



C.M.A(MD)No.785 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.09.2022

PRONOUNCED ON:15.11.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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1.Gunasekaran
2.Vijayalakshmi
3.Minor.Bharath
4.Minor.Madhu Nisha
(Minor 3rd and 4th petitioners
are through the first petitioner,
who is their father, next friend and
guardian : Appellants / Petitioners

Vs.

1. Muthukrishnan
2. The Branch Manager,
The New India Assurance
Company Limited,
Trichy Branch. : Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree, dated 25.04.2022, in M.C.O.P.No.872 of 2018, on the file of the Motor Accident Claims Tribunal (Additional District Court), Pudukkottai.



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For Appellants : Mr.P.Ganapathi Subramanian

For Respondents :Ms.P.Malini
for R2

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.872 of 2018, dated 25.04.2022, on the file of the Motor Accident Claims Tribunal/ Additional District Judge, Pudukottai.

2. The appellants/claimants, who were awarded with Rs.1,50,000/- with interest at 7.5% per annum and costs for the death of Lakshmana Kumar, who died consequent to an accident occurred on 27.09.2018, challenged the quantum of compensation awarded at by the Tribunal and claimed enhancement of the same.

3. Admittedly, the first appellant/first claimant is the brother of the deceased Lakshmana Kumar, that the second appellant/second claimant is the wife of the first appellant/claimant, and that the appellants 3 and 4/claimants 3 and 4 are the children of the appellants 1 and 2. The case of the claimants is that on 27.09.2018, when the deceased Lakshmana



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totalling Rs.1,50,000/- with interest and costs. Aggrieved by the quantum of award, the claimants have come forward with the present Civil Miscellaneous Appeal.

6. The learned Counsel for the appellants/claimants would contend that the claimants have clearly established that they are depending upon the income of the deceased Lakshmana Kumar, that the Tribunal ought to have fixed the income of the deceased at Rs.30,000/- as the appellants had established the fact that the deceased was working as Field Manager at Blutron India, Musiri, Trichy District, that the Tribunal ought to have considered the future prospects of the deceased and ought to have awarded compensation towards the future prospects of the deceased, that the Tribunal ought to have awarded Rs.40,000/- towards loss of consortium to each of the claimants and that the Tribunal ought to have awarded compensation towards loss of estate and for damages to clothing and articles.

7. The points that arise for consideration are;

(1) Whether the Tribunal erred in granting Rs.1,50,000/- as compensation without considering the fact that the claimants were the



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dependants of the deceased and are entitled to claim compensation under the head of loss of dependency?

(2) Whether the Tribunal erred in not granting any compensation towards loss of consortium and towards loss of estate and for damages to clothing and articles? And

(3) Whether the quantum of compensation awarded at by the Tribunal is just and proper and in accordance with law?

Points 1 to 3:

8. The case of the claimants is that the deceased after completing his B.Com., in MIET College, was working as a Field Manager in Grama Vidiyal Micro Finance for the period from 2009 to 2011, that thereafter he joined as Field Manager in Blutron India, that the deceased was getting monthly salary of not less than Rs.30,000/- per month, that the deceased, without marriage, has been living with his brother and brother's family and that the parents of the deceased Lakshmana Kumar were already reported dead.

9. The learned Counsel for the second respondent would contend that the appellants/claimants being brother, sister-in-law and brother's



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children of the deceased, they are not the legal heirs of the deceased and they are not dependant on the income of the deceased and that therefore, the Tribunal has rightly awarded Rs.1,50,000/- for loss of love and affection and towards Ambulance charges and funeral expenses.

10. Regarding the entitlement of brother or brother's family in laying the claim for compensation, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and another*** reported in ***(1987)3 Supreme Court Cases 234***, wherein it has been held as follows:

“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 an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependant upon the bread-winner of the family and if the bread-winner 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 has been substantially modified by the provisions of the Motor Vehicles Act in



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relation to cases arising out of motor vehicles accidents.

(Ed.: Though in the present case it may be that the deceased, who was only a 14 year old boy, was not the bread-winner of the family at the present moment, but legally his brothers would be entitled to claim compensation)

*Chapter VIII of the Motor Vehicles Act provides for a forum alternative to that provided under the provisions of the Fatal Accidents Act for realisation of compensation payable on account of motor vehicles accidents and its provisions are substantive and not merely procedural in nature. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act was “new in its species, new in its quality, new in its principles, in every way new” the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act. New situations and new dangers require new strategies and new remedies. Contrary observation made by the Supreme Court in **Minu B.Mehta case** were in the nature of obiter dicta.”*



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11. The Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Birender and others*** reported in ***(2020)11 Supreme Court Cases 356***, has specifically held that all or any of the legal representatives of the deceased can move application for compensation and the relevant passages are extracted hereunder:

*“12. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of [Section 166\(1\)](#). The major married son who is also earning and not fully dependant on the deceased, would be still covered by the expression “legal representative” of the deceased. This Court in *Manjuri Bera* (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression “legal representative” has not been defined in the Act. In *Manjuri Bera* (supra), the Court observed thus:*

“9. In terms of clause (c) of subsection (1) of [Section 166](#) of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said subsection makes the position clear that where all the legal representatives had not



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joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of [Section 166](#) of the Act.

10.The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

11. According to Section 2(11) CPC, “legal representative” 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. Almost in similar terms is the definition of legal representative under the Arbitration and [Conciliation Act, 1996](#) i.e. Under [Section 2\(1\)\(g\)](#).

12. As observed by this Court in [Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique](#) [1989 Supp (2) SCC 275 the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate



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of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression “legal representative”. As observed in [Gujarat SRTC v. Ramanbhai Prabhatbhai](#) [(1987) 3 SCC 234 a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.”

13. In paragraph 15 of the said decision, while adverting to the provisions of [Section 140](#) of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between “right to apply for compensation” and “entitlement to compensation”. The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of [Section 140](#) of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.



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14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only.

12. A learned Judge of this Court in ***K.Sivakumar Vs. R.Muthu Kumar and Others*** reported in ***2022(2) TN MAC 403***, after considering the decisions of the Hon'ble Supreme Court and this Court, has held that there is no iota of doubt that the legal representatives can maintain the claim under Section 167 of the Motor Vehicles Act and so, the issue as to whether the brother of the deceased can maintain a claim and whether he is entitled for compensation is answered in favour of the appellants/claimants.



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13. As already pointed out, in the case on hand, the first claimant being the brother of the deceased along with his wife and children have laid the above application claiming compensation for the death of his brother Lakshmana Kumar. Considering the above and the legal position above referred, this Court has no hesitation to hold that the claimants are entitled to claim compensation under the loss of dependency and others heads.

14. Now turning to the quantum of compensation, as already pointed out, according to the claimants, the deceased was working as a Field Manager in Blutron India, Kulithalai and was earning monthly salary of Rs.30,000/-. The claimants have produced salary and education particulars of the deceased under Ex.P.8, whereunder it is evident that the deceased was working as a Field Manager in Grama Vidiyal Micro Finance Ltd., and was drawing gross salary of Rs.6,784/- and net pay at Rs.3,679/- in November 2011. The claimants have produced a xerox copy of the Identity Card issued by the Blutron India and the same is not legible. Though the claimants have been alleging that the deceased was lastly working in Blutron India, Kulithalai, Karur District and was getting monthly salary at Rs.30,000/-, they have not produced any evidence to substantiate the same. As rightly pointed out by the learned



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Counsel for the respondent, the claimants have not even produced the records to show that the deceased, after leaving the Grama Vidiyal Micro Finance Ltd., had joined in Blutron India and was working therein at the time of accident.

15. It is evident from Ex.P.7 – Transfer and conduct certificate of the deceased that the date of birth is 25.07.1987 and as such, his age is fixed at 31 years at the time of accident. Considering the above and also the age of the deceased, the Tribunal has rightly fixed the notional income of the deceased at Rs.7,500/-. Since the deceased was a bachelor, as per the judgment of the Hon'ble Supreme Court in ***Smt.Sarla Verma and Others Vs. Delhi Transport Corporation and another*** reported in ***2009(5) LW 561***, 50% of the income has to be deducted towards his personal and living expenses. Accordingly, the notional income is arrived at Rs.45,000/- (Rs.7,500/2 x 12). Taking the age of the deceased as 31 years, the proper multiplier would be “16” and the compensation towards loss of dependency is arrived at Rs.7,20,000/-(Rs.45,000x16). Under the conventional heads, this Court awards a sum of Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.20,000/- towards loss of love and affection and all totalling Rs.7,70,000/- , as follows:



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Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced or granted
1	Loss of Dependency	-----	7,20,000/-	granted
2	Loss of love and affection	1,25,000/-	20,000/-	reduced
3	Funeral expenses	15,000/-	15,000/-	confirmed
4	Ambulance charges	10,000/-	----	-----
5	Loss of estate		15,000/-	granted
	Total	Rs. 1,50,000	Rs. 7,70,000/-	Enhanced by a sum of Rs.6,20,000/-

16. In the result, the Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from **Rs.1,50,000/- to Rs.7,70,000/-** along with interest at 7.5%pa., and costs. The second respondent/Insurer is directed to deposit the entire award amount along with accrued interest and costs, from the date of petition till the date of payment to the credit of above said M.C.O.P.No.872 of 2018, on the file of the Motor Accident Claims Tribunal / Additional District Judge, Pudukkottai, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit, the first and second appellants/claimants are entitled to withdraw Rs.4,70,000/- and



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Rs.1,00,000/- respectively along with proportionate interest and costs, the appellants 3 and 4 / claimants are entitled to Rs.1,00,000/- each, along with proportionate interest and costs and the minors' share shall be deposited in any Nationalized Bank till they attain majority and till then, the first appellant/claimant is entitled to withdraw the interest once in six months directly from the Bank, for the maintenance of the minors. The parties are directed to bear their own costs.

15.11.2022

Index : Yes : No

Internet : Yes : No

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To

- 1.The Motor Accident Claims Tribunal /
Additional District Court, Pudukkottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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