

CMA.No.1182 of 2023

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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 25.08.2025**

**CORAM:**

**THE HONBLE MRS.JUSTICE J.NISHA BANU  
AND  
THE HON'BLE MR. JUSTICE M.JOTHIRAMAN**

**CMA.No.1182 of 2023  
and CMP.No.11614 of 203**

The Divisional Manager,  
The New India Assurance Co. Ltd.,  
Having office at Officers Line,  
Vellore.

... Appellant / 2nd respondent  
vs.

1.S.Rajamani

2.Minor Surya Prakash

3.Minor Yashwandh Prakash

4.Muniammal

5.Munisamy

.. Respondents 1 to 5 / Petitioners 1 to 5 /  
Claimants

(Minor respondents 2 and 3 are represented  
by their mother / natural guardian 1st respondent)

6.Sivamani

.. Respondent No.6 / 1st Respondent

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor



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Vehicles Act, 1988, against the Decree and Order dated 25.08.2022 made in M.C.O.P.No.413 of 2017, on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.Leeban Arivalagan for R1 to R4

### **JUDGMENT**

(Judgment of the Court was delivered by M.Jothiraman, J.)

The unsuccessful Insurance Company has preferred this appeal. The claimants filed the Claim Petition for Fatal under Section 166 of the Motor Vehicles Act, 1988 [in short "MV Act"], which was taken on file in M.C.O.P.No.413 of 2017 on the file of the Motor Accidents Claims Tribunal, Vellore, [I Additional District and Sessions Court, Vellore] [in short "Tribunal"] seeking compensation of Rs.15,00,000/- for the death of Chakravarthy in a road accident. The Tribunal, allowed the claim petition with costs and held that the petitioners/claimants are entitled for Rs.21,85,800/- as compensation. The insurer of the vehicle, namely the appellant Insurance Company is directed to pay and deposit the award amount before the Tribunal within a period of four weeks with interest @ 7.5. p.a, from the date of filing of the petition till the date of deposit,

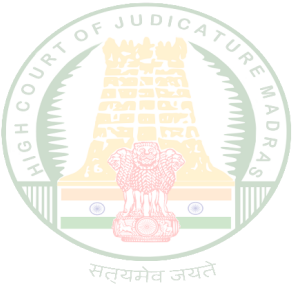


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excluding the period of default, if any. The parties are referred to as per their rankings before the Tribunal.

2. It is stated in the Claim Petition that on 28.08.2016 at about 11.00 p.m., the deceased Chakravarthy was returning from Arcot to Brammadesam Village by riding his two wheeler bearing Reg.No.TN73 H 6855. When he approached a bridge near Ariyur Village, another two wheeler bearing Reg.No.TN 21 AE 2459, which was coming in the opposite direction in a rash and negligent manner, came in a wrong direction and dashed against the above said vehicle and caused multiple injuries to the said Chakravarthy. The deceased was thrown to a pit at a depth of 15 feet and he was lying unconscious throughout the night. The deceased was retrieved from the pit on the next day morning and was taken to the Government Hospital, Wallaja and subsequently to the Government Vellore Medical College Hospital. He took treatment as inpatient and was discharged on 10.09.2016 at 3.00 p.m. on 10.09.2016. He was taken to the Government Hospital, Walaja for treatment on 11.09.2016 at about 6.00 a.m., where he died at 7.00 a.m. on the same day. This was reported to Brammadesan Police Station orally on 11.09.2016 at 1.00 p.m. But the police who was present in the police



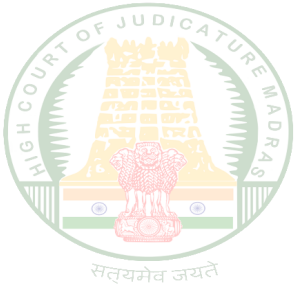
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station wrote a false complaint stating that the deceased died of having consumed tablets issued by the hospital and registered a separate F.I.R. in Crime No.264/2016 under Section 174 CrPC. According to the petitioners/claimants, the death of the deceased occurred not due to the consumption of medicines, but due to the multiple injuries on his vital organs. The accident occurred due to the rash and negligent act of the rider of the alleged two wheeler vehicle at the time of the accident and hence, the owner and insurer respectively of the alleged two wheeler bearing Reg.No.TN 21 AE 2459 are liable to pay compensation of Rs.15,00,000/- with 12% interest to the petitioners / claimants.

3. The owner of the vehicle / sixth respondent herein was called absent before the Tribunal and he was set exparte.

4. The Insurance Company / appellant herein filed a counter affidavit, wherein it has been stated that the claim petition is not sustainable either in law or on facts. The appellant denied the allegations made in the claim petition and stated that as per the F.I.R., it was stated that the injured was discharged on 10.09.2016 at 8.00 p.m. and he has consumed the medicine given by the G.H.



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Adukuamparai Hospital and he was unconscious and lay down. Later he was admitted in the Government Hospital, Wallaja and the doctor examined him and declared as dead. The death occurred due to the consumption of medicine and not due to the mishap occurred. As per the investigation report, it was stated that the Bajaj Pulsar vehicle bearing Reg.No.TN21 AE 2459 was in the name of S.Kumaran. S.Kumaran told the vehicle to Mr.Sivamani. He has not transferred his name in R.C.Book. The deceased has not possessed a valid driving licence at the time of the accident and as per the motor vehicle policy condition, the owner has not transferred his name in R.C. Book and the deceased was not having valid driving licence at the time of accident. The deceased died due to medical negligence and not due to the accident and prayed for dismissal of the claim petition.

5. Based on the above pleadings, the Tribunal framed the following points for consideration:

*(1) Whether the accident took place only due to the rash and*



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*negligent driving of the driver of the rider of Bajaj Pulsar motorcycle bearing registration No.TN 21 AE 2459 ?*

*(2) Whether the respondents are liable to pay compensation to the petitioners ? Which respondent is liable ?*

*(3) Whether the death of the injured occurred due to medical negligence or due to the consequences of the accident ?*

*(4) Whether the claimants are entitled for compensation, if so, what is the quantum of compensation amount ?*

6. During trial, on the side of the claimants, the first claimant examined herself as PW1. Dr. M.Venkateshwaran was examined as PW2. One R.Ashok Kumar was examined as PW3. One V.Duraisamy was examined as PW4 and one S.Sekar was examined as PW5 and Exs.A1 to A8 were marked. On the side of the respondent / Insurance Company, Dr.A.Mohammed Thabresh was examined as RW1 and no document was marked.

### 7. Findings of the Tribunal

(1) The eye witness / PW5, who saw the accident, stated that the rider of the



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two wheeler bearing Reg No.TN 21 AE 2459 alone was responsible for the accident, as he has driven the said vehicle in a rash and negligent manner and it hit against the two wheeler driven by the deceased, due to which he rolled down to the pit and got injured Through the testimony of the eye witness / PW5, it was clear that the accident occurred due to the rash and negligent driving by the aforesaid two wheeler.

(2) The doctor, who conducted post mortem, was examined as RW1 and he stated that the death was happened only due to the head injury and Hemorrhage.

(3) PW2 - Dr.M.Venkateshwaran, based on the postmortem certificate, stated that the deceased died due to the effects of head injury and blood leakage in the brain. From the evidence of PW2 and RW1 / Doctors, it is clear that the death of the deceased occurred only due to the consequences and complications of head injury and other injuries sustained by the deceased in the road accident and not due to the consumption of medicines by the deceased.

(4) The accident took place in the year 2016. The age of the deceased was



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27 years at the time of accident and therefore, the Tribunal fixed the notional income of the deceased at Rs.9000/- per month and by following the dictum laid down by the Hon'ble Apex Court in *Smt.Sarla Varma and Others v. Delhi Transport Corporation & Others [2009 (2) TN MAC 1(SC)]*, the Tribunal deducted 1/4th of salary towards personal and living expenses of the deceased and after such deduction, the monthly income was fixed as Rs.9,450/-. Considering the age of the deceased and adopting Multiplier 17 for calculation of compensation under the head of Loss of Income, by following the decision in *Sarla Varma case (cited supra)*, an amount of Rs.19,27,800/- was arrived by the Tribunal. The total compensation arrived by the Tribunal is extracted hereunder:

<i>Sl.No.</i>	<i>Head of Compensation</i>	<i>Amount awarded in Rs.</i>
1	Loss of Income	19,27,800
2	Spouse Consortium for the first claimant	44,000
3	Filial Consortium for the Claimants 2 and 3 / Minors	88,000
4	Parental Consortium for 4th and 5th claimants	88,000
5	Transport Expenses	5,000
6	Loss of Estates	16,500
7	Funeral Expenses	16,500
	Total	21,85,800

8. The learned counsel appearing for the appellant/insurance company



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would submit that when the claim petition was filed under Section 163A of the MV Act, the Tribunal erred in awarding compensation under Section 166 of the MV Act. Except the F.I.R., the claimants have not produced any document to substantiate that the accident occurred due to the rash and negligent driving of the driver of the offending two wheeler. The claimants states that the victim was lying in the pit for the whole night after the accident and then how the Tribunal believed the evidence of PW5, who claims to be the eye witness. The claimants failed to produce the driving licence of the deceased, though it was pleaded that the deceased did not possess the valid driving licence and also the victim suffered head injuries which would clearly show that he was not wearing helmet at the time of accident, however the said two factors were not considered by the Tribunal and therefore, prays for interference.

9. The points for determination in this appeal are:

- (i) Whether the accident took place only due to the rash and negligent driving of the driver of the Bajaj Pulsor two wheeler bearing Reg. No. TN 21 AE 2459 ?
- (ii) Whether the respondents are liable to pay compensation to the claimants

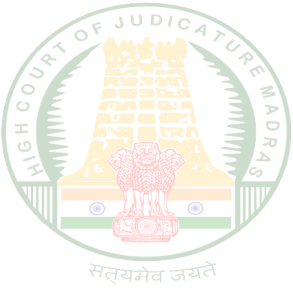


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10. Ex.P1 is the F.I.R. in Crime No.256 of 2016 registered on 31.08.2016 for the accident that occurred on 28.08.2016. It is seen from Ex.P1 / F.I.R. that the rider of the Bajaj Pulsar two wheeler is the accused who caused the accident. Further, it is seen that once again, after the death reported to Brammadesam Police Station on 11.09.2016, they in-turn registered another F.I.R. in Crime No.264 of 2016 under Section 174 CrPC under Ex.P2. It is seen from Ex.P2 that the deceased Chakravarthy died because of consumption of tablets and stated that the tablets were given by the hospital. On the side of the appellant/insurance company, the doctor who conducted the postmortem, namely Dr.Mohammed Thabresh was examined as RW1 and he deposed that the death was happened only due to head injury and Hemorrhage.

11. PW2 - Dr.M.Venkateswaran has also deposed that as per the Postmortem Certificate, it revealed that the deceased died due to the effects of head injury and blood leakage in the brain. From the testimonies of PW2 and RW1 / Doctors, it is evident that the accident had occurred only due to the



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consequences and complications due to head injury and other injuries sustained by the deceased in the road accident.

12. PW5, who claims to be the eye-witness to the accident, deposed that the rider of the Bajaj Pulsar two wheeler bearing Reg.No. TN21 AE 2459 was alone responsible for the accident, as he has driven the vehicle in a rash and negligent manner and hit against the two wheeler driven by the deceased. PW5, in his proof affidavit, further deposed that since the deceased fell into the pit, he could not able to lift him and he has informed the same to the police station, so also to the family of the deceased.

13. PW1 - Tmt.S.Rajamani deposed that the deceased was thrown into the pit at a depth of 15 feet and retrieved from the pit on the next day morning and he was taken to the Government Hospital, Wallaja and subsequently, shifted to the Government Medical College Hospital, Vellore, where he took treatment as in-patient and discharged on 10.09.2016 at 3.00 p.m.

14. There are minor contradictions between the version of PW5 / eye



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witness and the evidence of PW1 - wife of the deceased. However, through the evidence of PW5 / eye witness, the accident had occurred due to the rash and negligent driving of the rider of Bajaj Pulsar two wheeler bearing Reg.No.TN 21 AE 2459. According to the appellant / insurance company, the Bajaj Pulsar vehicle initially stood in the name of one S.Kumaran. S.Kumaran sold the vehicle to Mr.Sivamani / sixth respondent herein and he has not transferred his name in the R.C. Book and the said Bajaj Pulsar vehicle was taken by his friend S.Subramani for his personal use and at that time, it hit against the vehicle driven by the deceased. It is seen from Ex.P6 -Xerox copy of the Insurance Policy dated 10.12.2015 of Bajaj Pulsar bearing Reg.No.TN21 AE 2459, at the time of the accident, the said vehicle was insured with the appellant insurance company and stood in the name of the sixth respondent herein and the policy was in force.

15. Though it is the case of the appellant/insurance company that the deceased did not possess a valid driving licence at the time of the accident, the said factor cannot be a ground to attribute contributory negligence on the deceased in the light of the decision of the Hon'ble Apex Court in ***Sudhir Kumar Rana v. Surinder Singh and Others [(2008) 12 SCC 436]***, wherein it was held as under:



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**"8. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the Courts below that it was the driver of the mini-truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence."**

*(emphasis supplied)*

16. The contents of the F.I.R. reflects the manner of accident, as spoken to by PW5 and hence, it is clear that the accident occurred due to the rash and negligent driving of the Bajaj Pulsar bearing Reg.No.TN21 AE 2459 and the appellant and the sixth respondent are the insurer and owner of the vehicle respectively and the claimants are yet to be paid compensation.

17. The accident took place in the year 2016. The age of the deceased was 27 years at the time of the accident. The Tribunal, by relying upon the dictum laid down by the Hon'ble Supreme Court in the case of *The National Insurance*



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***Company Limited v. Pranay Sethi and Others, SLP (Civil) No.25590 of 2014 dated 31.10.2017 and Smt.Sarla Varma and Others v. Delhi Transport Corporation and Others [ 2009 (2) TN MAC 1 (SC)]***, has rightly arrived at the monthly income of the deceased as Rs.9,450/-.

18. However, it is contended by the appellant/Insurance Company before this Court that the deceased was not wearing helmet at the time of the accident and that is the reason for causing head injury and therefore, contributory negligence is attributed on the part of the deceased. In this context, it is relevant to refer to the judgment of this Court in ***C.M.A.(MD)No.987 and 988 of 2014 dated 13.02.2017, Branch Manager (Oriental Insurance Company Limited) v. Indirani and Others***, wherein it was held as follows:

"11.Without wearing a helmet, no rider can drive the two wheeler and as per Section 129 of the Motor Vehicles Act, 1988, it is mandatory....

....

12. This Court has elaborately dealt with the instances of wearing of helmet by quoting the details of death cases due to non-wearing of helmet in ***R.Mallika and Others vs. A.Babu and Others***



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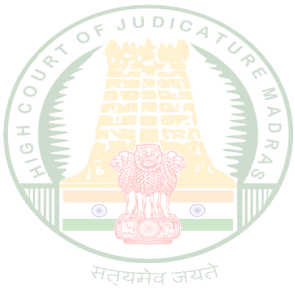
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[C.M.A.No.3235 of 2014, decided on 08.06.2015] and therefore, 15% negligence has to be fixed on the rider of the two wheeler for not wearing the helmet and accordingly, 15% negligence is fixed on the rider of the two wheeler."

19. A Division Bench of this Court in the judgment dated **27.03.2024 made in C.M.A.No.928 of 2022 [The Divisional Manager, United India Insurance Co. Ltd. Vellore, v. S.Rathna and others]** has observed as under:

"8.The Tribunal had deducted 15% towards contributory negligence, since the deceased was not wearing the helmet. We approve the said conclusion of the Tribunal."

20. In the light of the aforesaid decisions of this Court, this Court is inclined to modify the amount of compensation awarded by the Tribunal under the head "Loss of Income" by deducting 15% towards contributory negligence and therefore, the amount of compensation under Loss of Income is modified to Rs.16,38,630/- [Rs.9,450 x 12 x 17 x 85%]. This Court is of the view that the compensation awarded by the Tribunal under other heads are based on proper reasoning. The total modified amount of compensation is tabulated as under:

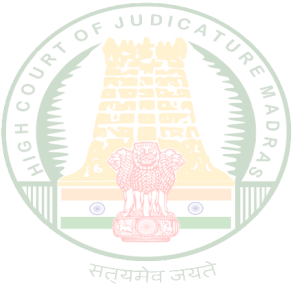


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<i>Sl.No.</i>	<i>Head of Compensation</i>	<i>Amount awarded in Rs.</i>
1	Loss of Income	16,38,630
2	Spouse Consortium for the first claimant	44,000
3	Filial Consortium for the Claimants 2 and 3 / Minors	88,000
4	Parental Consortium for 4th and 5th claimants	88,000
5	Transport Expenses	5,000
6	Loss of Estates	16,500
7	Funeral Expenses	16,500
	<b>Total</b>	<b>18,96,630</b>
	<b>Rounded off</b>	<b>18,97,000</b>

21. In the result, this Civil Miscellaneous Appeal stands partly allowed, and the decree and award dated 25.08.2022 made in M.C.O.P.No.413 of 2017, on the file of the Motor Accidents Claims Tribunal, I Additional District and Sessions Court, Vellore is modified to Rs.18,97,000/- with interest @ 7.5% from the date of filing of the petition till the date of realisation. The appellant insurance company is directed to pay the modified compensation amount as awarded by this Court, less the amount if any already paid, within a period of four weeks from the date of receipt of a copy of this order. The order of apportionment between the claimants is as per the ratio of apportionment awarded by the Tribunal. There shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.



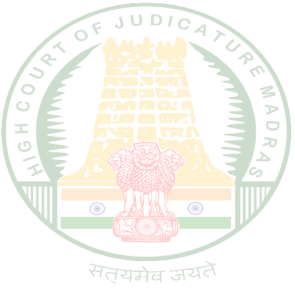
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**[J.N.B., J.] [ M.J.R., J.]**  
**25.08.2025**

Intex : Yes/No  
Internet : Yes/No  
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To  
Motor Accidents Claims Tribunal,  
I Additional District and Sessions Court,  
Vellore.



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**J.NISHA BANJ, J.**  
**AND**  
**M.JOTHIRAMAN, J.**

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