

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of reservation	06.12.2017
Date of Judgment	22.12.2017

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CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)Nos.1075 and 1076 of 2015
and
M.P. (MD)Nos.1 and 1 of 2015

M/s. Oriental Insurance Company Limited,
Represented by its,
Divisional Manager,
Office at Door No.16,
North Veli Street,
K.J.R.Complex,
Madurai - 625 001.

... Appellant/2nd Respondent
(in both appeals)

Vs.

1.S.Vishnu Ganga
2.S.Sudha Maheswari
3.S.Aishwarya Ganga
4.S.Sudha Rani

...1-4 Respondents/1-4 Petitioners
(in both appeals)

5. Thirumurugan Agency,
Represented by its Sole Proprietor,
S.Sethu Parwathi, W/o. Sermaraj,
Office at 5-B/1, Police Station Lane,
East Masi Street,
Madurai - 625 001.

... 5th Respondent/ 1st respondent
(in both appeals)

6. M/s. Tamil Nadu State
(Anna) Transport Corporation Ltd.,
Represented by its Managing Director,
Office at Johnsonpettai Branch,
Salem.

...6th Respondent/ 3rd Respondent
(in both appeals)

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.Nos.1573 and 1574 of 2009, dated 25.11.2014, on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Madurai.



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For Appellant

: Mr.K.Bhaskaran

For Respondents

: Mr.Meenakshi Sundaram

Senior Counsel for

Mr.P.Jeganathan (For R1 to R4)

: No appearance, For R.5

: Mr.M.Prakash, For R.6

(in both appeals)

COMMON JUDGMENT

[Judgment of the Court was delivered by **T.KRISHNAVALLI, J**]

Since the both Civil Miscellaneous Appeals arise out of a common award, dated 25.11.2014 made in M.C.O.P.Nos.1573 and 1574 of 2009, on the file of the Motor Accidents Claims Tribunal (IV Additional District Judge), Madurai, they are taken up together for final disposal and disposed of by a common judgment.

2.For the sake of convenience, the parties are referred to according to their litigative status before the Tribunal.

3.This is a case of fatal accident, in which the accident took place on 17.06.2008, while the deceased travelled in a tempo traveller TN-59-V-8987 belonging to the first respondent from Bellari to Madurai, near Namakal, at that time the Tamil Nadu State Transport Corporation Bus belonging to the third respondent, bearing Registration No.TN-30-0612, coming on the opposite direction, dashed against the tempo traveller. The driver of the first respondent's vehicle drove the vehicle on the proper side of the road at a moderate speed and that the third respondent's vehicle came on the wrong side of the road and lost his balance and control of the Bus. The above driver drove his vehicle in a rash and negligent manner and dashed against the tempo traveller. The accident had occurred due to the rash and negligent driving of the driver of first and third respondents. On the said impact, Sethuraman, the father of the claimants died on the spot and Radha Rukmani, the mother of the claimants died on the way to the Hospital.

4.The legal-heirs of the deceased filed claim petitions M.C.O.P.Nos.1573 and 1574 of 2009, on the file of the Motor Accident Claims Tribunal (IV Additional District Judge), Madurai. In both the petitions, the second respondent/Insurance Company denied the averments made in the claim petitions.

5.Before the Tribunal, on the side of the claimants, P.W.1 to P.W.10 were examined and Exs.P1 to P84 were marked. On the side of the second respondent, R.W.1 and R.W.2 were examined and Exs.R1 and R2 were marked.



6.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the learned counsel for the claimants, held that the Insurance Company has not chosen to examine the driver of the offending vehicle and as such, there was no contra evidence let in on the second respondent, the Tribunal held that the accident had occurred due to the rash and negligent driving of the driver of first and third respondents and direct the first, second and third respondents to pay the compensation to the claimants at the ratio of 50% : 50%.

7.These appeals have been filed only challenging the quantum awarded by the Tribunal.

8.The learned counsel for the appellant/2nd respondent submitted that Sri Ganga Mill was a partnership concern with the partners comprising the petitioners and their parents and that after the death of the parents in this accident, the firm had been reconstituted and the four petitioners are now partners and that all the Units of the Mill, including the Wind Mill Division were in operation. Even though, the deceased were stated as income tax assesseees on the petitioners side and the income tax returns in respect of the parents were not produced on the petitioner's side and also their individual accounts have not been produced and no further details have been furnished on the petitioner's side and no proper explanation was given on the petitioner's side for fluctuation of income of Ganga Mill, after the death of the deceased and that two Textile Mills taken up for comparison were from a different area and of a different size with Ganga Mills and P.W.10 could not have compared the above two Textile Mills with Sri Ganga Mills. Since Sri Ganga Mill is situated in Kariyapatti Village and the Global Recession would affect the Spinning Mills and due to the death of the deceased, the running of Sri Ganga Mill was not affected and there was no significant change in the average turnover and that the rate of profit had increased when compared to the figures in 2007-2008 and 2008-2009 and since, the Mill was still running, the estimated value of the services, which the deceased were rendering in the running of the Mill would form the basis of compensation and the income of the Company cannot be equated to the income of the individuals owning and managing the Company. The income tax returns of the deceased would be the material piece of evidence to fix the loss of earnings, but it was not produced on the claimants' side. Hence, the compensation awarded to the petitioners are excessive and exorbitant and prays that the appeals may be allowed.

9.In support of the contention, learned counsel for the appellant has relied upon the judgments reported in **2002 ACJ 154** (Karnataka Vs.Riyaz Ahamed), **2011 (1) TN MAC 34 (DB)** (National Insurance Company Limited Vs.Sujatha Rajalakshmi) and



2017 (2) TN MAC 522 (DB) (National Insurance Company Limited Vs.K.Ramya and others)

10. On the other hand, on the respondents side, it is submitted that the deceased had a very wide scope of expanding the business of Textiles and Mill Energy Units and had lot of plans to launch more projects and due to the death of the deceased, the petitioners/claimants deprived all the earning and all the claimants are unmarried and due to the death of their parents, exclusive care enjoyed by the petitioners/claimants are snatched away and the claimants are the dependants of the deceased and that they are entitled to the compensation as claimed for.

11. It is settled law that the Motor Vehicles Act is a social welfare legislation and the claimants are entitled for just compensation and it cannot be a bonanza or source of profit and in the following decisions principles have been laid down to determine just compensation.

12. The Hon'ble Apex Court in **Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826 : 2013 SCC OnLine SC 284 at page 87**, wherein has held as follows:-

" 32. Almost a century back in *Taff Vale Railway Co. v. Jenkins* [1913 AC 1 : (1911-13) All ER Rep 160 (HL)] , the House of Lords laid down the test that award of damages in fatal accident action is compensation for the reasonable expectation of pecuniary benefit by the deceased's family. The purpose of award of compensation is to put the dependants of the deceased, who had been the breadwinner of the family, in the same position financially as if he had lived his natural span of life; it is not designed to put the claimants in a better financial position in which they would otherwise have been if the accident had not occurred. At the same time, the determination of compensation is not an exact science and the exercise involves an assessment based on estimation and conjectures here and there as many imponderable factors and unpredictable contingencies have to be taken into consideration.

33. This Court in *C.K. Subramania Iyer v. T. Kunhikuttan Nair* [(1969) 3 SCC 64 : (1970) 2 SCR 688] , reiterated the legal philosophy highlighted in *Taff Vale Railway* [1913 AC 1 : (1911-13) All ER Rep 160 (HL)] for award of compensation in claim cases and said that there is no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations. Obviously, award of damages in each case would depend on the particular



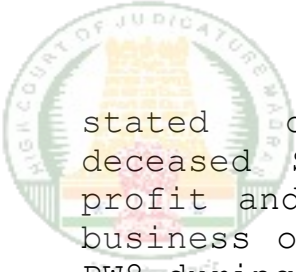
facts and circumstances of the case but the element of fairness in the amount of compensation so determined is the ultimate guiding factor. "

13. In the case of Reliance General Insurance Company Limited Vs. Shashi Sharma and others [(2016) 9 SCC 627], wherein at 17, it has been held as follows:-

"17. Be that as it may, the term "compensation" has not been defined in the 1988 Act. By interpretative process, it has been understood to mean to recompense the claimants for the possible loss suffered or likely to be suffered due to sudden and untimely death of their family member as a result of motor accident. Two cardinal principles run through the provisions of the Motor Vehicle Act of 1988 in the matter of determination of compensation. Firstly, the measure of compensation must be just and adequate; and secondly, no double benefit should be passed on to the claimants in the matter of award of compensation. Section 168 of the 1988 Act makes the first principle explicit. Sub-section (1) of that provision makes it clear that the amount of compensation must be just. The word "just" means-fair, adequate, and reasonable. It has been derived from the Latin word "justus", connoting right and fair. In para of State of Haryana v Jasbir Kaur (2003) 7 SCC 484, it has been held that the expression "just" denotes that the amount must be equitable, fair, reasonable and not arbitrary. In para 16 of Sarla Verma vs. DTC (2009) 6 SCC 121, this Court has observed that the compensation "is not intended to be a bonanza, largesse or source of profit". That, however, may depend upon the facts and circumstances of each case, as to what amount would be a just compensation."

14. Keeping in mind the principles laid down in the above decisions, we proceed to assess compensation in the case on hand.

15. The petitioners in their claim petition stated that their deceased parents were partners of M/s.Ganga Mills. To prove it, the partnership deed was marked as Ex.P3. On a perusal of Ex.P3, it reveals that the deceased Sethuraman and Radha Rukmani were partners of M/s.Sri Ganga Mills. To prove the income derived from the business, the claimants examined the Associate Audit, Assistant Manager of Sri Ganga Mills, Cost Accountant (Intermediate) respectively as PW8 to PW10. PW8 to PW10 have specifically



stated during their evidence that due to the skill of the deceased Sethuraman and Radha Rukmani, Sri Ganga Mill earned profit and after the death of Sethuraman and Radha Rukmani, the business of Sri Ganga Mill was drastically reduced in scale. But, PW8 during his cross examination stated as follows:-

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...லாபத்தில் ஏற்ற இறக்கம் சந்தை நிலவரத்தை பொருத்தும் தொழிலாளர்களின் தொழில் நுட்பத்தைப் பொருத்தும் மற்றும் பல காரணங்களாலும் ஏற்படுகிறது நான் பார்த்த கணக்கில் ஏற்பட்ட ஏற்ற இறக்கங்கள் என்று எதனால் ஏற்பட்டது என்று நான் ஆய்வு, செய்யவில்லை. அதை முழுவதுமாக ஆய்வு, செய்யாமல் கருத்து கூற முடியாது....

16. PW9 during his cross-examination stated as follows:-

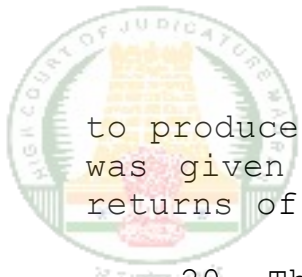
....நான் மாதம் 4 லட்ச ரூபாய் நஷ்டம் சேதுராமன் ராதாருக்மணி இறப்பால் ஏற்பட்டுள்ளது என்று சொல்வதற்கு எந்த ஆதாரமும் தாக்கல் செய்யவில்லை. நன்றாக வேலை செய்யும் ஊழியர்களுக்கான தட்டுப்பாடு சேதுராமன் ராதாருக்மணி உயிருடன் இருந்த காலத்தில் ஏற்பட்டு விட்டது என்றால் சரிதான்

17. P.W.10 admits that Sri Ganga Mill situated in Kariyapatti Village and Jeya Jothi Mills Rajapalayam Mill situated in Rajapalayam. In this respect, the cross examination of P.W.10 was referred. P.W.10 during his cross examination stated as follows:-

...ஜெயசோதி மில்லும் ராசபாளையம் மில்லும் கங்கா மில்லுடன் ஒப்பிட்டு செய்வதற்கான சரியான அளவிலான மில்கள் அல்ல. காரியாபட்டியிலிருந்து ராசபாளையம் செல்லும் வழியில் கங்கா மில் போன்று அளவிலுள்ள சிறு சிறு மில்கள் இயங்கி வருகின்றன என்றால் சரிதான். அந்த மில்களில் ஏதாவது ஒரு மில்லை கங்கா மில்லுடன் ஒப்பிட்டு பார்த்தேனா என்றால் பார்த்துள்ளேன். ஆனால் அதை பொருத்து எனது கருத்துரையை எனது நிருபண வாக்குமூலத்தில் சொல்லவில்லை.

18. On a careful perusal of the evidence of PW8 to PW10, it is evident, the income from the Mill was not reduced due to the death of Sethuraman and Radha Rukmani.

19. It is not in dispute that the deceased are income tax assesseees. To prove the income of the deceased, the income tax returns of the deceased were not produced on the side of the petitioners. The income tax returns of the deceased are the



to produce the income tax returns of the deceased. No explanation was given on the petitioners' side for non-production of income returns of the deceased in this case.

20. The Tribunal based on the income of the Textile Mills has awarded compensation. When the similar issue came up for consideration before the Division Bench of Karnataka High Court in **2002 (2) ACJ 154**, it has been held as follows:-

"23. Where the deceased was carrying on any business (either as proprietor or as managing partner) which was run solely on account of his efforts and skill and such business is closed or is drastically reduced in scale, on account of his death, there can be little doubt that the earning of the deceased from such business will have to be taken as 'income' for calculating the loss of dependency. But, what is the position, if the deceased was not carrying on the business by his individual skill and effort, but the deceased was a partner with several others or is a member of a family firm and on his death his widow or son/daughter steps into his place in the partnership and family continues earlier? In that event, can it be said that there is loss of entire income, which the deceased was getting from the partnership firm, for calculating loss of dependency? Obviously not. In that event, the loss of income will be the monetary equivalent of the supervision, skill and effort of the deceased. But, how is it to be calculated? A few illustrations will be useful to highlight and differentiate between several categories of income and determination of income for purposes of arriving at the loss of dependency.

Illustration A: The deceased had invested a sum of Rs.5,00,000/- in fixed deposits with banks and was getting an income of Rs. 5,000/- per month, by way of interest. On his death, the said sum of Rs.5,00,000/- is inherited by the dependants (wife and children) and they also continue to get Rs.5,000/- per month as interest. In such a case, the sum of Rs.5,000/- received by the deceased as 'income' is not really a 'loss' of income on his death and cannot, therefore, be taken into account for determining the loss of dependency. The said income will have to be ignored and in the absence of any other income, only a notional income (say Rs.15,000 per annum as provided in Schedule II to Motor Vehicles Act) should be considered as income for calculating the loss of dependency.

Illustration B: The deceased was owning 10 acres of land and by cultivating the same, through labourers



under his supervision, he was earning Rs.1,00,000/- per annum. On his death, the dependent family (wife and children) inherit the land. But, for lack of experience, they engage a manager to supervise the cultivation by paying a salary of Rs.3,000/- per month and continue to get an annual income of Rs.1,00,000/- from the land. In such a case, the annual income of Rs.1,00,000/- earned by the deceased from the land cannot be the loss of income of the family. Only the value of the supervision and personal effort put in by the deceased, which had to be made good by engaging a manager, can be treated as loss of income. Thus, the loss of income will have to be taken as Rs.36,000/- per annum. Even where a manager is not engaged and the family members of the deceased supervise the land, the loss will be the value of supervision by the deceased. The notional value of such effort and supervision, determined with reference to the facts and circumstances, will be the loss on account of the death.

Illustration C: The deceased, during his lifetime, was a partner in a family business of which he and his brother are the partners, each having invested Rs.1,00,000/- to the capital and both participating in the management of the partnership. Each partner was taking a monthly remuneration of Rs. 5,000/- and interest at 12 per cent on the capital of Rs.1,00,000/- invested by each of them and 50 per cent share in the profits/losses, the share in profits being Rs.10,000/- per annum during the relevant year. One of the partners died in a motor accident and his son is taken as partner in the place of the deceased on the same terms; and thus the family continues to get the same income (consisting of remuneration, interest on capital investment and share in profits/losses). In such a situation, the entire income which the deceased used to get from the firm (remuneration plus interest on capital plus share in profits) will not be the loss to the family for purposes of calculating the loss of dependency. Only the value of the effort put in by the deceased as partner will be loss to the family. Thus, the remuneration of Rs.5,000/- per month or Rs. 60,000/- per annum will be the loss of income.

Illustration D: On the same facts (as in illustration C), the partnership merely provided for sharing of profits/losses at 50 per cent each, without any remuneration or interest on capital contributed by the two partners. In the absence of evidence to the contrary, the 'income' for purposes of dependency can be arrived at by deducting the interest (say 10 per cent per annum) on the capital contributed from the



profit from the firm. If the capital is Rs.1,00,000/- and the share in profits is Rs. 30,000/- per annum, then the loss of 'income' will be Rs.30,000/- minus Rs.10,000/- (that is 10 per cent interest on capital of Rs.1,00,000/-) that is, Rs.20,000/-. If the income arrived at by such method is less than the now recognised notional income of Rs.15,000/- per annum, the income can be taken as Rs.15,000/- per annum.

23.1. It is, however, to be reiterated that the income should be determined with reference to facts of each case. For example, there may be cases where a family firm is well established and reputed and having a large income, with a small capital and death of one of the family members (a partner) may not make any difference in the income. In such case the entire income (minus interest on capital) may not be the income and appropriate further deductions will have to be made to ascertain the real contribution of the deceased and value thereof. Be that as it may.

24. In this case, late Govinda Setty was receiving by way of income, from the BVS firm, not only a share in the profits, but also a remuneration. After his death, his son Raghavendra (claimant No.2) was taken as a partner in the said firm with the same capital and the same share and thus the family of Govinda Setty is having the benefit of the income from the said firm, as it was getting when Govinda Setty was a partner. Thus, it is just and appropriate to take as the income of the deceased Govinda Setty, for the purpose of determination of loss of dependency, only the remuneration he was getting from the firm and not the share in the profits."

21. The same view was taken by this court in the judgment reported in 2011 (1) TN MAC 34 (DB) (National Insurance Company Limited Vs.Sujatha Rajalakshmi). Following the principles laid down in the earlier cases, this Court **2017(2) TN MAC 522** (DB) [National Insurance Co. Ltd., vs. K.Ramya and others], has held as follows:-

"17.It is relevant to refer to the decision of the Honourable Supreme Court, in the case of National Insurance Company Limited vs. Sujatha Rajalakshmi, 2011 (1) TN MAC 34 (DB), wherein this Court has held in an identical case as follows:-

"In our considered opinion, the said piece of evidence of P.W.1 undoubtedly goes to prove that the deceased was earning more income by continuing the business of his father. Under such circumstances, we do not hesitate to hold that there is no Loss of Income



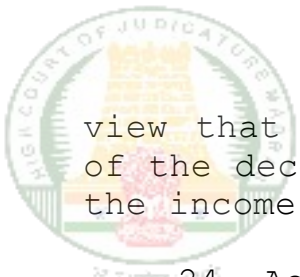
to the family of the respondents 1 to 3/ claimants on account of the death of the victim, since the source of income would continue to exist even after the death of the victim. In this regard, reference could be placed in the judgments relied upon by the learned counsel appearing for the appellant. In *M.G. Service, Madras and another vs. V.S. Andalammal and others*, 1982 ACJ (Supp.) 408, it has held as follows:

"... The income from agriculture, house property and from the investments cannot be taken into account for determining the Loss of Income, for those are sources which still continued to exist even after the death of Sanjeevi Mudaliar. Therefore, there cannot be said to be any loss from those three sources."

18. However, it is to be reiterated that the income should be determined with reference to facts of each case for example there may be cases where a family man is well established and reputed and having a large income, with a small capital and death of one of the Family Members (a Partner) may not make any difference in the income. In such case, the entire income may not be the income and appropriate further deductions will have to be made to ascertain the real contribution of the deceased and value thereof."

22. On a perusal of Ex.P3 partnership deed, it reveals that the deceased are the Managing Partners of Sri Ganga Mill and they had 30% share each, in respect of profit and loss of the business and the annual remuneration was fixed at Rs.3,75,000/- for Sethuraman and Rs.1,15,000/- for Radha Rukmani. The learned counsel for the claimants argued that the deceased are the Managing Partners of Sri Ganga Mills and only due to their skill, the business earn profits and after the death of the deceased, the business has drastically reduced in scale and hence, the claimants are entitled to compensation as claimed for.

23. In this case, already it was decided that the claimants have not taken any steps to prove the income of the deceased by producing the income tax returns of the deceased. Further, after the death of the deceased, now the partnership was reconstituted and the business was run by the claimants. P.W.8 admitted during his cross examination that after the death of deceased, for some years, the business fetched profit and for some years, the business sustained loss and the loss may be due to global recession in the product. In this case, it is not in dispute that after the death of the deceased, the business was continued. Due to the death of the deceased, the claimants stepped into the shoes of the deceased and became partners and hence, it is held that after the death of the deceased, the claimants have no pecuniary loss in respect of the business. Hence, in the light of the decisions referred supra, this Court is of the considered



view that the relevant factor for determining the loss of income of the deceased is the remuneration received from the Mill and not the income of the Mill.

24. As per Ex.P3, the annual remuneration fixed for Sethuraman is Rs.3,75,000/-. Hence, the monthly income for Sethuraman is fixed as Rs.30,000/-. The deceased Sethuraman is a self-employee and he was 57 at the time of accident and he is entitled to 10% of future prospects. Hence, the monthly salary for the deceased is fixed at Rs.33,000/-. After deducting $\frac{1}{4}$ towards personnel expenses, the monthly salary is fixed at Rs.25,350/- (Rs.33,000/- - Rs.7,650/-). Based on the judgment reported in the case of **Sarla Varma & Others Vs. Delhi Transport Corporation and another 2009(2) TNMAC 1 (SC)**, this Court applied multiplier of '8' and awarded Rs.24,33,600/- (Rs.25,350/- x 12 x 8) towards loss of income. The Tribunal awarded Rs.2,00,000/- towards loss of love and affection; Rs.10,000/- towards transport expenses and Rs.25,000/- towards funeral expenses. The above amount granted by the Tribunal for conventional damages seems to be reasonable and the same is confirmed. Hence, the claimants in MCOP No.1573 of 2009 are entitled to **Rs.26,68,600/-** towards compensation along with interest @ 7.5% p.a.

25. With regard to quantum in **MCOP No.1574 of 2009**, as per Ex.P.3, the remuneration for the deceased Radha Rukmani is fixed at Rs.1,15,000/- per annum. Hence, her monthly salary comes to Rs.12,500/-. The age of the deceased Radha Rukmani is shown as 50 years. She is also a self-employee. For the age group of 50 years, 25% is added for future prospectus. Hence, the monthly salary for the deceased Radha Rukmani is fixed at Rs.15,625/-. After deducting $\frac{1}{4}$ towards personnel expenses, the monthly contribution to the family is fixed at Rs.11,720/-. By applying multiplier "12", loss of income of the deceased Radha Rukmani is arrived at Rs.16,87,680/- (Rs.11,720 x 12 x 12). The award of the Tribunal under conventional damages at Rs.2,00,000/- towards loss of love and affection; Rs.10,000/- towards transport expense; Rs.25,000/- towards funeral expenses are not excessive and they are reasonable and the same is confirmed. Hence, the claimants are entitled to Rs.16,87,680/- towards loss of income; Rs.2,00,000/- for pain and sufferings; Rs.10,000/- towards Transport expenses and Rs.25,000/- towards funeral expenses and *in toto*, the claimants in M.C.O.P.No.1574 of 2009 are entitled to **Rs.19,22,680/-** as compensation together with interest @ 7.5% p.a.

26. In the result, these Civil Miscellaneous Appeals are allowed in part. It is made clear that the finding of the Tribunal on negligence is confirmed. The appellant Insurance Company is directed to deposit the modified amount, less the amount already deposited. On such compliance, the claimants are permitted to withdraw their share as per the ratio of



apportionment of the Tribunal. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal
cum IV Additional District Judge,
Madurai.
2. The Record Keeper, V.R.Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+2cc to Mr.K.Bhaskaran, Advocate Sr.No.94435, 94436

+1cc to Mr.M.Prakash, Advocate Sr.No.94447

+1cc to Mr.P.Jeganathan, Advocate Sr.No.94415

GSP

VB/GT/SAR3/06.03.2018/12P/8C

**Common Judgment made in
C.M.A(MD)Nos.1075 and 1076 of 2015
and
M.P. (MD)Nos.1 and 1 of 2015
22.12.2017**