



CMA NOS.222 & 333 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 08 / 01 / 2025

JUDGMENT DELIVERED ON : 08 / 04 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NOS.222 AND 333 OF 2023

AND

CMP NO.1726 OF 2023 IN CMA NO.222 OF 2023

AND

CMP NO.23861 OF 2024 IN CMA NO.222 OF 2023

CMA NO.222 OF 2023

1.R.Dhandapani

2.M/s.IFFCO – TOKIO General
Insurance Co. Ltd.,
No.28 (Old No.195),
North Usman Road, T.Nagar,
Chennai – 600 017.

... Appellants /
Respondents

Vs.

C.Karthikeyan

... Respondent /
Petitioner

PRAYER IN CMA.NO.222 OF 2023 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated February 25, 2022 made in M.C.O.P.No.736 of 2015 on the file of the Motor Accidents Claims Tribunal / IV Court of Small Causes, Chennai.



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CMA NOS.222 & 333 OF 2023

For Appellants : Mr.S.Arunkumar
For Respondent : Mr.F.Terry Chella Raja
for Mr.S.Ravikumar

CMA NO.333 OF 2023

C.Karthikeyan

... Appellant /
Petitioner

Vs.

1.R.Dhandapani
2.M/s.IFFCO – TOKIO General Insurance Co. Ltd.,
No.28 (Old No.195),
North Usman Road, T.Nagar,
Chennai – 600 017.

... Respondents /
Respondents

PRAYER IN CMA.NO.333 OF 2023 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to enhance the compensation awarded vide Award dated February 25, 2022 made in M.C.O.P.No.736 of 2015 on the file of the Motor Accidents Claims Tribunal / IV Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chella Raja
for Mr.S.Ravikumar

For Respondents : Mr.S.Arunkumar

COMMON JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated February 25, 2022 passed by the ‘Motor Accidents Claims Tribunal - IV Court of Small Causes, Chennai’ (‘Tribunal’ for short) in M.C.O.P.No.736 of 2015, the

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respondents therein have preferred CMA.No.222 of 2023 praying to set aside the Award, while the petitioner - claimant therein has preferred CMA No.333 of 2023 praying to enhance the compensation. This Common Judgment will now decide both these Civil Miscellaneous Appeals.

2. For the sake of convenience, the parties herein will be referred to as per their rank in the Motor Accident Claim Original Petition.

PETITIONER'S CASE

3. Petitioner is the husband of the deceased – K.Hemalatha. The case of the petitioner is that on December 12, 2014, at around 11:00 PM, the deceased - K.Hemalatha was riding as a pillion rider on a motorcycle bearing Registration No.TN-02-W-6240 driven by her brother / first respondent. The first respondent rode the motorcycle in a rash and negligent manner at high speed, lost control and fell into a deep road hollow near Green Garden Colony, Anna Nagar East, Chennai. Consequently, the deceased – K. Hemalatha sustained head and multiple fatal injuries. Immediately, she was taken to Sundaram Medical Foundation, Shanthi Colony, Anna Nagar, Chennai. Despite treatment at Sundaram Medical Foundation, she passed away on December 24, 2014



and post-mortem was conducted by Rajiv Gandhi Government General

Hospital, Chennai. At the time of accident, the deceased was working as a

Staff Nurse in Government Hospital, Coimbatore. The petitioner claims

that the rider of the motorcycle / first respondent was solely responsible

for the accident, and hence, the respondents 1 and 2, who were the owner

and insurer of the motorcycle respectively, are liable to pay compensation.

Accordingly, the petitioner filed a claim petition claiming compensation of

Rs.50,00,000/- from the respondents.

FIRST RESPONDENT'S CASE

4. The first respondent (owner of the motorcycle cum brother of the deceased) denied the allegations, asserting that the accident occurred solely due to the negligence of the deceased, who was carrying luggage and suddenly fell off while he was riding at a normal speed. Further asserted that his vehicle was insured with the second respondent - insurance company under Policy Nos.1-2QOACK P400 and 87622653 [valid from May 8, 2014 to May 7, 2015]. Further, the first respondent was holding a valid driving licence at the time of accident. Hence, if any liability arises, it must be borne solely by the second respondent - insurance company. Thus, he sought to dismiss the claim petition.



SECOND RESPONDENT'S CASE

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5. The second respondent - insurance company denied its liability and contended that the first respondent lacked a valid driving license, making the claim untenable due to policy violations. Further, second respondent contested the alleged cause of the accident, the deceased's income and the compensation claimed. Thus, it sought to dismiss the claim petition.

TRIBUNAL

6. Before the Tribunal, the petitioner was examined as P.W.1, one Mr.K.T.Palaniswamy, Junior Assistant, Coimbatore Medical College was examined as P.W.2 and one Mr.T.Murthy, an ocular witness to the accident was examined as P.W.3, and Ex-P.1 to Ex-P.14 were marked on the side of the petitioner. On the side of the first respondent, the first respondent - Mr.R.Dhandapani was examined as R.W.1 and Ex-R.1 to Ex-R.5 were marked. Neither any witness was examined nor any document was marked on the side of the second respondent.

7. The Tribunal, after hearing both sides and considering the evidence available on record, held that the accident had occurred only due



to rash and negligent riding of the rider of the motorcycle / first respondent and accordingly, directed the second respondent, being the insurer of the first respondent's vehicle, to pay compensation to the petitioner. The break-up of the compensation awarded is as hereunder:-

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1	Loss of dependency	Rs.58,89,228.00
2	Loss of consortium	Rs.40,000.00
3	Loss of estate	Rs.15,000.00
4	Funeral expenses	Rs.15,000.00
5	Loss of love and affection	Rs.50,000.00
6	Transportation expenses	Rs.5,000.00
	Total	Rs.60,14,228.00
	10% Income Tax deduction	(-) Rs.6,01,422.00
	Grand total	Rs.54,12,806.00 restricted to Rs.50,00,000.00

8. The first respondent, namely R.Dhandapani, claiming that the deceased had nominated him as her nominee for the Contributory Pension Scheme and that she was under his care and custody, contends that the Tribunal failed to note that he was the dependent of the deceased. Further contends that, for the past 9 years before the accident, the deceased had been living separately from the petitioner / her husband due to incompatibilities with him; that the petitioner / husband deserted her



long back; that due to the strained relationship between them, the deceased never wished the petitioner / husband to inherit or claim any legal nominee or beneficiary and hence, the petitioner / husband is not entitled to file the claim petition. Accordingly, the first respondent along with the Insurance Company (second respondent) filed Civil Miscellaneous Appeal No.222 of 2023 challenging the Award passed by the Tribunal in favour of petitioner / husband of the deceased.

9. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner / husband has filed CMA No.333 of 2023.

ARGUMENTS

10. Mr.S.Arunkumar, learned counsel appearing for the appellants in CMA No.222 of 2023 / respondents would submit that the petitioner and the deceased led their matrimonial life only for a short span of time. Thereafter, the wife / deceased began residing with her brother / first respondent namely R.Dhandapani. He would further submit that on the fateful day, brother of the deceased, namely R.Dhandapani, picked up the deceased as a pillion on the motorcycle from Central Railway Station



and proceeded towards her house. While so, the accident occurred. The

claim petition by the petitioner / husband is not at all maintainable since the petitioner / husband was not a dependent of the deceased. As the deceased was under the care and custody of the first respondent - R.Dhandapani, he alone can be considered a dependent of the deceased and not the petitioner. The Tribunal failed to consider Ex-R.1 to Ex-R.5 documents as well as the oral evidence of R.W.1 and erred in passing an Award in favour of petitioner. Accordingly, he would pray to set aside the Award.

10.1. Further, he would submit that the respondents have filed an Application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 in CMP No.23861 of 2024 in CMA No.222 of 2023, seeking to receive additional documentary evidence in order to prove the aforesaid facts. The said documents are necessary to decide the case. Accordingly, he would pray to allow CMP No.23861 of 2024 in CMA No.222 of 2023.

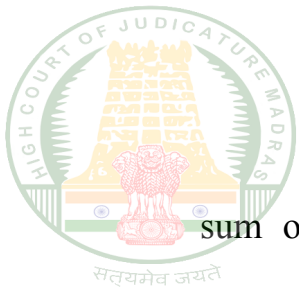
11. In response to the above arguments, Mr.F.Terry Chella Raja, learned counsel appearing for the petitioner / husband would submit that first respondent - R.Dhandapani is the tort-feasor in this case. He did



not plead in his counter that the petitioner is not a dependant of the deceased and that, on that account, the petitioner is not entitled to entertain the claim petition. He brought up such allegations only through his oral evidence. It is settled law that without pleadings, any amount of oral evidence is of no use. Be that as it may, the petitioner / husband is the legal heir / legal representative of the deceased. In the presence of legal heir / legal representative, the first respondent - R.Dhandapani has no legal right to raise objection. Further, mere nomination does not confer any right over the estate left by the deceased.

11.1. He would further argue that the additional documents sought to be marked would in no way be helpful to decide the appeal. The said documents were not adduced before the Tribunal. Only with a view to drag on the proceedings, the insurance company and the first respondent - R.Dhandapani, who is the tort-feasor, have filed CMP No.23861 of 2024 in CMA No.222 of 2023. Accordingly, he prayed to dismiss the same.

11.2. The learned counsel would further argue that the Tribunal arrived at a compensation of Rs.54,12,806/- and restricted the same to Rs.50,00,000/-. Though the petitioner / husband claimed only a

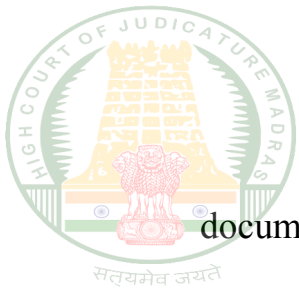


sum of Rs.50,00,000/-, the Tribunal ought not to have restricted the compensation of Rs.54,12,806/- to Rs.50,00,000/-. It ought to have awarded the entire amount of Rs.54,12,806/- by directing the petitioner / husband to pay the deficit court fee. Further, the Tribunal wrongly applied the multiplier of 14 instead of 15. Accordingly, he prayed for an enhancement of the award amount.

DISCUSSION:

12. Heard on both sides. Perused the materials available on record.

13. This Court has perused the documents sought to be received as additional evidence. The 1st document is an Inland Letter dated September 19, 2000 allegedly sent by the deceased to her mother - Ponnammal. The 2nd document is a Letter dated September 23, 2000 alleged written by the petitioner - husband to the deceased. The 3rd document is a Letter dated May 8, 2002 allegedly sent by the petitioner - husband to the deceased's father i.e., his father-in-law. The 4th document is a copy of the First Information Report (FIR) dated September 3, 2008 along with complaint given by one Kalpana against one Chitra. The 5th



document is a Letter dated March 27, 2009 and September 10, 2022 (both dates mentioned in the same letter) allegedly written by the deceased - Hemalatha.

14. The aforementioned documents would show that the deceased and the respondent were living separately till 2012. As far as this case is concerned, the said fact is in no way helpful to the respondents. To be noted, the deceased - Hemalatha passed away intestate leaving no Will or Settlement / Gift. In the absence of any Will or Settlement / Gift, mere letter would not take away the character of the petitioner / husband as legal heir of the deceased.

15. In these circumstances, this Court is of the view that the additional documents sought to be marked by the first respondent would not in any way help to decide the appeal. If the documents are received, it will cause delay in the proceedings and no fruitful purpose would be served in this appeal. Further, Ex-P.11 – Death Certificate, Ex-P.12 – Legal Heir Certificate, Ex-P.13 – Family Card issued by Civil Supplies and Consumer Protection Department for the years 2005 – 2009, and Ex-P.14 – Identity Card issued by Election Commission of India, all would show the



petitioner as the husband of the deceased. Hence, this Court is of the view

that the additional documents sought to be received would not in any way

be helpful to decide the case. Moreover, in the absence of any legal

document to show that the deceased's lawful marriage had been severed,

the documents sought to be marked will not be helpful to the respondents.

Hence, this Court is not inclined to allow the petition. **Accordingly, CMP**

No.23861 of 2024 in CMA No.222 of 2023 is dismissed.

16. Coming to maintainability of the claim petition by the petitioner - husband, it is pertinent to extract Section 166 of the Motor Vehicles Act, 1988 hereunder:

“166. Application for compensation.—(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

(a) by the person who has sustained the injury;
or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or



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(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application....

... ..”

17. Further, it is apposite to extract Section 2(11) of the Code of Civil Procedure, 1908 hereunder:

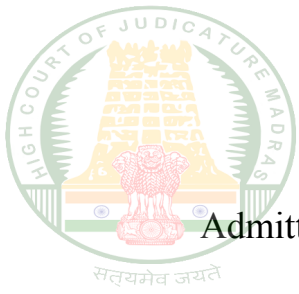
'2.Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

...

(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.'



18. As stated *supra*, Ex-P.11 to Ex-P.14 would establish that the petitioner is the husband of the deceased and that their marital relationship had not been severed through any decree of divorce or any other legal mode. Bare reading of the above extracts coupled with Ex-P.11 to Ex-P.14 would show that the petitioner, who is the husband / legal heir / legal representative of the deceased is entitled to maintain the claim petition. Further, it is settled law that mere nomination does not confer any exclusive right to the nominee. Nominee is only a trustee who cannot claim exclusive rights over the estate left by deceased [See (i) Judgment of Hon'ble Supreme Court in *Shirpa Sengupta -vs- Mridul Sengupta*, reported in (2009) 10 SCC 680, (ii) Judgment of this Court in *Ramayee -vs- Krishnaveni*, reported in 1996 (1) CTC 547, (iii) Judgment of this Court in *Parvathi -vs- Valliyammal*, reported in 2005 – 2 - L.W. 256, (iv) Judgment of this Court in *Sandhya -vs- The Chief General Manager, BSNL Ltd*, reported in 2012 – 3 – L.W. 41]. Though the first respondent has been shown as the deceased's nominee for her Contributory Pension Scheme, as detailed above, mere nomination does not confer any exclusive right to the first respondent over the estate left by the deceased – K. Hemalatha.



Admittedly, the deceased passed away as a Hindu and as per Section 15 of the Hindu Succession Act, 1956, the petitioner / husband is alone the legal heir of the deceased – K. Hemalatha [See ***Omprakash -vs- Radhacharan***, reported in **(2009) 15 SCC 66**]. The Tribunal rightly decided this issue in favour of petitioner / husband and there is no need to interfere with the same.

19. As regards the quantum, admittedly, the deceased was working as a Staff Nurse at Government Hospital, Coimbatore earning a sum of Rs.40,448/- as Gross Salary. Her date of birth is July 18, 1974 and the date of accident is December 12, 2014. On the date of accident, she had completed 40 years and four months of age.

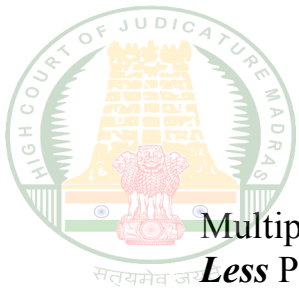
20. As per the Judgment of the Hon'ble Supreme Court in ***Sarla Verma -vs- Delhi Transport Corporation*** reported in **(2009) 6 SCC 121**, the correct multiplier is 15, and as per the Judgement of Hon'ble Supreme Court in ***National Insurance Company Limited -vs- Pranay Sethi*** reported in **(2017) 16 SCC 680**, 30% future prospects should be added. If calculated accordingly, her monthly income after addition of future prospects would come around Rs.52,582/-.



21. Admittedly, the petitioner / husband and the deceased

were not living together until 2012. There is no evidence on record to suggest that the petitioner / husband and the deceased were living together thereafter or around the time of accident. No doubt that though they were not living under one roof, in the absence of any valid Will or any other legal document, the petitioner / husband could alone be considered as her legal heir / legal representative. However, the petitioner - husband was not dependent on the deceased. At the time of accident, the deceased was under the due care and custody of his brother. As she is living separately from her husband, naturally, the deceased would have spent 50% of her salary as her personal expenses and hence this Court is inclined to deduct the same as personal deductions. Accordingly, this Court calculates loss of dependency as follows:

Monthly Salary	-	Rs. 40,448.00
Add 30% Future prospects	-	<u>Rs. 12,134.40</u>
Total Monthly Income	-	<u>Rs. 52,582.40</u>
Annual Income (Rs.52,582.40 X 12)	-	Rs. 6,30,988.80
Less Income Tax	-	<u>Rs. 52,773.69</u>
Net Annual Income	-	<u>Rs. 5,78,215.11</u>



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Multiplier 15 (Rs.5,78,255.11 X 15)	-	Rs.86,73,226.65
Less Personal expenses (½)	-	<u>Rs.43,36,613.33</u>
Loss of Dependency	-	<u>Rs.43,36,613.00</u>

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22. Further, the Tribunal erred in awarding compensation under the head of love and affection and the head of consortium simultaneously. Hence, the compensation awarded under the head of loss of love and affection is liable to be deleted. In all other aspects, the Award of the Tribunal is confirmed.

23. The Award as modified by this Court is tabulated hereunder:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1	Loss of dependency	Rs.43,36,613.00
2	Loss of estate	Rs.15,000.00
3	Loss of consortium	Rs.40,000.00
4	Funeral expenses	Rs.15,000.00
5	Transportation charges	Rs.5,000.00
	Total	Rs.44,11,613.00

24. It is settled law that if the policy is Act policy, the petitioner would not be entitled to compensation from the insurance



company. If the insurance policy is a package / comprehensive policy, then the insurance company is liable to pay compensation. In this case, neither the petitioner, nor the insurance company nor the first respondent produced a copy of the insurance policy. At the same time, the Insurance company did not deny the insurance policy. In these circumstances, this Court presumes that the policy is a comprehensive policy and hence, the insurance company is liable to pay compensation.

25. Therefore, the second respondent / Insurance Company is directed to deposit the modified award amount of ***Rs.44,11,613/- (Rupees Forty-Four Lakh Eleven Thousand Six Hundred and Thirteen only)*** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P.No.736 of 2015 on the file of the Motor Accidents Claims Tribunal / IV Court of Small Causes, Chennai, less the amount if any already deposited, within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit being made, the petitioner / husband is entitled to withdraw the same along with interest and costs, less the amount if any already withdrawn, by filing proper application.



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RESULT:

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26. In the result,

- (i) CMP No.23861 of 2024 in CMA No.222 of 2023 filed praying to receive additional documents is dismissed;
- (ii) CMA No.222 of 2023 is allowed in part as detailed above;
- (iii) CMA No.333 of 2023 is dismissed;
- (iv) In view of the facts and circumstances of this case, there shall be no order as to costs;
- (v) Consequently, connected CMP No.1726 of 2023 in CMA No.222 of 2023 is closed.

[J.N.B., J.]

[R.S.V., J.]

08 / 04 / 2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
TK

To

- 1.The Motor Accidents Claims Tribunal
IV Court of Small Causes
Chennai.
- 2.The Section Officer,
V.R.Section,
Madras High Court,
Chennai.



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CMA NOS.222 & 333 OF 2023

J.NISHA BANU, J.
AND
R.SAKTHIVEL, J.

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PRE-DELIVERY COMMON JUDGMENT MADE IN
CMA NOS.222 AND 333 OF 2023

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