



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

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C.M.A(MD)Nos.987 and 988 of 2014C.M.A(MD)No.987 of 2014:

The Branch Manager,
The Oriental Insurance Company Limited,
Thiruvannamalai - 606 601.

... Appellant/
2nd Respondent

Vs.

- 1.Indirani
- 2.Rajakumari
- 3.Minor Selvarani
- 4.Minor Vijeyarani
- 5.Minor Jeyarani
- 6.Minor Rajkumar

(Minor Respondents 3 to 6 are represented by their mother and guardian, the second respondent herein.)

- 7.Chinnapottu
- 8.Kalappaiah

... Respondents 1 to 8/
1st to 8th Petitioners

- 9.A.Palani

... 9th Respondent/

1st Respondent

(9th Respondent remained exparte before the Lower Court)

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.01.2014, made in M.C.O.P.No.258 of 2011, by the Motor Accident Claims Tribunal - cum - Additional District and Sessions Judge, Special Judge,Pudukottai.

For Appellant

: Mr.K.Bhaskaran

For Respondents

: Mr.S.I.Muthiah Nathan
for Mr.K.C.Maniyarasu for R.1 to R.8
No appearance for R.9

C.M.A(MD)No.988 of 2014:

<https://hcmesportal.in/Memios>
The Branch Manager,

The Oriental Insurance Company Limited,
Thiruvannamalai - 606 601.

... Appellant/
2nd Respondent



Vs.

1.Ammu

2.Minor Buvaneswari

3.Minor Tamilarasan

(Minor Respondents 2 and 3 are represented by their mother and guardian, the first respondent herein.)

4.Rajalakshmi

5.Senthamilselvi

6.Chellathambi

7.Selvam

... Respondents 1 to 7/
1st to 7th Petitioners

(Claim petition was dismissed by the Tribunal against the respondents 5 to 7 and hence, the respondents 5 to 7 are given up.)

8.A.Palani

... 8th Respondent/
1st Respondent

(8th Respondent remained exparte before the Lower Court)

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.01.2014, made in M.C.O.P.No.259 of 2011, by the Motor Accident Claims Tribunal - cum - Additional District and Sessions Judge, Special Judge, Pudukottai.

For Appellant

: Mr.K.Bhaskaran

For Respondents

: Mr.S.I.Muthiah Nathan
for Mr.K.C.Maniyarasu for R.1 to R.4

No appearance for R.5 & R.8

R.6 & R.7 - "Unclaimed".

COMMON JUDGMENT

C.M.A.(MD)No.987 of 2014 has been filed by the appellant-Insurance Company against the award of Rs.13,61,520/- (Rupees Thirteen Lakhs Sixty One Thousand Five Hundred and Twenty only) passed in M.C.O.P.No.258 of 2011, by the Motor Accident Claims Tribunal - cum - Additional District and Sessions Judge, Pudukottai, dated 20.01.2014.

2. C.M.A(MD)No.988 of 2014 has been filed by the appellant-Insurance Company against the award of Rs.12,76,200/- (Rupees Twelve Lakhs Seventy Six Thousand and Two Hundred only) passed in M.C.O.P.No.259 of 2011, by the Motor Accident Claims Tribunal - cum - Additional District and Sessions Judge, Pudukottai, dated 20.01.2014.



3. Since both the appeals arise out of a common award passed in respect of the same accident occurred on 22.09.2010, these appeals are disposed of by this common judgment.

4. The claim petitions in M.C.O.P.Nos.258 and 259 of 2011 have been filed by the respective claimants, stating that on 22.09.2010, Chellakannu was riding his motorcycle and Selvaraj was the pillion rider and when they were riding on the south-west direction near Keeramangalam West Electricity Board Office, the Tractor-Trailor belonging to one Palani, 9th respondent in C.M.A (MD)No.987 of 2014/8th respondent in C.M.A(MD)No.988 of 2014, insured with the appellant-Insurance Company, was driven in a rash and negligent manner and dashed behind the motorcycle, causing the accident and resulting in the death of the said Chellakannu and Selvaraj. Therefore, the claim petitions.

5. On contest, the Tribunal found that the Tractor-Trailor was driven in a rash and negligent manner and fixed the negligence on the driver of the Tractor-Trailor and fixed 90% negligence on the part of the driver of the Tractor-Trailor and 10% negligence on the part of the rider of the two wheeler as he did not possess a valid driving licence and awarded a sum of Rs.13,61,520/- (Rupees Thirteen Lakhs Sixty One Thousand Five Hundred and Twenty only) for the death of Selvaraj and Rs.12,76,200/- (Rupees Twelve Lakhs Seventy Six Thousand and Two Hundred only) for the death of Chellakannu, respectively. The said awards are being challenged before this Court.

6. Heard Mr.K.Bhaskaran, learned Counsel for the appellant-Insurance Company and Mr.S.I.Muthiah Nathan, learned Counsel appearing on behalf of Mr.K.C.Maniyarasu, learned Counsel for the respective claimants in both the appeals.

7. The owner of the Tractor-Trailor remained exparte before the Tribunal and though notice was served on him and his name appeared in the cause list, there is no representation on behalf of him.

8. The Tribunal, based on the evidence of P.W.2 - eyewitness and filing of Ex.P.1 - F.I.R and Ex.P.4 - charge sheet against the driver of the Tractor-Trailor and also Ex.P.3 - the report of the Motor Vehicle Inspector, rightly came to the conclusion that the driver of the Tractor-Trailor alone was responsible for the accident. However, taking note of the lack of driving licence on the part of the rider of the two wheeler, the Tribunal fixed 10% negligence on the part of the rider of the two wheeler.

9. Though the finding of the Tribunal is correct, the persons who are in possession of the documents, namely, driving licence to drive the two wheeler, are bound to produce the driving licence. As per the judgment of the Honourable Supreme Court, it is the burden of proof cast upon the Insurance Company to show that the rider of the two wheeler did not have any driving licence by



issuing a notice to the owner of the two wheeler and also by summoning the officials of the Regional Transport Office, but the appellant-Insurance Company did not discharge the same and therefore, the said fixation of 10% negligence on the part of the rider of the two wheeler is set aside.

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10. However, neither the rider of the two wheeler nor the pillion rider, was wearing helmets at the time of the accident as per Section 129 of the Motor Vehicles Act, 1988.

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. Section 129 of the Motor Vehicles Act, 1988, is usefully extracted hereunder:

"129. Wearing of protective headgear.- Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear [protective headgear conforming to the standards of Bureau of Indian Standards]:

Provided that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban:

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

Explanation.- "Protective headgear" means a helmet which,-

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the event of an accident; and

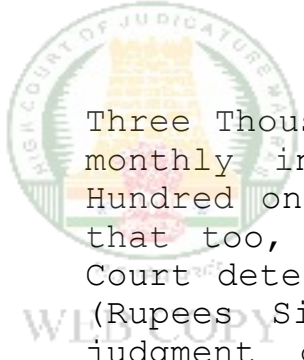
(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

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 another v. A.Babu and others* [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.

C.M.A(MD)No.987 of 2014:

<https://hcservices.courts.gov.in/hcservices/>

In the respondents 1 to 8/claimants 1 to 8 claimed that the deceased Selvaraj was doing agriculture as well as catering agency and earning about Rs.15,000/- (Rupees Fifteen Thousand only) per month, in the absence of proof regarding the same, the Tribunal fixed the monthly income at Rs.3,500/- (Rupees



Three Thousand and Five Hundred only) and the determination of the monthly income at Rs.3,500/- (Rupees Three Thousand and Five Hundred only) per month for the death of 45 years old person and that too, in the year 2010, is very meagre and therefore, this Court determines the monthly income of the deceased as Rs.6,500/- (Rupees Six Thousand and Five Hundred only) by following the judgment of the Honourable Supreme Court in *Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.* reported in 2014 (1) TNMAC 459 (SC), wherein for a vegetable vendor, who got injured in an accident occurred on 14.02.2008, a sum of Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month was fixed.

14. However, the Tribunal rightly added 30% towards future prospects as per the judgment of the Honourable Supreme Court in *Sarla Verma v. Delhi Transport Corporation* reported in 2009 (2) TN MAC 1 (SC), and accordingly, the monthly income of the deceased would be Rs.8,450/- (Rupees Eight Thousand Four Hundred and Fifty only) [Rs.6,500/- + Rs.1,950/-].

15. The size of the family of the deceased is 8 and therefore, 1/5th amount has to be deducted towards personal expenses of the deceased and accordingly, the monthly contribution of the deceased would be Rs.6,760/- (Rupees Six Thousand Seven Hundred and Sixty only) [Rs.8,450/- - Rs.1,690/-].

16. As per Ex.P.2 - post-mortem certificate, the age of the deceased was fixed at 45 years and as per the judgment of the Honourable Supreme Court in *Sarla Verma v. Delhi Transport Corporation* reported in 2009 (2) TN MAC 1 (SC), the appropriate multiplier is '14'. Accordingly, the loss of income would be Rs.11,35,680/- (Rupees Eleven Lakhs Thirty Five Thousand Six Hundred and Eighty only) [Rs.6,760/- X 12 X 14].

17. No amount was awarded towards loss of consortium to the first respondent/first wife and therefore, a sum of Rs.1,00,000/- (Rupees One Lakh only) is awarded.

18. The second marriage is not legally recognised by law. However, in this case, with the consent of the first respondent/first wife, the deceased married the second respondent/second wife and they were living under the same roof and therefore, though the second respondent/second wife is not entitled to any amount towards loss of consortium, she is entitled to a sum of Rs.50,000/- (Rupees Fifty Thousand only) as she only gave birth to the respondents 3 to 6. If at all there was any grievance against the second marriage, it is only the first respondent/first wife alone to object the same. In this case, as stated above, the first respondent/first wife has not objected to the claim petition has been filed making them as claimants as the respondents 1 and 2/claimants 1 and 2. Therefore, the second respondent/second wife is entitled to a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards loss of love and affection. Merely because she was married as a second wife, she

should not be condemned for "No Fault of Her". In this case, as explained supra, she only gave birth to the respondents 3 to 6/claimants 3 to 6 as the first respondent/first wife did not have any issue. It is not only the first respondent/first wife, but the second respondent/second wife should be undergoing psychological, emotional and physical sufferings and sorrows, which cannot be estimated in terms of money.

19. The Tribunal awarded a sum of Rs.5,00,000/- (Rupees Five Lakhs only) towards loss of love and affection to the respondents 1, 3, 4, 5 and 6 and the said amount is on the higher side and moreover, a sum of Rs.1,00,000/- (Rupees One Lakh only) is awarded to the first respondent/first wife towards loss of consortium and therefore, the respondents 3 to 6 are entitled to a sum of Rs.50,000/- (Rupees Fifty Thousand only) each, towards loss of love and affection and they are entitled to a sum of Rs.2,00,000/- (Rupees Two Lakhs only) together.

20. The respondents 7 and 8/claimants 7 and 8 are entitled to a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each towards loss of love and affection.

21. A sum of Rs.20,000/- (Rupees Twenty Thousand only) awarded by the Tribunal towards funeral expenses is confirmed. However, a sum of Rs.5,000/- (Rupees Five Thousand only) awarded towards transportation charges is enhanced to a sum of Rs.15,000/- (Rupees Fifteen Thousand only).

22. Further, a sum of Rs.1,00,000/- (Rupees One Lakh only) awarded by the Tribunal towards loss of estate is on the higher side and the same is reduced to a sum of Rs.75,000/- (Rupees Seventy Five Thousand only).

23. Accordingly, the total compensation would come to Rs.16,45,680/- (Rupees Sixteen Lakhs Forty Five Thousand Six Hundred and Eighty only). For not wearing of the helmet, 15% negligence is fixed on the part of the deceased and therefore, 15% has to be deducted and accordingly, after deducting a sum of Rs.2,46,852/- (Rupees Two Lakhs Forty Six Thousand Eight Hundred and Fifty Two only), the respondents 1 to 8/claimants 1 to 8 are entitled to a sum of Rs.13,98,828/- (Rupees Thirteen Lakhs Ninety Eight Thousand Eight Hundred and Twenty Eight only) [Rs.16,45,680/- - Rs.2,46,852/-], rounded off to Rs.14,00,000/- (Rupees Fourteen Lakhs only).

24. The rate of interest at 7.5% per annum awarded by the Tribunal remains unaltered.

25. Even though the appeal has been preferred by the Insurance Company against the award of Rs.13,61,520/- (Rupees Thirteen Lakhs Sixty One Thousand Five Hundred and Twenty only) awarded by the Tribunal, this Court, on reappreciating the evidence and applying the current proposition of law, *suo motu* enhances the compensation to Rs.14,00,000/- (Rupees Fourteen Lakhs

only) even in the absence of appeal/cross appeal invoking Order 41 Rule 33 of the Code of Civil Procedure and Article 227 of the Constitution of India, for which, this Court has got power and jurisdiction as declared by the Honourable Supreme Court in *Nagappa v. Gurudayal Singh and others* reported in 2004 (2) TNMAC 398 (SC) : 2003 (2) SCC 274.

26. Therefore, the respondents 1 to 8/claimants 1 to 8 are entitled to a sum of Rs.14,00,000/- (Rupees Fourteen Lakhs only) along with interest at 7.5% per annum from the date of petition till date of realisation and proportionate costs and the apportionment of the compensation is as follows:

Sl. No.	Claimants	Amount (s) Rs.
1.	1 st Respondent/First Wife of the deceased	2,00,000.00
2.	2 nd Respondent/Second Wife of the deceased	2,00,000.00
3.	3 rd Respondent/Minor Daughter of the deceased	2,00,000.00
4.	4 th Respondent/Minor Daughter of the deceased	2,00,000.00
5.	5 th Respondent/Minor Daughter of the deceased	2,00,000.00
6.	6 th Respondent/Minor Son of the deceased	2,00,000.00
7.	7 th Respondent/Father of the deceased	1,00,000.00
8.	8 th Respondent/Mother of the deceased	1,00,000.00
Total		14,00,000.00

C.M.A(MD)No.988 of 2014:

27. In this case, the deceased Chellakannu, aged about 30 years, as per Ex.P.6 - post-mortem certificate, was stated to be an Assistant Cook, earning about Rs.15,000/- (Rupees Fifteen Thousand only) per month and in the absence of positive proof regarding the monthly income, the Tribunal fixed a sum of Rs.4,000/- (Rupees Four Thousand only) and added 50% towards future prospects and deducted 1/4th amount towards personal expenses of the deceased and determined the loss of income at Rs.9,18,000/- (Rupees Nine Lakhs and Eighteen Thousand only).

28. The determination of Rs.4,000/- (Rupees Four Thousand only) as monthly income is on the lower side and therefore, this Court takes a sum of Rs.6,500/- (Rupees Six Thousand and Five Hundred only) as monthly income and adds 50% towards future prospects and determines the monthly income at Rs.9,750/- (Rupees Nine Thousand Seven Hundred and Fifty only). Though the size of the family is 7, the Tribunal rightly took the same as '4' excluding 3 members being the sister and brothers of the deceased and therefore, 1/4th amount has to be deducted towards personal expenses as the size of the family is 4 and therefore, the monthly contribution would come to Rs.7,312.50 (Rupees Seven Thousand Three Hundred and Twelve and Paise Fifty only) [Rs.9,750/- - Rs.2,437.50].

29. The multiplier according to the age of the deceased (30 years) is 17 and the Tribunal rightly applied the same.

Accordingly, the loss of income would be Rs.14,91,750/- (Rupees Fourteen Lakhs Ninety One Thousand Seven Hundred and Fifty only) [Rs.7,312.50 X 12 X 17].

30. The Tribunal awarded a sum of Rs.3,00,000/- (Rupees Three Lakhs only) to the respondents 1 to 3. The first respondent/wife is entitled to a sum of Rs.1,00,000/- (Rupees One Lakh only) towards loss of consortium. Since a sum of Rs.1,00,000/- (Rupees One Lakh only) is awarded by this Court to the first respondent/wife towards loss of consortium, a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) awarded by the Tribunal under the very same head is deleted.

31. The balance amount of Rs.2,00,000/- (Rupees Two Lakhs only) awarded to the respondents 2 and 3 is on the higher side and therefore, the same is reduced to Rs.1,00,000/- (Rupees One Lakh only) and accordingly, the respondents 2 and 3 are entitled to a sum of Rs.50,000/- (Rupees Fifty Thousand only) each towards loss of love and affection.

32. A sum of Rs.50,000/- (Rupees Fifty Thousand only) awarded to the fourth respondent/mother of the deceased towards loss of love and affection is confirmed.

33. A sum of Rs.25,000/- (Rupees Twenty Five Thousand only) awarded by the Tribunal towards funeral expenses is confirmed. However, a sum of Rs.5,000/- (Rupees Five Thousand only) awarded under the head 'transportation charges' is enhanced to a sum of Rs.10,000/- (Rupees Ten Thousand only).

34. Further, a sum of Rs.1,00,000/- (Rupees One Lakh only) awarded by the Tribunal towards loss of estate is reduced to a sum of Rs.50,000/- (Rupees Fifty Thousand only).

35. Accordingly, the total compensation would come to Rs.18,26,750/- (Rupees Eighteen Lakhs Twenty Six Thousand Seven Hundred and Fifty only). For not wearing of the helmet, 15% negligence is fixed on the part of the deceased and therefore, 15% has to be deducted and accordingly, after deducting a sum of Rs.2,74,013/- (Rupees Two Lakhs Seventy Four Thousand and Thirteen only), the respondents 1 to 4/claimants 1 to 4 are entitled to a sum of Rs.15,52,737/- (Rupees Fifteen Lakhs Fifty Two Thousand Seven Hundred and Thirty Seven only) [Rs.18,26,750/- - Rs.2,74,013/-] rounded off to Rs.15,50,000/- (Rupees Fifteen Lakhs and Fifty Thousand only).

36. The rate of interest at 7.5% per annum awarded by the Tribunal remains unaltered.

<https://hcservices.ecourts.gov.in/hcservices/>

37. Even though the appeal has been preferred by the appellant-Insurance Company against the award of Rs.12,76,200/- (Rupees Twelve Lakhs Seventy Six Thousand and Two Hundred only) awarded by the Tribunal, this Court, on reappreciating the

evidence and applying the current proposition of law, *suo motu* enhances the compensation to Rs.15,50,000/- (Rupees Fifteen Lakhs and Fifty Thousand only) even in the absence of appeal/cross appeal invoking Order 41 Rule 33 of the Code of Civil Procedure and Article 227 of the Constitution of India, for which, this Court has got power and jurisdiction as declared by the Honourable Supreme Court in *Nagappa v. Gurudayal Singh and others* reported in 2004 (2) TNMAC 398 (SC) : 2003 (2) SCC 274.

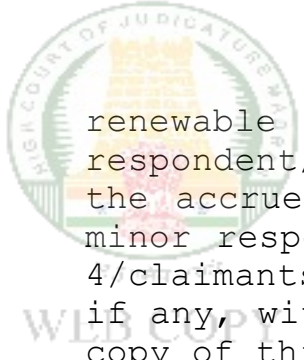
38. Therefore, the respondents 1 to 4/claimants 1 to 4 are entitled to a sum of Rs.15,50,000/- (Rupees Fifteen Lakhs and Fifty Thousand only) along with interest at 7.5% per annum from the date of petition till date of realisation and proportionate costs and the apportionment of the compensation is as follows:

Sl. No.	Claimants	Amount(s) Rs.
1.	1 st Respondent/Wife of the deceased	7,00,000.00
2.	2 nd Respondent/Minor Daughter of the deceased	3,50,000.00
3.	3 rd Respondent/Minor Son of the deceased	3,50,000.00
4.	4 th Respondent/Mother of the deceased	1,50,000.00
Total		15,50,000.00

39. In the result,

(i) C.M.A(MD)No.987 of 2014 is partly allowed and the respondents 1 to 8/claimants 1 to 8 are entitled to a sum of Rs.14,00,000/- (Rupees Fourteen Lakhs only) along with interest at 7.5% per annum from the date of petition till date of realisation and proportionate costs. Each of the respondents 1 to 8/claimants 1 to 8 are entitled to get their respective share amounts as per the apportionment made by this Court along with accrued interest and costs. Insofar as the minor respondents 3 to 6/claimants 3 to 6 are concerned, their respective shares are directed to be kept in an interest bearing Fixed Deposit in any one of the nationalised banks under the renewable scheme, till they attain majority and the second respondent/mother of the minor claimants is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 3 to 6/claimants 3 to 6. The respondents 1 to 8/claimants 1 to 8 are directed to pay the additional Court Fees, if any, within a period of two weeks from the date of receipt of a copy of this judgment;

(ii) C.M.A(MD)No.988 of 2014 is partly allowed and the respondents 1 to 4/claimants 1 to 4 are entitled to a sum of Rs.15,50,000/- (Rupees Fifteen Lakhs and Fifty Thousand only) along with interest at 7.5% per annum from the date of petition till date of realisation and proportionate costs. Each of the respondents 1 to 4/claimants 1 to 4 are entitled to get their respective share amounts as per the apportionment made by this Court along with accrued interest and costs. Insofar as the minor respondents 2 and 3/claimants 2 and 3 are concerned, their respective shares are directed to be kept in an interest bearing Fixed Deposit in any one of the nationalised banks under the



renewable scheme, till they attain majority and the first respondent/mother of the minor claimants is permitted to withdraw the accrued interest once in three months for the welfare of the minor respondents 2 and 3/claimants 2 and 3. The respondents 1 to 4/claimants 1 to 4 are directed to pay the additional Court Fees, if any, within a period of two weeks from the date of receipt of a copy of this judgment;

(iii) The appellant-Insurance Company is directed to deposit the respective entire compensation amounts to the credit of M.C.O.P.Nos.258 and 259 of 2011, on the file of the Motor Accident Claims Tribunal - cum - Additional District and Sessions Judge, Pudukottai, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment;

(iv) On such deposit, the Tribunal shall transfer the entire compensation amount along with accrued interest and proportionate costs, as per the apportionment made by this Court, to the respective Personal Savings Bank Account Numbers of the respective major respondents/major claimants, through RTGS/NEFT system after getting their Account Details, within a period of two weeks thereafter; and

(v) In the facts and circumstances of the case, there shall be no order as to costs in both the appeals.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal - cum -
Additional District and Sessions Judge, Special Judge,
Pudukottai.

2.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+2ccs to Mr.K.Bhaskaran, Advocate, SR.Nos.7884 and 7883

+2ccs to Mr.K.C.Maniyarasu, Advocate, SR.Nos.7808 and 7809

rsb

RL/7C/10P/MR/SAR3/7.4.2017

C.M.A(MD)Nos.987 and 988 of 2014

13.02.2017