



C.M.A(MD)No.949 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.06.2025

PRONOUNCED ON : 28.08.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.949 of 2023

and

C.M.P(MD)Nos.14452 of 2024 and 13337 of 2023

The Branch Manager,
M/s.TATA AIG General Insurance Co Ltd.,
North Block, 3rd Floor, AA Towers,
4 & 5, By pass Road, Madurai.

: Appellant

Vs.

1. Muthamil Sagayam

2.Amirtham

3.A.Ashwin

: Respondents

(Memo, dated 16.06.2025 in USR.No.23499
is recorded to the effect that notice to R3 is
dispensed with as he was set ex-parte before
the Tribunal vide Court order, dated 17.06.2022
made in CMA(MD)No.949/2023)



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PRAYER:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree, dated 21.06.2023 passed in M.C.O.P.No.931 of 2019, on the file of the Special District Judge to deal with MCOP Cases (Motor Accident Claims Tribunal) Thiruchirappalli.

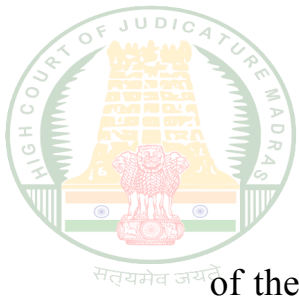
For Appellant : Mr.V.Sakthivel

For Respondents : Mr.N.Sudhagar Nagaraj,
for R1 & R2.

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.931 of 2019, dated 21.06.2023, on the file of the Special District Judge to deal with MCOP Cases (Motor Accident Claims Tribunal) Thiruchirappalli.

2. The respondents/claimants, claiming to be the daughters of the deceased Pichaipillai's brother, laid the above claim application seeking compensation for the death of their paternal uncle Pichaipillai, who died consequent to an accident occurred on 07.12.2018, alleging that the accident was occurred due to the rash and negligent driving of the rider



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of the two wheeler bearing Reg.No.TN-30-BA-9758 owned by the third respondent and insured with the appellant Insurance Company and that they are liable to be pay compensation.

3.The first respondent had remained ex-parte. The appellant insurer has filed a counter statement raising objections.

4. During trial, the first claimant examined himself as P.W.2 and examined one Rajakumaran as P.W.1 and exhibited 11 documents as Ex.P.1 to Ex.P.11. 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 sides, has passed the impugned award, dated 21.06.2023, holding that the first respondent's vehicle rider was responsible for the accident, directed the insurer to pay compensation of Rs.3,85,000/- with interest at 7.5% per annum and costs. Aggrieved by the impugned order, the insurer has preferred the present Civil Miscellaneous Appeal.



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6. The only and main ground canvassed in the present appeal is that the respondents 1 and 2/claimants are only the daughters of the deceased's brother and as such, they are not depending on the deceased and hence, they are not entitled to claim compensation.

7.The learned counsel for the appellant would submit that even assuming for argument sake that the claimants, being the daughters of the deceased's brother, in the capacity of legal representatives are 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 the specific case of the claimants that the deceased remained unmarried and he led a happy life with his brother's daughters ie., the claimants herein; that he gave his earnings to the claimants and that both the claimants have lost their loving, caring, affectionate of their paternal uncle, who guided them through their life.

9. The appellant has taken a stand that the claimants are not the legal heirs and dependants of the deceased Pichaipillai and hence,they



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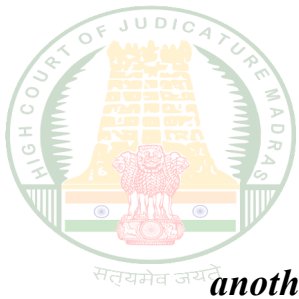
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have no right to claim compensation for the death of the deceased Pichaipillai.

10. The claimants have produced the legal heirship certificate under Ex.P.4, wherein it is shown that the claimants are the legal heirs of the deceased Pichaipillai. The appellant has not disputed the said factum. It is not the case of the appellant that the deceased is having other legal heirs/legal representatives other than the claimants or that the claimants are not the legal representatives of the deceased.

11.No doubt, as rightly pointed out by the learned counsel for the appellant, the claimants were aged 46 and 42 years respectively at the time of filing the claim application and are married. The learned counsel for the appellant would submit that the claimants are living with their respective families at different places and they are not financially dependant on the deceased and as such there are not entitled for the claim.

12. The learned counsel for the appellant would rely on the decision of Hon'ble Supreme Court in the case of ***Deep Shikha and***

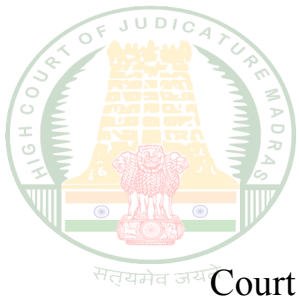


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another Vs. National Insurance Company Ltd., and others reported in **2025 (1) TN MAC 689 (SC)**, wherein the married daughter of the deceased and the mother of the deceased have claimed compensation. The Tribunal partly allowed the claim petition granting compensation of Rs.15,97,000/- to the claimants therein. But when the same was challenged, the High Court modified the award and reduced the compensation awarded to the daughter of the deceased and set aside the award as against the mother of the deceased, as they could not be considered as dependents of the deceased for the purpose of calculating compensation. When the said order was challenged, the Hon'ble Apex Court has held that the married daughter of the deceased is not entitled to get compensation as she has failed to prove that she was being financially supported by her mother post marriage, but granted enhanced compensation to the mother of the deceased.

13. 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 deceased and other claimants are the wife and children of the first claimant. This Court, by relying on the judgments of Hon'ble Supreme



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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 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



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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 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.”*



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*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 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



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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 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



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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 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.



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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 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.”*



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14. 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 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.”



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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.

15. Considering the legal position above referred and also taking note of the fact that the claimants are the legal representatives of the deceased, even though the claimants were not financially dependant on the deceased, are certainly entitled to get compensation.



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16. The learned counsel for the appellant would submit that the deceased was 76 years, but the Tribunal fixed the notional income of the deceased at Rs.10,500/- per month. Though the claimants have alleged that the deceased was working as a Security and was earning Rs.15,000/- per month, they have not produced any iota of evidence to substantiate the same. But the Tribunal, taking note of the judgment of Hon'ble Supreme Court in ***Syed Siddque Vs. Divisional Manager, United India Insurance Co., Ltd.***, reported in ***2014(2) SCC 735***, where notional income of the vegetable vendor in the year 2014 was fixed as Rs.6,500/- per month, considering the fact that the accident was occurred in the year 2018, has rightly fixed the notional income at Rs.10,500/- and as such the same cannot be found fault with. The Tribunal has rightly deducted 50% of the income towards personal and living expenses of the deceased and by rightly applying multiplier '5' has quantified the compensation at Rs.3,15,000/- and the same is very much reasonable.

17. Except the above, the appellant has not canvassed any other reason or ground to impugn the award. Hence, this Court concludes that the Civil Miscellaneous Appeal is devoid of merits and the same is liable to be dismissed.



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18. In the result, the Civil Miscellaneous Appeal is dismissed and the award, dated 21.06.2023, in M.C.O.P.No.931 of 2019, on the file of the Special District Judge to deal with MCOP Cases (Motor Accident Claims Tribunal) Thiruchirappalli, is confirmed. Consequently, connected Miscellaneous Petitions are closed. No costs.

28.08.2025

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

1.The Special District Judge to deal with MCOP Cases
(Motor Accident Claims Tribunal) Thiruchirappalli.

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.949 of 2023
and
C.M.P(MD)Nos.14452 of 2024 and 13337 of 2023

28.08.2025