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CMA.(MD)Nos.1308 & 1309 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	10/10/2025
Date of Pronounced	29/10/2025

CORAM

The Hon'ble Ms.Justice **R.POORNIMA**

CMA(MD)Nos.1308 & 1309 of 2014
&
MP(MD)Nos.2 & 3 of 2014

(1) CMA(MD)No.1308 of 2014 :-

M/s. National Insurance Co. Ltd.,
Rep. By Its Branch Manager,
No.74-a, Paramathi Road,
Namakkal District.

: Appellant/2nd Respondent

Vs.

1. Muthukumari,
2. Minor Nanthini,
3. Minor Arunkumar,
4. Sekar,
5. Vijayalakshmi,

(Minors R2 & R3 are represented by their next friend and natural guardian their mother Muthukumari/R1)

..Respondents 1 to 5 / petitioners

6. Krishnan
(R6 Ex-parte in Tribunal : Notice dispensed with)

: 6th Respondent /1st Respondent



PRAYER :- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed in MCOP No.576 of 2011 on the file of the Motor Accident Claims Tribunal District Court, Karur, dated 04/12/2013.

For Appellant : Mr.J.S.Murali
For Respondents : Mr.R.M.S.Sethuraman – for R1 to R5
: Dispensed with – for R6

(2) CMA(MD)No.1309 of 2014 :-

M/s. National Insurance Co. Ltd.,
Rep. By Its Branch Manager,
No.74-a, Paramathi Road,
Namakkal District.

: Appellant/2nd Respondent

Vs.

1.Sekar ..1st Respondent / petitioner
2.Krishnan ..2nd Respondent /1st respondent
(R2 Ex-parte in Tribunal : Notice dispensed with)

PRAYER :- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed in MCOP No.577 of 2011 on the file of the Motor Accident Claims Tribunal District Court, Karur, dated 04/12/2013.

For Appellant : Mr.J.S.Murali
For Respondents : Mr.R.M.S.Sethuraman – for R1
: Dispensed with – for R2



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COMMON JUDGMENT

Since both the Civil Miscellaneous Appeals arise out of the common award, dated 04.12.2013 made in MCOP Nos.576 & 577 of 2011 on the file of the Motor Accident Claims Tribunal / District Court, Karur, they are taken up together for final disposal and disposed of by a common judgment.

2. For the sake of convenience, the parties are referred to according to their litigative status before the Tribunal.

3. These Civil Miscellaneous Appeals are preferred seeking to set aside the common judgment and decree, dated 04.12.2013 passed in MCOP Nos.576 & 577 of 2011 by the Motor Accident Claims Tribunal / District Court, Karur.

4. The facts in brief:-

On 6.11.2011, at about 9.50 p.m., Manikandan was riding his Pulsar motorcycle bearing Regn. No.T.N.47-W-6294 along with his father Sekar as pillion rider, who is petitioner in M.C.O.P.577/2011, from south to north on Madurai-Karur N.H.7 Road keeping extreme left side



of the road. In front of the two wheeler, the first respondent's lorry was proceeding. Unexpectedly, the lorry was swerved to the right side by its driver without showing any signal or applying brake. Therefore, Manikandan made effort to apply brake, but in spite of applying brake, the two wheeler dashed on the right side of the lorry. Due to the said impact, Manikandan trapped under the rear wheel of the lorry and crushed to death instantaneously. Sekar was thrown out from the two wheeler and sustained injuries on his head, leg and hand. The injured was taken to Government Hospital, Dindigul and the dead body of Manikandan was taken to Government Hospital, Vedsenthur for post mortem. The injured had taken treatment in the said hospital for two days and he has not fully recovered and still taking treatment.

5. At the time of accident, the deceased Manikandan and Sekar were doing tiles work and were earning Rs.10,000/- per month and contributed their entire income for the welfare of the family. After the death of Manikandan, the petitioners not only lost their love and affection, but also entire income of the deceased. The petitioner Sekar in M.C.O.P.577/2011 is unable to do his work as done before the accident and lost his income due to injuries and disabilities sustained by him. The driver of the lorry alone was responsible for the accident. Therefore, the



petitioners in M.C.O.P.No.576 of 2011 claims a sum of Rs.25 lakhs as compensation for the death of Manikandan and the petitioner in M.C.O.P.No.577 of 2011 claims a sum of Rs.50,000/- for the injuries sustained by him.

6. The claim was resisted by the Insurance Company disputing the manner of the accident and their liability to pay compensation.

7. Before the Tribunal, on the side of the claimants, 2 witnesses were examined and 9 documents marked. On the side of the respondents, one witness was examined and no document was marked.

8. At the conclusion of the enquiry, the Tribunal found that the accident occurred due to the negligent act of the driver of the Lorry belong to the 1st respondent. The Tribunal, awarded a total compensation of Rs.10,08,000/-, in respect of MCOP Nos.576 of 2011; and in respect of MCOP No.577 of 2011, awarded Rs.12,000/-.

9. With regard to the first aspect of negligence, the Tribunal on the basis of the evidence let in by the claimants and based on the FIR



registered against the driver of the Lorry bearing Registration No.TN 28 AH 6287 belongs to the first respondent insured with the second respondent, concluded that the occurrence took place due of the negligence on the part of the driver of the Lorry belong to the first respondent.

10. Regarding the compensation, the Tribunal assessed the income of the deceased and fixed the compensation and also assessed the injuries, based on the Wound Certificate issued by the Doctor, who treated the claimant and fixed the compensation depending upon the injuries sustained by the claimant in MCOP No.577 of 2011.

11. Aggrieved by the same, these appeals were preferred by the appellant insurance company disputing the negligence and awarded excess compensation without considered the settled position of law that the claim under section 163-A of Motor Vehicles Act could be made only the annual income does not exceed Rs.40,000/- per annum and awarded huge sum under various other heads.



12. Now, this Court has to decide the following points for considerations:

(1) Whether the accident occurred due to the rash and negligent act of the 1st respondent's driver ?

(2) Whether the Tribunal failed to consider that the claim petition was filed under section 163-A of MV Act and awarded higher compensation against structural formula basis?

13. Point No.1

The appellant contends that the accident occurred solely due to the rash and negligent driving of the deceased. It is further stated that the Tribunal ought to have fixed the entire negligence on the deceased or atleast some percentage of contributory negligence on the part of the deceased. It is further stated that the Tribunal failed to consider that the driver of the appellant insured vehicle lorry was examined as RW1, who has given a clear and cogent evidence leading to the fact that the deceased alone is negligent for the accident and the evidence of PW2 (father of the deceased) cannot be relied upon since he is an interested witness.



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14. The main grounds raised in these Civil Miscellaneous Appeals by the insurance company is that the deceased Manikandan riding the vehicle without proper license, rashly and negligently without taking due care and caution and fell on the road under the right middle portion of the issued vehicle going to skid because of rain, by application of break off Motor Vehicle and therefore, the accident took place. The deceased being a tort-feasor not entitled to compensation for his own wrong.

15. The claim Tribunal failed to consider that it is the settled position of law that the claim under Section 163(A) of the Motor Vehicle Act could be made only if the annual income does not exceed Rs.40,000/- whereas the claim Tribunal has fixed the annual income of the deceased at Rs.72,000/- by taking Rs.6000/- as monthly income of the deceased. The Tribunal awarded a sum of Rs.5,10,000/- instead of Rs.9,18,000/- towards loss of income of the family.

16. As far as ground number one is concerned, Ex.P1-FIR was lodged against the driver of the vehicle by PW2 injured in MCOP.No.577 of 2011, who is the pillion rider of the two wheeler



bearing registration No. TN 47 W 6294 in which the deceased was riding the vehicle, sustained injuries and died. It was admitted by the driver of the said lorry who was examined as RW1 that, a final report Ex.P6 filed against him by the Investigating Officer of the Police Department holding him guilty of the offence. No complaint filed by the driver of the lorry or its owner against the rider of the two wheeler. Further Ex.P3 MVI report for the lorry, it has been stated that the lorry has not sustained any damages, on the other hand, in Ex.P4 the MVI report for the two wheeler where damages have been shown on the front portion of the vehicle. Likewise, Ex.P5 certified copy of rough sketch in which the accident place has been shown on the eastern portion of the road and it is not stated that as if the accident took place in the middle of the road, as stated by the appellant. The appellant failed to produce substantial evidence or document to prove that the accident occurred due to the rash and negligent driving of the rider of the motorcycle. Therefore, the Tribunal rightly held that the accident occurred due to the negligent act of the first respondent's driver. This Court of the view that no interference warrants with regard to the finding of the trial Court. Point No.1 is answered accordingly.



17. Point No.2 :

As far as the second ground is concerned, it is true that the claim petition was filed under Section 163A of the Motor Vehicle Act, which is a Special provision as to payment of compensation on structured formula basis, which read as follows :

“163 -A Special provision as to payment of compensation on structured formula basis - (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this subsection, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).”

18. The claim Tribunal instead of fixing the maximum annual income of Rs.40,000/- per annum wrongly fixed a sum of Rs.72,000/- by taking Rs.6000/- as monthly income of the deceased. In the judgement rendered in ***Deepal Girishbhai Soni and Others Vs.***



United India Insurance Co. Ltd., Baroda reported in ***2004 (5) SCC 385***,

where in it was held that in a claim under Section 163-A, the compensation is to be determined strictly in accordance with the second schedule, therefore the award passed by the Tribunal in MCOP No.576 of 2011 to be modified and accordingly this Court modified the compensation amount in CMA(MD)No.1308 of 2014 as follows :

The annual income is fixed at Rs.40,000/-

Deduct 1/3rd for personal expenses = Rs.13,333/- (13,300/-)

Total = Rs.26,700/-

Apply multiplier = Rs.26700 x 17= Rs.4,53,900/-

Add

Loss of estate Rs.2,500

Loss of consortium for wife Rs.5,000

Funeral expenditure Rs.2,000

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Total = Rs.4,63,400/-

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Therefore, the award is modified and reduced to a sum of Rs.4,63,400/- from Rs.10,08,000/-. Point No.2 is answered accordingly.



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CMA.(MD)Nos.1308 & 1309 of 2014



19. As far as CMA(MD)No.1309 of 2014 is concerned, the Tribunal awarded only just compensation and this Court find no reason to interfere with the well considered findings of the Tribunal and hence, the CMA(MD)No.1309 of 2014 is liable to be dismissed.

20. CMA(MD)No.1308 of 2014

In the result, Civil Miscellaneous Appeal is allowed. The award passed by the trial Court is modified and the Appellant/ Insurance Company is directed to deposit a sum of Rs.4,63,400/- 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 if any, to the credit of M.C.O.P.No.576 of 2011 on the file of the District Court, Motor Accident Claims Tribunal, Karur, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/1st claimant is entitled to a sum of Rs.1,63,400/-, 2nd & 3rd claimants are entitled to a sum of Rs.1,00,000/- each and the 4th and 5th claimants are entitled to a sum of Rs.50,000/- each towards their share and on such deposit, the 1st, 4th & 5th respondents /1st, 4th & 5th claimants are permitted to withdraw their shares, less the amount already



CMA.(MD)Nos.1308 & 1309 of 2014

withdrawn, if any, together with proportionate interest and costs, by filing an appropriate petition before the Tribunal. The Tribunal is directed to deposit the share of the minors 2nd & 3rd respondents/ 2nd & 3rd claimants in a nationalized bank in an interest bearing deposit scheme until they attain majority. The 1st respondent herein, who is the mother/guardian, is permitted to withdraw the interest amount once in three months, in order to maintain and educate the minor children. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant insurance company is entitled to get back the excess deposited amount before the Tribunal, if any by filing appropriate application before the Tribunal in the manner known to law.

21. CMA(MD)No.1309 of 2014

In the result, Civil Miscellaneous Appeal is dismissed and the order dated 04.12.2013 passed in MCOP No.577 of 2011 on the file of the Motor Accident Claims Tribunal (District Court), Karur is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

29.10.2025

Index:Yes/No
NCC :Yes/No
RM

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CMA.(MD)Nos.1308 & 1309 of 2014

To

- 1.The District Court /
Motor Accident Claims Tribunal
Karur,
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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CMA.(MD)Nos.1308 & 1309 of 2014

R.POORNIMA, J.

RM

CMA(MD)Nos.1308 & 1309 of 2014

29.10.2025