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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :04.01.2021
Pronounced on :08.01.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.M.A.No.206 of 2017

National Insurance Co.Ltd.,
74A, Paramathy Road,
Namakkal.

... Appellant /3rd Respondent

/versus/

Karanamurthy(died)

1.Chitra

2.Senthilkumar

3.Thirunavukarasu

4.Kamaraj

5.Mahalakshmi

...R1 to R5/Claimants

(R2 to R6 impleaded as parties as per
order in I.A.no.885/2011 dated
26.06.2012)

6.Kumar

7.Saravanan

...R6 and R7/R1 and R2

8.Suba

9.Royal Sundaram Alliance

Insurance Co.Ltd.,

II Floor, K.C. Arcade, 79/2,

Sir Shanmugam Road,

(T.V.Samy Road -east),

R.S.Puram, Coimbatore.

... Respondents 8 &
9/Respondents 4 & 5

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 31.01.2013 made in M.C.o.P.No.1126 of 2009 on the file of the Motor Accidents Claims Tribunal, II Additional District and Sessions Judge, Tirupur.

For Appellant :Mr.S.Arunkumar

For Respondents:Mr.Lokesh for

Mr.Ma.P.Thangavel for R1 to R5

No appearance for

R6, R7, R8 and R9



J U D G M E N T

(The case has been heard through video conference)

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This appeal is filed by the Insurance Company, being aggrieved by the liability fixed on the appellant and also the quantum of compensation awarded by the Tribunal.

2. Brief facts of the case leading to the appeal is that, on 11.08.2009 at about 12.50 a.m., when one Mr. Durai @ Deivasigamani was driving the lorry bearing Reg.No.TN-38-AT-3209, another lorry bearing Reg.No.TN-KA-21C-0610 hit the lorry driven by Durai @ Deivasigamani. In the said accident, Durai @ Deivasigamani died. Case was registered against the driver of the lorry bearing Reg.No.TN-KA-21C-0610. Claim petition was filed by the father of the deceased Durai @ Deivasigamani seeking compensation of Rs.15,00,000/-.

3. As per the claim petition, the deceased Durai @ Deivasigamani was hale and healthy; was a bachelor; aged 34 years and earning a sum of Rs.10,000/- per month as driver. The claimant being the father and dependant on the deceased lost his income of his son. Hence, the claim petition filed to compensate the loss of income and dependency.

4. The appellant herein/third respondent (in the claim petition), who is the insurer of the offending lorry filed counter stating that the insurance policy for the vehicle is covering the period from 28.02.2009 to 27.02.2010. However, the driver of the vehicle had no valid licence. Therefore, for the contravention of the provision of Motor Vehicles Act and the insurance policy condition, the Insurance Company is not liable to indemnify the owner of the offending vehicle. The quantum of compensation prayed also questioned by the Insurance Company and sought leave to take all defence available to the vehicle owner.

5. When the claim petition was pending, the claimant Karanamoorthy, the father of the deceased accident victim died. His legal heirs were brought on record as claimants 2 to 6.

6. Before the Tribunal, on the side of the claimants, two witnesses were examined and 7 documents were marked. The Tribunal framed the following points for consideration:-

- (1) On whose negligence the accident occurred?
- (2) From whom, the claimants can seek compensation?
- (3) Whether the claimants are entitled for compensation? If yes, How much?



7.The Tribunal, relying upon the First Information Report marked as Ex.P1 and oral evidence of PW-1 and PW-2 held that the accident occurred due to the major negligence of the driver of the lorry bearing Reg.No.TN-KA-21C-0610. The accident victim, who is the driver of the lorry bearing Reg.No.TN38-AT-3209 had minor contribution for the accident. Hence, apportioned the contribution between the two drivers in the ratio of 80:20.

8.Regarding the quantum of compensation, the Tribunal taking note of the death certificate of the original claimant Karanamurthy(Ex.P6) and the legal heirs certificate (Ex.P7), held that the claimants who are the brothers and sisters of the deceased Durai @ Deivasigamani are entitled for compensation and notionally fixed the monthly income of the deceased at Rs.8550/-. After deducting $1/3^{\text{rd}}$ for his personal expenditure, the Tribunal applied multiplier '17' to compute loss of income. A total sum of Rs.12,94,800/- was assessed as compensation and out of which, the liability has been apportioned between the 3^{rd} and 5^{th} respondents two insurance companies in the ratio of 80:20.

9.The 3^{rd} respondent/National Insurance Company, being aggrieved upon the fixation of liability and the quantum of compensation has filed the appeal.

10.The prime contention raised in the appeal is that, the Tribunal having concluded that both the drivers were negligent for the composite negligence, ought to have apportioned the liability equally. The Tribunal failed to note that respondents 1 to 5 are not dependent on the deceased and huge compensation of Rs.12,94,800/- for them is not warranted. In the absence of proper and admissible evidence, notional fixation of income at the rate of Rs.8550/- is exorbitant. The deceased being a bachelor and only his father was the original claimant, deduction of $1/3^{\text{rd}}$ only towards personal expenditure is contrary to the settled principle of law. The Tribunal ought to have deducted 50% towards personal expenditure of the deceased. The application of multiplier '17' for the deceased aged about 34 years is erroneous.

11.The learned counsel appearing for the appellant/National Insurance Company specifically contended that respondents 1 to 5 who are the brothers and sisters of the deceased Durai @ Deivasigamani were not the original claimants. They were impleaded on the death of the original claimant Karanamurthy, who is the father of the deceased and the sole dependent. The Tribunal has fixed the compensation as if respondents 1 to 5 are the dependants of the deceased accident victim. Further more,



when the evidence clearly proves the contributory negligence of the deceased, the contribution ought to have been apportioned equally among the insurers of the two vehicles involved in the accident.

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12.The learned counsel appearing for respondents 1 to 5/claimants submitted that the contention of the Insurance Company is contrary to law. The claim petition was filed under Section 166 of the Motor Vehicle Act, 1988, which entitle the dependants of the deceased accident victim to file claim petition. It is settled by Catena of judgments that the brothers and sisters of the accident victim as legal representatives are entitled to file claim petition. Therefore, the locus of respondents 1 to 5 cannot be disputed.

13.As far as the quantum of compensation is concerned, the Tribunal has taken only Rs.8550/- as monthly income for the professional driver, aged 34 years and the tribunal has not added any future prospects. The accident occurred due to the negligence of the driver of the lorry bearing Reg.No.TN-KA-21C-0610. Therefore, the Tribunal has fixed 80% contribution to the said lorry owner and the Insurance Company/appellant to indemnify the said lorry owner. Hence, there is no error in the Tribunal award for interference.

14.Learned counsels appearing for either side in support of their submissions also circulated the following judgments:-

(1)New India Assurance Co.Ltd.,v. Sasikala Devi(deceased) and others reported in [2011(2) TN MAC 152 (DB);

(2)Mrs.Hafizun Begum v. Md Ikram Heque and others reported in [2007(2) TN MAC 143(SC)];

(3)Goutham Bafna and others v. J.Pramod Kumar Bansal and another reported in [2009(2) TN MAC 526];

(4)Dr.Gangaraju Sowmini v. Alavala Sudhakar Reddy and Ors. reported in [2016 (2) TN MAC 20(FB) (Hrd.)];

(5)Rajan v. Biju and others reported in [2017 (2) TN MAC 321 (FB) Ker.)];

(6)Branch Manager, ICICI Lombard General Insurance Co., Mumbai v. Kaliyamoorthy and others reported in [2016(1) TN MAC 453(DB)];

(7)Anandha lakshmi and ors. v. Tamil Nadu State Transport Corporation (Villupuram District) Ltd., reported in [2017(1) TN MAC 383 (DB)];

(8)Oriental Insurance Co., Ltd., Dharmapuri-1, v. Munusamy and another reported in [2015(1)TNMAC 153]; and



(9) S. Nagamathan v. New India Assurance Company Limited and another in final order dated 23.11.2013 in S.L.P. (civil) No. 29272/2011.

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15. According to the learned counsel appearing for the appellant/National Insurance Company, though Section 166 of the Motor Vehicles Act, 1988 entitles the legal representative of the deceased accident victim to file claim petition, in the present case, it was the father of the deceased, who preferred the claim petition and not the present respondents 1 to 5. Only on the demise of the father, as legal heirs of the original sole claimant, these respondents 1 to 5 have entered the shoes of the original claimant and got impleaded. When the implead petition was objected, the Tribunal overruled the objection and allowed the implead petition, since they are the brothers and sisters of the deceased Durai @ Deivasigamani fall under the meaning of dependants.

16. Referring the Hon'ble Division Bench judgment of this Court rendered in New India Company Limited v. Sasikala Devi (deceased) and others cited supra, the learned counsel appearing for the appellant/National Insurance Company submitted that the compensation for the death of the deceased Durai @ Deivasigamani payable to the original claimant Karanamurthy ought to have been determined for his lifetime and the same should be apportioned to his legal heirs as the estate of the sole claimant. Whereas, the Tribunal has considered the legal heirs of the original claimant as legal representatives of the deceased and has awarded exorbitant and disproportionate compensation, which they never sought for.

17. The learned counsel appearing for the claimants/respondents 1 to 5 submitted that the said judgment relied by the learned counsel appearing for the appellant/Insurance Company was challenged before the Hon'ble Supreme Court and pending SLP, the parties settled the dispute in the Lok Adalat and therefore, the principle laid in Sasikala Devi (deceased) and others case cannot be held as a precedent. The order passed by the Hon'ble Supreme Court in S.L.P. (civil) No. 29272 of 2011 dated 23.11.2013 cited and circulated.

18. In response to the said submission, the learned counsel appearing for the appellant/Insurance Company submitted that the principle laid by the Hon'ble Division Bench of this Court, unless overruled by the Hon'ble Supreme Court, have a binding effect on a single Judge. The compromise entered between the parties in the Lok Adalat is only in respect of the quantum of compensation and not on the principle of liability which has been settled by the Hon'ble Division Bench.



19. The learned counsel appearing for the appellant/Insurance Company has also distinguished the other judgments relied by the respondents 1 to 5/claimants stating that those judgments which are in respect of the claim petition filed by the brothers and sisters of the deceased as original claimants and not as legal heirs of the original claimant. For the death of Durai @ Deivasigamani, in this case, the present respondents 1 to 5 never made claim as the dependants of the accident victim Durai @ Deivasigamani. Therefore, the Tribunal erred in considering them as original claimants and applied the multiplier. In this case, at the most, the Tribunal ought to have taken note of the date of claim petition and the date of the death of the original claimant Karanamurthy and as held by the Hon'ble Divisional Bench of this Court in Sasikala Devi(deceased) case should have restricted the computation of loss of income for the life time of the original claimant and as legal heirs of the original claimant, respondents 1 to 5 should have been apportioned the estate of the deceased sale claimant.

20. On perusing the citations relied by the learned counsels and their oral submission, it is clear that if the claim petition is filed under Section 163A of the Motor Vehicles Act, 1988, only the legal heirs of the deceased accident victim are entitled to file claim petition. Whereas, if the claim petition is filed under Section 166 of the Motor Vehicles Act, 1988, all or any of the legal representatives of the deceased are entitled to file an application for compensation.

21. The provision of 163(A) of the Motor Vehicles Act, 1988 and Section 166 of the Motor Vehicles Act, 1988 are extracted below to highlight the distinction between these two Sections:-

163A. Special provisions as to payment of compensation on structured formula basis.-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

(emphasis added)

166. Application for compensation.-



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(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 authorised 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.

(2) Every application under Sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.]

(3) Omitted

(4) The Claims Tribunal shall treat any



report of accidents forwarded to it under sub-Section (6) of Section 158 as an application for compensation under this Act.

22. In *Montford Brothers of St. Gabriel and another v. United India Insurance and another* reported in [2014(3) SCC, 394], the Hon'ble Supreme Court has held that:

"in case of death of a person in Motor Accident, 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 and the same is subject to result of dispute/objection raised by the Opposite Party on said issue. The aforesaid adjudication is made by the Hon'ble Supreme Court while extending the definition of "Legal Representative" as defined under Section 2(11) of the Code of Civil Procedure. Para 12 of the judgment which is relevant to the case on hand reads as under:

"12. Para 13 of the Report of Gujarat State Road Transport Corporation, Ahmedabad v. Rmanbhai Prabhabhai and another, 1987 (3) SCC 234: 1987 ACJ 561, reflects the correct philosophy which should guide the Courts interpreting the legal provisions of beneficial legislations providing for compensation to those, who has suffered loss:

"13. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realization of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to



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whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110- A of the Act have to be done in accordance with well- known principles of law. We should remember that in an Indian family, brothers, sisters and brothers children and some times foster children live together and they are dependent upon the breadwinner of the family and if the breadwinner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhai Khimji Vira v. Chaturbhai Taljabhai (AIR 1977 Guj 195) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased.

In the above judgment, it is clearly held that the brother of a person who dies in a motor vehicle accident, is entitled to make an application under Section 110-A of the Motor Vehicles Act, 1939, if he is a legal representative of the deceased."

23.Following this judgment, they are the plethora of judgments which have held that the term legal representative referred in Section 166 of the Motor Vehicles Act does not mean dependant only and that the brothers and sisters of the deceased even if they are married are entitled to file petition for compensation and have right to represent the estate of the deceased.

24.In Manjuri Bera v. Oriental Insurance Co.Ltd., and another reported in [2007 (1) TN MAC 385(SC)]: 2007 (3) ALD 55



(SC): 2007 ACJ 1279, the Hon'ble Supreme Court has considered the question whether a married daughter, nor dependant on the deceased, is entitled to file a claim petition for the death of her father and answered the said question in the affirmative. It is held in the said judgment that even though there is no loss of dependency, the claimant, if he or she is a legal representative, will be entitled to compensation, the quantum of which shall not be less than the liability flowing from Section 140 of the Act.

25. In *Kannamma v. Deputy General Manager*, reported in [1991 ACJ 707], a Full Bench of Karnataka High Court has considered the right of Legal Representatives to come on record and continue the proceedings initiated by the deceased claimant. In the aforesaid judgment, the Full Bench, while considering the provision under Section 110-A of the Motor Vehicles Act, 1939 read with the provision under Section 306 of the Indian Succession Act, 1925, has held that if the death is due to the injuries suffered in the accident, Legal Representative can prosecute the petition only relating to the loss to the estate of the deceased.

26. In *Dr. Gangaraju Sowmini v. Alavala Sudhakar Reddy and Ors.* [2016(2) TN MAC 20 (FB) (Hyd.)] when reference was made to the Full Bench of the Andhra Pradesh High Court regarding "whether non-dependant heir of the deceased, who died in a Motor accident is entitled to lay claim for compensation under Section 166 of the Motor Vehicles Act, 1988 where there is no other dependant legal heir claiming compensation." The Hon'ble Full Bench of Andhra Pradesh High Court held in affirmative holding that legal representative does not mean dependant alone but includes one who can represent the estate of the deceased, merely because one is not dependant, is not a ground for not entertaining his claim. Therefore, the non-dependant legal heir of the deceased, who died in the motor accident, is entitled to lay a claim compensation under Section 166 of the Motor Accident Act, 1988, in the absence of the dependant legal heir.

(emphasis added)

27. The Full Bench of Kerala High Court in *Rajan v. Biju and others* reported in 2017 (2) TN MAC 321 (FB) (Ker.), pointing out the difference in phrase used in Section 163A and Section 166 of the Motor Vehicles Act, 1988 held that the person eligible to make claim under Section 163A and Section 166 of the Motor Vehicle Act, 1988 belong to different categories. The claimants even if not dependant, are entitled to claim compensation under Section 163A if they are the legal heirs of the victim. Whereas, under Section 166 of the Motor Vehicles Act, 1988 all or any legal representative of the victim entitled to make claim if they are dependant of the deceased.



28. From the judgments cited and referred above, it is clear that the provisions of Motor Vehicles Act, 1988 being a welfare legislation. The construction of the provision made to be interpreted harmoniously to effectuate the object of the statute. The Courts have clarified in many words that the term 'legal representative' does not mean dependant. The term 'legal heir' need not include dependant. The distinction between being a dependant and a legal representative can not be misunderstood or misapplied. If the claim petition is filed under Section 163A of the Motor Vehicles Act, 1988, the claimant must be either the victim or the legal heir of the victim. If the claim petition is filed under Section 166 of the Motor Vehicles Act, 1988, the claimant must be the victim or the legal representative of the victim. The term 'legal representative' has to be understood as defined under Section 2(11) of the Civil Procedure Code, since the Motor Vehicles Act, 1988 has not defined the term 'legal representative'. As per the definition provided for the term 'legal representative' under Section 2(11) of the Civil Procedure Code, it means 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.

29. In the instant case, on the date of accident, the father of the deceased Durai @ Deivasigamani was the lone legal representative of the deceased, who applied for compensation. Incidentally, he was also dependant on the income of the deceased. To file a claim petition for compensation under Section 166 of the Motor Vehicles Act, 1988, the requirement is that the claimant must be a legal representative falling within the definition under Section 2(11) of the Civil Procedure Code. For ascertaining the quantum of compensation, the degree of dependency of the legal representative will be the relevant factor. The scrutiny of Sections 163A and 166 of the Motor Vehicles Act, 1988 clearly throw light and reasoning why different expressions are used under these two provisions.

30. The Hon'ble Division Bench of this Court in Branch Manager, ICICI Lombard General Insurance Co., Mumbai v. Kaliyamoorthy and others reported in 2016(1) TN MAC 453 (DB) has stated as below:

"22. As the statute is very clear that all the legal representatives can maintain a claim under Section 166 of the Motor Vehicles Act, 1988, depending upon the loss of monetary benefit or the gratuitous and invaluable services, measured in terms of



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money, that the legal representative, might have received and the likelihood of loss in the event of death, brother or sister can maintain a claim, the words "legal representatives", cannot be narrowed down to mean only, dependants."

31.The facts of the present case is that, respondents 1 to 5 have not made claim petition as the legal representatives of the deceased. They have not stated anything about their dependency on the deceased. Nodoubt, the brothers and sisters in Indian Society have emotional and physical dependency on their siblings and in some case, financial dependency also. Unless and until, there is a plea on this regard, in the claim petition, the lateral entrant as legal representative of the claimant cannot have an independent claim for compensation by enlarging the scope of claim petition. They can only represent the deceased original claimant. They are entitled to share what the original claimant is entitled. They enter the shoes of the original claimant. Just, because they have been allowed to continue the claim petition before the Tribunal, they cannot be treated as the original claimant to award compensation which they never sought for.

32.The said dictum laid in Sasikala Devi (deceased) case by the Hon'ble Division Bench of this Court is intact and not been over ruled in any of the subsequent judgments. The submission of the learned counsel appearing for respondents 1 to 5 that the judgment of this Court in Sasikala Devi (deceased) case cited supra has been over ruled by virtue of the order passed by the Hon'ble Supreme Court in S.L.P.(civil) No.29272 of 2012 is factually and legally in correct. The compromise entered in the Lok Adalat on 23.11.2013 cannot be taken as the judgment over ruling the Division Bench in Sasikala Devi(deceased) case. In the Catena of judgments, the Hon'ble Supreme Court has clarified that the orders passed in the SLP, without referring the merits of the case shall not be treated as precedent. The principle laid down in Sasikala Devi (deceased) case cited supra, passed by the Hon'ble Division Bench of this Court is intact and the SLP order dated 23.11.2013 is not on merits. The other judgments cited by the respondents are on different set of facts. If the legal representatives have made the original claim petition pleading their dependency on the accident victim, the judgments cited by the learned counsel appearing for respondents 1 to 5 have bearing and binding effect. Whereas, in this case, the original claim petition was not filed by the present respondents 1 to 5. Therefore, the principle laid in Sasikala Devi (deceased) case alone will apply.



33. The dependency can be classified as physical dependency, monetary dependency and emotional dependency. To file a petition under Section 166 of the Motor Vehicles Act, 1988, the claimant must first be a legal representative and next be a dependant. The compensation for the loss of dependency based on extent his dependency; physical, emotional or financial. There may be a class of persons who may be dependant on the accident victim but may not fit within the definition of legal representative. Though they may physically, emotionally and financially depend on the deceased accident victim, in view of the expression used in Sections 166 and 163A of the Motor Vehicles Act, 1988, they may not have locus to file claim petition. Similarly, the legal representative who is entitled to file the claim petition for compensation under Section 166 of the Motor Vehicles Act, 1988, may not succeed much unless he establishes that he was dependant on the deceased under any of the three categories namely, physical, emotional or financial.

34. In this case, can be demonstrated an illustration, a bachelor living in city and his old parents in a remote village may have employees in his city residence, who are depending on him. On his death in a motor accident, those employees though may be dependants, they are not entitled to file claim petition since they are not legal representatives. The parents who are living in Village, though may not be depending on him, physically or financially will have right to file claim petition. The presumption that they were depending on him is drawn in view of the social welfare indent running throughout the provisions of the Motor Vehicles Act, 1988. For non-claimant who has entered the shoes of the deceased claimant, such presumption is not available. Even if he falls within the definition of legal representative, a non-claimant who enters the shoes of the deceased claimant can only represent the estate of the deceased claimant and not the estate of the deceased accident victim.

35. In this case, the original claimant Karanamurthy has filed the claim petition on 09.10.2009. After his death, respondents 1 to 5 were impleaded vide order dated 26.06.2012. Without any document to prove the income of the deceased, the Tribunal has fixed the monthly income of the deceased at Rs.8550/- per month and has deducted 1/3rd for his personal expenditure. As per the settled principle, if the deceased is a bachelor, 50% of the income has to be deducted for his personal expenditure and the remaining 50%, should be his contribution. The original claimant was alive for nearly 3 years, after the demise of the accident victim and died pending claim petition. Respondents 1 to 5 herein are the legal representatives of the estate of the deceased claimant. In the claim petition, they



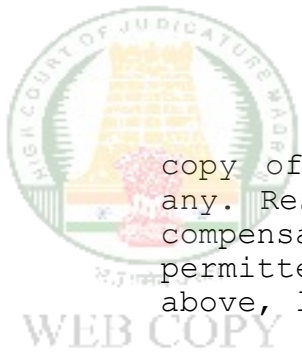
cannot be treated as legal representative of the deceased accident victim since they have not filed any original claim petition on their own. Therefore, the duty of the Tribunal should have been to ascertain the entitlement of the compensation by the original claimant and to apportion the same treating it as the estate of the deceased claimant. Since the Tribunal has failed to do so, this Court takes up the responsibility and revise the award of the Tribunal as per the principle laid in Sasikala Devi (deceased) case.

36. The original claimant was alive for about 3 years. 50% of the contribution was Rs.4275/- as monthly income of the deceased accident victim and therefore, Rs.1,53,900/-(4275x12x3) is awarded towards loss of income. The tribunal has awarded Rs.25,000/- to each of the respondents 1 to 5 towards loss of love and affection caused due to the loss of their brother, the same is left undisturbed.

37. The break up details of the modified award is as below:-

Sl. No.	Particulars	Award of the Tribunal (Rs.)	Enhanced award of this Court (Rs.)	Enhanced/ Reduced/ awarded
1.	Loss of income	11,62,800-00	1,53,900-00	Reduced
2.	Loss of love and affection (each Rs.25000x5)	1,25,000-00	1,25,000-00	Confirmed
3.	Funeral expenses	7,000-00	15,000-00	Enhanced
	Total	12,94,800-00	2,93,900-00 rounded off 2,94,000-00	Reduced

38. The award of the Tribunal is modified from Rs.12,94,800-00 to Rs.2,93,900-00 rounded off to Rs.2,94,000/-. Therefore, respondents 1 to 5 are entitled to withdraw the modified award amount, as per the ratio 80:20 fixed by the Tribunal with interest at the rate of 7.5% per annum, from the date of petition, till the date of realisation. The appellant herein, who is the 3rd respondent in the claim petition, is directed to deposit 80% of the modified award of Rs.2,94,000/- (i.e. Rs.2,35,200/-) with accrued interest thereon and the 9th respondent herein, who is the 5th respondent in the claim petition, is directed to deposit 20% of the modified award of Rs.2,94,000/- (i.e. Rs.58,800/-) with accrued interest thereon, within a period of eight weeks from the date of receipt of a



copy of this judgement, less the amount already deposited, if any. Respondents 1 to 5 shall be entitled to apportion the said compensation equally among themselves. Respondents 1 to 5 are permitted to withdraw the same, as per the apportion mentioned above, less the amount already withdrawn by them.

39. In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

The II Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Tiruppur.

Copy to

The Section Officer,
VR Section, High Court,
Madras-104.

+lcc to Mr.Ma.P.Thangavel, Advocate Sr.1313
+lcc to Mr.S.Arunkumar, Advocate Sr.1708

C.M.A.No.206 of 2017

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srg 20/09/2021