



C.M.A(MD)No.116 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**C.M.A.(MD)No.116 of 2020
&
C.M.P(MD)No.2045 of 2020**

The Branch Manager,
New India Assurance Company Ltd.,
Rajapalayam.

... Appellant

Vs.

- 1.Chockalingam (died)
- 2.Ranjitham
- 3.The Administrative Manager,
Arulmighu Kalasalingam College of Engineering,
Krishnankoil.
- 4.Govindan
- Irulandi (died)
- 5.Ramalakshmi
- 6.Samuithirakani
- 7.Maheshwari



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8.Selvakumar

9.Ramalakshmi

10.Ponselvi

11.Muthumari

12.Santhanamari

13.Sri Radhika

...Respondents

(Respondents 11 to 13 are brought on record as legal heirs of deceased 1st respondent vide order dated 22.11.2019 made in CMP.(MD)No.9834 to 9836 of 2019 in C.M.P(MD)No.2719 of 2019 in C.M.A(MD) SR.No.1816/2019)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 07.10.2017 made in MCOP No.44 of 2009 on the file of Motor Accident Claims Tribunal, Subordinate Court, Srivilliputhur, and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.B.Vijaykarthikeyan

For Respondents : Mr.S.Alagusundar – for R4 & R5

Mr.M.Chakkaravathi–for R2, R11 to R13



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JUDGMENT

WEB COPY (Judgment of this Court was delivered by **R.POORNIMA, J.**)

The appellant / 2nd respondent-Insurance Company has filed this Civil Miscellaneous Appeal against the fair order and decretal order dated 07.10.2017 passed in MCOP No.44 of 2009 by the file of Motor Accident Claims Tribunal, Subordinate Court, Srivilliputhur.

2.Brief case of the claimant before the lower Court is as follows:

(a)The claimants are the brother and sister of the deceased Chidambaram. The parents of Chidambaram died long back. The deceased was under the care and custody of the first claimant and second claimant. The petitioners made arrangements for the marriage of their deceased brother Chidambaram. Apart from the petitioners, the said Chidambaram had two brothers and one sister, namely, Govindan, Irulandi and, Ramalakshmi who were arrayed as respondents 3 to 5. The third respondent T.R.Govindan is working as a manager in State Bank. The fourth respondent is doing agriculture and brokerage work and leading a wealthy life. The husband of the fifth respondent Ramalakshmi



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is also working in Indian Overseas Bank as cashier. The above respondents failed to maintain the deceased and deserted him. The petitioners and the deceased were living under one roof. They alone attended all his requirements.

(b)On 27.8.2008, Chidambaram drove the two wheeler Hero Honda plus bearing Registration No.TN 67 K 8776 from V.Muthulingapuram to Thummanaikanpatty Pancayat Middle School. When he was riding his vehicle from South to North in the Tenkasi to Madurai National Highway-208, in the left corner, at that time, the bus belonging to the first respondent was driven by the driver from North to South in a rash and negligent manner. The bus dashed against the two wheeler which was driven by Chidambaram on the north side of Mairulampatty bridge. As the result, Chidambaram sustained injuries on his forehead, right side of head, fracture above his right wrist, and died on the spot. The vehicle which was driven by him was also totally damaged. The accident occurred due to the rash and negligent act of the driver of the first respondent's vehicle.



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(c)The criminal case was filed against the driver of the vehicle in Crime No.100/2008 under section 304(A) IPC and the same is pending before the Judicial Magistrate, Srivilliputhur. The first respondent's vehicle was insured with the second respondent.

(d)Since the petitioners are living with the deceased Chidambaram and are dependent on him, due to his death, they faced financial loss. At the time of death, the deceased was 36 years old. He was working as a Maths teacher and was deriving a sum of Rs.13,099/-. If he had not met with the accident, he would have worked for another 22 years and would have derived more income. Both the petitioners are legal heirs of the deceased. Hence, the respondents 1 and 2 are liable to pay compensation of Rs.45 lakhs for the death of Chidambaram.

(e)The accident happened due to rash and negligent driving of the driver of the first respondent vehicle bearing Registration No.TN 67 K 0351. The second respondent was with whom the vehicle was insured. Thus both first and second respondents are liable to pay compensation. Hence, this petition.



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3.The brief averments contained in the counter affidavit filed by the respondents 3 to 5 are as follows:

(a)The respondent denied the entire allegations contained in the petition, save those that are specifically admitted in the counter.

(b)The respondents admitted the relationship between the parties, but denied that when Chidambaram was five years old, his parents had died. The father of the deceased Chidambaram died in the year 1976 but his mother died only in the year 2002. From that time onwards, the deceased was earning. Therefore, the averment that the first respondent herein alone brought up his brother Chidambaram is false. When the deceased Chidambaram was young, the first respondent herein was not earning any money. The third respondent alone maintained his family and met the expenses through his salary. It is false to state that the petitioners alone maintained the said Chidambaram. The avocation and income of the fourth respondent is false. The fourth respondent was doing coolie work and was maintaining the deceased Chidambaram. It is false to state that this respondent deserted Chidambaram 30 years back. In order to grab the entire compensation, the petitioners stated false



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statements. Third respondent purchased land for the first petitioner and helped with his marriage. The deceased was not under the care and custody of the first petitioner. The age difference between the deceased Chidambaram and first petitioner is only two years. The second petitioner is three years younger than Chidambaram. They were not in a position to maintain Chidambaram. They had not even spent any money on him. This respondent alone maintained and educated the said Chidambaram. The fifth respondent wanted his daughter and Chidambaram to get married and his education expenses were paid by the first petitioner. The first petitioner within two days after the death of his mother got married and settled separately. The third respondent redeemed the property mortgaged for the expenditure of Chidambaram. The details were concealed by the petitioners. The respondents 3 to 5 are brothers and sisters. They are also expecting to get equal compensation as they alone met out the educational expenses and helped in his upbringing.

4.The brief averments contained in the counter affidavit filed by the second respondent are as follows:

(a)The respondent denied all allegations. The respondent stated that the accident did not take place in the manner as alleged by the



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petitioners. The petitioners suppressed the real facts and the real manner of the accident.

(b)The age, avocation and the salary derived by the deceased Chidambaram are denied.

(c)The 2nd respondent stated that the first respondent has not driven the vehicle in a rash and negligent manner, but the rider of the bike alone drove the vehicle in a rash and negligent manner. As per the criminal records, the accident took place on the eastern side of the road, while the bus was progressing from North to South. Without noticing the same, the deceased attempted to overtake a lorry from behind, which was parked on the western side of the road and thereby he crossed the travelling path of the bus and invited trouble. On the sudden appearance of the deceased, the driver of the bus got shocked and turned the bus to his left side to avoid accident, but the bike rider was not be able to control his speed and dashed onto the bus. Therefore, the rider of the two wheeler (deceased) was negligent. The respondents 1 and 2 are not liable to pay the compensation.



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(d)The 2nd respondent denied the relationship between the parties. It is on the petitioners to prove the relationship by producing legal heirship certificate. The petitioners are not dependent on the deceased. The petitioners and the respondent 3 to 5 did not admit the monetary support provided by the deceased. But for arguments, it is admitted that the petitioners would no longer be provided with monetary support for the deceased. The claim of the petitioners is excessive.

(e)The 2nd respondent further stated that up to 2003, the deceased was with his mother. She alone brought up the petitioners, respondents 3 to 5 and the deceased. After her demise, the deceased Chidambaram was living separately and the respondents 3 to 5 were living with their family members. The petitioners and respondents 3 to 5 are entitled to compensation only for the loss of love and affection. The 2nd respondent denied the damages and other claims which are highly excessive and hence, prayed to dismiss the petition.

5.On the side of the petitioners, PW1 and PW2 were examined and Exs.P1 to Exs.P7 were marked. On the side of the respondents no witness was examined and no documents were marked.



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6.The trial Court after considering the evidence and records allowed the petition and awarded compensation of Rs 19,53,080/- under the following heads :

Loss of Income	Rs.16,81,080/-
Loss of Love and affection	Rs.2,00,000/-
Loss of estate	Rs.25,000/-
Funeral expenses	Rs.25,000/-
Transport expenses	Rs.2,000/-
Damages for two wheeler and cloth	Rs.20,000/-
Total	Rs.19,53,080/-

The learned Judge directed the 2nd respondent-Insurance Company to pay the entire amount within a period of one month.

7.Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed by the Insurance Company who is the 2nd respondent before the lower Court against the quantum of compensation among other grounds :

(a) That the Tribunal ought not to have taken the monthly income of the deceased as Rs.13,049/- and added 50% towards future prospects.

(b) That the Tribunal has awarded a sum of Rs.16,81,080/- towards loss of income which is highly excessive and needs to be modified.



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(c) That the Tribunal has awarded a sum of Rs.2,00,000/- towards the loss of love and affection which is excessive and needs to be modified.

(d) That the Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses which has to be modified as Rs.15,000/- as per the Hon'ble Supreme Court Judgment in Pranay Sethi case.

(e) That the Tribunal has awarded a sum of Rs.25,000/- towards loss of estate which is highly excessive and needs to be modified.

(f) That the Tribunal has awarded a sum of Rs.20,000/- towards the damages caused to the two wheeler without any oral or documentary evidences.

(g) That the Tribunal failed to note that the 4th respondent and respondents 6 to 10 are not dependants of the deceased and they are married sisters and brothers of the deceased.

(h) That the Tribunal has awarded 7.5% interest from the date of filing of the claim petition. The claim petition was filed on 11.03.2009 and the award was passed on 07.10.2017 and therefore, if any default period is there, the interest should not be awarded for such period.

(i) In any event, the compensation awarded is excessive and needs to be modified.



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Hence, he prayed to allow the Civil Miscellaneous Appeal.

8.Heard the learned counsel on either side and perused the material available on records.

9.The parties are arrayed in the Civil Miscellaneous Appeal as per their own ranking before the Trial Court in M.C.O.P. No.44 of 2009.

10.Exhibit P1 is the death certificate of Chidambaram issued by the Village Administrative Officer, Nathampatti. It shows that he died on 27.2.2003. Ex.P2 is the complaint by one Thiru.Villi Alwar on 27.08.2008 in which it was contended that the vehicle bearing Registration No.TN 67 K – 0351 was driven by its driver, Gandhi, in a rash and negligent manner without honking and dashed against the two wheeler bearing Registration No.TN 67 K – 8776 Hero Honda, which was driven by the deceased Chidambaram. He was thrown away. Due to which he sustained injuries and a fracture on his left wrist. He died on the spot.



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11. Based on the complaint, FIR was registered in Crime No.100/08 for the offence under section 304(A) IPC against the said driver. The FIR was taken on file in C.C.No.78 of 2008, by the Judicial Magistrate No.I, Srivalliputhur, and the case was disposed of. In the judgement dated 20.7.2009, the Judicial Magistrate held the accused Gandhi guilty for the offence and convicted him for the offence under Section 304A IPC and sentenced him to undergo three months simple imprisonment, and to pay a fine of Rs.3000/-.

12. Ex.P2 to Ex.P4 clearly proves that the vehicle of the first respondent was driven in a rash and negligent manner by its driver and due to his act, the accident took place causing the death of Chidambaram. The first respondent is the owner of the vehicle and is vicariously liable for the act of his servant, the driver. Since the appellant/second respondent is the insurance company with whom the bus was insured, which was in force at the time of accident, the same was not denied by the appellant. Hence, the 2nd respondent is liable to pay compensation.



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13.The claimants 1 and 2 claimed to be legal heirs and dependent on the deceased. Ex.P6 is a legal hardship certificate issued by the Tahsildar, Srivilliputhur, dated 06.02.2009 in which the petitioners along with three others viz., Rama Lakshmi, Chokkalingam and Ranjitham, brothers and sisters of the said deceased Chidambaram, were also shown as legal heirs. Ex.P4 and Ex.P5 are the death certificates of parents of the deceased Chidambaram. During the trial, one of the brother Irulandi died, and his legal heirs have been impleaded as respondents 6 to 10. During the pendency of the Civil Miscellaneous Appeal, the first petitioner also died leaving behind respondents 11 to 13 as his legal heirs and they have been impleaded as parties.

14.Now we have to decide whether the brother and sisters of the deceased are the dependents of the deceased and are entitled for compensation. The learned counsel for the appellant stated that the deceased was living alone and he did not financially support the petitioners or other brothers and sisters who were arrayed as respondents 3 to 5.



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15.The first petitioner was examined as PW1. The respondent 3 to 5 categorically stated that the petitioners were not maintained by the said Chidambaram and he has not shared his salary to any of the petitioners and cross examined him.

16.On the side of the second respondent, during cross examination, the first petitioner and the second petitioner admitted that they have not produced his Family Card to show that the petitioners and the deceased were living together. The 1st petitioner admitted that he was married during the year 2002. He further admitted that he is not aware as to when his brother started working. He also admitted that the deceased Chidambaram held separate ration card in his name and did not nominate the petitioners as his legal heirs.

17.In the claim application, the addresses of the petitioners differ from each other. The first petitioner's address has been mentioned as Muthulingapuram, Meenakshipuram Post, Srivilliputhur, Virudhunagar District, whereas, the second petitioner's address has been mentioned as M.Chokalingapuram, Via Thiruthangal, M.Pudhupatti Post, Sivakasi, Virudhunagar District. This proves that both are residing in



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different places whereas the deceased Chidambaram's address has been mentioned as V.Muthulingapuram, Meenakshipuram Post, Srivilliputhur, which is similar to that of the first petitioner, but he has not produced his Aadhaar card to show that he is also residing in the same address. The addresses of the other brothers and sisters name also differs. The petitioners have failed to produce their ration card to prove that they are living with the deceased Chidambaram but admitted that the deceased was holding a separate ration card. The respondents 3 to 5, who are also brothers and sisters, seriously disputed the fact by stating that the petitioners were not living with the deceased Chidambaram. Therefore, the contention of the petitioners that the petitioners and the deceased Chidambaram were living in a joint family has not been proved and it is not proved that the petitioners are solely dependent on the deceased Chidambaram. In order to prove that, they had not examined any independent witnesses or produced any document to show that they are solely dependent upon the deceased Chidambaram. The petitioners failed to prove that due to the death of their brother, they have incurred loss of income and they could not maintain themselves. It is no doubt that they are brothers and sisters and due to the death of Chidambaram, they lost, love, and affection of their brother, and they are only entitled to claim



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compensation only on the head of loss of love and affection.

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18.The trial Court without taking into consideration the dependency of the siblings on the deceased, allowed the compensation by calculating compensation under the head of loss of income which is improper. We do not find any material to prove that the petitioners are dependent of the deceased Chidambaram. Though the respondents 3 to 6 also claimed that they were looking after the deceased, they have not adduced any evidence.

19.Any adult can claim compensation for the death of his elder or younger brother. However, unless dependency is proved, compensation cannot be allowed, we rely upon the following judgement of the Hon'ble Supreme Court in ***The New India Assurance Company Ltd., Vs. Anand Pal and Others (Civil Appeal No.7920 of 2023 arising out of SLP (civil) No.7805 of 2022) dated 04.12.2023*** reported in 2024 ***ACJ 6***, in which Paragraph Nos.7 and 8 held as follows :

“7. On the above, it is necessary for us to be conscious that there are two family registers. This would indicate that the victim resided separately as was noted by the Motor Accident Claims Tribunal. The siblings of the victim were older and were married with their own respective families. In these



circumstances, they being dependent on the victim's earnings is unlikely particularly when the victim resided separately.

8. Looking at the above, the Tribunal and the High Court should not have considered the three older married siblings, to be dependent on the deceased victim. The compensation awarded to the married siblings is therefore found to be unmerited. The appeal is accordingly allowed by setting aside the impugned award of the Motor Accident Claims Tribunal as upheld by the High Court under the impugned judgment.”

20. Since the petitioners have lost their brother, they are only entitled to compensation towards loss of love and affection. Therefore, the Court awards a sum of Rs.20,000/- each to the petitioners 1 and 2 and respondent 3 to 5, (totally a sum of Rs.1,00,000/-) and for Funeral expenses a sum of Rs.15,000/-, for transport expenses a sum of Rs.2,000/- and for damages to vehicle and cloth a sum of Rs.10,000/-. The petitioners are not entitled for compensation under any other heads. With these observation, the point is answered accordingly.

21. In the result, the Civil Miscellaneous Appeal is partly



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allowed and the award passed by the trial Court is modified as follows :

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(1)The Appellant/2nd respondent-Insurance Company is directed to pay a sum of Rs.1,27,000/- (Rupees One Lakh Twenty Seven Thousand only) towards compensation to the petitioners and respondents 3 to 5 along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit the amount, less the amount if already deposited to credit of M.C.O.P.No.44/2009 on the file of the Subordinate Court/Motor Accident Claims Tribunal, Srivilliputhur, within a period of four weeks from the date of receipt of a copy of this order.

(2) On such deposit, the petitioners 1 and 2 and respondents 3 to 5 are permitted to withdraw a sum of Rs.25,400/- each towards their share, less the amount already withdrawn, if any, together with proportionate interest and costs, by filing appropriate petition before the Tribunal.

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

(4) Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (R.P., J.)
27.01.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To
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1.The Subordinate Court,
Motor Accident Claims Tribunal, Srivilliputhur.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

RM

Judgment in
C.M.A.(MD)No.116 of 2020

27.01.2025