarded a sum of Rs.30,000/- as monthly income of the deceased. Moreover, the claimants witnesses have categorically deposed about the income of the deceased. So far as the negligence is concerned, the claimants have examined PW2 who is the eye witnesses to the occurrence and he has categorically deposed about the negligence on the part of the driver of the Bus. Therefore, the Tribunal has correctly came to the conclusion that the driver of the Bus is responsible for the accident. However, failed to award fair and just compensation. Therefore, the award passed by the Tribunal is liable to be enhanced.

13.The learned counsel appearing for the second respondent would submit that the accident took place due to the negligence on the part of the driver of the Car. Simply because the deceased died, FIR has been registered against the driver of the Bus. The Tribunal also fastened the liability only as against the driver of the Bus. The Tribunal has erroneously fixed the liability on the part of the driver of the first respondent Bus. The driver of the first respondent Bus had no valid driving licence on the date of the accident to drive the vehicle and therefore, the 2nd respondent is not liable to pay the compensation. However, the Tribunal has awarded a sum of Rs.47,95,000/- by directing the 2nd respondent with liberty to recover the same from the insured. Further, the Tribunal has taken Rs.30,000/- towards the monthly income of the deceased without any basis. Even as per the records, for the year 2011-2012, the total income of the deceased was Rs.2,74,386/- and the monthly income was arrived by the Tribunal to the tune of Rs.22,865/-. But without any basis, fixed Rs.30,000/- towards the monthly income and therefore, the award passed by the Tribunal is liable to be set aside.

14.This Court heard both sides and the perused the records.

15.The points for determination in this appeal are that:-

(i).Whether the accident took place due to the negligence on the part of the driver of the Bus?

(ii)Whether the Tribunal awarded a just and fair compensation?

16.In this case, there is no dispute in respect of the date of the accident and the involvement of the vehicles in the accident. According to the claimants, the accident took place due to the negligence on the part of the driver of the first respondent, which insured with the second respondent and the second respondent denied the negligent on the part of the driver of the Bus.

17.In order to prove the negligence on the part of the driver of the Bus, on the side of the claimants, they examined the eye witness PW2, who has categorically deposed about the nature of the accident and the FIR also registered against the driver of the Bus. There is no contra evidence adduced by the 2nd respondent to rebut the evidence of the claimants side in respect of the negligence. Therefore, in the absence of any contra evidence, the evidence of PW2 is reliable and acceptable. Therefore, the claimants have proved the negligence on the part of the driver of the first respondent by cogent evidence. The Tribunal also after considering the records correctly fastened the liability against the driver of the Bus.

18.As far as the quantum is concerned, according to the claimants, the deceased was doing granite and blue-metal business and was earning Rs.6,00,000/- per month. PW1 also deposed that the deceased was earning Rs.6,00,000/- per month. But there is no document to prove that the deceased was earning Rs.6,00,000/- per month. However, on the side of the claimants produced Exs.P6 to P8, the income tax returns for the year 2009-2010 to 2011-2012. For the year 2009-2010, the total income of the deceased as per Ex.P6 is shown as Rs.17,277/-. For the year 2010-2011, the net income is shown as Rs.31,54,980/-. For the year 2011-2012, the gross income was shown as Rs.2,74,386/-. The Tribunal has fixed a sum of Rs.30,000/- as monthly income of the deceased, but no any evidence to fix such a quantum of the amount. Even as per the records of the claimants, the maximum income for the year 2011-2022 is Rs.2,74,386/- and thereby, the monthly income comes to Rs.22,835/-.

19.The learned counsel appearing for the claimants would submit that the total income of the deceased for the year 2011-2012 is Rs.53,47,410/- and the previous year loss was also deducted and thereby, the actual income of the deceased comes to Rs.6,00,000/- per month. Exs.P6 to P8 are the income tax returns, but there is no evidence whether those income tax returns were accepted by the Income Tax Department or not. As per Ex.P7 for the 2010-2011, there is no loss of income. While so, mere showing some amount towards income cannot be taken into account, thereby this Court is inclined to take the evidence of the deceased as mentioned in Ex.P6 and thereby the monthly income comes to Rs.22,865-50/- and the same can be rounded off to Rs.23,000/-. There is no dispute that the deceased was aged about 41 years on the date of the occurrence. Since the deceased was aged about 41 years at the time of the accident, 25% of the income has to be taken for future prospects. So, the total monthly income comes to **Rs.28,750/-** and the annual income comes to R**s.3,45,000/-**. Considering the dependents of the deceased, 1/4th amount has to be deducted for his personal expenses, thereby, it comes to **Rs.2,58,750/-**. After applying multiplier 14, the total amount comes to **Rs.36,22,500/-**.

20.The Tribunal has only awarded a sum of Rs.40,000/- towards consortium to the third claimant alone. As per the **Pranay Sethi's** case, each claimant is entitled to Rs.40,000/- under the head of consortium and thereby, the claimants are entitled to Rs.2,00,000/- under the head of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, In total, the claimants are entitled to Rs.38,52,500/- rounded off to **Rs.38,50,000/-**.

21.The learned counsel appearing for the claimants would submit that the claimants have incurred travel expenses to take the body of the deceased from the place of the occurrence to their native place and thereby, they are entitled to travelling expenses, apart from the funeral expense to be awarded by the Tribunal. In support of his contention, he relied upon the judgment of the Hon'ble Apex Court in the case of ***M.H.Umamaheswari and another Vs. United India Insurance Company and another, reported in 2020 6 SCC 400***. Since the deceased died at Puthalapattu, Chittor District, Andrapradesh State and he was taken to his native place, thereby the second claimant has spent money for transportation expenses. Therefore, the second claimant is entitled for **Rs.20,000/-** towards transportation expenses. In total, the compensation amount is calculated as **Rs.38,70,000/-**

22.Therefore, the award passed by the Tribunal is modified as stated above. The appellant in CMA(MD)No.188 of 2019 and the second respondent in CMA(MD)No.200 of 2022 is directed to deposit the above said modified amount of **Rs.38,70,000/-** with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization within a period of four weeks from the date of the receipt of a copy of the judgment. On such deposit being made, the first claimant is entitled to Rs.4,00,000/-, 2nd claimant is entitled to Rs.4,70,000/- and the claimant 3 to 5 are entitled to Rs.10,00,000/- each, with proportionate interest. In respect of the share of the minor claimants namely 4 and 5, their share shall be deposited in any one of the nationalized Bank for a period of three years in a fixed deposit, till they attain majority. The 3rd claimant being the mother and natural guardian of the minor claimants is permitted to withdraw the accrued interest once in three months for the welfare of the minors.

23.With the above said modification, **CMA(MD)No.188 of 2009** is **partly allowed** as indicated above and **CMA(MD)No.200 of 2022** is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

(N.A.V.,J) **(P.D.B.,J)**
12/03/2026

Index:Yes/No
Internet:Yes/No
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To,

1.The Motor Accident Claims Tribunal/
Subordinate Judge, Ambasamudram.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.

N. ANAND VENKATESH.J
AND
P.DHANABAL.J

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CMA(MD)Nos.188 of 2019 and 200 of 2022

12/03/2026