



C.M.A.Nos.983 & 1733 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.08.2025

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.Nos.983 & 1733 of 2023

C.M.A.No.983 of 2023

1.A.Selvi

2.A.Jenitha (Minor)

Rep. By Mother and Next Friend A. Selvi

3.X.Alphonsa

4.B.Xavier

...Appellant(s)

Vs.

1.Mahalakshmi

(was set exparte in Trial Court)

2.The New India Assurance Co. Ltd.,

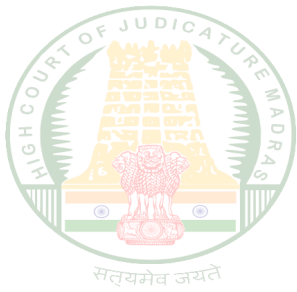
Motor Third Party Cell,

No.45, Moore Street,

Chennai – 600 001.

...Respondent(s)

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated



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08.11.2019 passed in M.C.O.P.No.4986 of 2013, on the file of the Motor Accidents Claims Tribunal, Chennai (in the II Court of Small Causes, Chennai-104).

For Appellant(s) : Mr.F.Terry Chella Raja
for Mr.M.Pachaiyappan
For Respondent(s) : R1 – NDW
Mr.M.Krishnamoorthy for R2

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The New India Assurance Co. Ltd.,
Motor Third Party Cell,
No.45, Moore Street,
Chennai – 600 001.

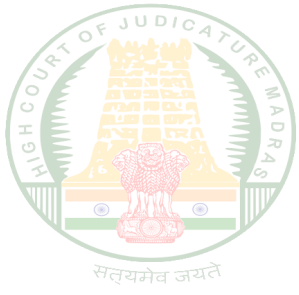
...Appellant(s)

Vs.

1.A.Selvi
2.A.Jenitha (Minor)
Rep. By Mother and Next Friend A. Selvi
3.X.Alphonsa
4.B.Xavier
5.Mahalakshmi
(5th respondent remained *exparte*
and notice dispensed with)

...Respondent(s)

For Appellant(s) : Mr.M.Krishnamoorthy
For Respondent(s) : Mr.F.Terry Chella Raja for R1 to R4
for Mr.M.Pachaiyappan
R5 - NDW



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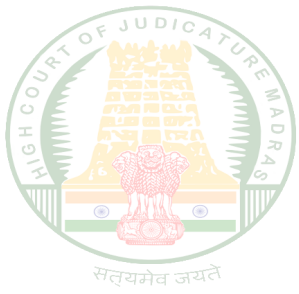
COMMON JUDGMENT

These appeals are filed challenging the judgment and decree dated 08.11.2019 passed in M.C.O.P.No.4986 of 2013 on the file of the Motor Accidents Claims Tribunal/II Court of Small Causes, Chennai.

2.Since the parties and the issues are one and the same, these appeals are disposed of by a common judgment.

3.C.M.A.No.983 of 2023 is filed by the claimants seeking enhancement of compensation and C.M.A.No.1733 of 2023 is filed by the appellant Insurance Company with regard to the quantum of compensation.

4.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.



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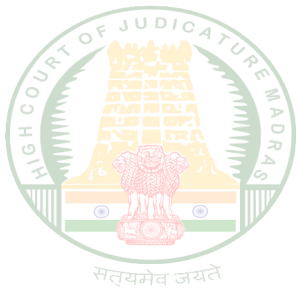
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5.The petitioners are the claimants, the first respondent is the owner of the vehicle and the second respondent is the Insurance Company before the Tribunal.

6.The brief facts of the case are as follows:

On 23.07.2012 at about 14.00 hours, when the petitioner was riding his motorcycle bearing Registration No.TN 02 AK 1138 from south to north direction on 200 Feet Road at Dadankuppam Over bridge, at that time, a Bajaj Tempo bearing Registration No.TN 21 P 2053 driven by its driver in a rash and negligent manner dashed against the petitioner. Immediately after the accident, the petitioner sustained multiple injuries and was taken to Madras Medical College; he succumbed to injuries in spite of treatment given to him. The petitioners filed a claim petition before the Tribunal in M.C.O.P.No.4986 of 2013, the Tribunal awarded a sum of Rs.10,01,800/- as compensation.

7.Learned counsel appearing for the claimants submitted that the accident occurred due to the rash and negligent driving by the driver of the tempo; the compensation awarded by the Tribunal is very meagre and



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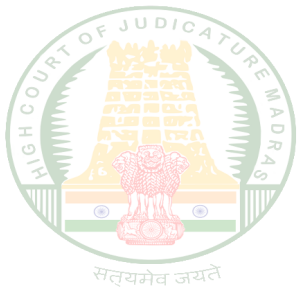
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hence, he filed the present appeal for enhancement. In support of his arguments, he relied upon the following judgments:

(a) A Division Bench Judgment of this Court in the case of ***Divisional Manager, United India Insurance Co. Ltd., vs. Kumar and Others*** reported in ***2018 (2) TN MAC 749 (DB)***, wherein the Division Bench has held as follows:

“15.No doubt there is no attempt made to transpose the Tortfeasor as was done in the Appeal before the Division Bench. We are, however, of the considered opinion that the same would not affect the right of the other Claimants viz., the minor children of the deceased from seeking compensation. After all, the object of the enactment is to award just and reasonable Compensation and a right to claim just Compensation cannot be defeated by technicalities. It will be pertinent to quote the observations of the Hon'ble Supreme Court in Collector, Land Acquisition v. Mst. Katiji, 1987 (100) LW 676, wherein, the Hon'ble Supreme Court had observed as follows:

4.When substantial justice and technical considerations are pitted



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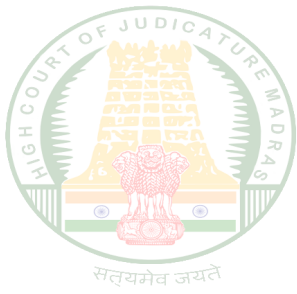


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against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.”

(b)A Full Bench judgment of the Hon'ble Supreme Court in the case of ***Deepal Girishbhai Soni and Others vs. United India Insurance Co. Ltd., Baroda*** reported in ***2014 (1) TN MAC (SC) 193***, wherein the Hon'ble Supreme Court has held as follows:

“51.It may be true that Section 163-B provides for an option to a claimant to either go for a claim under Section 140 or Section 163-A of the Act, as the case may be, but the same was inserted 'ex-abundanti cautela' so as to remove any misconception in the mind of the parties to the lis having regard to the fact both relate to the claim on the basis of no-fault liability. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims either under Section 163-A or Section 166 does not arise. If the submission of the learned



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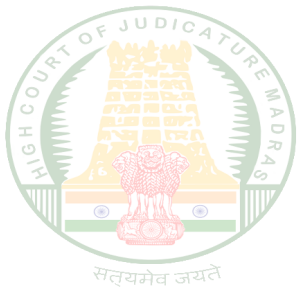


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counsel is accepted the same would lead to an incongruity.

52.Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the Court would not travel beyond the same and extend the scope of the statue on the pretext of extending the statutory benefit to those who are not covered thereby.

53.The decision of this Court in Kunal Singh v. Union of India and Another [(2003) 4 SCC 524] relied upon by Mr.Banerjee cannot be said to have any application whatsoever in the instant case as therein this Court while considering the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 held that the language thereof is plain and certain statutory obligation on the employer was cast to protect an employee acquiring disability



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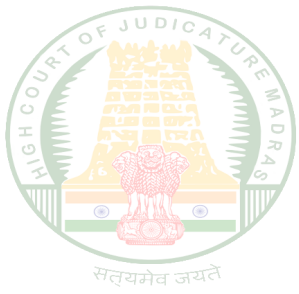
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during service and only in that situation, it was observed:

“9...In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act...”

55.It is now well-settled that for the purpose of interpretation of statute, same is to be read in its entirety. The purport and object of the Act must be given its full effect.

56.We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.”



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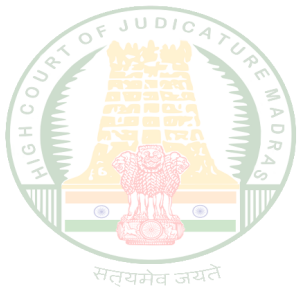
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8.Learned counsel appearing for the second respondent submitted that the compensation awarded by the Tribunal is very excessive and hence, he prayed for dismissal of the appeal filed by the claimants and prayed to allow the appeal in C.M.A.No.1733 of 2023. In support of his arguments, he relied upon the following judgments:

(a)A judgment of the Hon'ble Supreme Court in the case of ***United India Insurance Company Limited vs. Sunil Kumar and Another*** reported in ***(2019) 12 SCC 398***, wherein the Hon'ble Supreme Court has held as follows:

“Motor Vehicles Act, 1988 – S.163-A – Defence/plea of negligence on the part of victim i.e.plea for contributory negligence – Non-availability of, to the insurer in a claim proceeding under S.163-A.”

(b)A judgment of the Hon'ble Supreme Court in the case of ***Ramkhiladi and Another vs. United India Insurance Company and Another*** reported in ***(2020) 2 SCC 550***, wherein the Hon'ble Supreme Court has held as follows:



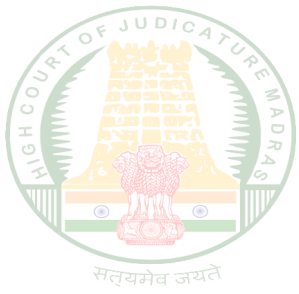
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“Motor Vehicles Act, 1988 – Ss. 163-A and 147 – Claim petition under S.163-A, held, not maintainable by borrower/permissive user steps into shoes of owner, and owner cannot both be claimant and recipient - In a claim under S.163-A, deceased/victim has to be a third party in relation to vehicle in question - Mere own-use of motor vehicle by owner/borrower/permissive user does not entitle such person(s) to maintain S.163-A petition against insurer of their own/borrowed vehicle – Owner/borrower/permissive users are not “third parties” in relation to their own/borrowed vehicle and hence are not covered by statutory insurance under S.147.

Fact that S.163-A claim is based on no-fault liability principle only means that fault or negligence or wrongful act, neglect or default of driver/owner of offending vehicle does not need to be established for award of compensation under S.163-A/Sch. II”



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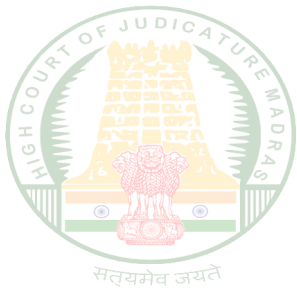
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(c)A judgment of the Hon'ble Supreme Court in the case of ***Shivaji and Another vs. Divisional Manager, United India Insurance Company and Others*** reported in ***(2019) 12 SCC 395***, wherein the Hon'ble Supreme Court has held as follows:

“Motor Vehicles Act, 1988 – S.163-A – Defence/plea of negligence on the part of victim i.e.plea for contributory negligence – Non-availability of, to the insurer in a claim proceeding under S.163-A.”

9.Heard learned counsel appearing for the appellant, learned counsel for the second respondent and perused the materials available on record.

10.Before the Tribunal, the first petitioner was examined as PW1, Mr.Aravindh Babu was examined as PW2, Mr.Mohan was examined as PW3 and on the side of the petitioners, 8 documents were marked as Exs.P1 to P8. On the side of the respondent, Mr.Soundarapandian was examined as RW1, Mr.Ajaykumar was examined as RW2 and 3 documents were marked as Exs.R1 to R3.



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11.The Tribunal after elaborately discussing the factual aspects, awarded a sum of Rs.8,56,800/- for loss of dependency, Rs.40,000/- for loss of consortium, Rs.45,000/- for loss of love and affection, Rs.25,000/- for parental consortium, Rs.20,000/- for Filial consortium, Rs.15,000/- for funeral expenses and arrived at a total compensation of Rs.10,01,800/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

12.On perusal of the records, it is seen that the petitioner was aged 27 years and was working as a driver at the time of the accident. It is also seen that there was a smell of alcohol on the deceased at the time of the accident; therefore, this Court is inclined to fix 10% contributory negligence on the part of the deceased.

13.The amount awarded under the head loss of consortium and loss of dependency, in the opinion of this Court is very meagre and this Court is inclined to enhance the amount awarded under the said head. Accordingly, the amount awarded under the head loss of consortium is enhanced to Rs.1,20,000/- from Rs.40,000/- (Rs.40,000 x 3).



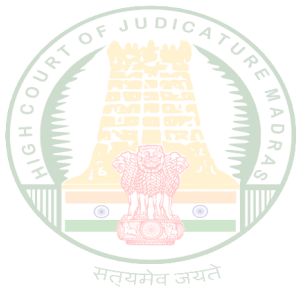
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Accordingly, the amount awarded under the head loss of dependency is enhanced to Rs.25,70,400/- from Rs.8,56,800/-.

14.Considering the age, year of the accident and the submission made by the learned counsel appearing for the claimants, this Court is inclined to modify the award and accordingly, the compensation awarded by the Tribunal is reassessed as follows:

(Rs.400 per day x 30 days = Rs.12,000/- x 40% future prospects
= Rs.4,800/-; = Rs.16,800 - 1/4 = Rs.12,600 x 12 x 17 = Rs.25,70,400/-)

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1	Loss of dependency	8,56,800/-	25,70,400/-
2	Loss of consortium	40,000/-	1,20,000/-
3	Loss of love and affection	45,000/-	45,000/-
4	Parental consortium	25,000/-	25,000/-
5	Filial consortium	20,000/-	20,000/-
6	Funeral expenses	15,000/-	15,000/-
	Total	10,01,800/-	27,95,400/-



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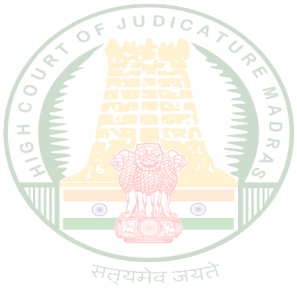
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S.No.	Description	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
	10% contributory negligence	-	2,79,540/-
	Total	-	25,15,860/-

15.The claimants are entitled to total compensation of Rs.25,15,860/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization. In view of the said findings, the appeal filed by Insurance Company in C.M.A.No.1733 of 2023 is dismissed as no merits.

16.The judgment and decree passed by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai in M.C.O.P.No.4986 of 2013 dated 08.11.2019 is modified to the above extent.

17.The Insurance Company is directed to deposit the modified/enhanced award amount before the Tribunal within a period of 6 weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants 1 to 3 are permitted to withdraw the amount along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and



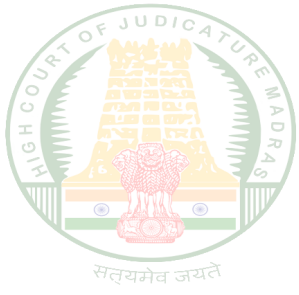
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necessary application before the Tribunal. If the second claimant is still minor, her share shall be kept in an interest-yielding fixed deposit with any one of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until she attains majority and the interest derived from out of the said share of the minor shall be paid to the claimant's mother every quarter to be utilized for the welfare of the said minor. The other directions issued by the Tribunal with regard to the mode of payment of compensation and apportionment remain unaltered.

18.The claimants shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The claimants are directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accident Claims Tribunal/II Court of Small Causes, Chennai shall disburse the enhanced amount upon production of a certified copy showing proof of payment of Court fee by the claimants.

19.With the above directions, the appeal filed by the claimants is partly allowed with the above terms and the appeal filed by the Insurance Company is dismissed. No costs.



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05.08.2025

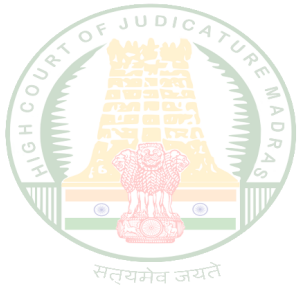
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Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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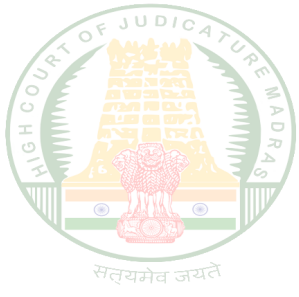


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To

- 1.The Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.
- 2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.



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T.V.THAMILSELVI, J.

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