

C.M.A.(MD)Nos.1510 and 1570 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Dated : 25.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)Nos.1510 and 1570 of 2024
and
C.M.P.(MD)Nos.15890 and 16497 of 2024

The Branch Manager,
M/s.ICICI Lombard General Insurance Company Limited,
AA Towers, Plot No.5, By-Pass Road,
S.S.Colony,
Madurai – 625 010.

... Appellant in both Appeals

Vs.

1.R.Jeyakumar

2.J.Revathi

3.M.Arjunan

.. Respondents in C.M.A.(MD)No.1510 of 2024

1.A.Kowsalya

2.M.Arjunan

.. Respondents in C.M.A.(MD)No.1570 of 2024

COMMON PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.Nos.173 and 174 of 2020 dated 10.08.2023, on the file of the Motor Accident Claims Tribunal/District and Sessions Court, Madurai.



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For Appellant	: Ms.V.Muthu Kamatchi
For R1 & R2	: Mr.R.Gowri Shankar
For R3	: Given Up

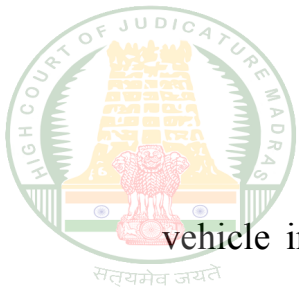
COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellant/insurance company, challenging the award passed by the learned Motor Accident Claims Tribunal (District and Sessions Judge), at Madurai, in M.C.O.P.Nos.173 and 174 of 2020, dated 10.08.2023.

2.For the sake of convenience, the parties are arrayed herein as per the ranking in M.C.O.P.No.173 of 2020.

3.The factual matrix of the present case, briefly stated, are as under:-

The parents of the deceased minor child are the claimants herein, the first respondent is the owner of the vehicle and the second respondent is the company, with which the vehicle was insured. On 24.11.2019, at about 09.40 a.m., while the claimants along with the minor children Ramachandran and Lagan and some relatives travelled in a vehicle bearing Registration No.TN-58-AT-7925, near Thirumangalam – Solavanthan road from south to north direction due to the sudden break applied by the driver, who had driven the said



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vehicle in a rash and negligent manner, the said vehicle capsized and as the result of which, the passengers travelling in the said vehicle sustained serious injuries. In the said accident, the minors, namely, Ramachandran and Lagan passed away. FIR was registered by Thirumangalam Police Station in Crime No.649 of 2019 under Sections 279, 337, 304(A) of IPC as against the driver of the said two wheeler. Seeking to compensate the death of their children, the claimants are before the M.C.O.P.

4.The learned Tribunal has examined eight witnesses and 23 documents were marked on the side of the petitioner/claimants and no witness was examined and 4 documents were marked on the side of the respondents. Three Court documents were marked. On the basis of the arguments, evidence deposed and documents marked, the learned Tribunal has proceeded to pass an award of Rs.8,66,000/- each to the petitioners/claimants in both claim petitions. Challenging the same, this Civil Miscellaneous Appeal is filed.

5.The learned counsel appearing for the appellant categorically submitted that the death is with respect to two minor children. However, the learned Tribunal had fixed the notional income of the deceased minor children as Rs. 6,000/- without proper reason and the same is excessive. The age of the



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deceased children was 9 and 2 years respectively. He pointed out that adopting the dictum of **Praney Sethi**¹ case, 40% has been calculated for future prospects, on the basis of which, notional income has been arrived Rs.1,08,000/-, which is exorbitant. For which, he relied upon **Meena Devi v. Nunu Chand Mahto @ Nemchand Mahto and others**², in which the Hon'ble Apex Court has relied upon the case of **Kishan Gopal and Another v. Lala and Others**³, had taken the notional income as Rs.30,000/- and Rs.25,000/- respectively for the death of the minor of age 10 and 7 years respectively and further insisted that following the dictum of the Hon'ble Apex Court of **Meena Devi's** case, this Court in the case of **Magma HDI General Insurance Company Limited v. A. Veera Pandian and others**⁴, has proceeded to fix the notional income of the deceased 11 year minor boy as Rs.30,000/- and adopted multiplier '15', for the accident which had happened on 08.10.2020 and pressed for allowing the Civil Miscellaneous Appeals.

6.Per contra, the learned counsel for the claimants submitted that whenever the aspect of compensation is finalised, the date of accident and date of award of the various cases should be taken into consideration and the

1 (2017) 16 Supreme Court Cases 680

2 2022 (2) TNMAC 605 (SC)

3 2014 (1) SCC 244

4 C.M.A.(MD)No.988 of 2024



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judgments relied upon by the appellant were with respect to the accident, which happened at least two decades, more particularly in the years 1992 and 2003.

That apart, the aspect of inflation also has not been considered in the respective Courts in the aforesaid judgments. The said dictum will not be applicable to the facts and circumstances of the present cases and categorically contended that the award by the Tribunal need not be interfered with and pressed for dismissal of the Appeal.

7.Heard the learned counsels on either side and carefully perused the materials available on record.

8.In the instant case, the date of accident is 24.11.2019. The learned counsel appearing for the appellant relied upon the case of ***Kishan Gopal and Another v. Lala and Others***⁵, wherein the date of accident was 19.07.1992 and the date of award was 25.05.2000. In which, the notional income was fixed as Rs.30,000/- for a minor of age 10 years.

9.Similarly, in the case of ***Meena Devi v. Nunu Chand Mahto @ Nemchand Mahto and Others***⁶, wherein the date of accident was 29.07.2003,

⁵ Supra 3

⁶ Supra 2



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for which the award was passed in the year 2013, in which the Hon'ble Supreme

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Court has relied upon **Kishan Gopal** dictum and had fixed the notional income of Rs.30,000/- for 12 year old child. Interestingly, this Court in **Magma HDI General Insurance Company Limited v. A. Veera Pandian and others**⁷, for an accident dated 08.10.2020, has adopted the dictum of judgments of the Hon'ble Supreme Court which had happened during the year 1992 and 2003 without considering the cost inflation and money value aspects. This Court has dealt with similar case in **United India Insurance Company Limited v. Tamizhselvi**⁸, dated 30.01.2025, a similar case of death of minor child of age about 8 years, for an accident had happened on 08.03.2019, this Court has confirmed the award of Rs.11,03,800/-.

10.In yet another case of **Devapriya v. R.Srinivasa Rao**⁹ dated 27.01.2025, in the case of death of minor child aged about 3 years for an accident, which happened on 29.07.2005, this Court has adopted the **Kishan Gopal** dictum and had fixed the notional income of Rs.30,000/- for 12 year old child and the relevant portion of the same is extracted as follows:-

“8. The factum and manner of the accident is not disputed by the parties and the parties have not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same.

⁷ Supra 4

⁸ C.M.A.No.227 of 2025

⁹ C.M.A.No.153 of 2025



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9. *Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2005 and at the time of accident, the deceased was aged about 3 years. As per the above decision of Kishan Gopal and another Vs. Lala and others reported in 2014 1 SCC 244, insofar as children are concerned, only a consolidated notional income can be fixed and the income cannot be fixed like how it is fixed to an adult. That apart, there is no question of determining the monthly income and adding future prospects towards the same.*

10. *As per the judgement of Hon-ble Apex Court in the case of Kishan Gopal and another Vs. Lala and others reported in 2014 1 SCC 244, the Apex Court had directed a sum of Rs.30,000/~ to be fixed as annual income for the children below 10 to 15 years for the accident which had taken place in the year 1992. In view of the same, this Court has to necessarily keep in mind the raise in price index and the cost of living and accordingly, the amount has to be increased. Without considering, the same, the Tribunal has fixed only a sum of Rs.18,000/~ as annual income of the deceased for the accident which happened on the year 2005, which is wholly unsustainable.”*

11. *Even in the instant case, the factum and the manner of the accident is not disputed by the parties, the parties have not raised any issue on the aspect of*



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negligence and liability. The only aspect which has been raised is as to the fixation of notional income fixed by the learned Tribunal.

12. Fully fortified by the order of this Court in **Devipriya's** case, I am of the view that this Court has to necessarily keep in mind raise in price index, cost of living and on that basis, the compensation should be gradually increased. For an accident which had happened during the year 2019, I do not find any de-merit in the manner, in which the compensation has been awarded by the learned Tribunal.

13. In view of the above, the award passed by the learned Tribunal is confirmed and these Civil Miscellaneous Appeals are dismissed.

14. The claimants are entitled to the award amount with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The appellant/insurance company is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimants are permitted to withdraw the award amount, after deducting any amount received



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by them earlier. The claimants are not entitled for interest for the default period,

if there is any. There shall be no order as to costs. Consequently, connected

miscellaneous petitions are closed.

25.03.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes

Mrn

To

1.The Motor Accidents Claims Tribunal,
(District and Sessions Judge), Madurai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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