



C.M.A.(MD)Nos.205 to 208 of 2012
C.M.A.(MD)No.1677 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserving the order	Date of Pronouncing the order
19.01.2023	03.02.2023

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

**C.M.A.(MD)Nos.205 to 208 of 2012
and
C.M.A.(MD)No.1677 of 2008
and
C.M.P.(MD)Nos.9467 and 9470 of 2022**

C.M.A.(MD)No.205 of 2012:-

The Divisional Manager,
M/s.United India Insurance Co. Ltd.,
TVS Building (D.O.1.),
West Veli Street,
Madurai – 1.

... Appellant

vs.

1.S.Sri Devi
2.Rm.Nachal
3.K.R.Ramanathan
4.Rm.Alagappan

5.Managing Director,
Tamil Nadu State Transport Corporation,
Salem.

... Respondents

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 13.06.2011, made in M.C.O.P.No.247 of 2003, on the file of the Motor Accident Claims Tribunal

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C.M.A.(MD)Nos.205 to 208 of 2012
C.M.A.(MD)No.1677 of 2008

(1st Additional District Court), Madurai.

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For Appellant : Mr.B.Rajesh Saravanan
For Respondents 1 to 3 : Mr.R.Aravindan
For 4th Respondent : No Appearance
For 5th Respondent : Mr.M.Prakash

C.M.A.(MD)No.206 of 2012:-

The Divisional Manager,
M/s.United India Insurance Co. Ltd.,
TVS Building (D.O.1.),
West Veli Street,
Madurai – 1.

... Appellant

vs.

1.Sri Devi
2.Rm.Alagappan

3.Managing Director,
Tamil Nadu State Transport Corporation,
Salem.

... Respondents

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 13.06.2011, made in M.C.O.P.No.248 of 2003, on the file of the Motor Accident Claims Tribunal (1st Additional District Court), Madurai.

For Appellant : Mr.B.Rajesh Saravanan
For 1st Respondent : Mr.R.Aravindan
For 2nd Respondent : No Appearance
For 3rd Respondent : Mr.M.Prakash



C.M.A.(MD)Nos.205 to 208 of 2012
C.M.A.(MD)No.1677 of 2008

C.M.A.(MD)No.207 of 2012:-

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The Divisional Manager,
M/s.United India Insurance Co. Ltd.,
TVS Building (D.O.1.),
West Veli Street,
Madurai – 1.

... Appellant

vs.

1.R.Uma
2.Rm.Alagappan

3.Managing Director,
Tamil Nadu State Transport Corporation,
Salem.

... Respondents

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 13.06.2011, made in M.C.O.P.No.249 of 2003, on the file of the Motor Accident Claims Tribunal (1st Additional District Court), Madurai.

For Appellant : Mr.B.Rajesh Saravanan

For 1st Respondent : Mr.R.Aravindan

For 2nd Respondent : No Appearance

For 3rd Respondent : Mr.M.Prakash

C.M.A.(MD)No.208 of 2012:-

The Divisional Manager,
M/s.United India Insurance Co. Ltd.,
TVS Building (D.O.1.),
West Veli Street,
Madurai – 1.

... Appellant

vs.

1.Rm.Nachal
2.Rm.Alagappan



C.M.A.(MD)Nos.205 to 208 of 2012
C.M.A.(MD)No.1677 of 2008

3.Managing Director,
Tamil Nadu State Transport Corporation,
Salem.

... Respondents

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 13.06.2011, made in M.C.O.P.No.250 of 2003, on the file of the Motor Accident Claims Tribunal (1st Additional District Court), Madurai.

For Appellant : Mr.B.Rajesh Saravanan

For 1st Respondent : Mr.R.Aravindan

For 2nd Respondent : No Appearance

For 3rd Respondent : Mr.M.Prakash

C.M.A.(MD)No.1677 of 2008:-

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Salem,
Salem District.

... Appellant

vs.

1.Tamilarasi, S/o.Arockiasamy
2.Minor Hemalatha, D/o. Late. Pandi
3.Minor Gowtham, D/o.Late. Pandi
4.Valliammal, M/o.Late. Pandi
[Minor respondents are rep. through their
mother and natural guardian, the first respondent
herein]
5.R.M.Alagappan
6.The Branch Manager,
The United India Insurance Co. Ltd.,
91, Kamarajar Salai, Madurai,
Madurai District.

... Respondents



C.M.A.(MD)Nos.205 to 208 of 2012
C.M.A.(MD)No.1677 of 2008

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 07.07.2008, made in M.C.O.P.No.79 of 2004, on the file of the Motor Accident Claims Tribunal-cum-District Judge, Sivagangai.

For Appellant : Mr.M.Prakash

For Respondents 1 to 4 : Mr.R.J.Karthick

For 6th Respondent : Mr.B.Rajesh Saravanan

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.

C.M.A.(MD)Nos.205 to 208 of 2012 are preferred by the Insurance Company against the award dated 13.06.2011, made in M.C.O.P.Nos.247 to 250 of 2003, on the file of the Motor Accident Claims Tribunal (1st Additional District Court), Madurai. C.M.A.(MD)No.1677 of 2008 is preferred by the Tamil Nadu State Transport Corporation, against the award dated 07.07.2008, made in M.C.O.P.No.79 of 2004, on the file of the Motor Accident Claims Tribunal-cum-District Judge, Sivagangai.

2. All the five Civil Miscellaneous Appeals arising out of the road accident, which occurred on 03.09.2002 at about 09.00 hours on Madurai – Salem Main Road, near Moonuchavadi, Periyapalam. In the said accident, among the occupants of the Hyundai car bearing Registration No.TN-59-R-2293, the driver



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Pandi died. Among the passengers, Rm.Subramanian and his 1 ½ years old son Sanjay died, two others survived (with injuries).

3. While the dependants of the deceased driver of the car filed claim petition before the Motor Accident Claims Tribunal, at Sivagangai, alleging negligence on the part of the bus driver owned by the Tamil Nadu State Transport Corporation, bearing Registration No.TN-27-N-0927, Claim petitions were filed on the behalf of the occupants in the car before the Motor Accident Claims Tribunal, Madurai, alleging negligence on the part of their car driver.

4. The Motor Accident Claims Tribunal, Madurai, which decided four claim petitions filed by the passengers of the car, fixed negligence on the part of the car driver and passed a common order dated 13.06.2011. The legal representatives of the deceased car driver, who alleged negligence on the part of the offending bus driver, succeeded in their claim petition filed before the Motor Accident Claims Tribunal, Sivagangai and award was passed against the Transport Corporation, the owner of the bus.

5. Therefore, an interesting question has now arose due to the conflicting finding regarding negligence in respect of the same accident by two different Tribunals.



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6. With the above background and facts, these batch of Civil Miscellaneous Appeals are taken up for consideration.

7. On 03.09.2002 at about 09.00 hours, a Hyundai Car, bearing Registration No.TN-59-R-2293 driven by one Pandi with Rm.Subramanian and his family members was proceeding from Madurai to Salem dashed against the Transport Corporation Bus coming from the opposite direction, bearing Registration No.TN-27-N-0927. Due to the impact, the car turned to the extreme East and got capsized. Pandi, the driver of the car, Subramanian, and his 1 ½ years old son Sanjay died due to the injuries sustained. Uma, W/o. Ram Mohan, sustained multiple grievous injuries and was treated as inpatient from 03.09.2002 to 14.09.2002 at K.G.Hospital, Coimbatore and follow up treatment as outpatient. Rm.Nachal, the other occupant of the car, who sustained multiple grievous injuries took treatment as inpatient at United Hospital, Coimbatore, from 03.09.2002 to 01.11.2002 and subsequently as outpatient.

8. The Hyundai car bearing Registration No.TN-59-R-2293 belongs to Ram Mohan, who is the brother of one of the occupants [Subramanian] of the car, who died in the accident. The deceased car driver Pandi was the paid employee of Ram Mohan.



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9. M.C.O.P.No.247 of 2003 was filed by the dependants of the deceased Rm.Subramanian, namely, Sridevi, Rm.Nachal and Ramanathan, assessing compensation of Rs.37,75,000/-, but claim restricted to Rs.20,00,000/- on the premise that the claimants are wife and parents of the deceased Rm.Subramanian. At the time of accident, the deceased was 35 years old and was a Managing Partner in a private Firm, earning Rs.20,000/- per month.

10. M.C.O.P.No.248 of 2003, filed by Sridevi the mother of the minor boy Sanjay, assessing compensation of Rs.2,70,000/-, but claim restricted to Rs.2,00,000/- for the loss of her 1 ½ years old son.

11. M.C.O.P.No.249 of 2003 filed by R.Uma for compensation in respect of the injuries sustained by her and for the expenses towards the medical treatment. She has estimated her loss at Rs.7,75,000/- and restricted her claim to Rs.5,00,000/-.

12. M.C.O.P.No.250 of 2003 filed by Rm.Nachal, the other occupant of the car, who sustained multiple grievous injuries and took treatment as inpatient at United Hospital, Coimbatore, from 03.09.2002 to 01.11.2002 and as outpatient thereafter, estimated her loss at Rs.15,10,000/- and restricted her claim to Rs.10,00,000/-.



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13. These four M.C.O.Ps. on the file of the Motor Accident Claims Tribunal, Madurai, were taken up for consideration, and common award dated 13.06.2011, was passed.

14. To prove the claim, the claimants in these four claim petitions have relied upon 28 exhibits and examined 7 witnesses.

15. The claim petitions were strongly resisted by the Insurance Company as well as the Transport Corporation. The Insurance Company, which has indemnified the owner of the Hyundai car, contested the claims alleging the negligence on the part of bus driver. Whereas, the Transport Corporation attributed negligence on the part of the car driver and contested the claim petition. It is to be noted that while the occupants of the car preferred the claim petitions before the Motor Accident Claims Tribunal, Madurai, alleging negligence on the part of their own driver and claiming compensation against the Insurance Company, which has indemnified the owner of the car, the legal representatives of the driver of the car, who died in the accident, attributing negligence on the part of the bus driver, preferred claim petition in M.C.O.P.No.79 of 2004 before the Motor Accident Claims Tribunal, Sivagangai, estimating the loss at Rs.25,17,000/-, but claim restricted to Rs.5,00,000/-.



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16. In the said claim petition, the legal representatives of the deceased Pandi, (the car driver), the claimants filed 7 exhibits and examined 2 witnesses. On behalf of the respondent, two witnesses were examined and two documents were marked.

17. Before this Court, four appeals, namely, C.M.A.(MD)Nos.205 to 208 of 2012 are preferred by the Divisional Manager, United India Insurance Co. Ltd., the insurer of the Hyundai car, against the common award passed by Motor Accident Claims Tribunal, Madurai. C.M.A.(MD)No.1677 of 2008 is filed by the Managing Director, Tamil Nadu State Transport Corporation, against the award passed by the Motor Accident Claims Tribunal, Sivagangai.

18. In all these appeals, the negligence is the point for consideration. As far as the Insurance Company, who is the appellant in C.M.A.(MD)Nos.205 to 208 of 2012 is concerned, it is contended that the Hyundai car was driven by its driver in a moderate speed following the road rules. It was the driver of the State Transport Corporation bus, bearing Registration No.TN-22-N-0927, who drove the bus rashly and negligently and dashed against the Hyundai car and pushed it towards extreme road margin, causing extensive damage to the vehicle and caused instant death of two occupants, namely, Subramanian and Sanjay. The driver of the car also later succumbed to the injuries in the hospital in the course of taking treatment. Besides,



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two other occupants also sustained multiple injuries. The Tribunal at Sivagangai considering the fact that the F.I.R. was registered against the driver of the bus by Puduchatram Police Station in Crime No.385 of 2002, rightly fixed negligence on the part of the bus driver and ordered the Transport Corporation to pay compensation. Contrarily, the Tribunal at Madurai relying upon the evidence of R.W.1, the driver of the bus, has shifted the negligence on the part of the car driver, which is contrary to the complaint given by Sridevi, the occupant of the Car, who has stated in her complaint that the accident took place due to the rash and negligent driving of the bus driver. The Tribunal at Madurai ignoring the contemporaneous document namely, the complaint of Sridevi leading to the registration of the F.I.R. alleging negligence on the part of the bus driver, had given go by the complaint, but given undue weightage to the self-serving testimony of the bus driver.

19. Contrarily, the learned counsel appearing for the State Transport Corporation submitted that the accident has occurred due to rash and negligent driving of the car driver, who in order to overtake a lorry going ahead of him, took extreme right and dashed against the bus coming on its extreme left from the opposite direction. After colluding with the bus, the car turned turtle and two occupants of the car died on the spot and the driver of the car died in the hospital in the course of taking treatment and other two occupants sustained injury. The accident happened because of the negligence of the car driver as spoken by the



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occupants of the car in their claim petitions and therefore, it is contended that the accident had occurred only due to the negligence of the car driver and therefore, they are not liable to pay compensation to the legal representatives of the car driver for the death occurred due to his negligence. Apart from the dispute regarding negligence, even regarding the quantum, the respective appellants have raised objections.

20. The point for consideration in all these appeals is on whose negligence the accident occurred on 03.09.2002 at about 09.00 hours, causing the instant death of two persons, namely, Rm.Subramanian, aged 35 years and Sanjay 1 ½ years old and the death of Pandi (Car driver) on 04.09.2002 at Rasipuram Government Hospital in the course of taking treatment and the injury caused to Uma and Rm.Nachal.

21. In the batch of claim petitions filed by the occupants of the car and the legal representatives of the deceased occupants (except the dependants of the car driver Pandi), which was tried before the Motor Accident Claims Tribunal, Madurai. Sridevi, the first informant though deposed before the Court and marked documents, her evidence was struck off, since the original deposition found missing. Therefore, the evidence of Uma, examined as P.W.2 and Rm.Nachal, examined as P.W.3, both injured occupants of the car were taken into consideration besides the evidence of



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the bus driver Thangavel, who all have attributed negligence on the part of the car driver Pandi for rash and negligent driving and causing the accident. P.W.4 could not say anything about the negligence, since he has fallen asleep at the time of accident.

22. As stated above, Sridevi, who gave information about the accident, has deposed before the Tribunal as P.W.1, but since her deposition copy went missing, the Tribunal has struck off her evidence. The evidence of Uma [P.W.2] attributing rash and negligent driving of Pandi, the driver of the car, in which, she was travelling, is contrary to the documentary evidence namely, the F.I.R., which is marked as Ex.P.22. The printed F.I.R. (Ex.P.22) indicates that the complaint was given by Sridevi, W/o.Subramanian while she was in Surya Hospital, Rasipuram and taking treatment for her injury. The F.I.R. has been registered on recording the statement of Sridevi in the Hospital at about 10.00 p.m. on 03.09.2002. As per the F.I.R., the accident has occurred due to the rash and negligent driving of the driver of the bus, bearing Registration No.TN-37-N-0927. It is stated in the F.I.R. that Subramanian, the husband of the first informant Sridevi, died on the spot. Apart from that, the other occupants, namely, Uma, her mother-in-law [Rm.Nachal] and the driver sustained injuries and were all taken to Surya Hospital, Rasipuram, for treatment.



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23. As far as Uma [P.W.2], when she was examined in chief on 22.11.2006, she has not whispered anything about the negligence of the vehicle drivers. But, she was again recalled after five years, *i.e.*, on 06.04.2011, wherein she has alleged that the accident occurred only due to the negligence of the car driver. She admits that Sridevi, the other occupant of the car, gave the complaint to the Police and based on the statement, F.I.R. was registered in which, it is stated that the accident occurred due to the negligence of the bus driver. Rm.Nachal, the other occupant of the car, who was examined as P.W.3 in the batch of claim petitions on the file of the Motor Accident Claims Tribunal, Madurai, was examined as P.W.2 in the claim petition in M.C.O.P.No.79 of 2004 filed by the dependants of the deceased car driver Pandi before the Motor Accident Claims Tribunal, Sivagangai. In this claim petition, she has deposed that the accident occurred due to the rash driving of the bus driver. Again in the cross-examination, she admits that at the time of accident, she was asleep.

Negligence:

24. The contradictory findings by two different Tribunals has occurred because the Tribunal at Madurai ignored the content of the F.I.R. [Ex.P.22], accepted the evidence of P.W.2, one of the occupants of the car and injured claimant, also the self-serving evidence of P.W.1, the driver of the bus. Whereas, the Tribunal at Sivagangai relied upon the F.I.R., the contemporaneous document, disbelieved the self-serving evidence of the bus driver Thangavelu [R.W.2]. At this juncture, it is to



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be noted that the Final Report has been filed after completion of investigation against the driver of the car, Pandi. The said Final Report showing the charge abated is marked as Ex.R.1 before the Tribunal at Madurai.

25. The order passed by the learned Judicial Magistrate pursuant to the Final Report in connection with the motor accident is marked as Ex.P.4 in M.C.O.P.No.79 of 2004, on the file of the Motor Accident Claims Tribunal, Sivagangai. The Final Report indicates that the investigation has led to the conclusion that the accident has occurred due to the negligence of the car driver Pandi and since he died in the accident, the day next to the accident, the charge against him has got abated.

26. This Court on considering the facts and circumstances, the information furnished to the Police by Sridevi soon after the accident, the contradictory oral evidence by the claimants, who got injured in the accident and the Final Report filed after investigation finds that the accident ought not to have been occurred without the contributory negligence of both the vehicle drivers. Considering the version of the eye-witnesses as well as the Final Report of the Police, fixing negligence on the part of the car driver, this Court fixes the negligence on both the drivers of the car as well as bus driver which could be roughly between 15% to 20% on the part of the bus driver.



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27. M.C.O.P.No.247 of 2003 filed by the wife, mother and father of the deceased Subramanian. He was 35 years old, working as Partner in Sathya Cartons, alleged to have income of Rs.20,000/- p.m. The Postmortem report (Ex.P.23) indicates the age of the deceased Subramanian. Ex.P.25 is the death certificate and Ex.P.26 is legal heirship certificate. Income Tax return for the year 1996-1997 shows the annual income of the deceased was Rs.64,352/-. Therefore, based on Ex.P.21, Income Tax return dated 27.10.1997, the annual income of the deceased Subramanian has been fixed at Rs.58,802/- after deducting tax. For calculating the loss of income, the Tribunal has estimated Rs.5,000/- towards loss of income of the deceased and after deducting 1/3rd of the deceased income for his personal expenses, applying multiplier '16', a sum of Rs.9,60,000/- towards loss of income ascertained and Rs.30,000/- towards loss of consortium and Rs.10,000/- towards loss of love and affection for the first petitioner and Rs.5,000/- each towards loss of love and affection for the petitioners 2 and 3 and Rs.5,000/- towards funeral and transport charges were awarded. Totally, a sum of Rs.10,20,000/- has been awarded as compensation.

28. The said award is under challenge in C.M.A.(MD)No.205 of 2012, the learned counsel appearing for the appellant/Insurance Company submitted that apart from the negligence on the part of the bus driver, which has not taken note of by the



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Tribunal, the loss of income at Rs.7,500/- per month for the deceased Subramanian based on the income tax return filed subsequent to the death, ought not have been taken note of.

29. Per contra, the learned counsel appearing for the respondents/claimants in C.M.A.(MD)No.205 of 2012 contended that the future prospects for the deceased not been taken note of though no appeal preferred by the claimants for enhancement of compensation, *suo motu* the compensation has to be enhanced.

30. In the appeal C.M.A.(MD)No.205 of 2012, the Insurance company contended that the Tribunal erred in fixing Rs.7,500/- as monthly income for the deceased Subramanian and fixation of multiplier '16' is on the higher side. In fact, at the time of accident, Subramanian was 35 years old and therefore, the multiplier '16' is proper. Further, the Auditor's report marked as Ex.P.29 and the Acknowledgement of the Income Tax Department for the return filed indicates that after income tax deduction, his annual income is around Rs.58,802/-. Since the man died at the age of 35 years and had future prospects, the fixation of monthly income at Rs.7,500/- and deducting 1/3rd towards personal expenditure is not excessive.

31. M.C.O.P.No.248 of 2003 is filed by Sridevi for the death of her 1 ½ years old son. She has estimated the loss at Rs.2,70,000/- and restricted the claim to



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Rs.2,00,000/- The Tribunal fixed Rs.1,25,000/- towards monetary loss and a sum of Rs.10,000/- towards loss of love and affection, Rs.5,000/- towards funeral expenses, Rs.5,000/- towards transport charges and Rs.5,000/- towards mental agony and totally, a sum of Rs.1,50,000/- payable by the owner of the car and its insurer. This award is under challenge in C.M.A.(MD)No.206 of 2012.

32. In C.M.A.(MD)No.206 of 2012, the Insurance company has questioned the quantum of compensation, fixing Rs.1,50,000/- for the loss of 1 ½ years old child. The appellant contended that the award of Rs.1,25,000/- as a monetary loss is on the higher side. In fact, in this case, the claimant not only has lost her only son, but also lost her husband in the accident. The Hon'ble Supreme Court in **Kurvan Ansari vs. Shyam Kishore Murmu** reported in (2022) 1 SCC 317 has held that for infants, a consolidated sum of Rs. 5,00,000/- shall be awarded as compensation. In view of the above judgment, the compensation awarded by the Tribunal is not on the higher side.

33. M.C.O.P.No.249 of 2003 is filed by R.Uma, one of the injured persons in the accident. She was admitted as inpatient and treated in K.G. Hospital for multiple injuries. She has estimated the loss at Rs.7,75,000/- restricted to Rs. 5,00,000/-. The Tribunal awarded a sum of Rs.3,80,000/- as compensation taking into account of the medical bills [Exs.P.6, P.7 and P.8], the transport bill [Ex.P.9] and



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the disability certificate [Ex.P.16]. The claimant had sustained fracture in the head, estimated 31% disability in her earning capacity, compensation of Rs.3,80,000/- was fixed. This award is under challenge in C.M.A.(MD)No.207 of 2012.

34. In the appeal in C.M.A.(MD)No.207 of 2012, the Insurance Company contended that the fixation of compensation is on the higher side and the notional monthly income fixed at Rs.3,000/- is excessive, since the claimant is only a house wife. The said contention of the appellant is unsustainable. The notional income for a house wife during the year 2002, cannot be less than Rs.3,000/- p.m. The compensation is awarded based on the medical records and disability certificate. The Hon'ble Supreme Court in **Lata Wadhwa and Ors. vs. State of Bihar and Ors.** reported in **(2001) 8 SCC 197**, observing that the monetary quantification of the work done by the women at home is something that has not been really assessed, held that notional income of Rs.3,000/- p.m. should be awarded to the house wife.

35. M.C.O.P.No.250 of 2003 is filed by one Rm.Nachal, who alleged to have been sustained fracture in head, left hand, left leg and hip bone. She was treated as inpatient in Surya Hospital and United Hospital, Coimbatore, between 04.09.2002 to 01.11.2002 and 17.11.2002 to 30.12.2002 respectively. She has suffered amputation of two fingers in the left leg. Medical bills [Exs.P.9 to P.15] were marked and considered by the Tribunal. A sum of Rs.56,365/- was awarded towards medical



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expenses. The disability certificate [Ex.P.28] issued by Dr.Chidambaram who was examined as P.W.7, was taken into consideration and permanent disability is fixed at 66%. After awarding Rs.2,61,360/- towards loss of earning power, considering the medical bills, a total sum of Rs.3,67,725/- is awarded. This award is challenged in C.M.A.(MD)No.208 of 2012 by the Insurance Company.

36. In this appeal, it is contended that the notional monthly income of Rs.3,000/- fixed by the Tribunal is excessive and therefore, the award of compensation under the head of loss of income and also under the head of loss of earning power tantamount to double payment.

37. This Court finds that no merits in this appeal C.M.A.(MD)No.208 of 2012, since the Tribunal after fixing Rs.3,000/- as notional monthly income, has applied multiplier '11', taking the age of the claimant as 54 years, thereafter, restricted the loss of income to 66% disability as certified by the Doctor [P.W.7] in his certificate [Ex.P.28].

38. This Court, after considering the contentions raised by the learned counsels for the appellants both on negligence and quantum, finds that there is no error in fixing the quantum of compensation by the Tribunal. In fact, it is on the lower side in the case of fatal. However, since the claimants have not preferred any



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appeal for enhancement, this Court is not inclined to disturb the award after 12 years.

Regarding the negligence, it is to be noted that the F.I.R. given by Sridevi, which has been marked as Ex.P.22 alleges negligence on the part of the transport corporation bus driver. However, when the claim petition was filed by them, they have shifted the negligence on the part of the car driver. The Final Report of the Police after investigation also supports their case. However, from the evidence, even according to the claim petition, it could be inferred that, but for the contribution of drivers of both the vehicles, the accident could not have occurred. In fact, the driver of the bus has mounted the witness box and has given evidence attributing entire negligence on the car driver. The fact remains that it is an accident occurred due to contributory negligence of both the drivers, in which, the major contribution is by the car driver.

39. In the batch of appeals, while the Insurance Company, who is the appellant in four cases, blamed the driver of the Transport Corporation against whom the F.I.R. was initially registered, whereas, the Transport Corporation, who is the appellant in one case blamed the driver of the car as a cause of accident against whom the Final Report was filed after investigation. While the Tribunal at Madurai, fixed entire negligence on the part of the car driver and fixed responsibility to indemnify the claimants upon the Insurance Company, the Tribunal at Sivagangai has fixed the responsibility on the Transport Corporation for the negligence of its driver.

However, the fact remains from the record that both the drivers have contributed for



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the accident. The contribution of the car driver, who has driven the car towards the extreme right in his attempt to overtake the lorry is more and substantial.

40. It is a case involving two vehicles, wherein the negligence of the car driver is major and the negligence of the bus driver is minor. In this accident, three persons died and two sustained injury. Instead of fixing negligence in a particular proportion for the sake of equitable distribution of compensation money, which is lying in the deposit and to avoid further delay in payment of compensation for the accident occurred 20 years ago, it is suffice to direct the Insurance Company as well as the Transport Corporation, which are responsible for their drivers' negligence to compensate the claimants in the below manner:-

The four claim petitions M.C.O.P.Nos.247 to 250 of 2003 [two for injury and two for death], the Insurance Company is directed to pay the compensation as awarded and in one claim petition M.C.O.P.No.79 of 2004 [for death of the car driver Pandi], the Transport Corporation is directed to pay the compensation.

41. Accordingly, the awards passed in M.C.O.P.Nos.247 to 250 of 2003, on the file of the Motor Accident Claims Tribunal, Madurai, as well the award passed in M.C.O.P.No.79 of 2004 on the file of the Motor Accident Claims Tribunal, Sivagangai, are confirmed. The claimants are entitled to interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization. The award amount to be shared by the claimants as per the apportionment indicated by the Tribunal.



C.M.A.(MD)Nos.205 to 208 of 2022
C.M.A.(MD)No.1677 of 2008

42. In the result, all the Civil Miscellaneous Appeals are dismissed. No

costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SMN2

[G.J., J.] [S.M., J.]
03.02.2023

To

- 1.The Motor Accident Claims Tribunal
(1st Additional District Court), Madurai.
- 2.The Motor Accident Claims Tribunal,
(District Judge), Sivagangai.
- 3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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*C.M.A.(MD)Nos.205 to 208 of 2012 and
C.M.A.(MD)No.1677 of 2008*

DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

SMN2

PRE-DELIVERY COMMON JUDGMENT MADE IN
C.M.A.(MD)Nos.205 to 208 of 2012
and C.M.A.(MD)No.1677 of 2008

DATED : 03.02.2023