



C.M.A.Nos.2688 and 2691 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 06.06.2023

PRONOUNCED ON: 27.07.2023

CORAM:

**THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

Civil Miscellaneous Appeal Nos.2688 and 2691 of 2019  
and  
Civil Miscellaneous Petition No.13397 of 2019

C.M.A.No.2688 of 2019:

Veeramuthu

...Appellant/3<sup>rd</sup> respondent in  
MCOP

No.42/2017

Vs.

1. Neelavathy

.... Respondent/1<sup>st</sup> petitioner in  
MCOP No.42/2017

Ramasamy (deceased)

.... Respondent/2<sup>nd</sup> petitioner in  
MCOP No.42/2017

2. Nepolean

3. The Branch Manager

The New India Assurance Company Ltd.,  
78 First Floor, East Theradi Street,  
Dhanvantri Building,  
Chidabambaram – 608 001.

4. Abdul Rahman

5. The Manager

United India Insurance Company Ltd.,  
No.36-11, First Floor Raghavan Complex,  
Vellala Street, Ariyalur Taluk,  
Ariyalur District – 621 704.

... Respondents 2 to 5/ Respondents 1, 2, 4 & 5 in  
MCOP No.42/2017



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Prayer in C.M.A.No. 2688 of 2019: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, by the third respondent to set aside the Judgment and decree passed in M.C.O.P.No.42 of 2017 made passed by the Motor Accident Claims Tribunal/ Additional District Sessions Court at Ariyalur, Ariyalur District, whereby, the Tribunal has awarded 50% of the compensation in favour of the claimant.

|               |   |                            |
|---------------|---|----------------------------|
| For Appellant | : | Mr. R. Jayaprakash         |
| For R1        | : | Mr. S. Kaithamalai Kumaran |
| For R3        | : | Ms. C. Sangamithirai       |
| For R5        | : | Mr. D. Bhaskaran           |

C.M.A.No.2691 of 2019:

|               |                                                  |
|---------------|--------------------------------------------------|
| 1. Veeramuthu | ... Appellant/Petitioner in<br>MCOP No. 297/2016 |
|---------------|--------------------------------------------------|

Vs.

1. Nepolean  
2. The Branch Manager  
The New India Assurance Company Ltd.,  
78 First Floor, East Theradi Street,  
Dhanvantri Building,  
Chidabambaram – 608 001.

3. Abdul Rahman  
4. The Manager  
United India Insurance Company Ltd.,  
No.36-11, First Floor Raghavan Complex,  
Vellala Street, Ariyalur Taluk,  
Ariyalur District – 621 704.

... Respondents/Respondents in  
MCOP No. 297/2016

Prayer in C.M.A.No. 2691 of 2019: Civil Miscellaneous Appeal filed



under Section 173 of the Motor Vehicles Act, 1988, by the claimant, for enhancement of compensation awarded in M.C.O.P.No.297 of 2016 passed by the Motor Accident Claims Tribunal/ Additional District Sessions Court at Ariyalur, Ariyalur District.

For Appellant : Mr. R. Jayaprakash  
For R2 and R3 : Ms. C. Sangamithirai  
For R4 : Mr. D. Bhaskaran

### COMMON JUDGMENT

Both the Appeals arises out of a Common Judgment passed in M.C.O.P.No.42 of 2017 and M.C.O.P.No.297 of 2016, by the Motor Accidents Claims Tribunal/Additional District Sessions Court, Ariyalur, dated 19.02.2019 for the death of one Pachaiaammal. The claimant in M.C.O.P.No.42 of 2017 is the husband and the claimant in M.C.O.P.No.297 of 2016 is the sister of Pachaiaammal and the Tribunal has held that both the claimants are the dependants of the deceased Pachaiaammal, and granted compensation for a sum of Rs.6,10,000/- to be partitioned equally between them. Aggrieved over the granting of compensation in favour of the sister of the deceased, the husband of the deceased has filed C.M.A.No.2688 of 2019 and filed C.M.A.No.2691 of 2019 for enhancement of compensation.

2. The necessary facts relating to the disposal of the case is as follows:



2.1. On 29.08.2016 at about 9.00 a.m the deceased/Pachaiammal was travelling in a Auto/Three Wheeler Passenger Vehicle from Keelpaluvur to Jayamkondam road, when the vehicle was near Vinayaga College, a lorry bearing Registration No. TN-32-Z-5646 which belongs to the first respondent, driven by its driver in a rash and negligent manner and hit on the auto resulting in causing grievous injuries to the deceased. The deceased succumbed to the injuries on the way to the hospital. The deceased is a agricultural labourer and used to sell milk and earning good income. A criminal case in Crime No. 299 of 2016 has been registered before the Keelpaluvur police station under Sections 279, 337 and 304 (A) of I.P.C against the driver of Lorry.

2.2.The First respondent in both claim petitions namely Nepolean is the owner of the lorry, who remained ex-parte before the Tribunal. The second respondent is the Insurer of the lorry and they have filed counter, wherein it has been stated that the accident was occurred only due to the negligent driving of the auto driver and lorry driver is not responsible for the accident. The owner and Insurance company of Auto also arrayed as Respondent 3 and 4. The Claimant in M.C.O.P.No.297 of 2016 is the husband of the deceased and claimant in M.C.O.P.No.42 of 2017 is elder

sister of the deceased. Husband of deceased denied the dependency of the elder sister and claimed that as a legal heir he alone entitled to claim compensation. The sister of deceased contend that, husband has deserted the deceased and married another women and have separate family, is not entitled to claim compensation. Joint enquiry was conducted in both the claim petitions and evidence was recorded in M.C.O.P.No.297 of 2016.

2.3 After considering the oral and documentary materials the Tribunal has held that the driver of the lorry is responsible for the accident and the compensation amount of Rs.6,10,800/- awarded by the Tribunal, and the same is directed to be apportioned equally between the petitioners in both the M.C.O.Ps. Aggrieved over the apportionment ordered, and for enhancement of compensation, husband has filed these appeals.

3. Mr. Jaya Prakash, the learned counsel for the husband, has contended that the deceased is the wife and he is entitled for the compensation as an legal heir. There is ample evidence produced that the sister of the deceased is living with her husband, there is no dependency established by the sister of the deceased and compensation awarded to her is to be set aside.



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4. Per contra, Mr. Kaithaimalai Kumaran, the learned appearing for the elder sister of the deceased has submitted that due to the difference of opinion between the deceased - Pachaiaammal and her husband she has started to live with her sister namely Neelavathy. Since the sister herein is not having any children, the deceased was treated like her child and deceased was supported by the elder sister and her uncle.

5. On the side of Husband P.W.1 and P.W.2 were examined and Exs.P1 to P10 were marked. On the side of the sister of the deceased P.W.3 was examined. Exs.P11 to P16 were marked. On the side of the Respondent No.2. R.Ws.1 and 2 were examined and Ex.R1 is marked.

6. The learned counsel appearing for the Insurance company has stated that the Tribunal has properly appreciated each and every heads in which the claimant is entitled for compensation and there is no infirmity in the award and prays to dismiss these appeals.

7. The Insurance company has not filed any appeal challenging the liability fixed on the driver of the lorry. The owner and the Insurer have also not challenged the quantum.



8. The point arise for consideration in this appeal is:

1. whether the claimants are entitled for compensation for the death of the deceased Pachaiaammal, if so, what is the apportionment they are entitled?
2. Whether the compensation awarded by the Tribunal is just and proper?

9. I have considered the rival submissions of both sides and also perused the materials available on record.

10. In umpteen number of Judgements, the Hon'ble Apex Court and this Court has held that the term legal representative has a wider applicability, unless the personal law of succession, in the matter of payment compensation under Motor Vehicles Act, the Tribunal shall exercise it jurisdiction, for fixing it for dependency.

11. Recently this Court in ***Saroja Vs. Parvathy*** reported in **2021(2) TNMAC 169**, the Division Bench of this Court has considered the wider meaning of the term legal representative prescribed under Rule 2(11) of C.P.C and 2(c)d Tamil Nadu Motor Accident Claims Tribunal Rules 1989



and by following ***Gujarat State Road Transport Corporation Vs Ramabhai*** reported in ***1987 (3) SCC 234; Hafizum Begum Vs. Mohamed Ikram*** reported in ***AIR 2007 SC 2680; N.Jayashree and other Vs Cholamandalam M.S.General Insurance*** reported in ***2021(2) TNMAC 639*** SC has reiterated as follows:

*“43. Therefore, in all the above cases, the discussion made would show that dependency is the criteria to award compensation. Hence mere status of legal representative alone is not sufficient to make a claim. Thus, the basis for entitlement for compensation is dependency. If a legal representative is not a dependant of the deceased, he is not entitled for compensation for loss of dependency. Whether the claimants are dependants or not, has to be examined only based on the evidence adduced in a particular case.*

Based on the above settled legal provisions, this Court has constrained to consider the evidence produced by both sides.

12. The husband of the deceased was examined as P.W.1 and he has deposed that while deceased was going to Keelpaluvur village wherein the sister of the deceased was residing, the accident has taken place and mistakenly it is recorded in F.I.R and other documents, the deceased was living at the residence of her sister. He has also marked Ex.P7/Boothslip



issued by the Election Commission, Ex.P8/Family card and Ex.P10/Legal heir ship certificate to show that the deceased was living with him. However, in the cross examination he has admitted that he performed second marriage with another women, since he was not blessed with any child in the wedlock between the deceased-Pachiammal and him. The deceased was alive when he performed the second marriage with one Lakshmi and due to the said wedlock they have blessed with two children by name Arul and Muthammal. He denied that the deceased was living with her sister after his second marriage. He also admitted that after the post mortem the dead body of the deceased was handed over to the husband of the Neelavathy/sister of the deceased.

13. P.W.2, who is the relative of the husband, examined to show that the deceased was living with husband, not lived along with her sister.

14. Neelavathy/sister of the deceased was examined as P.W.3 and she has deposed that the deceased was living with them after separating herself from her husband, for the past 20 years. At the time of accident, the deceased has gone to do some agricultural work and due to the sudden demise of her sister, she has suffered loss of love and affection and sustained



severe mental agony. She further submitted that the deceased is younger sister and she treated the deceased as daughter as she is not having any child. The name of the deceased is also included in their Family Card/Ex.P13 and marked original Aadhar card, Voter Identity card as Ex.P14 and Ex.P15 respectively. She further submitted that after 20 years the husband of the deceased suddenly claiming compensation for the death of the deceased which is not proper.

15. It is also the admitted evidence of the husband that she married one Lakshmi 20 years ago, since he was not blessed with any child due to the wedlock between himself and the deceased. The admission of the husband that deceased was living with her sister at the time of accident supports the case of the sister of the deceased that the deceased was living separately from her husband and patronaged by her elder sister.

16. On a perusal of Ex.P8/ Family Card marked by the husband shows that the Family Card was issued in the year 2005 and the name of the deceased was in the Family Card along with the name of the second wife and two children. But he has not produced entries made in the Family Card more particularly to show that any addition or deletion made in the Family



Card. In Ex.P13 the Family Card of Neelavathy/sister of the deceased shows that there is a endorsement made by the concerned Department to include the name of the deceased as one of the family member in sister's family, which shows that the name of the deceased -Pachaiammal has been included in the year 2012 itself. Without removing the name from the Family Card issued to the deceased along with her husband, it is not possible to include the name in Family Card of other. Thus, the husband suppressed the deletion entry made in his Family Card and produced the fake one to claim compensation.

17. Similarly, the deceased has obtained the Aadhar Card in the address of her sister's residence. This Aadhar Card was issued in the year 2012 and the same was marked as Ex.P15, which shows that the deceased from the year 2012 onwards i.e., when she was separated from her husband, started residing with her elder sister Neelavathy. Evidence of Neelavathy is that she treated the deceased as her own daughter is also supported by the fact that she is not having any child. Moreover the deceased is 15 years (approximately) younger than her elder sister/Neelavathy and she lived in support of her sister and brother-in-law, who were senior citizens.



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18. From the above facts, it is made clear, that the deceased had removed her name from her matrimonial address and added her name in her sister's family card and the admission of fact, that the deceased-Pachaiammal was not living with her husband and the documents and evidence produced by her elder sister Neelavathy shows that from the year 2012 onwards she was living with her deceased younger sister-Pachaiammal.

19. It is also admitted by the Neelavathy that the deceased had not obtained divorce from her husband and she used to visit her husband's village during important occasions, which shows that even though she has not obtained divorce, she had maintained the cordial relationship with her husband and not having any strained relationship with her husband. Under such circumstances, this Court is of the view that as a legal heir, her husband is also entitled to claim compensation.

20. Similarly, as a sister and as a dependent, due to the old age, the Neelavathy shall be considered to be the dependent of the deceased and she is entitled for compensation. The Trial Court by considering the evidence above placed, has rightly concluded that both the claimants are entitled for compensation for the demise of the deceased-Pachaiammal. However, the



evidence produced, shows that the deceased was living with her elder sister Neelavathy, who is not having any child and she always treat the deceased as her own daughter and sister and brother-in-law of the deceased would have had large support and dependent on the deceased. Now, the loss of dependency to the sister is greater than the loss of dependency to the husband.

21. Considering the facts discussed above and applicability of the term legal representative as per the Judgement rendered by this Court mentioned supra, this Court is inclined to confirm the dependency found by the Tribunal.

22. The Tribunal has awarded total compensation of Rs.6,10,000/- under various heads, and the counsel appearing on behalf of the husband has contended that the compensation awarded by the Tribunal is on the lower side and the notional income fixed on the deceased to be revised as per the notional income fixed by this Court.

23. Mr. D. Bhaskaran, learned counsel appearing on behalf of the Insurance Company has submitted that the quantum of compensation awarded for the death of the deceased is properly assessed and considering the dependency and the age of the deceased, revision of the quantum need not be made.

24. I have considered the submissions of both sides and also perused the records with regard to the quantum of compensation awarded.

25. The Tribunal has fixed the notional income of the deceased as Rs.6,000/- considering the age of the deceased as 45 years. The case of the claimant is that she is a manual labourer and she used to attend daily wages in agriculture and also used to sell milk vending activities, however, no documentary proof regarding income has been produced by the claimants. The accident is of the year 2016 and this Court consistently followed the fixation of notional income for the accident during the year 2016, considering the age, this Court is inclined to fix a sum of Rs.9,000/- as notional income. Considering the age of the deceased by following Judgment of the Hon'ble Apex Court in *Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another* reported in **2009 (6) SCC 121**, the



applicable multiplier is '14' and the Judgement of the Hon'ble Apex Court in

***National Insurance Co. Ltd., vs Pranay Sethi and Others*** reported in **2017**

**(2) TNMAC 609 (SC)**, the future prospects applicable is 25%. Accordingly, the income is arrived after deducting 1/3<sup>rd</sup> for personal expenses of the deceased since the claimants herein are two in number is calculated as Rs.12,60,000/- [9000 + 2250 (25% of 9000) = 11250 – 3750 (1/3 of 11250) = 7500 X 12 X 14]. Thus, the compensation awarded by the Tribunal is modified as follows:

| S. No | Description                                                                     | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|---------------------------------------------------------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Loss of income                                                                  | Rs.5,80,800/-                   | Rs.12,60,000/-                    | Enhanced                               |
| 2.    | Loss of Estate                                                                  | Rs.15,000/-                     | Rs.15,000/-                       | Confirmed                              |
| 3.    | Funeral Expenses                                                                | Rs.15,000/-                     | Rs.15,000/-                       | Confirmed                              |
| 4.    | Loss of consortium to both husband and sister of the deceased each Rs.40,000/-. | ----                            | Rs.80,000/-                       | Granted                                |
|       | <b>Total</b>                                                                    | <b>Rs.6,10,800/-</b>            | <b>Rs.13,70,000/-</b>             | <b>Enhanced by Rs.7,59,200/-</b>       |

26. In the result,



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C.M.A.Nos.2688 and 2691 of 2017

(i) C.M.A.No.2688 of 2019 is dismissed.

(ii) C.M.A.No.2691 of 2019 is partly allowed. The

compensation awarded by the Tribunal at Rs.6,10,800/- is hereby enhanced to Rs.13,70,000/- [Rupees Thirteen Lakhs Seventy Thousand only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The 2<sup>nd</sup> respondent-The New India Assurance Company Ltd., in both MCOPs is directed to deposit the award amount, now determined by this Court, along with proportionate interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this common judgment, to the credit of M.C.O.P.No.297 of 2016 and M.C.O.P.No.42 of 2017 respectively, on the file of the Motor Accident Claims Tribunal/Additional District Sessions Court, Ariyalur, Ariyalur District. On such deposit, the claimant-Veeramuthu in MCOP No.297/2016 is permitted to withdraw 50% of the award amount i.e., Rs.6,85,000/- [Rupees Six Lakhs Eighty Five Thousand only] and the claimant-Neelavathy in MCOP No.42/2017 is permitted to withdraw 50% of the award amount i.e., Rs.6,85,000/- [Rupees Six Lakhs Eighty Five Thousand only] along with proportionate interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the award amount by directly giving credit to the Savings Bank Account of the



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claimants. In other aspects, the award of the Tribunal shall stand confirmed.

Since this Court has enhanced the compensation, the appellants/claimants are directed to pay necessary Court fee, if any, on the enhanced compensation.

(iii) There shall be no order as to costs.

(iv) Consequently the connected miscellaneous petition is closed.

27.07.2023

smn/ssi

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Additional District Sessions Judge,  
Motor Accident Claims Tribunal,  
Ariyalur, Ariyalur District.
2. The Section Officer,  
V.R.Section,  
High Court,  
Chennai.

K.RAJASEKAR,J.

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C.M.A.Nos.2688 and 2691 of 2019

Pre delivery Judgment made in  
C.M.A.Nos.2688 and 2691 of 2019

27.07.2023