

C.M.A. (MD) No. 1002 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 24.04.2026

Pronounced on : 30.06.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.1002 of 2023

1.A.Sujitha

2.A.Suba

... Appellants/
Claimants

*(Cause title is accepted vide Court order dated
08.11.2022 made in CMP(MD)No.10354 of 2022
in CMA(MD)SR.No.13787 of 2018)*

Vs.

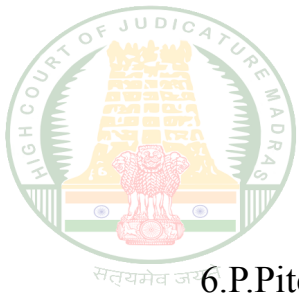
1.T.Jeyaraman

2.M/s.ICICI Lombard General Insurance Company Ltd.,
represented through its Divisional Manager,
No.D1, AR Plaza, II Floor, North Veli Street,
Madurai.

3.R.Premanand

4.United India Insurance Company Limited,
represented through its Divisional Manager,
West Veli Street, Madurai.

5.J.Revathy



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6.P.Pitchaiammal

7.R.Arul Jothi

... Respondents/
Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to call for the records pertaining to the judgment and decree dated 19.04.2017 made in M.C.O.P.No.376 of 2008 on the file of the Motor Accident Claims Tribunal / Sessions Judge, Communal Clash Cases Court, Madurai and set aside the same insofar as the liability is concerned and to direct the second respondent to satisfy the entire award on behalf of the van and lorry owner with liberty given to the second respondent to initiate independent proceedings against the owner and driver of the lorry to recover the amount to the extent it has satisfied the liability of the owner of the lorry by allowing the above appeal.

For Appellants : Mr.J.Lawrance

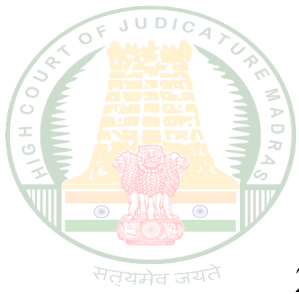
For Respondents : Mr.V.Muthu Kamatchi for R2

Mr.J.S.Murali for R4

No appearance for R1, R3, R5 to R7

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award made in M.C.O.P.No.376 of 2008 dated 19.04.2017 on the file of the Motor Accident Claims Tribunal / Communal Clash Cases Court, Madurai.

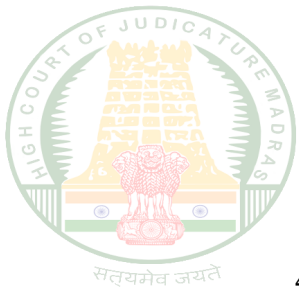


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2. The appellants / claimants, who were awarded with compensation of Rs.6,26,000/- (Rupees Six Lakhs and Twenty Six Thousand only) with interest and costs payable by the sixth respondent, challenged the mulcting of entire liability on the lorry driver and claimed fixing of liability on the van driver and consequently directing the second respondent / insurer of the van to pay the award amount.

3. The case of the appellants is that on 20.03.2007 at about 16.15 hours, when the deceased along with her co-workers were returning from their work place in a van bearing Registration No.TN-32-2430 and at the place near Ankayarkanni Nagar, the van driver drove the vehicle in a rash and negligent manner and at that time, a lorry bearing Registration No.TAT 2660, which came in the opposite direction, in a rash and negligent manner, had dashed against the van and as a result of which, the occupants of the van including the mother of the appellants sustained injuries and the appellants' mother died on the way to Government Rajaji Hospital, Madurai and that therefore, the accident was occurred only due to the rash and negligent driving of both the van driver and the lorry driver.



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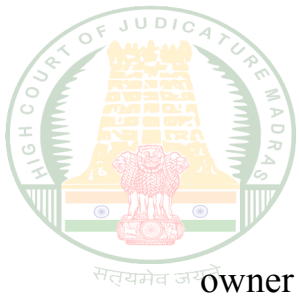
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4. The defence of the second respondent is that the accident was occurred only due to the rash and negligent driving of the lorry driver, that the van driver was not at fault and that since the first respondent's van driver was not responsible for the accident, the second respondent is not liable for any of the claim.

5. The third respondent filed a counter statement stating that he already sold the lorry bearing Registration No.TAT 2660 to one Petciammal and that he has no connection whatever with the lorry and the accident alleged in the claim petition.

6. The defence of the fourth respondent is that the third respondent had insured the lorry with the fourth respondent only for the period from 12.03.2006 to 11.03.2007 and the same was not renewed further, that the third respondent sold the vehicle to one Revathi and she was the owner on the date of accident and that the claim petition as against the fourth respondent is liable to be dismissed.

7. In pursuance of the stand taken by the third respondent, previous

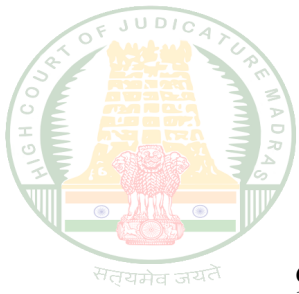


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owner of the lorry bearing Registration No.TAT 2660, the fifth respondent Revathy and the sixth respondent Pitchaiammal came to be impleaded. The fourth respondent filed an additional counter statement taking a stand that both the Revathy and Pitchaiammal have not insured the said lorry with the fourth respondent and that since there was no insurance coverage for the vehicle on the date of accident, the fourth respondent is not liable for the claim.

8. The respondents 2 and 3 have taken a stand that the husband of the deceased has not been added as a party, the claim petition is liable to be dismissed for non-joinder of necessary party. In view of the above defence, the appellants have impleaded their father Arul Jothi as seventh respondent. The seventh respondent filed a counter statement stating that there was a customary divorce between him and the deceased Umarani and thereafter, he married one Mariyatharisi @ Rajakumari and was having children through her, that the appellants have been under the care and custody of their grandfather Periyakaruppan and that he had no objections to give compensation amount to the appellants.



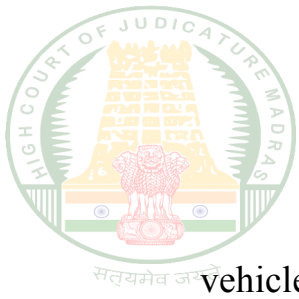
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9. During trial, the appellants examined their grandfather and guardian Periyakaruppan as P.W.1 and the first appellant as P.W.2 and 2 other witnesses alleged to be the occurrence witnesses as P.W.3 Nallammal and P.W.4 Jeyapandi respectively and exhibited 8 documents as Ex.P1 to Ex.P8. The second respondent examined 2 witnesses as R.W.1 and R.W.2 and exhibited 10 documents as Ex.R1 to Ex.R10.

10. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned order dated 19.04.2017 holding that the accident was occurred only due to the rash and negligent driving of the lorry driver and that since there was no insurance coverage for the said lorry at the time of accident, directed the sixth respondent / owner of the lorry at that time to pay compensation of Rs.6,26,000/- with interest and costs. Aggrieved by the impugned order, the claimants have preferred the present appeal.

11. The learned counsel appearing for the appellants would contend that, even according to the appellants, the driver of the van had driven the



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vehicle in a rash and negligent manner and collided with the lorry, which came in the opposite direction and caused the accident, that though there was sufficient evidence to prove that both the drivers of van and the lorry were responsible for the accident, the Tribunal has erroneously held that the accident had occurred only due to the rash and negligent driving of the lorry driver, that there was no insurance coverage for the lorry on the date of accident, that the appellants were unable to trace the whereabouts of the sixth respondent, that the Tribunal ought to have held that the van driver was also responsible for the accident, in which event, the second respondent would have been held liable to pay the compensation and that on account of the erroneous finding of the Tribunal, the appellants have been deprived of the compensation for the past 19 years.

12. As rightly contended by the learned counsel appearing for the second respondent, the mere fact that the sixth respondent, the owner of the lorry, who was directed by the Tribunal to pay the compensation, could not be traced and that the appellants have been unable to realise the compensation for the past 19 years cannot, by itself, constitute a valid ground for setting aside the finding of the Tribunal and fastening liability



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on the van driver and, consequently, on the second respondent.

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13. The learned counsel appearing for the appellants would further contend that the Tribunal has recorded the above finding not on the basis of any conclusive material, but merely on the basis of Ex.R1 rough sketch; that the rough sketch cannot have any conclusive evidentiary value in the absence of any other evidence; that, since the maker of Ex.R1 was not examined, the same cannot be relied upon; that, in a case of head-on collision, no conclusion regarding the manner in which the accident occurred can be reached solely on the basis of the rough sketch; that the rough sketch normally depicts only the final position where the vehicles involved in the accident came to a halt; that the van, which was proceeding at a high speed, collided with the lorry, which was also travelling at a high speed, and thereafter moved towards the southern side of the road; that Ex.R1 rough sketch was prepared only on the basis of the final position of the vehicles; and that, therefore, the rough sketch has only an inferential value and cannot be treated as conclusive evidence regarding the manner in which the accident occurred.



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14. The learned counsel appearing for the appellants would submit that the Motor Vehicle Inspector has noticed the damages on the front right side and rear side of the van and the same would clearly show that the driver of the van and the lorry were responsible for the accident and that the findings recorded by the Tribunal on the basis of Ex.P3 motor vehicle Inspector's report are contrary to the particulars mentioned therein. He would further submit that a bare reading of the evidence of P.W.3 would reveal that he has clearly deposed that the driver of the van was responsible for the accident, that P.W.4 has also supported the appellants' case on the negligent aspects, that the Tribunal, without considering the evidence in proper perspective, mechanically recorded a finding that the lorry driver alone was at fault and that the same is liable to be set aside.

15. It is pertinent to note that on the basis of the complaint given by the van driver, FIR was registered against the lorry driver and after investigation, the jurisdictional police has lodged the charge sheet against the said lorry driver.

16. It is evident from the records that the van, in which the deceased



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was travelling, was proceeding from east to west, whereas, the lorry was proceeding from west to east. In Ex.R1 rough sketch, the accident was shown to have occurred on the southern side of the east west road. As rightly pointed out by the learned counsel appearing for the second respondent, the learned counsel appearing for the appellants has only referred the chief examination affidavit of P.W.3 and P.W.4 in support of their contention. No doubt, P.W.3 and P.W.4 alleged to be the occurrence witnesses have stated that the van driver drove the vehicle in a rash and negligent manner and dashed against the lorry, which came in the opposite direction, but P.W.3, in her cross-examination, has specifically admitted that the van was proceeding from east to west and the lorry from west to east, that the accident was occurred on the south of the said road and that the right side of the van has dashed against the right side of the lorry and the relevant portion is extracted hereunder:

“வேன் கிழக்கிலிருந்து மேற்கே வந்துகொண்டிருந்தது. லாரி மேற்கிலிருந்து கிழக்காக வந்துகொண்டிருந்தது. விபத்து நடந்தது சாலையின் தென்புறம் என்றால் சரிதான். வேனின் வலதுபக்கம் லாரியின் வலதுபக்கத்தில் மோதி விபத்து நடந்தது என்றால் சரிதான்.”



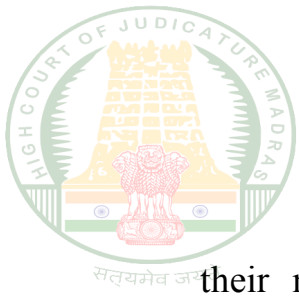
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17. According to P.W.3, she was also travelling in the van along with the deceased and others at the time of accident and she had not sustained any injury.

18. P.W.4, in his cross-examination, has admitted that the accident was occurred near the house of Sudamani and the relevant portion is extracted hereunder:

“விபத்து சூடாமணி வீட்டிற்கு அருகில் நடந்தது சரிதான். சூடாமணி வீடு ரோட்டின் தென்புறமாக வடக்கு பார்த்தவாறு இருந்தது என்றால் சரிதான். ... அங்கயர்கன்னிநகர் போகும் ரோட்டிலிருந்து சுமார் 200 அடி தூரத்தில் ரோட்டின் வடப்புறமாக பேருந்து நிறுத்தம் உள்ளது என்றால் சரிதான். லாரி மேற்கிலிருந்து கிழக்குப்புறமாக வந்துக்கொண்டிருந்தது. இறந்துபோன உமாராணி வந்த வேன் கிழக்கிலிருந்து மேற்குப்புறமாக வந்துக்கொண்டது என்றால் சரிதான். விபத்து நடந்தது சாலையின் தென்புறமாக சூடாமணி வீட்டின் முன்புறமாக என்றால் சரிதான்.”

19. P.W.3 and P.W.4, in their evidence, have admitted that they were not examined by the police in connection with the accident. As rightly pointed out by the learned counsel appearing for the second respondent,



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their names do not find place in the charge sheet under Ex.P2 as prosecution side witnesses.

20. It is pertinent to note that both P.W.3 and P.W.4 have categorically deposed that the accident occurred on the southern side of the east-west road. It is not their case that the accident occurred on the northern side of the road or at the centre of the road and that, after the impact, the vehicles moved towards the southern side. As rightly observed by the learned Tribunal, the van was proceeding on the southern side of the road, whereas the lorry was expected to proceed on the northern side, but, the lorry driver came to the wrong side of the road and dashed against the van.

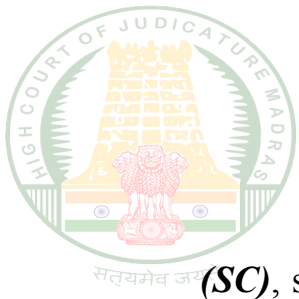
21. On considering the entire evidence available on record, the Tribunal has rightly come to the conclusion that the accident occurred only due to the rash and negligent driving of the lorry driver. There is absolutely no evidence to show that the van driver was also at fault or that he had in any manner contributed to the accident and consequently, the question of treating the van driver and the lorry driver as joint tortfeasors, as contended by the appellants, does not arise at all.



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22. Now turning to the quantum of compensation, the appellants have taken a stand in the appeal memorandum that the Tribunal, without advertent to the cost inflation index, has notionally fixed the monthly income at Rs.4,500/- and the Tribunal ought to have fixed the monthly income at Rs.15,000/-. It is pertinent to note that the appellants, in their claim petition, have specifically stated that the deceased was working as a labour in Sitalakshmi Mills Ltd, Tirunagar and was earning Rs.4,500/- per month. No doubt, in the absence of any evidence to prove the income of the deceased, as stated in the claim petition, the Tribunal can very well apply the cost inflation index and the decision of the Hon'ble Supreme Court in *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TN MAC 459** and fix the notional income of the deceased but in the present case, the appellants have themselves admitted that the deceased was earning Rs.4,500/- per month and hence, the Tribunal fixing of monthly income as Rs.4,500/- cannot be found fault with. No doubt, the Tribunal has not added any amount towards future prospects. As per the decision of the Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others* reported in **2017 (2) TN MAC 609**



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(SC), since the deceased was aged 31 years, 40% of the income has to be added towards future prospects and after such addition, the monthly income would come to Rs.6,300/- {Rs.4,500/- + Rs.1,800/- (40% of the income)}. Considering the number of dependents, the Tribunal has rightly deducted 1/3rd of the income towards personal and living expenses of the deceased and after such deduction, it comes to Rs.4,200/- {Rs.6,300/- - Rs.2,100./-}. The Tribunal, as per the dictum laid down by the Hon'ble Supreme Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another* reported in *AIR 2009 SC 3104*, has rightly applied multiplier 16. Hence, the compensation towards loss of dependency would be Rs.8,06,400/- (Rs.4,200/- x 16 x 12).

23. As rightly contended by the learned counsel appearing for the appellants, the Tribunal has not awarded any amount towards parental consortium instead awarded Rs.20,000/- for loss of love and affection. The Hon'ble Supreme Court in *The New India Assurance Company Ltd. Vs. Smt.Somwati and others* has specifically observed that no amount should be awarded under the separate head of loss of love and affection. Hence, the appellants being the children of the deceased are certainly entitled to get Rs.40,000/- each towards loss of parental consortium. The appellants



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are also entitled to get Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses under the conventional heads.

24. Considering the above, the appellants are entitled to get total compensation of Rs.9,16,400/- and the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss of dependency	5,76,000	8,06,400	Enhanced
2.	Loss of love and affection	20,000	Nil	Nil
3.	Loss of consortium	Nil	80,000	Granted
4.	Funeral expenses	20,000	15,000	Reduced
5.	Loss of estate	Nil	15,000	Granted
6.	Transport	10,000	Nil	Nil
	Total	6,26,000	9,16,400	Enhanced by Rs.2,90,400/-

25. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

26. In the result, this Civil Miscellaneous Appeal is partly allowed.



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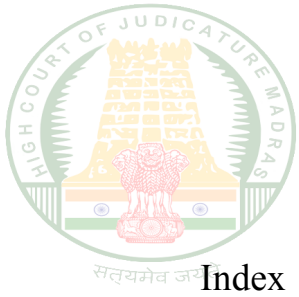
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The finding of the Tribunal that the sixth respondent alone is liable to pay the compensation stands confirmed. The compensation awarded by the Tribunal at Rs.6,26,000/- (Rupees Six Lakhs and Twenty Six Thousand only) is hereby enhanced to **Rs.9,16,400/- (Rupees Nine Lakhs Sixteen Thousand and Four Hundred only)** together with interest and costs. The sixth respondent is directed to deposit the modified enhanced amount with interest from the date of petition till the date of realization excluding the default period, if any, to the credit of M.C.O.P.No.376 of 2008 on the file of the Motor Accident Claims Tribunal / Communal Clash Cases Court, Madurai, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. Out of the compensation amount, the appellants are entitled to get 50% each. On such deposit, the appellants are permitted to withdraw their shares with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. The parties shall bear their own costs. The appellants are **directed to pay the court fee** for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

30.06.2026

NCC :yes/No

16/18



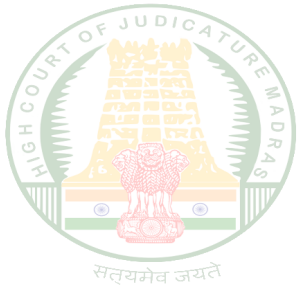
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Index :yes/No
Internet:yes/No
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To

- 1.The Sessions Judge,
Communal Clash Cases Court,
Motor Accident Claims Tribunal,
Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

**Pre-Delivery Judgment made in
C.M.A.(MD)No.1002 of 2023**

Dated : 30.06.2026