

C.M.A(MD)No.986 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.06.2025

PRONOUNCED ON : 28.08.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.986 of 2024

and

C.M.P(MD)No.10361 of 2024

and

C.M.P.(MD)No.5956 of 2025

The Branch Manager,
United India Insurance Company Ltd.,
Door No.2, Bhuvaneshwari Complex,
Sankaran Road, Namakkal Town.

: Appellant/2nd Respondent

Vs.

1. Dhamodhara Pandian : 1st Respondent/Petitioner

2.Sampoornam : 2nd Respondent/ 1st Respondent

PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree, dated 26.09.2023, in M.C.O.P.No.34 of 2016, on the file of the Motor Accident Claims Tribunal (Additional District Court), Dindigul.

For Appellant : Mr.A.S.Mathiyalagan
for Mr.I.Robert Chandra Kumar.



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For Respondents :Mr.A.Arul Jenifer,
for Mr.PSMS.Abuthaheer, for R1.

R2-Ex-parte memo filed in USR.No.29742, dated 19.08.2024.

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.34 of 2016, dated 26.09.2023, on the file of the Motor Accident Claims Tribunal/ Additional District Judge, Dindigul.

2. The first respondent/claimant, claiming to be the brother of the deceased Gowthaman, laid the claim application seeking compensation for the death of his brother, consequent to an accident occurred on 11.11.2015, alleging that the accident was occurred due to the rash and negligent driving of the driver of the Taurus lorry bearing Reg.No.TN-28-AD-9499 owned by the second respondent and insured with the appellant/Insurance Company and that therefore, they are liable to pay compensation.

3. The second respondent owner of the vehicle had remained ex-parte. The appellant/insurer filed a counter statement raising objections.



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4. During trial, the first respondent claimant examined himself as P.W.1 and examined two more witnesses as P.W.2 and P.W.3 respectively and exhibited six documents as Ex.P.1 to Ex.P.6. The appellant/insurer adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order, dated 26.09.2023, holding that the second respondent's driver was responsible for the accident, directed the appellant/insurer to pay compensation of Rs.10,93,400/- with interest at 7.5% per annum and costs. Aggrieved by the impugned award, the insurer has preferred the present appeal.

6. The only ground canvassed in the appeal is that the first respondent/claimant is only the elder brother of the deceased and is not a dependant on the deceased and as such, he is not entitled to claim compensation.



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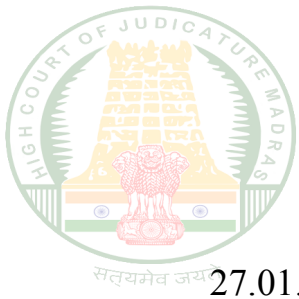
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7.The learned counsel for the appellant would submit that even assuming for argument sake that the claimant, being the brother of the deceased, in the capacity of legal representative, is not entitled to claim compensation for loss of dependency, they may at best, can claim compensation for loss of love and affection.

8. It is not in dispute that the claimant is none other than the elder brother of the deceased. It is the specific case of the claimant that after losing their parents, himself and the deceased's brother Gowthaman were living together and were supporting each other. But according to the appellant, the claimant as well as the deceased were living separately and more importantly, the claimant is working in a Software Company at Chennai, whereas the deceased was residing with his aunt at Natham and that since the claimant is not dependant on the income of the deceased, he is not entitled for the claim.

9.The learned counsel for the appellant/insurer would rely on a decision of the Division Bench of this Court in the case of ***The Branch Manager, New India Assurance Company Limited, Rajapalayam Vs. Chockalingam (died) and others*** in C.M.A(MD)No.116 of 2020, dated

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27.01.2020, wherein the Division Bench by referring to the decision 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,*** has held that the claimants therein, who are the brothers of the deceased are only entitled to get compensation towards loss of love and affection and rejected the claim for compensation under the head of loss of dependency and the relevant passage is extracted hereunder :

“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



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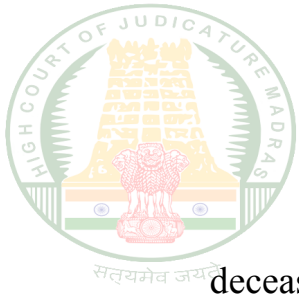
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circumstances, they being dependent on the victim's earnings is unlikely particularly when the victim resided separately.

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.”

10. I had an occasion to consider similar issue in ***Gunasekaran and others Muthukrishnan and another*** in C.M.A(MD)No.785 of 2022, dated 15.11.2022, wherein also the first claimant was the brother of the



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deceased and other claimants are the wife and children of the first claimant. This Court, by relying on the judgments of Hon'ble Supreme Court in the case of ***Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and another*** reported in ***(1987)3 Supreme Court Cases 234*** and ***National Insurance Company Ltd., Vs. Birender and others*** reported in ***(2020)11 Supreme Court Cases 356***, has held that the brother of the deceased along with his family members are entitled to claim compensation under the loss of dependency and other heads and the relevant passages are extracted hereunder :

“10. Regarding the entitlement of brother or brother's family in laying the claim for compensation, it is necessary to refer the judgment of the Hon'ble Supreme Court in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and another reported in (1987)3 Supreme Court Cases 234, wherein it has been held as follows:

“Brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased. In an Indian family brothers, sisters and brothers' children and sometimes foster children live



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together and they are dependant upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which has been substantially modified by the provisions of the Motor Vehicles Act in relation to cases arising out of motor vehicles accidents. (Ed.:Though in the present case it may be that the deceased, who was only a 14 year old boy, was not the bread-winner of the family at the present moment, but legally his brothers would be entitled to claim compensation)

Chapter VIII of the Motor Vehicles Act provides for a forum alternative to that provided under the provisions of the Fatal Accidents Act for realisation of compensation payable on account of motor vehicles accidents and its provisions are substantive and not merely procedural in nature. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act was “new in its species, new in its quality, new in its principles, in every way new” the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the



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*Fatal Accidents Act. New situations and new dangers require new strategies and new remedies. Contrary observation made by the Supreme Court in **Minu B.Mehta case** were in the nature of obiter dicta.”*

*11. The Hon'ble Supreme Court in **National Insurance Company Ltd., Vs. Birender and others** reported in (2020)11 Supreme Court Cases 356, has specifically held that all or any of the legal representatives of the deceased can move application for compensation and the relevant passages are extracted hereunder:*

“12. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1). The major married son who is also earning and not fully dependant on the deceased, would be still covered by the expression “legal representative” of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression “legal representative” has not been defined in the Act. In Manjuri Bera (supra), the Court observed thus:

“9. In terms of clause (c) of subsection (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to



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compensation and any such legal representative can file a claim petition. The proviso to said subsection makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of [Section 166](#) of the Act.

10.The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

11. According to Section 2(11) CPC, “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. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. Under Section 2(1)(g).

12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique [1989 Supp (2) SCC 275 the definition contained in



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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 SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234 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 paragraph 15 of the said decision, while advertng to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between “right to apply for compensation” and “entitlement to compensation”. The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section



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140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.

14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only.

*12. A learned Judge of this Court in **K.Sivakumar Vs. R.Muthu Kumar and Others** reported in **2022(2) TN MAC 403**, after considering the decisions of the Hon'ble Supreme Court and this Court, has held that there is no iota of doubt that the legal representatives can maintain the claim under Section 167 of the Motor Vehicles Act and so, the issue as to whether the brother of the deceased can maintain a claim and whether he is entitled for compensation is answered in favour of the appellants/claimants.*

13. As already pointed out, in the case on hand, the first claimant being the brother of the deceased along with his wife and children have laid the above application claiming compensation



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for the death of his brother Lakshmana Kumar. Considering the above and the legal position above referred, this Court has no hesitation to hold that the claimants are entitled to claim compensation under the loss of dependency and others heads.”

11. Recently, the Hon'ble Apex Court in ***Jithendra kumar and another Vs. Sanjay Prasad and another*** in ***Civil Appeal No.7199 of 2025, dated 22.05.2025***, has specifically held that the legal representatives, including married and earning sons and daughters, are entitled to claim compensation under the Motor Vehicles Act irrespective of financial dependency on the deceased and the relevant passages are extracted hereunder :

13.In our considered opinion, the view on this issue cannot be faulted. The exposition of law in Birender (Supra) is clear, wherein it was observed as under:

“14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden



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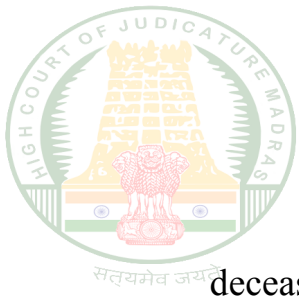
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duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only.”

14. Such exposition came to be followed by this Court in Seema Rani and Ors. v. Oriental Insurance Co. Ltd. and Ors. 6 , wherein it was observed that the application for compensation, even by married sons and daughters, must be considered, irrespective of whether they are fully dependant or not. In the present case, it cannot be disputed that the claimant-appellant(s) became partner in the consultancy firm run by the deceased. Moreover, it is not in dispute that that the Flour Mill being run by the deceased, is still being run by the claimant-appellant(s). In such a factual circumstance, it cannot be said that the claimant-appellant(s) were financially dependent upon the deceased.

15. Therefore, in view of the above, while the claimantappellant(s) were not dependent upon the deceased, they are entitled to receive compensation as his legal representatives, in accordance with law. Thus, the deduction towards the loss of personal and living expenses is to be ½ (50 % of the income of the deceased) in accordance with law.

12. In the case on hand, the claimant has produced the legal heirship certificate, wherein the claimant is shown as the legal heir for the deceased Gowthaman. It is not the case of the appellant that the



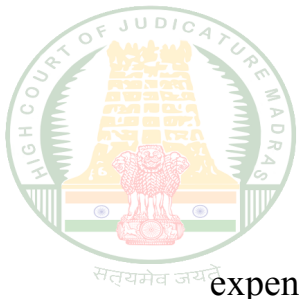
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deceased Gowthaman is having other legal heirs or legal representatives other than the claimant or that he is not the legal representative of the deceased.

13. No doubt, as rightly pointed out by the learned counsel for the appellant, the claimant as P.W.1 would admit that he had necessary wherewithal to maintain himself. When a specific question was put to the claimant during his cross examination that he is not a dependant on his deceased brother, he would say that they were living together, but he has not produced the ration card and other documents to prove the same.

14. Considering the fact that the claimant is the legal representative of the deceased and taking note of the legal position above referred, though the claimant is not financially dependant on the deceased, he is certainly entitled to get compensation. The Tribunal rightly applied the judgment of Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***2017(2) TNMAC 609(SC)*** and ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and others*** reported in ***2009(2) TNMAC 1 (SC)***, and by rightly deducting 50% of the income towards personal and living



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expenses of the deceased, has arrived at total compensation of Rs.10,93,400/-. As already pointed out, the appellant/insurer has not challenged the quantum of compensation awarded at by the Tribunal. Hence, this Court concludes that the Civil Miscellaneous Appeal is devoid of merits and the same is liable to be dismissed.

15. In the result, the Civil Miscellaneous Appeal is dismissed and the award, dated 26.09.2023, in M.C.O.P.No.34 of 2016, on the file of the Motor Accident Claims Tribunal (Additional District Court), Dindigul, is confirmed. Consequently, connected Miscellaneous Petitions are closed.

28.08.2025

NCC : Yes: No
Index : Yes : No
Internet : Yes : No

DAS

To

1.Motor Accident Claims Tribunal
(Additional District Court), Dindigul.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

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K.MURALI SHANKAR,J.

DAS

PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.986 of 2024
and
C.M.P(MD)No.10361 of 2024
and
C.M.P.(MD)No.5956 of 2025

28.08.2025