

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.754 of 2015
and M.P.No.1 of 2015

United India Insurance Company Ltd,
No.134, Greams Road,
Chennai-6.

.. Appellant

Vs.

1.Kalaiselvi

2.Ajay Joshua (Minor)

3.Jenisha (Minor)

4.Sudalaimani

5.Lingam @ Lingawasagam

(Minors 2 and 3 rep. By their mother,
and N.F 1st respondent, Kalaiselvi)

6.S.Leena Mary Rose

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.09.2014 made in O.P.No.2233 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of small Causes, Chennai.

For Appellant

: Mr.D.Bhaskaran

For Respondents 1 to 5

: Mrs.A.Subadra
for M.Malar

: M/s.S.Saravanan for R6

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J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 24.09.2014 made in O.P.No.2233 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of small Causes, Chennai.

2.The appellant-Insurance company is second respondent in O.P.No.2233 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of small Causes, Chennai. The respondents 1 to 5 filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the death of one Shanmugavelu, husband of the 1st respondent, father of the respondents 2 and 3 and son of the respondents 4 and 5, who died in the accident that took place on 14.12.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 6th respondent and directed both the 6th respondent-owner as well as the appellant-insurer of the vehicle, jointly and severally, to pay a sum of Rs.20,03,000/- as compensation to the respondents 1 to 5.

4.The appellant-Insurance Company has come out with the present appeal challenging the award dated 24.09.2014 made in O.P.No.2233 of 2012 .

5.The learned counsel appearing for the appellant contended that the accident did not occur due to rash and negligent driving by the driver of the lorry belonging to the 6th respondent. The respondents 1 to 5/claimants have not proved the avocation of the deceased. The deceased was not a skilled worker. The Tribunal erred in fixing the notional income based on the payment voucher, in the absence of material to show that PW3 was regularly giving work to the deceased. 50% enhancement granted by the Tribunal and the amount awarded by the Tribunal under different heads are excessive and contrary to the judgment of the Hon'ble Apex Court.

5(i). The learned counsel appearing for the appellant relied on the following judgments in support of his contentions:

(i) 2011 (2) TN MAC 481 (SC) (United India Insurance Company Ltd., vs. Shila Datta and Others);

"7. The scheme of the Motor Vehicles Act, 1988 as contained in Chapters XI (Insurance of Motor Vehicles against Third Party risks) and XII (Claim Tribunals) proceeds on the basis that an insurer need not be impleaded as a party to the claim proceedings and it should only be issued a statutory notice under section 149(2) of the Act so that it can be made liable to pay the compensation awarded by the tribunal and also resist the claim on any one of the grounds

mentioned in clauses (a) and (b) of sub-section (2) of section 149. Sub-sections (1), (2) and (7) of section 149 clearly refer to the insurer being merely a noticee and not a party. Similarly, sections 158(6), 166(4), 168(1) and 170 clearly provide for and contemplate insurer being merely a noticee for the purposes mentioned in the Act and not being a party- respondent. Section 170 specifically refers to impleading of insurer as a party to the claim proceedings.

11. Therefore, where the insurer is a party-respondent, either on account of being impleaded as a party by the tribunal under section 170 or being impleaded as a party-respondent by the claimants in the claim petition voluntarily, it will be entitled to contest the matter by raising all grounds, without being restricted to the grounds available under section 149(2) of the Act. The claim petition is maintainable against the owner and driver without impleading the insurer as a party. When a statutory notice is issued under section 149(2) by the tribunal, it is clear that such notice is issued not to implead the insurer as a party-respondent but merely to put it on notice that a claim has been made in regard to a policy issued by it and that it will have to bear the liability as and when an award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded as a party-respondent. But it can however be made a party-respondent either by the claimants voluntarily in the claim petition or by the direction of the Tribunal under section 170 of the Act. Whatever be the reason or ground for the insurer being impleaded as a party, once it is a party-respondent, it can raise all contentions that are available to resist the claim. Re : Point (ii) : Maintainability of a joint appeal by the owner of the vehicle (Insured) and Insurer"

(ii) CDJ 2016 Kerala High Court 898 (O.K Sheela and others vs. The New India Insurance Company Limited);

"41. As we have already noticed, in Shila Datta's case (supra) the Three-Judge Bench resolved points (i) and (ii) in favour of the insurers, since those two issues did not arise for consideration of the three-Judge Bench in Nicolletta Rohtagi's case, nor where they

considered therein, and referred to a Larger Bench only points (iii) and (iv) which may come in conflict with Nicolletta Rohtagi's case. In Shila Datta's case the Three-Judge Bench has drawn a distinction between a case where the insurer is merely issued with a notice under Section 149(2) of the Act; and a case where the insurer has been impleaded as a respondent in the claim petition. It was accordingly held that, when an insurer is impleaded as a party-respondent to the claim petition, as contrasted from merely being a noticee, it can only raise such of those grounds as are permissible in law under Section 149(2). But if he is a party-respondent, it can raise, not only those grounds which are available under Section 149(2), but also all other grounds that are available to a person against whom a claim is made. The Three-judge Bench has also held that, if the insurer is already a respondent, having been impleaded as a party-respondent, it need not seek the permission of the Tribunal under Section 170 of the Act to raise grounds other than those mentioned in Section 149(2) of the Act. In view of the law declared as above by the Three-Judge Bench in Shila Datta's case, we find absolutely no merits in the contention raised by the petitioners/claimants against the maintainability of the appeal filed by the insurer."

(iii) 2014 (2) TN MAC 606 (SC) (Bajaj Allianz General Insurance Co. Ltd., vs. Kamala Sen);

"4. The issues raised in this Appeal, in our view, are no more res integra, in view of the decision of this Court in the case of United India Insurance Company Ltd. v. Shila Datta, 2011 (2) TN MAC 481 (SC):2011 ACJ 2729 (SC). Relevant para is quoted hereunder:

"(11) Therefore, where the Insurer is a party Respondent, either on account of being impleaded as a party by the Tribunal under 170 or being impleaded as a Party Respondent by the Claimants in the Claim Petition voluntarily, it will be entitled to contest the matter by raising all grounds without being restricted to the grounds available under Section 149 (2) of the Act. The Claim Petition is maintainable against the owner and driver

without impleading the Insurer as a party. When a statutory Notice is issued under Section 149(2) by the Tribunal, it is clear that such notice is issued not to implead the Insurer as a Party Respondent but merely to put it on Notice that a claim has been made in regard to a policy issued by it and that will have to bear the liability as and when an Award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded as a party Respondent. But it can. However, be made a Party Respondent either by the Claimants voluntarily in the Claim Petition or by the direction of the tribunal under section 170 of the Act. Whatever be the reason or ground for the Insurer being impleaded as a party, once it is a Party Respondent, it can raise all contentions that are available to resist the claim."

5. Following the observations made in the aforesaid decision, this Appeal is disposed of. Accordingly, while setting aside the impugned Judgment and Order passed by the High Court we remand the matter to the High court for reconsideration as per law."

(iv) Judgment dated 04.01.2019 made in CMA.Nos.373 & 374 of 2015 (The New India Assurance Company Ltd., vs. R.Manoj Kumar and others);

"19. The contention of the learned counsel appearing for the claimant in M.C.O.P.No.728 of 2012 (C.M.A.No.374 of 2015) regarding maintainability is concerned, as per the judgment reported in 2100 (2) TN MAC 481 SC (United India Insurance Company Limited vs. Shila Datta and others), a Three Judges Bench of the Hon'ble Apex Court held that when the insurer is a party to the claim petition, they can raise all grounds of defence available to them and there is no necessity to get permission under Section 170 of the Motor Vehicles Act. In view of the ratio in the said judgment, the appeal filed by the Insurance Company is maintainable as they are aggrieved person."

6. Per Contra, the learned counsel appearing for the respondents 1 to 5 contended that the appeal is not

maintainable. The appellant has not obtained any permission under Section 170 of the Motor Vehicles Act and hence the appellant is not entitled to challenge the award of the Tribunal. The respondents 1 to 5 have examined PW2-eye witness to prove that accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 6th respondent. The appellant has not let in any contra evidence. The respondents 1 to 5 have examined PW3, who is the builder and proved that deceased was given contract for electrical and plumbing work and produced payment voucher. The amount awarded by the Tribunal is not excessive and prayed for dismissal of appeal.

6(i). The learned counsel appearing for the respondents 1 to 5 relied on the following judgments in support of his contentions:

(i) 2011 (2) TN MAC 481 (SC) (United India Insurance company Ltd., vs. Shila Datta and others);

"3. The insurance companies have urged the following five points for our consideration, which are independent grounds in support of their contention that insurance companies are not barred from questioning the quantum of compensation either before the Motor Accidents Claims Tribunal or in appeals arising from the awards of the Tribunal :

(i) There is a significant difference between insurer as a 'noticee' (a person to whom a notice is served as required by section 149(2) of the Act) in a claim proceedings and an insurer as a party-respondent in a claim proceedings. Where an insurer is impleaded by the claimants as a party, it can contest the claim on all grounds, as there are no restrictions or limitations in regard to contest. But where an insurer is not impleaded by the claimant as a party, but is only issued a statutory notice under section 149 (2) of the Act by the Tribunal requiring it to meet the liability, it is entitled to be made a party to deny the liability on the grounds mentioned in section 149(2).

(ii) When the owner of the vehicle (insured) and the insurer are aggrieved by the award of the Tribunal, and jointly file an appeal challenging the quantum, the mere presence of the insurer as a co-appellant will not render the appeal, as not maintainable. When insurer is the person to pay the compensation, any interpretation to say that it is not a 'person aggrieved' by the quantum of

compensation determined, would be absurd and anomalous.

(iii) When an insurer is aggrieved by the quantum of compensation, it is not seeking to avoid or exclude its liability, but merely wants determination of the extent of its liability. The restrictions imposed upon the insurers to defend the action by the claimant or file an appeal against the judgment and award of the Tribunal will apply, only if it wants to file an appeal to avoid liability and not when it admits its liability to pay the amount awarded, but only seeks proper determination of the quantum of compensation to be paid.

(iv) Appeal is a continuation of the original claim proceedings. Section 170 provides that if the person against whom the claim is made, fails to contest the claim, the insurer may be permitted to resist the claim on merits. If and when an award is made by the Tribunal which is excessive, arbitrary or erroneous, the owner of the vehicle has to challenge the same by filing an appeal before the High Court. If the insured (owner of the vehicle) fails to challenge an award even when it is erroneous or arbitrary or fanciful, it can be considered that the insured has failed to contest the same and consequently under section 170, the High Court or the tribunal may permit the insurer to file an appeal and contest the award on merits.

(v) The Motor Vehicles Act, 1988 ('Act' for short) creates a liability upon the insurer to satisfy the judgments and awards against the insured. The Act expressly restricts the right of the insurer to avoid the liability as insurer, only to the grounds specified in section 149(2) of the Act. Though it is impermissible to add to the grounds mentioned in the statute, the insurer has a right, if it has reserved such a right in the policy, to defend the action in the name of the insured. If it opts to step into the shoes of the insured, it can defend the action in the name of the insured and all defences open to the insured will be available to it and can be urged by it. Its position contesting a claim under section 149(2) of the Act is distinct and different, when it is contesting the claim in the name of or on behalf of the insured owner of the vehicle. In cases, where it is authorized by the policy to defend any claim in the name of the insured, and the insurer does so, it can not be restricted to the grounds mentioned in section 149

(2) of the Act, as the defence is on behalf of the owner of the vehicle. Relevant Legal Provisions

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22. We accordingly answer the points arising from the reference as under:

(i) Points (i) and (ii) are held in favour of the Insurers. The matters covered by points (i) and (ii) are to be placed before the respective benches for consideration accordingly. (ii) Points (iii) to (v) which may come in conflict with Nicolletta Rohtagi, are referred to a larger Bench. We accordingly direct these matters (that is, cases where the insurer alone was the appellant before the High Court and where the insurer was only a noticee under section 149(2) and not an impleaded respondent in the claim petition), to be placed before the Hon'ble Chief Justice for constituting a larger bench to consider points (iii), (iv) and (v) raised by the insurers."

(ii) 2002 (4) (CTC) 243 = 2002 (7) SCC 456 (National Insurance Co. Ltd., Chandigarh vs. Ltd. Nicolletta Rohtagi and others);

"15. It is relevant to note that the Parliament, while enacting sub-section (2) of Section 149 only specified some of the defences which are based on conditions of the policy and, therefore, any other breach of conditions of the policy by the insured which does not find place in sub-section (2) of Section 149 cannot be taken as a defence by the insurer. If the Parliament had intended to include the breach of other conditions of the policy as a defence, it could have easily provided any breach of conditions of insurance policy in sub-section (2) of Section 149. If we permit the insurer to take any other defence other than those specified in sub-section (2) of Section 149, it would mean we are adding more defences to insurer in the statute which is neither found in the Act nor was intended to be included.

32. For the aforesaid reasons, our answer to the question is that even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as

regards negligence or contributory negligence of the offending vehicle.”

(iii) 2013 (5) (CTC) 681 (Josphine James vs. United India Insurance Co. Ltd, and another); Para 8,17,18

“8. Aggrieved by the impugned judgment and award passed by the High Court in MAC Appeal no.433/2005 and the review petition, the present appeal is filed by the appellant urging certain grounds and assailing the impugned judgment in allowing the appeal of the Insurance Company without following the law laid down by this Court in Nicolletta Rohtagis case (supra) and instead, placing reliance upon the Bhushan Sachdevas case (supra). Nicolletta Rohtagis case was exhaustively discussed by a three judge bench in the case of United India Insurance Company Vs. Shila Datta[3]. Though the Court has expressed its reservations against the correctness of the legal position in Nicolletta Rohtagi decision on various aspects, the same has been referred to higher bench and has not been overruled as yet. Hence, the ratio of Nicolletta Rohtagis case will be still applicable in the present case. The appellant claimed that interference by the High Court with the quantum of compensation awarded by the Tribunal in favour of appellant and considerably reducing the same by modifying the judgment of the Tribunal is vitiated in law. Therefore, the impugned judgments and awards are liable to be set aside.

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17. The said order was reviewed by the High Court at the instance of the appellant in view of the aforesaid decision on the question of maintainability of the appeal of the Insurance Company. The High Court, in the review petition, has further reduced the compensation to Rs. 4,20,000/- from Rs. 6,75,000/- which was earlier awarded by it. This approach is contrary to the facts and law laid down by this Court. The High Court, in reducing the quantum of compensation under the heading of loss of dependency of the appellant, was required to follow the decision rendered by Three-Judge Bench of this Court in Nicolletta Rohtagi case (supra) and earlier decisions wherein this Court after interpreting Section 170 (b) of the M. V. Act, has rightly held that in the absence of permission obtained by the

Insurance Company from the Tribunal to avail the defence of the insured, it is not permitted to contest the case on merits. The aforesaid legal principle is applicable to the fact situation in view of the three judge bench decision referred to supra though the correctness of the aforesaid decision is referred to larger bench. This important aspect of the matter has been overlooked by the High Court while passing the impugned judgment and the said approach is contrary to law laid down by this Court."

7.The learned counsel appearing for the appellant in reply, contended that they are party to the claim petition and they can raise all the grounds of defence and they have obtained permission under Section 170 of the Motor Vehicles Act. The learned counsel appearing for the appellant also contended that the respondents 1 to 5 are not entitled to rely on the judgment of the Hon'ble Apex Court reported in 2011 (2) TN MAC 481 (SC) (United India Insurance company Ltd., vs. Shila Datta and others):

8.Heard the learned counsel appearing for the appellant as well as the respondents 1 to 5 and perused the materials available on record.

9.From the award of the Tribunal, it is seen that the respondents 1 to 5 have examined PW2-eye witness to prove that accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the 6th respondent. FIR is lodged only against the driver of the lorry belonging to the 6th respondent. The appellant has not examined the driver of the lorry belonging to the 6th respondent to prove their contention that the accident did not occur only due to rash and negligent driving by the driver of the lorry and there is negligence on the part of the deceased also. The Tribunal has considered the above facts in proper perspective and rightly held that the driver of the lorry is responsible for the accident.

10.As far as the contention of the learned counsel appearing for the respondents 1 to 5 that appeal filed by appellant-Insurance Company is not maintainable as appellant failed to obtain permission under Section 170 of the Motor Vehicles Act is without merits. The appellant in the counter statement in para 12 has stated that appellant craves leave to contest the claim on all grounds that may be available to the 1st respondent under Section 170 of the Motor Vehicles Act 1988. To decide the issue raised by the respondents 1 to 5 the relevant provisions of Motor Vehicles Act are Sections 149(2) and 170 of the Motor Vehicle act. They read as follows:

"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgement or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely :-

(i) a condition excluding the use of the vehicle -

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licenced, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or 176

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

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170. Impleading insurer in certain cases. -
Where in the course of any inquiry, the Claims Tribunal is satisfied that -

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the persons against whom the claim is made has failed to contest the claim, it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

A reading of Section 149(2) reveals that Insurance Company need not be impleaded as a party respondent in a claim petition. The claimant can implead only the driver and owner of the vehicle.

11. The Tribunal invoking provision of Section 149(2) has to give notice to the insurer with regard to claim petition and on notice the Insurance Company can be made as a party. The Insurance Company in such case is entitled to defend the claim petition raising the objections mentioned therein. As far as Section 170 of the Motor Vehicles Act is concerned the Tribunal on being satisfied that there is a collusion between the person making the claim and the person against whom the claim is made, or the person against whom the claim is made failed to contest the claim, implead the Insurance Company by recording reasons and permit the Insurance Company to contest on all the grounds that are available against whom the claim has been made. These two provisions were considered by Hon'ble Apex Court and in the Judgment reported in 2002 (7) SCC 456 = 2002 (4) CTC 243 (National Insurance Co. Ltd., Chandigarh vs. Nicolletta Rohtagi & others) referred to above the Hon'ble Apex Court has held that unless the Insurance company obtains permission under Section 170 of the Motor Vehicles Act it is not entitled to contest the claim petition on all the grounds available to driver or owner of the vehicle.

12. The issue was again considered by the Hon'ble Apex Court in judgment reported in 2011 (2) Tn MAC 481 SC (United India

Insurance Company Ltd., vs. Shila Datta and others) referred to above. In the later judgment the Hon'ble Apex Court has held that when the Insurance Company was impleaded as a party to the claim petition voluntarily by claimant or made a party to the claim petition, the Insurance Company is entitled to contest the claim petition on all or any of the grounds available to the owner of the vehicle. The Hon'ble Apex Court in para 22 held points I and II raised by Insurance Company in Para 3 of the said judgment in favour of Insurance Company to the effect that the Insurance Company can contest the claim petition without obtaining permission under Section 170 of the Motor Vehicles Act when it was made party to the claim petition.

13. The contention of the learned counsel for the respondents 1 to 5 that as per judgment of Hon'ble Apex Court reported in 2002 (7) SCC 456 referred to above the appeal filed by Insurance Company is not maintainable is without merits in view of later judgment of Hon'ble Apex Court reported in 2011 (2) TN MAC 481 (SC). The learned counsel appearing for the respondents 1 to 5 also relied on the judgment of Hon'ble Apex Court reported in 2011 (2) TN MAC 481 (SC) referred to above and the contention that judgment reported in 2002 (7) SCC 456 = 2002 (4) CTC 243 is applicable to the facts of present case is without merits. The issue has been decided by the Hon'ble Apex Court in the judgment referred to above 2011 (2) TN MAC 481 SC (United India Insurance Company Ltd., vs. Shila Datta and others) relied on by the learned counsel appearing for the appellant as well as respondents 1 to 5 that when an Insurance Company is a party to claim petition there is no necessity for the Insurance company to obtain permission under Section 170 of the Motor Vehicles Act. The Hon'ble Apex Court has elaborately considered the scope of section 149 (2) of the Motor Vehicles Act and has stated that notice may be issued to the Insurance Company when it is not a party to the claim petition and the right of the Insurance Company when it was the party to the claim petition. I had an occasion to consider this issue in CMA.Nos.373 and 374 of 2015 and by judgment dated 04.01.2019 following the judgment of the Hon'ble apex court referred to above in 2011 (2) Tn MAC 481 SC (United India Insurance Company Ltd., vs. Shila Datta and others) held that when an Insurance Company is party to claim petition, the Insurance Company need not obtain leave under Section 170 of the Motor Vehicles Act to contest the claim petition on all grounds available to owner of vehicle. It is pertinent to note that appellant Insurance Company has challenged the award of Tribunal not only on quantum but also on liability to pay the compensation. In view of the same, I hold that appeal filed by the appellant is maintainable.

14. As far as quantum of compensation is concerned, the respondents 1 to 5 contended that the deceased was doing

electrical and plumbing work and getting Rs.15,000/- per month. They examined PW3-builder, who deposed that he gives contract for doing electrical and plumbing work to the deceased and produced the payment voucher. The Tribunal considering the contention of the respondents 1 to 5 and evidence of PW3, fixed the notional income of the deceased at Rs.8,000/- per month, which is not excessive. The deceased was 31 years at the time of accident. As per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 [(SC) National Ins. Co. v. Pranay Sethi & others], the respondents 1 to 5 are entitled to only 40% enhancement, while the Tribunal has awarded 50% enhancement towards future prospects and hence, the same is reduced to 40%. After deducting 1/4th towards the personal expenses of the deceased, the compensation awarded under the head of loss of income is modified to Rs.16,12,800/- {[Rs.8,000/- + 3200 (40% of Rs.8,000/-)] X 12 X 16 x 3/4}. The Tribunal has not awarded any amount for loss of estate. A sum of Rs.15,000/- is granted towards loss of estate. The amounts awarded by the Tribunal under the heads of loss of consortium and funeral expenses are excessive. Hence, the same are reduced to Rs.40,000/- and Rs.15,000/- respectively. The Tribunal has awarded Rs.50,000/- each towards loss of love and affection for respondents 2 and 3 and Rs.25,000/- each for the respondents 4 and 5, which are excessive. The same is reduced to Rs.30,000/- each for the respondents 2 and 3 and Rs.15,000/- for each respondents 4 and 5 respectively. Thus, 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
1.	Loss of Consortium	1,00,000	40,000	Reduced
2.	Funeral Expenses	25,000	15,000	Reduced
3.	Loss of estate	-	15,000	Granted
4.	Loss of Income	17,28,000	16,12,800	Reduced
5.	Loss of love and affection for R1 & R3 (each)	1,00,000	60,000	Reduced

6.	Loss of love and affection for R4 & R5	50,000	30,000	Reduced
	Total	Rs.20,03,000/-	Rs.17,72,800/-	Reduced by Rs.2,30,000/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.20,03,000/- awarded by the Tribunal is hereby reduced to Rs.17,72,800/- together with interest and costs. The appellant-Insurance Company as well as the 6th respondent are directed to deposit the modified award amount along with interest and costs, jointly and severally, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the respondents 1, 4 and 5/claimants 1, 4 and 5 are permitted to withdraw their share of the award amount as per the ratio of apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount if any, already withdrawn, by filing necessary applications before the Tribunal. The share of the minor respondents 2 and 3/claimants 2 and 3 are directed to be deposited in any of the Nationalized Bank, till the minor respondents 2 and 3/claimants 2 and 3 attain majority. The 1st respondent/mother of the minor respondents 2 and 3 is permitted to withdraw the interest, once in three months for the welfare of the minor respondents 2 and 3. The appellant-Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.2233 of 2012. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal
II Court of small Causes, Chennai.

+1cc to Ms.M.Malar, Advocate SR.No.11250

+1cc to Mr.D.Bhaskaran, Advocate SR.No.11261

C.M.A.No.754 of 2015
and M.P.No.1 of 2015

VSNII (CO)

GMV (09/05/2019)