



*C.M.A.(MD)Nos.1232 and 1233 of 2017*

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Reserved on : 04.03.2024

Pronounced on : 04.06.2024

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

C.M.A.(MD)Nos.1232 and 1233 of 2017

and

C.M.P.(MD)Nos.12009 and 12010 of 2017

**C.M.A.(MD)No.1232 of 2017**

The Branch Manager,  
I.C.I.C.I. Lombard General Insurance Company,  
Madurai.

...Appellant

Vs.

1. P.Anbuchithra
2. Minor Rishiprabhu  
represented by Guardian by his  
Mother Anbuchithra

3. Rajamahendran

...Respondents

**C.M.A.(MD)No.1233 of 2017**

I.C.I.C.I Lombard General Insurance Company,  
ICICI Bank Towers, Bandra Kurla Complex,  
Mumbai-400051.  
Represented by its The Branch Manager,  
I.C.I.C.I. Lombard General Insurance Company,  
Madurai

...Appellant



*C.M.A.(MD)Nos.1232 and 1233 of 2017*

Vs.

1. Gunasundhari

2. Minor B.Malathi

3. Rajamahendran

4. C.Palanivel

5. P.Jeyam

6. P.Anbuchithra

... Respondents

**Common Prayer :** These Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 27.07.2016 in M.C.O.P.Nos.271 of 2011 and 544 of 2011 on the file of the Motor Accident Claims Tribunal cum Special Court for E.C. & NDPS Act Cases, Pudukkottai and allow these above Civil Miscellaneous Appeals.

(in C.M.A.(MD)No.1232 of 2017)

For Appellant : Mr.V.Muthukamatchi

For R1 : M/s.A.Banumathy

For R3 : No appearance

(in C.M.A.(MD)No.1233 of 2017)

For Appellant : Mr.V.Muthukamatchi

For R1 & R2 : Mr.G.Madhavan

For R3 : No appearance

For R4 & R5 : Mr.D.Ramesh Kumar

For R6 : M/s.A.Banumathy



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### **COMMON JUDGMENT**

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These Civil Miscellaneous Appeals are directed against the common order passed in M.C.O.P.Nos.271 of 2011 and 544 of 2011 dated 27.07.2016 on the file of the Motor Accident Claims Tribunal/Special Court for E.C. & NDPS Act Cases, Pudukkottai.

2. The appellant in both the appeals is the insurer. The respondents 1 and 2 in both the appeals are the claimants. For the sake of convenience and brevity, the parties herein will be referred to as per their status/ranking in the Tribunal.

3. Both the claim petitions in M.C.O.P.Nos.271 and 544 of 2011 came to be filed claiming compensation for the death of one Balamurugan, consequent to an accident occurred on 12.11.2010. The Tribunal, after conducting joint trial of both the cases, has passed an common order dated 27.07.2016 holding that the accident was occurred only due to the rash and negligent driving of the first respondent's driver and consequently mulcted liability on the second respondent/insurer directing them to pay compensation of Rs.16,87,500/- (Rupees Sixteen Lakhs Eighty Seven



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Thousand and Five Hundred only) to the claimants in both the claim petitions and the respondents 3 and 4 in M.C.O.P.No.544 of 2011.

4. The first claimant in both the claim petitions, claiming to be the wife of the deceased Balamurugan, have filed separate claim petitions along with their child claiming compensation for the death of their husband Balamurugan. The Tribunal, upon perusing the evidence available on record, has given a finding that the first claimant Gunasundhari in M.C.O.P.No.544 of 2011 (hereinafter called as the said Gunasundhari) is the legally wedded wife of the deceased Balamurugan, that the first claimant Anbuchithra in M.C.O.P.No.271 of 2011 (hereinafter called as the said Anbuchithra) is the second wife of the deceased Balamurugan, that the second claimant in both the claim petitions are the children born to the deceased Balamurugan and that the respondents 3 and 4 in M.C.O.P.No. 544 of 2011 are the parents of the deceased Balamurugan and all of them are entitled to get compensation.

5. The second respondent/insurer has preferred the present two appeals challenging the decision of the Tribunal in granting compensation



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to the claimants in M.C.O.P.No.271 of 2011 on the ground that they cannot be considered as legal heirs nor legal representatives of the deceased Balamurugan.

6. The learned counsel appearing for the second respondent/insurer would submit that the said Anbuchithra is not the legally wedded wife of the deceased Balamurugan, that the claimants in M.C.O.P.No.271 of 2011 are not the legal heirs of the deceased Balamurugan and they do not have any relationship with the deceased Balamurugan, that both of them cannot also be considered as legal representatives of the deceased Balamurugan and that the Tribunal ought to have appreciated the evidence of P.W.2- legally wedded wife of the deceased Balamurugan and held that the said Anbuchithra is not the wife of the deceased Balamurugan and as such, she is not entitled to get any compensation.

7. The learned counsel appearing for the second respondent/insurer would further submit that the Tribunal erred in deducting 1/5<sup>th</sup> of the salary towards personal and living expenses of the deceased Balamurugan by adding the claimants in M.C.O.P.No.271 of 2011 as the dependents of



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the deceased Balamurugan and the Tribunal ought to have deducted 1/3<sup>rd</sup> of the salary considering the fact that the deceased Balamurugan had left the claimants and the respondents 3 and 4 in M.C.O.P.No.544 of 2011.

8. The learned counsel appearing for the claimants in M.C.O.P.No. 544 of 2011 would reiterate the arguments of the learned counsel appearing for the second respondent/insurer and would contend that the claimants in M.C.O.P.No.271 of 2011 are not entitled to get any compensation as they are not the legal heirs of the deceased Balamurugan. But on the other hand, the learned counsel appearing for the claimants in M.C.O.P.No.271 of 2011 would contend that the Tribunal, taking note of the facts that the deceased Balamurugan was living with the claimants in M.C.O.P.No.271 of 2011 at the time of his death, that the deceased Balamurugan has already filed a divorce petition against the said Gunasundhari and that the claimants in M.C.O.P.No.271 of 2011 were only depending on the deceased Balamurugan, has rightly granted compensation to the claimants in M.C.O.P.No.271 of 2011.

9. Admittedly, the deceased Balamurugan has filed a divorce petition in H.M.O.P.No.11 of 2004 against the said Gunasundhari on the



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file of the Subordinate Court, Pudukkottai claiming divorce on the grounds of adultery, cruelty and desertion and it is evident from Ex.P.14-copy of the divorce petition that the deceased Balamurugan has specifically stated that his marriage with the said Gunasundhari was solemnized on 18.02.2001 in PVR Thirumana Mandabam at Thiruvappur, Pudukkottai Town. The said Gunasundhari has filed a counter statement and was contesting the divorce petition. Pending divorce petition, the said Gunasundhari has filed a petition in I.A.No.37 of 2008 claiming interim maintenance for herself and for her minor daughter and the learned Subordinate Judge has passed an order dated 23.06.2009 under Ex.P.19 directing the deceased Balamurugan to pay interim maintenance of Rs. 2,500/- to his wife and minor daughter. Moreover, the said Gunasundhari has also filed a maintenance case in M.C.No.13 of 2005 under Section 125 Cr.P.C. claiming maintenance for herself and for her minor daughter before the District Munsif cum Judicial Magistrate, Keeranur. The deceased Balamurugan has filed a counter taking a stand that the marriage was not consummated. But the learned Magistrate has specifically observed that the deceased Balamurugan during his cross-examination admitted that the second petitioner therein was his child born through the



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said Gunasundhari. Considering the above, the finding of the Tribunal that the said Gunasundhari is the legally wedded wife and the second claimant Malathi is the minor daughter of the deceased Balamurugan, cannot be found fault with.

10. Now turning to the claimants in M.C.O.P.No.271 of 2011, as rightly contended by the learned counsel appearing for the claimants in M.C.O.P.No.271 of 2011, there is ample evidence to show that the deceased Balamurugan was living with the claimants in M.C.O.P.No.271 of 2011 and they have produced the birth certificate of the second claimant Rishiprabhu, wherein, the deceased Balamurugan and the said Anbuchithra are shown as the parents of the said child. More importantly, the claimants in M.C.O.P.No.271 of 2011 have produced the medical bills under Ex.P.3 to show that the said Anbuchithra had spent for medical expenses for the deceased Balamurugan as he was living with her at that time. Considering the evidence available on record, the finding of the Tribunal that the said Anbuchithra was living with the deceased Balamurugan after separating from his first wife and that the said Rishiprabhu was born to the deceased Balamurugan, cannot be found fault with.



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11. Now turning to the legal plea that since the legally wedded wife was very much alive and divorce petition was pending, the said Anbuchithra cannot be considered as a legally wedded second wife of the deceased Balamurugan and she cannot be considered as a legal heir nor legal representative to the deceased Balamurugan. Section 166(1) of the Motor Vehicles Act speaks about only the legal representatives of the deceased and not the legal heirs. As per rule 2(c) of the Tamil Nadu Motor Accident Claims Tribunal Rules 1989, the words “Legal representative” shall have the meaning assigned to the same under Section 2(11) C.P.C., which is as follows:-

*“ 2(11) : “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.”*

12. The Hon'ble Supreme Court in the case of ***Custodian of Branches of BANCO National Ultramarino Vs. Nalini Bai Naique*** reported in ***AIR 1989 SC 1589*** has specifically held that “legal representative” defined in Section 2(11) C.P.C. is inclusive in character



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and its scope is wide, it is not confined to legal heirs only. Referring to the above judgment, the Hon'ble Supreme Court in the case of ***Hafizun Begum Vs. Mohd.Ikram Heque and others*** reported in (2007) 10 SCC 715 has observed as follows:-

*“12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino Vs. Nalini Bai Naique (AIR 1989 SC 1589) 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 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 State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr. (AIR 1987 SC 1690) 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 the case of ***N.Jayasree and others Vs. Chola mandalam MS General Insurance Co. Ltd.***, reported in 2021 (2) TN MAC 639 (SC), the



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Hon'ble Supreme Court has observed that mother-in-law, who was living with her daughter and son-in-law, can only be a dependent upon her son-in-law and that though she may not be a legal heir, she is a legal representative under Section 166 of the Motor Vehicles Act and is entitled to maintain a claim petition and the relevant passages are extracted hereunder:-

*“14. The MV Act does not define the term ‘legal representative’. Generally, ‘legal representative’ means a person who in law represents the estate of the deceased person and includes any person or persons in whom legal right to receive compensatory benefit vests. A ‘legal representative’ may also include any person who intermeddles with the estate of the deceased. Such person does not necessarily have to be a legal heir. Legal heirs are the persons who are entitled to inherit the surviving estate of the deceased. A legal heir may also be a legal representative.*

.....

*16. In our view, the term ‘legal representative’ should be given a wider interpretation for the purpose of Chapter XII of MV Act and it should not be confined only to mean the spouse, parents and children of the deceased.*



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*As noticed above, MV Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the MV Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfil its legislative intent. We are also of the view that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. Section 166 of the MV Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realization of compensation.*

.....

*21. Coming to the facts of the present case, the fourth appellant was the mother-in-law of the deceased. Materials on record clearly establish that she was residing with the deceased and his family members. She was dependent on him for her shelter and maintenance. It is not uncommon in Indian Society for the mother-in-law to live with her daughter and son-in-law during her old age and be dependent upon her son-in-law for her maintenance. Appellant no.4 herein may not be a legal heir of the deceased, but she certainly suffered on account of his death. Therefore, we have no hesitation to hold that she is a “legal representative” under Section 166 of the MV Act and is entitled to maintain a claim petition.”*



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14. A specific issue whether the second wife is entitled to maintain a claim petition has come up before the Division Bench of Karnataka High Court in the case of ***Lalita Vs. M.R.Sunilkumar and others*** reported in ***2016 ACJ 79*** and the Division Bench has observed,

*“49. Therefore, in the instance case, on fact, it is established that the deceased was living with the second wife: and the second wife and children were pending solely on the income of the deceased. Having regard to the provisions contained in Section 168 of the 1988 Act, it cannot be said that the second wife is not entitled to any maintenance or that she has to be excluded from the compensation payable by the Tribunal. Therefore, we are of the view having regard to the intention of the legislature as reflected in Section 168 of the 1988 Act, where it is a legal representative of the deceased and not a legal heir, who is entitled to maintain a petition and when the definition of the term 'legal representative' includes intermeddler, the second wife, as she would be intermeddling with the estate of the deceased by virtue of the fact that she was living with him at the time of his death would be entitled to maintain a petition. She also would be entitled to compensation, as a dependant, as she was depending on him for her living and sustained loss on account of his death. At the same time the first wife, who*



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*had been living separately, for whatever reason and even if she was not dependent on the deceased, would be entitled to compensation, as a legally wedded wife and also as a person entitled to the estate of the deceased. Similarly, the daughter of the second wife, though illegitimate, by virtue of Section 16(1) of Hindu Marriage Act, is to be treated as legitimate child. She would be entitled to a share in the estate of the father as class-I her and the petition filed by her can neither be dismissed nor she can be denied the compensation. In the light of the aforesaid discussion, we are of the view that in the facts of this case, the order passed by the Tribunal holding that the petition filed by the second wife is not maintainable is not correct and therefore, it has to be set aside. The second wife, as dependent on the deceased and an intermeddler of his estate and who has sustained loss is entitled to compensation along with the first wife and her own daughter. Therefore all of them are entitled to compensation. We therefore have to first determine the amount of compensation payable and then specify the person or person to whom, compensation is payable and then specify the amount payable to such persons out of the compensation so determined.”*

15. Moreover, the learned trial Judge, by relying on the decision



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reported in **2014 ACJ 105**, has come to the decision that grant of compensation under Motor Vehicles Act is the discretion of the Court and it need not necessarily be guided by the rules under the personal law of succession.

16. In the case on hand, since the first wife Gunasundhari was very much alive and in the absence of any divorce between the said Gunasundhari and the deceased Balamurugan, the said Anbuchithra cannot be considered as a legally wedded second wife and as such, she cannot be taken as a legal heir. But as already pointed out, since the said Anbuchithra along with her minor son were living with the deceased Balamurugan, they were solely dependent on the income of the deceased Balamurugan.

17. The Motor Vehicles Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. It is a settled law that the provision of the Motor Vehicles Act have to be interpreted liberally so as to serve the real purpose underlying the enactment and fulfil its legislative intent. The Hon'ble Supreme Court in **Jayasree's** case above referred, has made it clear that under Section 166 of



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the Motor Vehicles Act every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realisation of compensation. In the above decision case, mother-in-law, who was living with her daughter and son-in-law, was considered as a dependent as she suffered on account of the death of her son-in-law and on that basis, the mother-in-law was considered as a legal representative under Section 166 of the Motor Vehicles Act.

18. In the case on hand, as already pointed out, though the said Anbuchithra cannot be considered as a legal heir, but taking note of her dependency, she can also be considered as a legal representative of the deceased Balamurugan and is entitled to get compensation. Considering the above, the decision of the Tribunal in awarding compensation to the claimants in M.C.O.P.No.271 of 2011 cannot be found fault with.

19. The second respondent/insurer has not disputed the quantum of compensation awarded by the Tribunal. The second respondent/insurer has not canvassed any other reason or ground to impugn the common order. Hence, this Court concludes that the appeals are devoid of merits and the same are liable to be dismissed.



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20. Considering the other facts and circumstances, this Court, further decides that the parties are to be directed to bear their own costs.

21. In the result, these Civil Miscellaneous Appeals are **dismissed** and the common order passed in M.C.O.P.Nos.271 of 2011 and 544 of 2011 dated 27.07.2016 are confirmed. The appellant/insurer is directed to deposit the compensation amount with interest at 7.5% per annum to the credit of M.C.O.P.Nos.271 of 2011 and 544 of 2011 from the date of claim petitions till the date of deposit on the file of the Motor Accident Claims Tribunal/Special Court for E.C. and NDPS Act Cases, Pudukkottai, excluding the default period, if any, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant in M.C.O.P.No.271 of 2011 and the first claimant, second claimant, who has attained majority and the respondents 3 and 4 in M.C.O.P.No.544 of 2011 are permitted to withdraw their shares as per the apportionment fixed by the Tribunal together with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. The share of the minor second claimant in M.C.O.P.No.271 of 2011 shall be deposited in any one of the



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Nationalised Banks till he attain majority. The first claimant in M.C.O.P.No.271 of 2011, who is the mother of the minor second claimant, is permitted to withdraw the interest of minor once in three months directly from the Bank. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

**04.06.2024**

NCC :yes/No  
Index :yes/No  
Internet:yes/No  
csm

To

1. The Motor Accident Claims Tribunal /  
Special Court for EC and NDPS Act Cases,  
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**  
C.M.A.(MD)Nos.1232 and 1233 of 2017  
and  
C.M.P.(MD)Nos.12009 and 12010 of 2017

**Dated : 04.06.2024**