

C.M.A(MD)No.790 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 12.06.2025

Pronounced on : 02.07.2025

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**C.M.A.(MD)No.790 of 2022
&
C.M.P.(MD)No.7176 of 2022**

Claims Manager

Royal Sundaram General Insurance Limited,

Subramaniam Buildings,

1, Clap Housing Road, Anna Salai,

Chennai – 600 002.

... Appellant/ 2nd Respondent

Vs.

1.R.Pandeeshwari

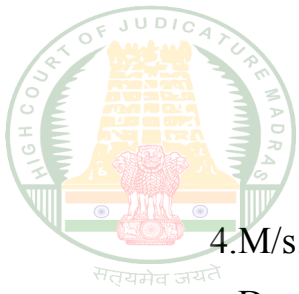
2.Minor R.Aruna Karthika

3.M.Mariammal

...Respondents 1 to 3 / Petitioners

(Minor 2nd respondent represented through

her mother and next friend 1st respondent)



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4.M/s.Mercury Car Rentals Private Limited,

Door No.37-30, M.G.Road,
Bangalore North, Bangalore

Karnataka 560 001.

...4th Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 02.03.2022 made in M.C.O.P.No.25 of 2019 on the file of Motor Accident Claims Tribunal, (Principal District Court), Virudhunagar District, Srivilliputhur, and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.M.Jothibasu – for R1 to R3

No appearance – for R4

JUDGMENT

(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 decreetal order dated 02.03.2022 passed in M.C.O.P.No.25 of 2019 by the Motor Accident Claims Tribunal, (Principal District Court), Virudhunagar District, Srivilliputhur.



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2. Brief facts of the petition filed by the claimants before the

Tribunal are as follows:

(a) The 1st petitioner is the wife, 2nd petitioner is the daughter and 3rd petitioner is the mother of Ramesh.

(b) As per the petition, on 02.10.2018 at about 09.40 a.m., the husband of the 1st petitioner, deceased Ramesh was traveling on his two wheeler bearing registration No.TN-84-E-6651 going to Uthirakulamadasamy temple from south to north on the Shencottai to Rajapalayam Main Road. While he was turning to go to Solaiseri Village, a Mahindra Car bearing registration No.KA 51 D 8538 belongs to the 1st respondent was driving by its driver namely, Prithwiraj Gupta coming from the back side in a rash and negligent manner without sound horn and in violation of traffic rules and dashed the motorcycle. Due to the impact, the husband of the 1st petitioner, deceased Ramesh sustained grievous head injuries, crush injuries over his face, chest, lips and both side knees. He sustained lacerated injuries all over his body. Immediately, he was taken to the Government Hospital, Rajapalayam where he was treated in ICU. However, due to severity of injury he succumbed to death.



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(c) At the time of accident, deceased Ramesh was aged about 38 years and he was working as a tailor and temple priest at Uthirakulamadasamy temple and earned a sum of Rs.15,000/- per month and he spent the entire amount to his family. Due to the accident, the 1st petitioner had lost her husband, 2nd petitioner had lost her father and 3rd petitioner had lost her son. He was having love and affection over the petitioners. The petitioners estimated a sum of Rs.30,00,000/- as compensation for the death of deceased Ramesh.

(d) The accident occurred solely due to the rash and negligent driving of the 1st respondent's driver namely, Prithwiraj Gupta. A criminal case was registered against the driver of the Mahindra Car in Crime No.157 of 2018 of Seithur Rural Police Station under Sections 279, 337 IPC altered into 304(A) IPC. The 1st respondent's Mahindra car is insured with the 2nd respondent and the policy is in force at the time of accident. So, the 1st respondent is the owner of the offending vehicle and the 2nd respondent is the insurer of the vehicle, both the respondents are jointly and severally liable to pay compensation to the petitioners.



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3. Brief averments contained in the counter filed by the first

respondent are as follows :

The petition is not maintainable either under law or on facts.

The age of the deceased and income stated to be earning Rs.15,000/- per month are denied and the petitioners are put to strict proof of the same.

The criminal case was filed in active collusion with the jurisdictional police only in order to claim compensation by unlawful means, and to get enrich at the cost of the respondent herein. It is false to state that due to rash and negligence driving of the driver of the offending vehicle, the accident took place. The amount claimed by the petitioners are highly excessive and without any basis. Hence, the petition is liable to be dismissed.

4. Brief averments contained in the counter filed by the

second respondent are as follows :

(i) The petition filed by the petitioners is frivolous, vexatious, and not sustainable either in law or on facts. The accident in question did not take place in the manner as alleged by the petitioners in petition. The petitioners have suppressed the real facts of the accident and suppressed the real manner by which the accident occurred. It is not



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admitted that at the time of accident, the 1st respondent's car bearing registration No.KA-51-D-8538 was insured in the 2nd respondent insurance company and the petitioners are put to strict proof of the same by documentary evidence. It is not admitted that the accident was occurred due to the rash and negligent act of the 1st respondent's driver. In fact 1st respondent's vehicle was not involved in this accident. So, the 2nd respondent is not liable to pay any compensation to the petitioners.

(ii) The age and income of the deceased was denied by this respondent. The petitioners are not depending upon the income of the deceased. At the time of accident, the deceased Ramesh was not having any valid and effective driving licence. The owner of the motorcycle and the insurance company have not been added as necessary parties. The entire restricted claim of Rs.30,00,000/- by the petitioners is too high, excessive and arbitrary. Hence, the petition is liable to be dismissed.

5. During trial, on the side of the petitioners, PW1 and P.W.2 were examined and Ex.P1 to Ex.P25 were marked. On the side of the respondents, no oral and documentary evidence was marked.



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6. Based on the records and evidence, the trial Judge

awarded compensation of Rs.28,15,600/- under the following heads :

Loss of Income	Rs.27,45,600/-
Funeral expenses	Rs.10,000/-
Loss of Love and affection for wife and two children	Rs.50,000/-
Funeral and transportation expenses	Rs.10,000/-
Total	Rs.28,15,600/-

The learned Judge directed the appellant/2nd respondent-Insurance Company to pay the entire award amount within a period of two months.

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 negligence and quantum with the following among other grounds :

(i) That the judgment of the Tribunal below is contrary to law, weight of evidence and probabilities of the case.

(ii) That the Tribunal was not justified in granting a sum of Rs.27,45,600/- towards future loss of income without deducting any



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amount towards personal expenses of the deceased.

WEB COPY (iii) Having chosen to fix a sum of Rs.11,000/- as notional monthly income, which is excessive and arbitrary in the absence of proof of income, the Tribunal ought not to have added Rs.3,300/- towards loss on account of future prospects.

(iv) That the Tribunal was not justified in its omission and failure to deduct 1/3rd of income towards personal expenses of the deceased, hence, the grant of Rs.27,45,600/- as compensation is on the higher side and is also excessive. The quantum of compensation fixed by the Tribunal in the future loss of income is liable to be reduced considerably. Hence, prayed to set aside the judgment of the trial Court and allow the Civil Miscellaneous Appeal.

8. The main ground urged in the Civil Miscellaneous Appeal is that the tribunal was not justified in awarding a sum of Rs.27,45,600/- towards future loss of income without deducting any amount towards personal expenses of the deceased. A sum of Rs.11,000/- has been fixed as monthly income which is excessive and arbitrary in the absence of proof of income. The Tribunal ought not to have added Rs.3,300/- towards loss, on account of future prospectus.



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9. The learned counsel for the respondents 1 to 3/claimants also fairly conceded that the Tribunal has failed to deduct personal expenditure while fixing the future loss of income. He further argued that at the time of death of the deceased, his age was 38 years, but the Tribunal had applied multiplier 16 instead of 15. No compensation has been granted for Loss of consortium and loss of estate. The Tribunal ought to have ordered Rs.15,000/- towards funeral expenses but Tribunal has fixed Rs.10,000/-. The Tribunal has failed to follow the guidelines stipulated in **Pranay Sethi's** case and thereby would seek for modification of the award.

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

11. Now, this court has to decide the following points for consideration :

- 1) Whether the monthly income awarded is on the higher side ?
- 2) Whether, the compensation paid under various



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heads needs modification by applying the guidelines stipulated in Pranay Sethi case?

12. Point Nos.1 and 2.

Though, the claimants claimed that the deceased was engaged in tailoring work, owned a tailoring shop and he was partly working as Poojari, no documentary evidence except the identity card was produced to substantiate the claim that he was earning a sum of Rs.15,000 per month. The Tribunal therefore, considering the cost of living index code and the income of skilled worker, determined the monthly income as Rs.11,000/-. We hold this is not to be considered on the higher side and therefore, do not wish to interfere with the order of the Tribunal.

13. As the deceased was married, and had three dependants 1/3rd of his income should have been deducted towards his personal and living expenses. However, the Tribunal failed to make such a deduction which amounts to an error.

14. Apart from the above, we find certain errors in awarding



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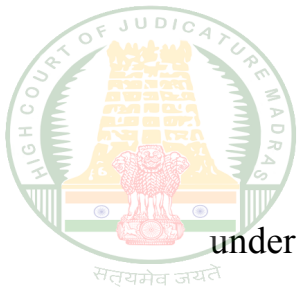
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compensation under various heads. As settled in ***Sarla Verma and others Vs. Delhi Transport Corporation [(2009) 6 SCC 121]*** and ***National Insurance Ltd., Vs. Pranay Sethi [2017 (16) SCC 680]***, the Hon'ble Apex court has held that the appropriate multiplier for the age group 36 to 40 years is 15. However, the trial Court applied 16 as multiplier, which is not proper.

15. To prove the age of the deceased, the petitioners/claimants produced certain documents, one of which is Transfer Certificate of the deceased marked as Ex.P15 in which his date of birth is recorded as 19.05.1981. The accident occurred on 02.10.2018. Therefore, on the date of accident, the deceased was aged about 38 years. Applying a multiplier of 16 is an error and require correction

16. Further, as per the judgment in ***Pranay Sethi's case*** if the deceased was self-employed, 40% of the established income should be added towards future prospectus. However, the Tribunal has erroneously allowed only 30% which requires correction.

17. Since the Tribunal has already awarded compensation



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under the head of 'love and affection', this Court is not inclined to grant a separate amount for loss of Consortium.

18. Though the respondents/claimants did not file cross-objection or separate appeal for enhancement, but during the course of argument pointed out the error committed by the trial Court. This Court now has to decide whether it has power to correct the error committed by the trial Court.

19. The appellate Court is authorized to review the lower Court's decision, including the calculation of compensation. It can modify the decision if it finds error of fact or law. The appellate Court has the power to correct the errors or misinterpretation made by the lower Court and it can increase the compensation if it is deemed appropriate in the interest of justice. In this connection, we rely upon the following judgement to support our decision :

In ***Tamil Nadu State Transport Corporation Ltd., Vs. Karupathal and Others (CMA.No.1845 of 2017 dated 26.06.2017)*** the Division Bench of Madras High Court relying upon several judgments has held that the High Court has power to modify or enhance the compensation



amount suo motu :

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“6..... On the facts and circumstances of this case, we are of the view that the respondents are entitled to higher compensation and hence, propose to suo-moto enhance the same. On the aspect of suo motu enhancement, it is useful to consider few decisions :-

(i) On the question, as to whether in the absence of any Cross Objection, the High Court could suo motu powers to enhance the compensation, by exercising power under Order 41, Rule 33 CPC, this Court, in NATIONAL INSURANCE CO. LTD., VS. M.JAYAGANDHI [2008 (1) TNMAC 177] at Paragraphs 37 and 38, has held as follows:

“37. The question arising for consideration is whether in the absence of any Cross Objection, the Appellate Court could suo motu enhance the compensation. The Appellate Court exercising power under Order 41, Rule 33, CPC could enhance the quantum of compensation even without Cross-Objection. The Courts and Tribunals have a duty to weigh various factors and quantify the amount of compensation which should be just. Reference could be made to the decision of the Supreme Court in Sheikhpura Trans. Co. Ltd. v. Northern India Transporter's Ins. Co. Ltd. , 1971 ACJ 206 (SC), wherein it is held that pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately, but must necessarily be an estimate or even partly a conjecture. The general principle is that the pecuniary loss can be ascertained only by balancing, on the one hand, the loss to the Claimants of future pecuniary benefits and on the other any



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pecuniary advantage which from what-ever sources come to them by reason of the death, i.e. the balance of loss and gain to a dependant by the death must be ascertained. The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error. Broadly speaking, in the case of death, the basis of compensation is loss of pecuniary bene-fits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be un-reasonable, excessive nor deficient.

38. Of course, the Claimants who are widow, minor daughter and mother have not filed any Cross-Objection. Even without a Cross-Objection, questioning the quantum, the Court could suo motu enhance compensation under Or. 41, R. 33, CPC. In this context, reference could be made to 1999 ACJ 977 [Karnataka] wherein it has been held as follows:

“(6) I am in general agreement with the basic proposition of law that has been canvassed by the appellant's learned advocate when he points out that it is a well settled principle that a party who suffers an order or a decree and does not Appeal against it or assail it would normally not be permitted at the hearing of the Appeal to try and take advantage of the situation by asking for enhancement. The issue is not that but really as to whether this situation prescribes an absolute and total bar to the Court granting a relief if in



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the interest of justice such a relief is an absolute must. One has to view the situation from a rather practical point of view the first of them being with regard to the very poor quality of legal assistance that is usually available in and around the M.A.C.T. and thereafter, the second aspect of the matter being that the status of the parties and their general condition themselves may be such that they are unable to agitate the matter further and the third aspect of the matter which is relevant having regard to the present case, is the possibility of certain further tragic occurrences such as deaths that may have intervened, all of which may contribute to a situation wherein the Court finds that no Appeal or Cross-Objections have been filed. The essence of doing justice requires that compensation when awarded has got to be reasonable and fair and it has also got to be adequate having regard to the totality of the circumstances. The hearing of the Appeal involves a total review of the case and the Appeal is virtually an extension of the proceedings before the lower Court. The law is well settled with regard to one interesting aspect of the matter; namely, that the Courts do come across a few instances where instead of over-pitching the case before the Trial Court, a very modest amount is claimed and the Tribunals in these circumstances have been wrongly limiting the relief to the amount that has been claimed on the ground that even though the party is entitled to something higher, what was asked for is a lower figure. This Court had occasion to correct these



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orders and to lay down that the Tribunal is required to pass an order quantifying the compensation correctly irrespective of what has been claimed on the basis of the principle that it is not the amount that is claimed in that matter, insofar as if the Court has to the power to award a lesser amount, that it is equally equipped with the power to award a higher amount. It is that principle which applies with equal force to the Appeal Court and though I do not dispute that a Court would normally not permit a party to ask for enhancement unless an Appeal or Cross-Objections have been filed but there could be a very small category of cases in which the Court would make an exception, the reason being that the essence of doing justice requires that a Court will not refuse a relief only because of a technical or a procedural bar. I need to amplify here that if the technicalities are upheld, the result would be doing injustice insofar as the party will be left with a compensation lesser than what a fair evaluation entitles the party to. Again, I do not on the basis of the law as enunciated by the Courts in the decisions set out by me above, subscribe to the view that there exists any bar in the way of this Court exercising such powers. The powers do exist under Order 41, Rule 33, Civil Procedure Code and more importantly, such powers can certainly be exercised under section 151, Civil Procedure Code in the interest of justice.”

(ii) In TAMIL NADU STATE TRANSPORT CORPORATION VS. SAROJA AND ORS., [2008 (1) TNMAC



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352] *this Court has considered the said issue and that the said point has been answered, as follows:*

“6. On point:

The learned counsel for the respondents/claimants placing reliance on Order XLI, Rule 33 of C.P.C. and the various decisions emerged thereunder would pray that the compensation might be enhanced even though no cross-objection has been filed by the claimants, whereas the learned counsel for the appellant - Transport Corporation would cite the decision of the Hon'ble Apex Court in Oriental Insurance Co. Ltd. v. R. Swaminathan & Ors. , 2006 (2) ACC 701 (SC), and develop his arguments to the effect that unless there is a cross objection, the question of enhancing the compensation would not arise. Hence, it is just and necessary to refer to the decision of the Hon'ble Apex Court in Oriental Insurance Co. Ltd. v. R. Swaminathan & Ors. , 2006 (2)ACC 701 (SC). An excerpt from it would run thus:

“Apparently the first respondent claimant was satisfied with the Tribunal's Award as he did not file any Appeal there against to the High Court. Nonetheless, being aggrieved by the Single Judge's judgment, the claimant filed a Letters Patent Appeal before the Division Bench of the High Court. This Appeal was allowed and by the impugned judgment the High Court has awarded total compensation amounting to Rs.7,44,000/- under different heads with a direction for payment of interest at 18% from the date of Petition. The appellant-Insurance Company is aggrieved thereby and is in Appeal before us.



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The issue that arises in this case is, whether the Division Bench of the High Court was justified in increasing the compensation amount beyond the amount awarded by the Tribunal despite the fact that the Award of the Tribunal was not at all challenged by the claimant. The only reason given by the Division Bench of the High Court for doing so is:

“In this connection, we may observe that we are aware of the fact that we are enhancing the compensation even though the injured has not claimed it. But, the question is covered by catena of decisions justifying enhancement of compensation even if cases where the injured has not preferred an Appeal, provided the circumstances of the case warrants the same.”

.....

9..... An excerpt from the decision of this Court in Managing Director, Thanthai Periyar Transport Corp., Villupuram v. Sundari Ammal and four Others reported in 1999 (2) CTC 560 would run thus:

“Unfortunately, in the instant case, there is no cross-objection. Therefore, it would be essential, in this context, to consider whether this Court has got powers to enhance the amount of compensation, in the event of coming to the conclusion that the award was on the lower side, even though there is no cross-objection by the claimants.

In Dangir v. Madan Mohan , AIR 1988 S.C. 54 and M.D., Pallavan Transport Corporation Ltd., v. Kalavathi , 1998 (1) A.C.J 151, it is held that this Court



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has got power to enhance the compensation, even though the claimants had not filed any cross-objection against the award seeking for higher compensation, if this Court finds that the amount awarded by the Tribunal is not just and adequate.

As pointed out by the Apex Court in State of Punjab v. Bakshish Singh , 1998 (8) S.C.C. 222, the reading of the provision would make it clear that the Appellate Court has got wide power to do complete justice between the parties and which enables this Court to pass such decree or order as ought to have been passed or as the nature of the case may require notwithstanding that the party in whose favour the power is sought to be exercised has not filed any Appeal or cross-objection.

.....

.....

11. Over and above that the decision of the Hon'ble Three Judges' Bench of the Hon'ble Apex Court, in Nagappa v. Gurudayal Singh and others , 2003 ACJ 12: 2004 (2) TN MAC 398 (SC), could be cited here. An excerpt from it would run thus:

“Firstly, under the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as “the M.V. Act”), there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the



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Tribunal may pass such award. Only embargo is - it should be 'just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence."

19. We therefore in order to meet the ends of justice, it is appropriate to rectify the error crept in the judgment of the trial Court and to correct the same by applying the guidelines of the Hon'ble Supreme Court held in Pranay Sethi case as follows :

The income of the deceased at the time of accident is Rs.11,000/-

Add - Future prospects 40% at Rs.4400 (11,000+4400) = 15,400

Deduct 1/3rd (15,400/3 = Rs.5,133.33 rounded to Rs.5130)

for his living expenditure = 10,270

The age of the deceased at the time death is 38 years

Multiplier would be 15 (10,270x12x15) = 18,48,600

Loss of love and affection/Consortium = 1,20,000

Funeral expenses = 15,000

Loss of estate = 15,000

Total **Rs.19,98,600/-**

Therefore, the claimants are entitled to a sum of Rs.19,98,600/- as



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compensation. The 1st Claimant is entitled to a sum of Rs.10,00,000/-,

2nd claimant is entitled to a sum of Rs.6,00,000/- and the 3rd claimant is entitled to a sum of Rs.3,98,600/- towards compensation. The Point Nos.1 and 2 is answered accordingly.

20. In the result, the Civil Miscellaneous Appeal is partly allowed. The award passed by the trial Court is modified and the appellant/ Insurance is directed to pay a sum of Rs.19,98,600/- to the respondents/claimants along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit of the amount, less the amount if already deposited to the credit of M.C.O.P.No.25 of 2019 on the file of the Principal District Court, Motor Accident Claims Tribunal, Virudhunagar District at Srivilliputtur, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/1st claimant is entitled to a sum of Rs.10,00,000/-, 2nd claimant is entitled to a sum of Rs.6,00,000/- and the 3rd claimant is entitled to a sum of Rs.3,98,600/- towards their share and On such deposit, the 1st & 3rd respondents /1st & 3rd claimants are permitted to withdraw their share, less the amount already withdrawn, if any, together with proportionate interest and costs, by filing an appropriate petition

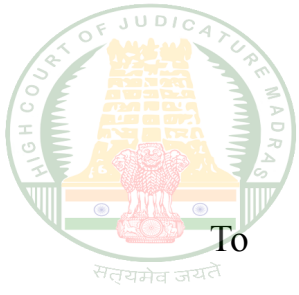


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before the Tribunal. The Tribunal is directed to deposit the share of the minor 2nd respondent/ 2nd claimant in a nationalized bank in an interest bearing deposit scheme until she attains majority. The 1st respondent herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months. No costs. Consequently, connected miscellaneous petition is closed.

(A.D.J.C., J.) & (R.P., J.)
02.07.2025

Index : Yes / No
NCC : Yes / No
RM



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To

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1.The Principal District Court
Motor Accident Claims Tribunal,
Virudhunagar District,
Srivilliputhur,

Copy to

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



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A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

RM

Judgment in
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