



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 31.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A. (MD)No.1550 of 2007

1.P.Jeya Basakaravel

(Memo presented in Court and
recorded as A2 died and 1st
appellant who is already on record
and recorded as Lrs of deceased A2,
vide Court order dated 05.08.2019)

2.C.Tamil Selvi (died)

... Appellants/petitioners

- Vs -

1.M/s.Veppalodai Chemicals,
No.13 A/1, Pillaiyar Koil Street,
Meenakshipuram West,
Thoothukudi - 2.

2.M/s United India Insurance Co., Ltd.,
having office at 81-C, W.G.C. Road,
Thoothukudi.

3.A.Jebakumar

... Respondents/Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 25.10.2006 passed in M.C.O.P.No.204 of 2004 on the file of Motor Accidents Claims Tribunal (Fast Track Court No.2), Tuticorin.

For Appellants: Mr.M.P.Senthil
For R-2 : Mr.A.Shajahan
For R-3 : Mr.R.Vijayakumar

J U D G M E N T

The appeal is directed against the judgment and decree dated 25.10.2006 passed in M.C.O.P.No.204 of 2004 by the learned Judge,
<https://hcservices.courts.gov.in/hcservices>



Fast Track Court No.2 (Motor Accidents Claims Tribunal), Tuticorin.

2.The facts in nutshell are as follows:-

On 09.02.2004 at about 7.00 a.m., when the petitioner along with his wife and daughter Anandha Sheeba travelled in a vehicle bearing registration No.TN 69 E 1444 from South to North at the left side of the road nearing South Pandiapuram corner and at that time, the first respondent drove the vehicle bearing registration No.TN 69 C 2563 in a rash the negligent manner from North to South and dashed against the petitioners' vehicle and in that accident the petitioners and their daughter Anandha Sheeba were thrown away from the vehicle and sustained grievous injuries. Thereafter, they were taken to Government Hospital, Tuticorin and thereafter, the petitioners' daughter Anandha Sheeba declared died due to the accident. Therefore, the petitioners have filed a claim petition before the Tribunal claiming compensation of Rs.3,00,000/-.

3.The second respondent/Insurance Company has filed counter and opposed stating that the petitioners cannot claim compensation for their adopted child and as long as the biological father is alive, the present petitioners cannot make any claim for the death of the deceased Anandha Sheeba due to the reason that the adoption is legally not valid.

4. Before the Tribunal, on the side of the petitioners, P.Ws.1 to 3 were examined and Exs.P1 to P19 were marked. On the side of the respondents R.W.1 was examined and no documentary evidence was marked.

5.After hearing both the parties, the Court below found that the accident occurred due to the rash and negligent driving of the driver of the vehicle bearing registration No.TN 69 E 1444 and had fixed the entire liabilities on the first respondent. Since the first respondent vehicle insured with the second respondent, the Court below fixed joint and several liabilities against the first and second respondents.

6.As far as the quantum of compensation is concerned, the Court below has refused to accept the contention of the appellants that they are the legal representatives of the deceased Anandha Sheeba and the Tribunal has awarded a sum of Rs.50,000/- to the biological father, who was the third respondent in the claim petition. Though the third respondent, the biological father has not filed any claim petition, he was impleaded as one of the respondents and the Court below awarded a lump sum amount of Rs.50,000/- as compensation by determining the income of the deceased as Rs.3,000/- p.a. and applying multiplier of 15, awarded a sum of Rs.45,000/- for loss of income and Rs.5,000/-



towards funeral expenses of the deceased and rejected the claim made by the appellants. Aggrieved by the said order, the appellants herein filed the present appeal.

7. Heard both sides and perused the materials available on record.

8. The issues to be decided in the present appeal are as follows:-

(i). Whether the appellants are legal representatives of the deceased, when the biological father is alive?

(ii). Whether the appellants are entitled for the compensation?

(iii). Whether the Court below is justified in rejecting the claim made by the appellants?

9. Before deciding the issue No.1, it is just and necessary to mention the brief facts of the adoption of the deceased Anandha Sheeba by the appellants herein.

10. When the deceased Anandha Sheeba was 1 ½ years old, her mother Shunmugakani @ Kani died on 09.05.1993 leaving behind her husband (3rd respondent herein) and the deceased Anandha Sheeba. The biological father of the deceased viz., Jebakumar, the third respondent herein handed over the child to the second appellant, who is the sister of the mother of the deceased Anandha Sheeba by way of adoption as per the customary practice. Subsequently, the said Jebakumar, the biological father of the deceased got re-married one Jessy Roase Suseela on 27.12.1993 and he also got one female child through the second marriage.

11. After the adoption of the deceased Anandha Sheeba, she was the only child for the appellants. After the adoption, all the records including Ration Card and school records are mutated with the name of the appellants as parents of the deceased Anandha Sheeba and thus the appellants become the guardian of the deceased. In this regard, in order to prove that the deceased Anandha Sheeba was the adoptive daughter of the appellant, the appellants have marked Exs.P1 to P4, Ex.P8 and Ex.P9 and Exs.P.13 to P15. Ex.P13 is the school certificate; Ex.P14 is the Ration Card, wherein the names of the appellants were shown as parents of the deceased Anandha Sheeba. The deceased Anandha Sheeba was born on 20.07.1991 and her mother died on 09.05.1993. When she was 1 ½ years old, as stated above, the appellants adopted her and she met with an accident when she was in 13 years old and died in the hospital. Therefore, the appellants contended that they are legal representatives of the deceased Anandha Sheeba and accordingly, they are entitled for the compensation.



12.The learned counsel for the appellants would contend that the certificate signed by the adopted father at the time of admission of school is a vital piece of evidence for the valid adoption and in this regard, the learned counsel referred a Judgment of this Court in **Ramadoss v. Subbayyan**, reported in **2018 (4) CTC 373**. Further he would contend that for a valid adoption, all that the law required is that the natural father shall be asked by the adoptive parents to give his son in adoption and that the boy shall be handed over and taken for this purpose. In this regard, the learned counsel referred the Judgment of the Hon'ble Supreme Court passed in **L.Debi Prasad (dead) by LRs v. Tribeni Devi and others**, reported **1970 AIR (SC) 1286**. Further he would contend that there is no prohibition for the adoption for Christian couples for adoption for male or female child. In support of his contention, the learned counsel referred the following Judgments:-

- (i). **In Pharez John Abraham (Dead) by LRs (Civil Appeal Nos.7207 and 7208 of 2008);**
- (ii). **In Biju Ramesh v. Vijayakumar (AIR 2005 (Kerala) 196);**
- (iii). **In Philips Alred Malvin v. Gonsalvis (AIR 1999 (Kerala) 187); and**
- (iv). **In Maxin George v. Indian Oil Corporation (2005 (3) ILR (Kerala) 89).**

13.Further, the learned counsel for the appellants advanced his arguments stating that they are the legal representatives of the deceased. In this regard, he referred Section 166 (1) (d) of the Motor Vehicles Act, 1988, and submits that the legal representatives of the deceased can file claim petition and if any legal representatives is not joined, then he / she shall be impleaded as respondent in the claim petition. Therefore, he would contend that the Act clearly states that the legal representatives need not be a dependant alone and he / she may not be either father, mother, brother or sister. According to him, a non dependant can also file claim petition. In this regard, the learned counsel referred the following Judgments:-

- (i). **In Gujarat State Transport Corporation v. Ramanbhai Prabhatbhai (1987 (3) SCC 234);**
- (ii). **In Dr.Gangaraju Sowmini v. Alavala Sudhakar Reddy (2016 (2) TN MAC 20 (FB) (Hyd.));**
- (iii). **In Montfort Brothers of St.Gabrial v. United India Insurance Co. Ltd., (2014 (1) TN MAC 272 (SC);**
- (iv). **In Sudama Devi v. Jogendra Choudhary (FB) (AIR 1987 PATNA 239); and**
- (v). **In Megjibhai v. Chauturbhai (AIR 1977 Gujarat 195).**

<https://hcservices.courts.gov.in/hcservices> 14. Relying the above Judgments, he would contend that the



appellants are the legal representatives of the deceased. Even, the appellants are not treated as an adoptive father, the deceased child was under the parental custody of the appellants, till she met with an accident. To support this contention, he also submitted that in the Ration Card as well as in the school certificate, the appellants are mentioned as father and mother of the deceased Anandha Sheeba. The appellants only have taken care from the date of her adoption. Therefore, he contended that the claim petition is maintainable. Since the words 'legal representatives' are not defined in the Motor Vehicles Act, 1988, the learned counsel referred Section 2(11) C.P.C and contended that the legal representatives are not only the father, mother and children but also others, who have lost the support of the deceased.

15. On the other hand, the learned counsel for the second respondent/Insurance Company would contend that the Tribunal has rightly rejected the claim petition stating that the appellants are not the legal representatives of the deceased. As long as the biological father is alive, the appellants cannot file the claim petition in the capacity as the legal representatives and only the biological father is entitled to claim compensation. Therefore, even though the biological father failed to file any claim petition, the Court below awarded a sum of Rs.50,000/- and the said amount was also paid to the biological father. Further, the learned counsel would contend that in the present case, the alleged adoption of the appellants is not in accordance with law. Therefore, the appellants cannot be treated as an adoptive parents and in this regard, the learned counsel for the respondent/Insurance Company referred the following Judgments, in order to prove how the adoption can be made legally and who are the legal representatives of the deceased.

- (i).In Maxin George v. Indian Oil Corporation (2005 0 Supreme (Ker) 327);**
- (ii).In Biju Ramesh v. J.P.Vijayakumar (AIR 2005 Kerala 196);**
- (iii).In National Insurance Co. Ltd., v. Rancjhoor Singh (2006 ACJ 920); and**
- (iv).In Oriental Insurance Co. Ltd v. Johnson (2017 (1) TN MAC 484.**

16. Further he referred Section 166 of the Motor Vehicles Act, 1988, which reads as follows:-

"166. Application for Compensation.- (1) An Application for Compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made-

- (a) by the person, who has sustained the injury; or
- (b) by the owner of the property; or



(c) where death has resulted from the accident, by all or any of the Legal Representatives of the deceased; or
(d) by any agent duly authorized by the person injured or all or any of the Legal Representatives of the deceased, as the case may be:

Provided that where all the Legal Representatives of the deceased have not joined in any such Application for Compensation, the application shall be made on behalf of or for the benefit of all the Legal Representatives of the deceased and the Legal Representatives, who have not so joined, shall be impleaded as respondents to the Application."

17. By mere reading of the above provision, it is made clear that it provides for making an Application for Compensation by all or any of the Legal Representatives of the deceased. Now, the issue to be decided is who are the legal representatives of the deceased?

18. In the Motor Vehicles Act, 1988, the legal representatives are not defined. However, Section 2(11) of the Code of Civil Procedure, defines the legal representatives as "a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued."

19. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. The issue as to who is a legal representative or agent is basically depending upon the facts of a particular case. But as the legal proposition it is undeniable that a person claiming to be the legal representative of the deceased, has locus to file claim under Section 166 of the Motor Vehicles Act, either directly or through any agent subject to result of dispute/objection raised by the opposite party on the said issue.

20. In the present case, the other side persuade this Court that since term legal representative has not been defined under the Motor Vehicles Act, the provision of Section 1-A of Fatal Accidents Act, 1855 should be taken as guiding principal and the claimants should be wife, husband, parent and child of the person whose death has been caused by the accident. However, the said submission cannot be accepted for the simple reason that the Fatal Accident Act, 1855, the right to file a claim was defined in order to benefit the wife, husband, parents and child. On the other hand, in the Motor Vehicles Act, 1988, the words 'Legal

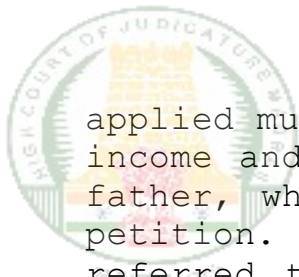


Representatives' was substituted in order to give very wider meaning to make claim in the case of Motor accident.

21.The Hon'ble Supreme Court has settled the principle on the issue of legal representatives to file the claim petition stating that the legal representative is not only includes, wife, husband, parents and child along with the dependants, but also others. But in the present case, as far as the wife, husband, parents and child can be identified and with regard to others, it needs to be decided who are all will fall under the category of others.

22.In the present case, it is not necessary to look into the aspect whether the adoption was legal or not. But the issue to be decided is whether the child was taken care after the same was handed over the appellants. Admittedly, when the child was 1 ½ years old, her mother was passed away and thereafter, the child was handed over with the appellants by the biological father and the appellants also accepted to adopt the deceased Anandha Sheeba and subsequent to the adoption, the child was under the custody of the appellants and they have maintained the child till she met with the accident; in the school records and Ration Card, which was marked as Exs.P13 and P14, also, it was shown that the appellants are the father and mother of the deceased. Though the biological father is alive, he is not entitled to file any claim petition, since he has handed over the child to the appellants when she was 1 ½ years old and the deceased was maintained by the appellants as the child's father and mother. Obviously, the appellants lost the love and affection due to the death of the deceased. It is not only the matter of love and affection, but also the appellants did not have any other child and the deceased was the only child and due to the death of the deceased Anandha Sheeba, the appellants, who maintained the child all along, ofcourse, have lost not only the love and affection, but also the loss of income of the deceased. Further, as defined in the C.P.C., the legal representatives includes intermeddles with the estate of the deceased. Therefore, this Court is of the view that the appellants are the legal representatives of the deceased Anandha Sheeba, not only in the capacity of the adoptive parents, even their adoption is not legally valid, still the appellants are entitled for the claim on the basis that they have maintained and they have lost the love and affection and lost the income of the deceased in future and therefore they squarely falls under the term legal representatives as stated in Section 166 of the Motor Vehicles Act, 1988. Therefore, this Court finds that there is no justification in rejecting the claim of the appellants stating that they are not the legal representatives and to that extent, the award of the Tribunal is set aside.

23.The Tribunal has awarded a sum of Rs.3,000/- p.a. and



applied multiplier 15 and awarded a sum of Rs.45,000/- for loss of income and Rs.5,000/- towards funeral expenses, to the biological father, who was impleaded as one of the respondents in the claim petition. In this regard the learned counsel for the appellants referred the Judgement of this Court in **National Insurance Co., Ltd., v. R.Vimala**, reported in **2015 (2) TN MAC 490 (DB)**, wherein it was held that for the 9 years old child, the Court fixed the notional income as Rs.5,000/- p.m. for the accident occurred in the year of 2013.

24.Since in the present case, the accident is of the year of 2014, it would be appropriate to fix the notional income of the deceased as Rs.4,000/- p.m. Considering the various Judgments of the Hon'ble Supreme Court and Division Bench of this Court, since the deceased was a Spinster, 50% of the income has to be deducted. Therefore, the loss of income after deduction would be Rs.2,000/- p.m. Since the deceased was 13 years old at the time of accident, 40% towards future prospects has to be added. If 40% is added towards future prospects, the monthly income would be Rs.2,000/- + Rs.800/- (Rs.2,000 X 40%) = Rs.2,800/- p.m. Since age of the deceased was 13 years, the appropriate multiplier to be applied as per the **Smt.Sarla Verma .vs. Delhi Transport Corporation reported in 2009(2) TN MAC 1(SC)** case, is '15'. Therefore, the loss of income would be Rs.2,800 X 12 X 15 = **Rs.5,04,000/-**.

25.The Tribunal has awarded a sum of Rs.10,000/- towards funeral expenses and no amount was awarded towards transportation and for loss of estate. Therefore, as per the decision of the Hon'ble Supreme Court in **NATIONAL INSURANCE CO. LTD., v. PRANAY SETHI**, reported in **2017 (2) TN MAC 609 (SC)**, a sum of **Rs.15,000/-** is hereby awarded for funeral expenses; **Rs.15,000/-** is awarded towards loss of estate and **Rs.10,000/-** is hereby awarded for transportation. As far as love and affection is concerned, the Tribunal has not awarded any amount. However, this Court is inclined to award a sum of **Rs.50,000/- each** towards loss of love and affection for the appellants.

26. In view of the above, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	45,000	5,04,000	enhanced



2.	For loss of estate	Nil	15,000	awarded
4.	For funeral expenses	5,000	15,000	enhanced
5.	For transportat ion	Nil	10,000	awarded
6.	For loss of love and affection	Nil	1,00,000	awarded
	Total	Rs.50,000/-	Rs.6,44,000/-	By enhancing a sum of Rs.5,94,000/-

27.In the result,

(i).This Civil Miscellaneous Appeal is partly allowed, enhancing the award of the Tribunal from **Rs.50,000/-** (Rupees Fifty Thousand only) to a sum of **Rs.6,44,000/-** (Rupees Six Lakhs Forty Four Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation with proportionate cost;

(ii).The second/Insurance Company is directed to deposit the entire award amount namely, **Rs.6,44,000/-** along with accrued interest at the rate of 7.5% p.a. and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.204 of 2004 on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.2), Tuticorin, within a period of **Eight weeks** from the date of receipt of a copy of this judgment;

(iii).On Such deposit, the Tribunal is directed to transfer the entire award amount along with accrued interest at the rate of 7.5% p.a. and costs directly to the Personal Savings Bank Account Number of the first appellant / claimant through RTGS/NEFT system, after getting his Account Details, within a period of **two weeks thereafter**. The claimants are directed to pay additional Court fee, if any.

(iv).Since the award amount of the lower Court to an extent of Rs.50,000/- has already been deposited and the same was disbursed to the third respondent herein, this Court directs the Court below to transfer the award amount after deducting the sum of Rs.50,000/- to the first appellant / claimant, along with interest.



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

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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To:

The Judge, Fast Track Court No.2
(Motor Accidents Claims Tribunal),
Tuticorin.

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Madurai Bench of Madras High Court,
Madurai.

C.M.A. (MD) No.1550 of 2007

31.10.2019

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