

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.01.2020

Coram:

**The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice KRISHNAN RAMASAMY**

**C.M.A.Nos.896, 897, 1495 & 2189 of 2013
and 2766 of 2014
and**

**M.P.Nos.1 & 1 of 2013 in C.M.A.Nos.896 & 897 of 2013
and M.P.Nos.1 of 2014 & 1 of 2015
in C.M.A.No.2766 of 2014
and C.M.P.Nos.2740 to 2743 of 2018
in C.M.A.No.897 of 2013**

C.M.A.No.896 of 2013:

Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers, 46, Whites Road,
Royapettah, Chennai - 600 014.

...Appellant

Versus

1.B.Manjula
(R1 was declared as major and her mother
B.Maragadham discharged the guardianship
vide order dated 13.03.2015 made in
M.P.Nos.1 & 1 of 2015 and 2 & 2 of 2015
in C.M.A.Nos.896 & 897 of 2013)

2.K.Saravanan

3.A.Gandhimathi

4.The Oriental Insurance Co. Ltd.,
No.8, Esplanade, Chennai.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the

<https://www.mhc.tn.gov.in/judis/> Motor Vehicles Act, 1988 against the judgment and decree dated

28.03.2012 in M.C.O.P.No.1116 of 2007 on the file of the Motor Accidents Claims Tribunal in the Small Causes Court No.V, Chennai.

For Appellant : Mr.M.Krishnamoorthy

For Respondent - 1 : Mr.K.V.Muthuvisakan

Respondent - 2 : set ex-parte

Respondent - 3 : No Appearance

Respondent - 4 : Mr.S.Arun Kumar

C.M.A.No.897 of 2013:

Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers, 46, Whites Road,
Royapettah, Chennai - 600 014.

...Appellant

Versus

1.B.Maragadham

2.B.Radha

3.B.Manikandan

(R2 & R3 were declared as major and her mother R1 discharged from the guardianship vide order dated 17.01.2014 made in M.P.Nos.2 to 5 of 2013 in C.M.A.No.897 of 2013)

4.B.Manjula

(R4 was declared as major and her mother B.Maragadham discharged the guardianship vide order dated 13.03.2015 made in M.P.Nos.1 & 1 of 2015 and 2 & 2 of 2015 in C.M.A.Nos.896 & 897 of 2013)

5.S.Sadayandi

6.K.Saravanan

7.A.Gandhimathi

8.The Oriental Insurance Co. Ltd.,

No.8, Esplanade, Chennai.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.03.2012 in M.C.O.P.No.1117 of 2007 on the file of the Motor Accidents Claims Tribunal in the Small Causes Court No.V, Chennai.

For Appellant : Mr.M.Krishnamoorthy

For Respondents - 1 to 5 : Mr.K.V.Muthuvisakan

Respondents - 7 : No Appearance

Respondent - 6 : set ex-parte

Respondent - 8 : Mr.T.Jaishankar

C.M.A.No.1495 of 2013:

M/s.Oriental Insurance Co. Ltd.,
No.A-18, 2nd Avenue, Anna Nagar,
East Canara Bank, Chennai - 102.

...Appellant

Versus

1.Subha

2.Hariharan (Minor)
Rep. by her mother Suba/R1

3.Rajalakshmi

4.A.Gandhimathy

5.K.Saravanan

6.Royal Sundaram Alliance Ins. Co. Ltd.,
Sundaram Towers,
No.46, Whites Road,
Royapettah, Chennai - 14.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 18.04.2011 in M.C.O.P.No.139 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Villupuram.

For Appellant : Mr.S.Arun Kumar

For Respondents - 1 to 3 : Mr.M.Nandhakumar

Respondents - 4 & 5 : set ex-parte

Respondent - 6 : Mr.M.Krishnamoorthy

C.M.A.No.2189 of 2013:

1.B.Maragatham

2.B.Radha

3.B.Manikandan

(R2 & R3 were declared as major and her mother R1 discharged from the guardianship vide order dated 17.01.2014 made in M.P.Nos.2 to 5 of 2013 in C.M.A.No.897 of 2013)

4.B.Manjula

(R4 was declared as major and her mother B.Maragadham discharged the guardianship vide order dated 13.03.2015 made in M.P.Nos.1 & 1 of 2015 and 2 & 2 of 2015 in C.M.A.Nos.896 & 897 of 2013)

5.S.Sadayandi

...Appellants

Versus

1.K.Saravanan

2.Royal Sundaram Alliance Ins. Co. Ltd.,
Sundaram Towers, 46, Whites Road,
Royapettah, Chennai - 600 014.

3.A.Gandhimathi

4.The Oriental Insurance Co. Ltd.,
No.8, Esplanade,
Chennai.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.03.2012 in M.A.C.T.O.P.No.1117 of 2007 on the file of the Motor Accidents Claims Tribunal in the Small Causes Court No.V, Chennai.

For Appellants : Mr.K.V.Muthuvisakan
For Respondent - 1 : set ex-parte
Respondent - 2 : Mr.M.Krishnamoorthy
Respondent - 3 : Dismissed as withdrawn
Respondent - 4 : Mr.T.Jaishankar

C.M.A.No.2766 of 2014:

Oriental Insurance Co. Ltd.,
Regional Office, UIL Building,
Chennai - 8.

...Appellant

Versus

1.Kamatchi

2.Chitra

3.Jayanthi

4.Manikanda Prabu

5.A.Gandhimathi

6.Saravanan

7.Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
No.46, Whites Road,
Royapettah, Chennai - 14.

...Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 15.05.2014 in M.C.O.P.No.132 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Villupuram.

For Appellant : Mr.N.Vijayaraghavan

For Respondents - 1 to 4 : Mr.T.Dhanyakumar

Respondents - 5 & 6 : set ex-parte

Respondent - 7 : Mr.M.Krishnamoorthy

COMMON JUDGMENT

***(Judgment of the Court was delivered by
KRISHNAN RAMASAMY, J.,)***

The Civil Miscellaneous Appeals in C.M.A.Nos.896 & 897 of 2013 have been filed by the Insurance Company questioning the negligence fixed and the quantum of compensation awarded by the Motor Accidents Claims Tribunal in the Court No.V of Small Causes, Chennai vide judgment and decree dated 28.03.2012 made in M.C.O.P.Nos.1116 & 1117 of 2007 respectively.

The other two Civil Miscellaneous Appeals in C.M.A.Nos.1495 of

2013 & 2766 of 2014 have been filed by the Insurance Company questioning the negligence fixed and quantum of compensation awarded by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Villupuram vide judgment and decree dated 18.04.2011 & 15.05.2014 made in M.C.O.P.Nos.139 & 132 of 2008 respectively.

The Civil Miscellaneous Appeal in C.M.A.No.2189 of 2013 has been filed by the claimants against the quantum of compensation awarded by the Motor Accidents Claims Tribunal in the Court No.V of Small Causes, Chennai vide judgment and decree dated 28.03.2012 made in M.A.C.T.O.P.No.1117 of 2007.

2. The brief facts of the case are as follows:

On 10.01.2007, at about 17.30 hours, while one Balamurugan (deceased in C.M.A.No.896 of 2013) and his minor daughter Manjula (R1 in C.M.A.No.896 of 2013/R4 in C.M.A.No.897 of 2013/4th Appellant in C.M.A.No.2189 of 2013) were travelling in the Mahendra Van bearing Registration No.TN 01 U 8968 owned by one A.Gandhimathi and insured with the Insurance Company (Appellant in C.M.A.No.1495 of 2013 & 2766 of 2014/R4 in C.M.A.Nos.896 & 2189 of 2013/R8 in C.M.A.No.897 of 2013) at Chennai to Trichy National Highways, Serathanur Village limit, proceeding from South to North

direction, a Maruti Omini Car bearing Registration No.TN 22 AP 8373 owned by one K.Saravanan and insured with the Insurance Company (Appellant in C.M.A.Nos.896 & 897 of 2013/R6 in C.M.A.No.1495 of 2013/R2 in C.M.A.No.2189 of 2013/R7 in C.M.A.No.2766 of 2014) vide Policy No.MP 10126891 valid from 30.03.2006 to 29.03.2007 being driven by its driver one Padmanaban (deceased in C.M.A.No.1495 of 2013) came in the opposite direction, dashed against the said Mahendra Van and thereby, the Mahendra Van was capsized, due to which the said Balamurugan sustained multiple injuries and died on the spot and his minor daughter Manjula sustained injuries. Also, the said Padmanaban, driver of the Maruti Omni Car died on the spot and one Saravana Kumar (deceased in C.M.A.No.2766 of 2014) travelled along with Padmanaban in the said Maruti Omni Car sustained severe injuries in his head and stomach. Despite treatment given to the said Saravana Kumar, he died. Immediately, after the accident, the driver of the Mahendra Van went to the Thirunaavalur Police Station and gave a complaint. Based on the said complaint, a case was registered against the driver of the Omni Car i.e., deceased Padmanaban in Crime No.13 of 2007 for the offenses u/s. 279, 337 & 304(A) of I.P.C.

2.1 Thereafter, two Claim Petitions in M.C.O.P.Nos.1116 & 1117 of 2007 have been filed by the family members of the deceased Balamurugan (deceased in C.M.A.No.896 of 2013) as against the

owner and insurer of the Maruti Omni Car and also against the owner and insurer of the Mahendra Van claiming a sum of Rs.1,00,000/- as compensation in M.C.O.P.No.1116 of 2007 for the injuries sustained by the said Manjula and Rs.15,00,000/- as compensation in M.C.O.P.No.1117 of 2007 for the death of said Balamurugan. Similarly, a Claim Petition in M.C.O.P.No.132 of 2008 has been filed by the family members of the deceased Saravana Kumar (deceased in C.M.A.No.2766 of 2014) as against the owner and insurer of the Mahendra Van and also against the owner and insurer of the Maruti Omni Car claiming a sum of Rs.30,00,000/- as compensation for the death of said Saravana Kumar. Also, a Claim Petition in M.C.O.P.No.139 of 2008 has been filed by the family members of the deceased Padmanaban (deceased in C.M.A.No.1495 of 2013) as against the owner and insurer of the Mahendra Van and also against the owner and insurer of the Maruti Omni Car claiming a sum of Rs.12,00,000/- as compensation for the death of said Padmanaban.

3. All the above Appeals are taken up for final disposal together since they arise out of the same accident.

4. Both K.Saravanan (owner of the Omni Car) and A.Gandhimathi (owner of the Mahendra Van) remained *ex-parte* before

5. Both the Insurance Companies filed their counter statement in M.C.O.P.Nos.132 & 139 of 2008 respectively before the Tribunal denying all the averments made by the claimants in the said M.C.O.Ps.

6. When M.C.O.P.Nos.1116 & 1117 of 2007 came up before the Tribunal, on the side of the petitioners/claimants viz., family members of the deceased Balamurugan, 3 witnesses were examined viz., P.W.1 to P.W.3 and 10 documents were marked as exhibits viz., Ex.P1 to Ex.P10 and on the side of the respondents, 3 witnesses were examined viz., R.W.1 to R.W.3 and 7 documents were marked as exhibits viz., Ex.R1 to Ex.R7.

6.1 When M.C.O.P.No.132 of 2008 came up before the Tribunal, on the side of the petitioners/claimants viz., family members of the deceased Saravana Kumar, 2 witnesses were examined viz., P.W.1 & P.W.2 and 10 documents were marked as exhibits viz., Ex.P1 to Ex.P10 and on the side of the respondents, 3 witnesses were examined viz., R.W.1 to R.W.3 and 4 documents were marked as exhibits viz., Ex.R1 to Ex.R4.

6.2 When M.C.O.P.No.139 of 2008 came up before the Tribunal, on the side of the petitioners/claimants viz., family members of the deceased Padmanaban, 2 witnesses were examined viz., P.W.1 & P.W.2 and 10 documents were marked as exhibits viz., Ex.P1 to Ex.P10 and on the side of the respondents, no witness was examined and also no document was marked as exhibits.

7. On appreciation of the oral and documentary evidence produced in M.C.O.P.Nos.1116 & 1117 of 2007, the Tribunal came to the conclusion that the accident was happened only due to the negligence of the driver of the Maruti Omni Car and therefore, neither the owner nor the insurer of the Mahendra Van are not liable to pay compensation to the claimants viz., family members of the deceased Balamurugan. Hence, the Tribunal directed the insurer of the Maruti Omni Car/Royal Sundaram Alliance Insurance Co. Ltd., to pay a sum of Rs.30,000/- as compensation to the petitioner in M.C.O.P.No.1116 of 2007 with interest at 7.5% per annum from the date of filing of petition till the date of deposit and Rs.7,45,000/- as compensation to the petitioners in M.C.O.P.No.1117 of 2007 with interest at 7.5% per annum from the date of filing of petition till the date of deposit. As far as M.C.O.P.No.1117 of 2007 is concerned, out of the entire award amount, the Tribunal apportioned a sum of Rs.2,70,000/- to the wife of the deceased; Rs.1,25,000/- each to the two daughters and son of

the deceased and Rs.1,00,000/- to the father of the deceased. The break up details of the Tribunal award in M.C.O.P.No.1117 of 2007 is mentioned hereinbelow:

S.No.	Heads	Amount awarded by the Tribunal
1.	Loss of Income	Rs.6,12,000/-
2.	Funeral Expenses	Rs. 8,000/-
3.	Loss of Consortium	Rs. 25,000/-
4.	Loss of Love & Affection	Rs.1,00,000/-
	Total	Rs.7,45,000/-

8. So far M.C.O.P.No.132 of 2008 is concerned, on appreciation of materials before it, the Tribunal arrived at a finding that the accident was occurred due to the rash and negligent driving of the driver of the Mahendra Van and not because of the negligence of the driver of the Maruti Omni Car. It therefore held that both the owner and the insurer of the Mahendra Van are liable to pay the just compensation to the claimants viz., the family members of the deceased Saravana Kumar. Hence, the Tribunal awarded a sum of Rs.20,00,000/- as compensation to the claimants. The break up details of the compensation awarded by the Tribunal are as follows:

S.No.	Heads	Amount awarded by the Tribunal
1.	Loss of Income	Rs.18,36,000/-
2.	Funeral Expenses	Rs. 14,000/-
3.	Loss of Love & Affection	Rs. 1,50,000/-
	Total	Rs.20,00,000/-

The insurer of the Mahendra Van/Oriental Insurance Co. Ltd., was directed to deposit a sum of Rs.20,00,000/- with interest at 7.5% per annum from the date of filing of petition till the date of deposit. Out of the entire award amount, the Tribunal apportioned a sum of Rs.14,00,000/- to the mother of the deceased and Rs.2,00,000/- each to the three siblings of the deceased.

9. Similarly, in M.C.O.P.No.139 of 2008, the Tribunal held that the accident was occurred due to the rash and negligent driving of the driver of the Mahendra Van and not because of the negligence of the driver of the Maruti Omni Car. Hence, the Tribunal awarded a sum of Rs.7,23,000/- as compensation to the claimants viz., family members of the deceased Padmanaban. The break up details of the compensation awarded by the Tribunal are as follows:

S.No.	Heads	Amount awarded by the Tribunal
1.	Loss of Income	Rs.6,48,000/-
2.	Loss of Love & Affection and Mental Agony	Rs. 30,000/-
3.	Loss of Consortium	Rs. 20,000/-
4.	Loss of Estate	Rs. 20,000/-
5.	Funeral Expenses	Rs. 5,000/-
	Total	Rs.7,23,000/-

10. As far as M.C.O.P.Nos.1116 & 1117 of 2007 are concerned,

P.W.2, eyewitness in the present case and R.W.2, driver of the

Mahendra Van, deposed that the accident was happened only due to the rash and negligent driving of the driver of the Maruti Omni Car. It is to be noted that the FIR was filed against the driver of the Maruti Omni Car, wherein, it was stated that the deceased Balamurugan and his minor daughter Manjula were travelling in the Mahendra Van and hit by the Maruti Omni Car. As the driver of the Maruti Omni Car died on the spot, the said FIR was registered only on the basis of the complaint given by the driver of the Mahendra Van. Considering all the above aspects, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the Omni Car viz., Padmanaban who died on the spot.

11. On the other hand, so far M.C.O.P.Nos.139 & 132 of 2008 are concerned, based on the Ex.P1, FIR registered against the driver of the Maruti Omni Car and as well as the deposition of P.W.2, eyewitness in the present case, the Tribunal categorically came to the conclusion that the driver of the Mahendra Van is the solely responsible for the accident occurred. While fixing the negligence on the driver of the Mahendra Van, the Tribunal considered the exhibits marked on the side of the claimants, viz., Ex.P1, Ex.P3 & Ex.P4.

In the above M.C.O.Ps, since the vehicles were insured with the Insurance Company the Tribunal directed the insurers to pay the just compensation to the claimants.

12. Now the issue raised before this Court is

(i) Whether the negligence and liability fixed by the Chief Judicial Magistrate Court, Motor Accidents Claims Tribunal, Villupuram in M.C.O.P.Nos.139 & 132 of 2008 is correct?

or

(ii) Whether the negligence and liability fixed by the Motor Accidents Claims Tribunal in the Small Causes Court No.V, Chennai in M.C.O.P.Nos.1116 & 1117 of 2007 is correct?

13. The learned counsel appearing for the Oriental Insurance Co. Ltd., viz., Appellant in C.M.A.No.1495 of 2013 & 2766 of 2014/R4 in C.M.A.Nos.896 & 2189 of 2013/R8 in C.M.A.No.897 of 2013 would contend that the accident occurred due to the rash and negligent driving of the driver of the Maruti Omni Car. In M.C.O.P.Nos.1116 & 1117 of 2007 is concerned, on behalf of the petitioners/claimants, one Mr.Janagiraman who travelled in the Mahendra Van was examined as P.W.2. P.W.2 in his deposition, deposed that the accident occurred due to the rash and negligent driving of the Maruti Omni Car. The driver of the Mahendra Van had also deposed so.

13.1 Based on the complaint given by the driver of the

<https://www.mhc.tn.gov.in/judic/> Mahendra Van, FIR was registered against the driver of the Maruti

Omni Car. Hence, the Tribunal, Chennai came to the conclusion that the accident was occurred only due to the negligence of the driver of the Maruti Omni Car, whereas, the learned Chief Judicial Magistrate, Villupuram came to the erroneous finding that the accident was occurred due to the rash and negligent driving of the driver of the Mahendra Van.

13.2 The learned counsel would further contend that the Tribunal, Chennai had examined P.W.2, Janagiraman as an occurrence eyewitness in M.C.O.P.Nos.1116 & 1117 of 2007, whereas, the Tribunal at Villupuram had examined P.W.2, Annadthurai as an occurrence eyewitness in M.C.O.P.No.132 of 2008 and P.W.2, Vetri as an occurrence eyewitness in M.C.O.P.No.139 of 2008. But originally P.W.2, occurrence eyewitness examined by the Tribunal at Chennai is the person who travelled in the Mahendra Van. P.W.2 who was examined at Tribunal, Chennai deposed in his evidence that the accident had occurred due to the rash and negligent driving of the Maruti Omni Car. He would contend that if the Tribunal, Villupuram had examined P.W.2, Janagiraman (eyewitness in M.C.O.P.No.1116 & 1117 of 2007) as an eyewitness of the accident in M.C.O.P.Nos.132 & 139 of 2008, then, it would have fixed the negligent liability correctly, at least, to the extent of contributory negligence as 50-50 on the driver of the Maruti Omni Car as well as on the driver of the Mahendra

Van. He therefore prayed that the negligence and liability fixed by the Tribunal, Villupuram requires to be reconsidered.

14. The learned counsel appearing for the Royal Sundaram Insurance Co. Ltd./Appellant in C.M.A.Nos.896 & 897 of 2013/R6 in C.M.A.No.1495 of 2013/R2 in C.M.A.No.2189 of 2013/R7 in C.M.A.No.2766 of 2014 would contend that the two different eyewitnesses examined before the Tribunal, Villupuram are the independent eyewitnesses. The weightage should be provided for the independent eyewitnesses than the other eyewitnesses who were examined before the Tribunal at Chennai and the driver as well as the passengers of the Mahendra Van. He further contended that based on the Rough Sketch and the independent eyewitnesses examined, the Tribunal, Villupuram rightly fixed the negligence on the driver of the Mahendra Van. He therefore prayed that the negligence fixed by the Tribunal, Chennai against the driver of the Maruti Omni Car is liable to be set aside since the same is absolutely against the finding of the Tribunal, Villupuram.

14.1. The learned counsel would argue that at any cost, the negligence and liability may be fixed as 50-50 since the accident occurred due to the rash and negligent driving of the driver of the Mahendra Van as well as the driver of the Maruti Omni Car.

15. Upon a perusal of the judgment and decree passed by the Tribunal, Villupuram in M.C.O.P.Nos.132 & 139 of 2008, it appears that the accident occurred due to the rash and negligent driving of the driver of the Mahendra Van. Hence, the Tribunal, Villupuram fixed the negligence on the driver of the Mahendra Van and liability on the insurer of the Mahendra Van. The Tribunal, Villupuram had examined two independent witnesses as an occurrence witness viz., P.W.2, Annadhurai in M.C.O.P.No.132 of 2008 and P.W.2, Vetri in M.C.O.P.No.139 of 2008.

16. Apart from that, the FIR was filed against the driver of the Maruti Omni Car and the Rough Sketch was prepared by the Police. After analyzing the FIR, Rough Sketch and eyewitnesses, the Tribunal, Villupuram came to the conclusion that the driver of the Maruti Omni Car drove the vehicle in a proper manner and only due to the rash and negligent driving of the driver of the Mahendra Van, the accident was occurred. Hence, the Tribunal, Villupuram fixed the entire liability on the insurer of the Mahendra Van.

17. Quite contrary to the judgment and decree passed by the Tribunal, Villupuram in M.C.O.P.Nos.132 & 139 of 2008, the Tribunal at Chennai in M.C.O.P.Nos.1116 & 1117 of 2007 arrived at a finding that the accident occurred due to the rash and negligent driving of the

driver of the Maruti Omni Car who died on the accident spot and therefore, it fixed the liability on the insurer of the Maruti Omni Car. Based on the oral deposition of P.W.2 who travelled in the Mahendra Van and the another eyewitness who is none other than the driver of the Mahendra Van, the Tribunal, Chennai came to such conclusion.

18. Now, the question before this Court is how to get over these two different judgments against the fixation of liabilities. It is really difficult for this Court to ascertain the negligence and fix the liability since before both the Tribunals, different independent eyewitnesses were examined and based on the deposition of those eyewitnesses, both the Tribunals have come to the conclusion and fixed the negligence and liabilities. Therefore, this Court is of the view that the accident occurred due to the negligence on the part of the driver of the Maruti Omni Car as well as on the driver of the Mahendra Van. In these circumstances, we are of the considered view that it would be appropriate to fix negligence equally and fasten the liability as 50:50 against both the insurer of the Maruti Omni Car and as well as on the insurer of the Mahendra Van, as contended by the counsel appearing for their respective Insurance Companies.

19. Accordingly, this Court fixes 50% liability on the insurer of the Maruti Omni Car and 50% liability on the insurer of the Mahendra

Van. In the result, CMA.No.896 & 897 of 2013 are partly allowed.

C.M.A.No.2189 of 2013:

20. Mr.K.Muthuvisakan, learned counsel appearing for the appellants/claimants would contend that M.C.O.P.No.1117 of 2007 was filed by the claimants viz., family members of the deceased Balamurugan and the said M.C.O.P was disposed of by way of common judgment. He would further contend that before the Tribunal, the claimants filed Ex.P5, Death Certificate of the deceased and Ex.P6, Postmortem Certificate of the deceased. In Ex.P6, the age of the deceased was stated as 34 years. From the documents viz., Ex.P8, Driving License and Ex.P10, Salary Certificate, filed by the claimants, it is clearly evident that deceased Balamurugan was driver by Profession and he was earning a sum of Rs.300/- per month at the time of accident. Therefore, the Tribunal fixed the notional income of the deceased as Rs.4,500/- per month. Also, considering the age of the deceased, the Tribunal applied the multiplier '17'. The Tribunal ought to have deducted 1/4th towards the personal expenses of the deceased since there were five claimants in M.C.O.P.No.1117 of 2007, however, it was wrongly deducted 1/3rd towards the personal expenses of the deceased.

the following judgments:

- **National Insurance Co. Ltd. Vs. Pranay Sethi and others** reported in **2017 (2) TNMAC 609 (SC)**
- **Sarla Verma and others Vs. Delhi Transport Corporation and another** reported in **2009 (6) SCC 121**
- **Syed Sadiq Vs. Divisional Manager, United India Insurance Co. Ltd.,** reported in **2014 (1) TNMAC 459 (SC)**

20.2 In **Syed Sadiq's case**, in the absence of any income proof, the Honourable Apex Court fixed the notional income of the vegetable vendor as Rs.6,500/- per month, for the accident occurred in the year 2008. However, in the case on hand, the Tribunal fixed only a sum of Rs.4,500/- as monthly income of the deceased, for the accident occurred in the year 2007. Therefore, he would contend that the deceased being a car driver, a sum of Rs.6,500/- may be fixed as notional income of the deceased for determining the compensation to claimants.

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20.3 Similarly, in **Pranay Sethi's case**, the Honourable Supreme Court has added 40% of income towards future prospects of the deceased, whereas, in the present case, the Tribunal failed to do so. He therefore prayed the award passed by the Tribunal, Villupuram

<https://www.mhc.tn.gov.in/judicial> In M.C.O.P.No.1117 of 2007 may be re-determined by this Court.

21. The learned counsel appearing for the second respondent/Insurance Company would submit that though the Insurance Company has strong objection to fix a sum of Rs.6,500/- as notional income of the deceased, but it agreed to fix the said amount. He would also submit that so far the addition of 40% of income towards future prospects and 1/4th deduction towards personal expenses are concerned, the Tribunal has committed an error.

22. In view of the submissions made by the counsel appearing for the claimants/appellants in C.M.A.No.2189 of 2013 and the counsel appearing for the Royal Sundaram Insurance Co. Ltd., this Court is inclined to fix the notional income of the deceased as Rs.6,500/- as held by the Honourable Apex Court in **Syed Sadiq's case** and add 40% of income towards Future Prospects as held by the Honourable Apex Court in **Pranay Sethi's case**. Also, considering the error committed by the Tribunal regarding the application of multiplier '17', this Court applies the multiplier '16'. Similarly, the Tribunal erred in deducting 1/3rd towards the personal expenses of the deceased instead of 1/4th.

Loss of Income:

23. Following the decision taken by the Honourable Apex Court

<https://www.mhc.tn.gov.in/judicial/> in **Sarla Verma's case**, this Court deducted 1/4th towards the

personal expenses of the deceased. Therefore, this Court modifies the Loss of Income of the deceased as follows:

$$\text{Rs.9,100/- (Rs.6,500/- + 40\% of Rs.6,500/-) x} \\ 12 \times 16 \times 3/4 = \text{Rs.13,10,400/-}$$

Loss of Consortium and Love & Affection:

24. Considering the meager amount of Rs.25,000/- towards Loss of Consortium and Rs.1,00,000/- towards Love and Affection awarded by the Tribunal, this Court enhances the same as Rs.40,000/- towards Loss of Consortium and Rs.1,60,000/- towards Love and Affection i.e., Rs.40,000/- each to the claimants 2 to 5 viz., two minor daughters, minor son and father of the deceased.

Funeral Expenses and Loss of Estate:

25. The Tribunal awarded a sum of Rs.8,000/- towards Funeral Expenses which is too low and no amount was awarded towards Loss of Estate. Therefore, this Court enhances the Funeral Expenses as Rs.15,000/- and awards a sum of Rs.15,000/- towards Loss of Estate.

26. Therefore, the compensation awarded by the Tribunal in M.C.O.P.No.1117 of 2007 has been re-determined by this Court in the manner stated below:

S.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court	Award Enhanced or Modified or granted
1.	Loss of Income	Rs.6,12,000/-	Rs.13,10,400/-	Enhanced
2.	Funeral Expenses	Rs. 8,000/-	Rs. 15,000/-	Enhanced
3.	Loss of Consortium	Rs. 25,000/-	Rs. 40,000/-	Enhanced
4.	Loss of Love & Affection	Rs.1,00,000/-	Rs. 1,60,000/-	Enhanced
5.	Loss of Estate	-	Rs. 15,000/-	Granted
	Total	Rs.7,45,000/-	Rs.15,40,400/-	Re-determined by increasing a sum of Rs.7,95,400/-

Accordingly, CMA.No.2189 of 2013 is partly allowed.

C.M.A.No.2766 of 2014:

27. The learned counsel appearing for the appellant/Insurance Company would submit that so far M.C.O.P.No.132 of 2008 is concerned, the Tribunal fixed a sum of Rs.12,000/- as notional income of the deceased, which is on the higher side. Further, the Tribunal deducted 1/4th towards the personal expenses of the deceased Saravana Kumar. He therefore prayed that a sum of Rs.8,000/- may be fixed as the notional income of the deceased.

<https://www.mhc.tn.gov.in/judis/> 28. He would submit that since the deceased Saravana Kumar

was bachelor of 30 years at the time of accident 50% of income should be deducted towards his personal expenses. He would also submit that the Tribunal deducted 1/4th towards personal expenses of the deceased and applied the multiplier '17'.

29. Mr.T.Dhanya Kumar, learned counsel appearing for the claimants 1 to 4 would submit that the Tribunal rightly fixed the quantum of compensation in the present case.

30. In view of the submissions made by the learned counsels on both sides, this Court is of the view that the notional income of the deceased is really too high and the same has to be reduced. In **Syed Sadiq's case**, the Honourable Supreme Court has fixed a sum of Rs.6,500/- as notional income of the deceased.

31. It is to be noted that in the present case, the deceased Saravana kumar was Physiotherapist by Profession. Therefore, we are of the considered view that it would be appropriate to fix a sum of Rs.9,000/- as notional income of the deceased and it is just and fair to add 40% of income towards Future Prospects, as held by the Honourable Apex Court in **Pranay Sethi's case**.

Loss of Income:

32. Taking note of the fact that the deceased was 30 years bachelor at the time of accident, this Court inclines to follow the decision taken in **Sarla Verma's case**, wherein, the Apex Court held that if the deceased was bachelor, while fixing compensation for the claimants, 50% should be deducted from the amount awarded by the Tribunal towards the personal expenses of the deceased bachelor. Accordingly, 50% is deducted from the amount awarded by the Tribunal towards personal expenses of the deceased Saravana Kumar. Hence, the Loss of Income of the deceased is re-determined as Rs.12,09,600 i.e., Rs.9,000/- + 40% of 9,000 x 1/2 x 12 x 16 = Rs.12,09,600/-.

Loss of Love & Affection:

33. The Tribunal awarded a sum of Rs.1,15,000/- towards Loss of Love & Affection. In our point of view, the said sum is just and fair. Therefore, we confirm the same.

Funeral Expenses:

34. The Tribunal awarded a sum of Rs.14,000/- towards Funeral Expenses. Since the said sum is meager we inclined to award a sum of Rs.15,000/- towards Funeral Expenses. Accordingly, a sum of Rs.15,000/- is awarded towards Funeral Expenses.

Loss of Estate:

35. Since no amount was awarded towards Loss of Estate this Court inclines to award a sum of Rs.15,000/- towards Loss of Estate. Accordingly, a sum of Rs.15,000/- is awarded towards Loss of Estate.

36. Finally, this Court modifies the compensation of Rs.20,00,000/- awarded by the Tribunal as Rs.13,54,600/-. The break-up details of the re-determined award of this Court reads as follows:

S.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court	Award Enhanced or Modified or Granted
1.	Loss of Income	Rs.18,36,000/-	Rs.12,09,600/-	Modified
2.	Loss of Love & Affection	Rs.1,50,000/-	Rs. 1,15,000/-	Modified
4.	Funeral Expenses	Rs. 14,000/-	Rs. 15,000/-	Enhanced
5.	Loss of Estate	-	Rs. 15,000/-	Granted
	Total	Rs.20,00,000/-	Rs.13,54,600/-	Re-determined by reducing a sum of Rs.6,45,400/-

Accordingly, CMA.No.2766 of 2014 is partly allowed.

C.M.A.No.1495 of 2013:

37. The learned counsel appearing for the Insurance Company would contend that the compensation of Rs.7,23,000/- awarded by the Tribunal in M.C.O.P.No.139 of 2008 is too high and therefore, the same may be reduced by this Court.

38. The said contention of the counsel for the Insurance Company cannot be accepted by this Court since the amount awarded by the Tribunal is just and fair. Therefore, we are inclined to confirm the compensation awarded by the Tribunal in M.C.O.P.No.139 of 2008. Accordingly, CMA.No.1495 of 2013 is dismissed.

39. In the result,

(i) All the Civil Miscellaneous Appeals are partly allowed, except CMA.No.1495 of 2013.

(ii) As far as liability is concerned, this Court fixed 50% liability on the insurer of the Maruti Omni Car and 50% liability on the insurer of the Mahendra Van since both the driver of the Maruti Omni Car and as well as the driver of the Mahendra Van were equally responsible for the accident.

(iii) So far as quantum of compensation is concerned, in C.M.A.No.896 of 2013, a sum of Rs.30,000/- (Rupees Thirty Thousand) awarded by the Tribunal in M.C.O.P.No.1116 of 2007 is confirmed by this Court. Further, in C.M.A.No.2189 of 2013, a sum of Rs.7,45,000/- (Rupees Seven Lakhs Forty Five Thousand) awarded by the Tribunal in M.C.O.P.No.1117 of 2007 is re-determined as Rs.15,40,400/- (Rupees Fifteen Lakhs Forty Thousand Four Hundred) by this Court. Out of the award amount as re-determined by this Court, wife of the deceased is entitled to a sum of Rs.8,00,000/-; two daughters and son of the deceased are entitled to Rs.2,00,000/- each and the father of the deceased is entitled to Rs.1,40,400/-. Both the Insurance Companies are directed to deposit the award amount as modified by this Court, deduct the amount, if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit to the credit of M.C.O.P.No.1117 of 2007 within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the respective bank account of the claimants, as per the award re-determined by this Court, through RTGS, within a period of three weeks thereafter. Necessary Court fee, if any, shall be paid by the claimants herein before receiving the copy

(iv) In C.M.A.No.2766 of 2014, a sum of Rs.20,00,000/- (Rupees Twenty Lakhs) awarded by the Tribunal in M.C.O.P.No.132 of 2008 is re-determined as Rs.13,54,600/- (Rupees Thirteen Lakhs Fifty Four Thousand and Six Hundred only) by this Court. Out of the award amount as re-determined by this Court, mother of the deceased is entitled to Rs.10,54,600/-; two sisters of the deceased are entitled to Rs.1,00,000/- each and the brother of the deceased is entitled to Rs.1,00,000/-. The Appellant and the Seventh respondent/Insurance Companies are directed to deposit the award amount modified by this Court, deduct the amount, if any, already deposited, along with interest at 7.5% per annum from the date of petition till the date of deposit to the credit of M.C.O.P.No.132 of 2008 within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the respective bank account of the claimants, as per the award re-determined by this Court, through RTGS, within a period of three weeks thereafter. Necessary Court fee, if any, shall be paid by the claimants herein before receiving the copy of the judgment.

(v) Further, C.M.A.No.1495 of 2013 is concerned, this Court confirms the quantum of compensation awarded by the Tribunal, Villupuram in M.C.O.P.No.139 of 2008 dated 18.04.2011 and directed

the Insurance Company to deposit the entire award amount as held by the Tribunal, if not deposited already, within six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

(M.M.S.J.,)

(K.R.J.,)

13.01.2020

Index : Yes
Speaking Order (or) Non-Speaking Order

mrr

To

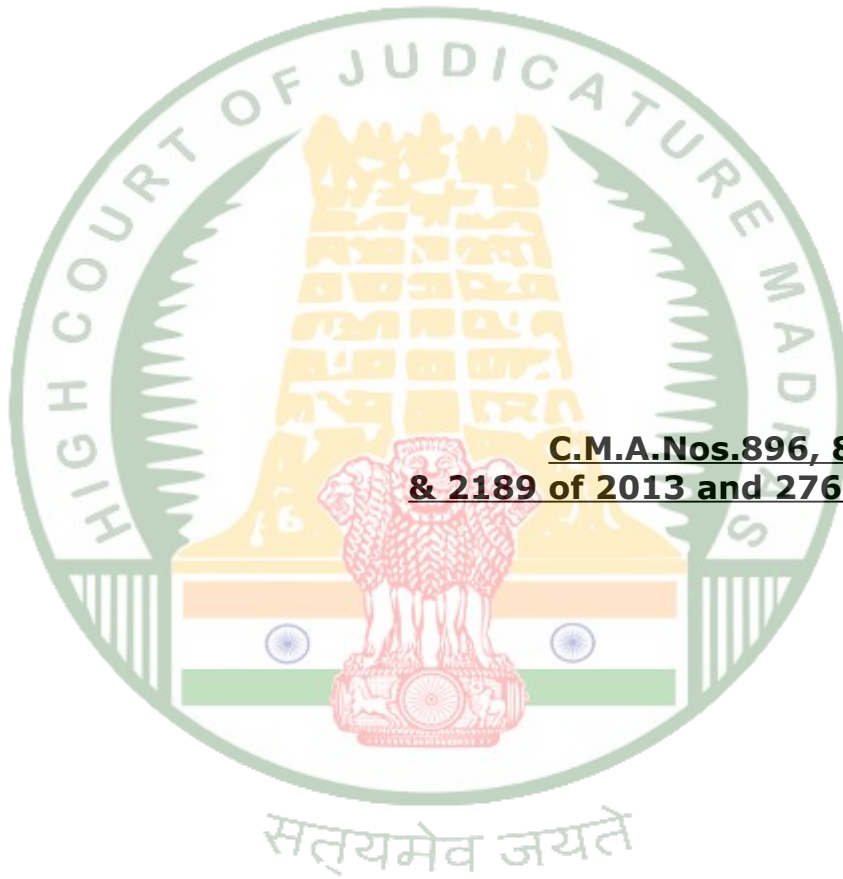
- 1.The Judge,
Small Causes Court No.V,
Motor Accidents Claims Tribunal,
Chennai.
- 2.The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Villupuram.
- 3.The Section Officer,
VR Section, High Court, Madras.

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C.M.A.Nos.896, 897, 1495
& 2189 of 2013 and 2766 of 2014

M.M.SUNDRESH, J.,
and
KRISHNAN RAMASAMY, J.,

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C.M.A.Nos.896, 897, 1495
& 2189 of 2013 and 2766 of 2014

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13.01.2020