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C.M.A.No.2827 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.2827 of 2014

and

M.P.No.1 of 2014

K.Venkatesan

.. Appellant

-Vs.-

Kuppusamy (died)

1. Vembayee
2. Kumar
3. Amsavalli
4. Minor Amsaya, rep by  
her mother Vembayee
5. S.Srinivasan

.. Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 18.06.2004 in M.C.O.P.No.1966 of 2007 on the file of the Motor Accident Claims Tribunal (I Additional Sub Court), Cuddalore.



C.M.A.No.2827 of 2014

For Appellant : Mr.R.Meenal  
For Respondents 1 to 3 : Ms.Ramya V.Rao  
For Respondent-4 : Minor Rep by R1  
For Respondent-5 : Mr.Pradeep Jayaraman

### **JUDGMENT**

The second respondent, who is the present owner of the motor cycle, bearing Registration No.TN 31 C 7209 and upon whom the liability has been fastened by the Motor Accident Claims Tribunal (I Additional Subordinate Judge, Cuddalore) in M.C.O.P.No.1966 of 2007 is the appellant herein, challenging the Award passed, in which, he has been jointly and severally held liable to compensate the claimants. Since the vehicle continues to be registered in the name of the first respondent, the Tribunal had held that both of them are jointly liable to compensate the petitioners. It is challenging this Award that the appellant / second respondent is before this Court.

2. Heard the learned counsels on either side and perused the



C.M.A.No.2827 of 2014

materials available on record.

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3. Admittedly, the vehicle continues to be registered in the name of the first respondent and the insurance policy also continues to stand in the name of the first respondent. However, since there has been a transfer of the vehicle without intimating the Regional Transport Office or the Insurance Company, the Insurance Company cannot be held liable and therefore, they have not been impleaded as a party to the proceedings. The Tribunal has awarded a compensation of a sum of Rs.3,44,000/-. The Tribunal has adopted a notional income of Rs.3,000/- and after deducting 1/3<sup>rd</sup> towards personal expenses, had taken a sum of Rs.2,000/- per month as the income and taking into account the age of the deceased had awarded a sum of Rs.3,12,000/- under the head of loss of dependency and a further sum of Rs.32,000/- under the head of loss of income for 16 months. It is challenging the same that the second respondent had filed the above appeal.

4. The deceased has suffered a communitated fracture of the right



C.M.A.No.2827 of 2014

tibia and fibula bone upper. He has undergone the treatment as an inpatient for 40 days, i.e from 16.06.2007 to 25.07.2007, a surgery had been performed by fixing a plate and screw. He had passed away and the Tribunal had treated the death as a consequence of the accident, though there was a nexus between the two. Therefore, the Award requires a modification.

5. The monthly notional income of the deceased can be taken at Rs.6,000/- The loss of income is calculated for 17 months, since the deceased could not have done any work for nearly 1 ½ years.. Therefore, a sum of Rs.1,02,000/- (Rs.6,000 x 17 months) under the head of loss of income. The claimants are entitled to attender charges, since the deceased has been an inpatient for over 40 days. Therefore, a sum of Rs.20,000/- can be granted under this head. That apart, a sum of Rs.10,000/- towards the transportation charges, Rs.10,000/- towards medical expenses and Rs.10,000/- towards extra nourishment charges can be granted. Therefore, the Award is reduced to a sum of Rs.1,52,000/-. Accordingly, the Compensation awarded by the Tribunal is reworked as below:



C.M.A.No.2827 of 2014

| <b><i>Heads</i></b>       | <b><i>Amount Awarded by this Court in Rs.</i></b> |
|---------------------------|---------------------------------------------------|
| Loss of Income            | <b>1,02,000</b>                                   |
| Attender Charges          | 20,000                                            |
| Medical expenses          | 10,000                                            |
| Transportation Charges    | 10,000                                            |
| Extra Nourishment Charges | 10,000                                            |
| <b>Total</b>              | <b>1,52,000</b>                                   |

6. Since the vehicle continues to be registered in the name of the 5<sup>th</sup> respondent, it is only the 5<sup>th</sup> respondent who is liable to compensate the claimants. The term owner is defined in Section 2(30) of the Motor Vehicles Act as follows:-

*“Owner” means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;”*

Therefore, considering the fact that the 5<sup>th</sup> respondent's name continues to be



C.M.A.No.2827 of 2014

so shown in the register of the Registering Authority, the 5<sup>th</sup> respondent is liable to compensate the claimants.

7. When the claim petition was filed in the year 2007, the 5<sup>th</sup> claimant was aged about 16 years and now, she should be aged about 31 years and is therefore, a major. Though no application has been taken out to declare her as a major, this Court *suo motu* takes into account the age given in the claim petition and also taking into account the efflux of time, declares the 5<sup>th</sup> claimant as major and discharges the second claimant from the guardianship.

8. This appeal is partly allowed and the impugned Award of the Tribunal is modified, reducing the compensation amount from **Rs.3,44,000/-** to **Rs.1,52,000/-**. **The said Award amount shall be payable by the 5<sup>th</sup> respondent herein, since this Court is exonerating the appellant.** The 5<sup>th</sup> respondent is directed to deposit the said amount of **Rs.1,52,000/-** to the credit of M.C.O.P.No.1966 of 2007 together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as



C.M.A.No.2827 of 2014

awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the claimants are permitted to withdraw the amount now determined by this Court, along with proportionate interest and costs, as apportioned by the Tribunal, after adjusting the amount if any already withdrawn. The award amount deposited by the appellant, if any, shall be refunded. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2022

srn

To

1. The Motor Accident Claims Tribunal  
(I Additional Sub Court), Cuddalore.
2. The Section Officer,  
V.R.Section,  
High Court of Madras,  
Chennai.



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C.M.A.No.2827 of 2014

**P.T.ASHA, J.,**

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C.M.A.No.2827 of 2014

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