



CMA(MD).No.681 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 27.03.2023

PRONOUNCED ON : 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.681 of 2019

1.Susila

2.M.Muthukumar

3.M.Vijayalakshmi

4.M.Vadivel

5.M.Nirmala

... Appellants

(Cause title accepted vide Court order
dated 06.08.2019)

VS.

1.S.Thirumalai

2.The Oriental Insurance Company Ltd.,
Represented by its
Branch Manager
K.J.R.Complex
16, North Veli Street
Madurai 625 001

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3.Gandhimathi

4.Minor Karuppu Raj

....Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 (1) of Motor Vehicles Act, 1988, to set aside the judgement and decree passed in MCOP.No.255 of 2011 on the file of the IV Additional District Judge, Madurai dated 13.04.2018 and also to allot the share of the deceased Karuppaiah to other petitioners.

For Appellants : Mr.C.Vakeeswaran

For R1 : Mr.M.M.Manivelpandian

For R2 : Mr.C.Jawahar Ravindran

For R3 & R4 : Mr.M.Chandrasekaran

J U D G M E N T

The appeal has been filed by the claimants challenging the rejection of award for the petitioners 2 to 5 and granting of award in favour of the 3rd respondent in the claim petition.

Factual Background:

2.According to the claimants, the deceased Mayilsamy was travelling in a two wheeler with the third respondent as a pillion rider on 13.06.2010. A Car coming from the opposite direction belonging to the

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first respondent and insured with the second respondent had dashed against the motor bike in which the driver of the bike had sustained grievous injuries and died on the spot and the pillion rider sustained grievous injuries.

3. According to the claimants, the deceased working as a Ticket Checker and he was running a Fancy Store and he was earning a sum of Rs.11,500/- per month. The first claimant is the wife and the claimants 2 to 5 are the children and the 6th claimant was the father of the deceased. The claimants have further contended that the 3rd respondent in the claim petition is alleged to be the second wife and the fourth respondent is alleged to be the minor son of the deceased through the second wife. The claimants have prayed for a sum of Rs.6,00,000/- towards compensation.

4. The owner of the car had remained exparte and the Insurance Company had filed a counter contending that only due to the rash and negligent driving of the deceased person, the accident has taken place and therefore, the Insurance Company is not liable to pay any compensation. The Insurance Company had further disputed the fact that the deceased was a Ticket Checker at Jeyavilas Transport, Madurai and



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also disputed the fact that he was running a Fancy Store. The Insurance Company had further contended that it is for the claimants to establish that the driver of the Car had got a valid driving license and insured at the time of accident. The Insurance Company had further disputed the quantum of compensation.

5.The respondents 3 and 4 had filed a counter contending that the marriage of the deceased with the first claimant was divorced by way of an execution of divorce agreement and thereafter, the deceased got married to the third respondent and out of the said wedlock, the fourth respondent was born. They have further contended that the respondents 3 and 4 were completely depending upon the income of the deceased. Since the deceased had obtained divorce from the first petitioner, he had no relationship with the petitioners. Even at the time of accident, the deceased was travelling in a two wheeler only with the third respondent as a pillion rider. Since she had sustained grievous injuries, she had filed MCOP.No.239 of 2012 seeking compensation for the injuries sustained by her.

6.The Tribunal had tagged both the claim petitions and passed a common order. In MCOP.No.239 of 2012, which was filed by the injured



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claimant (second wife) an award of Rs.30,000/- was passed. As against the same, no appeal has been filed by any one of the parties.

7.In MCOP.No.255 of 2011, the first wife and her children and the father of the deceased are claimants. The second wife and the son born through the second wife are arrayed as respondents 3 and 4.

8.The Tribunal after considering Exhibits P7 to P10 filed in MCOP.No.239 of 2012 arrived at a finding that the third respondent in MCOP.No.255 of 2011 is also a dependent. Though she may not be a legal representative, she is also a dependent and she is entitled to share in the compensation.

9.The Tribunal further found that the fourth respondent is born to the deceased through the third respondent based upon the birth certificate Exhibit P7. The Tribunal arrived at a total compensation of Rs.11,59,000/-. Out of the said compensation, the first wife and the second wife were awarded a sum of Rs.3,00,000/- and the fourth respondent who is the son through the second wife was awarded Rs.4,00,000/-. The sixth respondent claimant, namely the father of the deceased was awarded Rs.1,59,000/-. The claim petition was rejected for the children through the first wife. Challenging the said award, the first



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wife and her children have filed the present appeal primarily challenging the dismissal of the claim petition with regard to the children of the first wife and granting of share in the compensation to the second wife.

Contentions of the learned counsel for the appellants:

10. The learned counsel appearing for the appellants had contended that admittedly the first claimant is the first wife of the deceased person. The deceased had not divorced the first wife through Court. Therefore, on the date of death, the marriage between the first wife and the deceased was subsisting. That apart only when the marriage was subsisting, he is said to have married the third respondent as a second wife and begotten the fourth respondent through the second marriage.

11. According to the learned counsel for the appellants, the second marriage entered into by the deceased, while the first marriage was subsisting is illegal and it is void in the eye of law. Therefore, by no stretch of imagination, the third respondent could be considered to be the legal representative of the deceased person. When the third respondent is not a legal representative, the fourth respondent will also not be a legal representative who is the son said to be born to the deceased.



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12.The learned counsel for the appellants had further contended that under Section 166(1) of the Motor Vehicles Act, an application for compensation can be filed only by an injured person or the owner of the property or in case of death by all or any of the legal representatives of the deceased. Therefore, it is clear that only the legal heirs can file a claim petition. In the present case, admittedly the third respondent and the fourth respondent can never be construed to be the legal representatives of the deceased person in view of illicit relationship. The learned counsel had further contended that though it is pleaded in the counter that she got married to the deceased, no particulars of the said marriage has been placed. Not even the year of marriage has been mentioned in the counter filed in the claim petition.

13.When the marriage has not been established, neither the third respondent nor the fourth respondent can be considered to be a legal representative of the deceased person. The learned counsel had further contended that it is the allegation of the third respondent that the first wife had deserted him and the said desertion was after execution of the divorce agreement. However, there is no oral or documentary evidence to establish such desertion or execution of any such agreement.



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14. The learned counsel for the appellants had relied upon the judgment of our High Court *in CMA(MD).No.491 of 2005 dated 27.03.2006 (Manonmani and others Vs. R.Ranjitham and another)* to contend that a second wife could never be considered to be a legal representative of the deceased person and only the illegitimate children born through a void marriage could be considered to be a legal representative. The learned counsel had further contended that the trial Court has mainly relied upon the Division Bench Judgement of Karnataka High Court reported *in 2016 ACJ 79 (Lalita Vs. Mr.Sunilkumar and others)* wherein they have held that the second wife could be considered to be a dependent, though she is not a legal representative and she is entitled to receive a share in the compensation. The learned counsel had further contended they have not properly appreciated the legal position and they have relied upon the Hon'ble Supreme Court judgement reported *in (2014) 3 SCC Page 394 (Montford Brothers of St.Gabriel Vs. United India Insurance)* to hold that the second wife could be entitled to compensation. The judgement arises out of a case of death of a pastor and therefore, it is not applicable to the facts of the present case.

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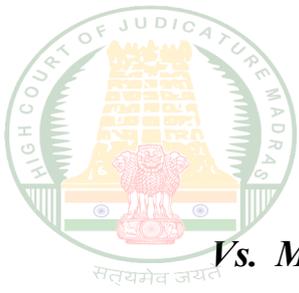
15.The learned counsel had further contended that the Karnataka Division Bench had relied upon the Judgment of the Hon'ble Supreme Court reported *in (2000) 2 SCC 431 (Rameshwari Devi Vs. State of Bihar)* which is not applicable to the facts of the present case. Therefore, according to the learned counsel for the appellants, the Division Bench judgement of Karnataka High Court has erroneously interpreted the judgement of the Hon'ble Supreme Court and hence, the same could not be relied upon to contend that a second wife is also entitled to receive compensation for the death of her husband.

16.The learned counsel for the appellants had further contended that the Tribunal after granting an award in favour of the son born through the second wife, had proceeded to dismiss the claim petition filed by the children born through the first wife without assigning any reason whatsoever and therefore, it is illegal and the same is liable to be dismissed.

Contentions of the learned counsel appearing for the respondent:

17.Per contra, the learned counsel appearing for the respondent/second wife had contended that the Division Bench judgement of Karnataka High Court reported *in 2016 ACJ 79 (Lalita*

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Vs. M.R.Sunilkumar and others) had discussed elaborately about the definition of the term legal representative and has arrived at a finding that it has got wider meaning which would include the second wife. He had further contended that another Division Bench Judgement of the Karnataka High Court ***in the Miscellaneous First Appeal No.7749 of 2016 dated 07.09.2002 (The Managing Director, Bangalore Metropolitan Transport Corporation Vs. P.Shanthi and others)*** wherein a compensation has been awarded in favour of the second wife relying upon the judgement of the Hon'ble Supreme Court reported ***in 2021 (2) TN MAC 639 (SC) (N.Jayasree & others Vs. Cholamandalam MS General Insurance Co., Ltd.)***.

18.The learned counsel for the respondent had further contended that the deceased was residing only with the second wife and the first wife had deserted the deceased long back. The fourth respondent was born through the third respondent in the year 2004 and the accident has taken place in the year 2010. Hence, it is clear that the deceased was living only with the second wife and not with the first wife. Therefore, the second wife and her son were more dependent upon the income of the deceased for their livelihood.

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19.The learned counsel for the respondent had further pointed out that at the time of accident, the deceased was travelling only with the second wife. The second wife who was a pillion rider had sustained grievous injuries and she had filed an independent claim petition and an award has been passed. Therefore, it is clear that the deceased was only residing with the second wife for long number of years and the second wife and her son were closely associated with the deceased in his day to day activities and they will strictly fall within the definition of the legal representatives.

20.The learned counsel for the respondent had further contended that the definition of the legal representative should be construed in such a manner only to include the dependents who have lost the love and affection and the income from the deceased person in view of the accident. When such inclusive/wider definition is given to her legal representative, certainly the second wife and her son are entitled to receive compensation. Hence, he prayed for sustaining the order passed by the Tribunal.

21.I have considered the submissions made on either side and perused the records and the judgements cited by either parties.

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Discussion:

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22.The issue that arises for consideration in the present appeal is whether the second wife and her children could be considered to be the dependents / legal representatives in order to claim compensation for the death of her husband under Section 166/163-A of the Motor Vehicles Act.

23.Rule 2(c) of the Tamil Nadu Motor Accident Claims Tribunal Rules 1989 defines legal representative as follows:

“2(c). “Legal representative” shall have the meaning assigned to it under clause (11) of Section 21 of the Code of Civil Procedure, 1908.(Central Act V of 1908)”

24.Section 2(11) of C.P.C defines legal heirs as follows:

“2(11). “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.”

25.The Hon'ble Supreme Court in a judgement reported *in (1987) 3 SCC 234 (Gujaraj State Road Transport Corporation Vs. Ramanbhai Prabhatbhai and another)* had considered the judgement of the Gujaraj



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High Court reported *in AIR 1977 Gujaraj 195 (Megjibhai Khimji Vira*

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Vs Chaturbhai Taljabhai) wherein the Gujaraj High Court was pleased to held that an application made by the nephews of the deceased who died on account of motor vehicle accident would clearly maintain a claim petition under Section 110-A of the Motor Vehicles Act. Approving the said decision in Paragraph No.13 the Hon'ble Supreme Court has held as follows.

“13. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by section 110B of the Act amongst the legal representatives for whose benefit an application may be filed under section 110-A of the Act have to be done in accordance with well-known prin-



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principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent 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 them compensation relying upon the provisions of the [Fatal Accidents Act, 1855](#) which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents.”

26.The Hon'ble Supreme Court in a judgement reported ***in (2007) 10 SCC 715 (Hafizun Begum Vs. Mohd.Ikram Heque and others)*** while considering an appeal for grant of compensation to the legal representative, but are not dependents upon the deceased in Paragraph No.12 has held as follows:

“12. As observed by this Court in [Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique \(AIR 1989 SC 1589\)](#) 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 as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the



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deceased. All such persons would be covered by the expression 'legal representative'. As observed in *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr.* 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.”

27.The Division Bench judgement of our High Court reported *in 2021(2) TN MAC 169 (Saroja Vs. Parvathy and others)* in Paragraph No.43 has held as follows:

“43.Therefore, in all the above cases, the discussion made would show that dependency is the criteria to award compensation. Hence, mere status of legal representative alone is not sufficient to make a claim. Thus, the basis for entitlement for compensation is dependency. If a legal representative is not a dependant of the deceased, he is not entitled for compensation for loss of dependency. Whether the claimants are dependants or not, has to be examined only based on the evidence adduced in a particular case.....”

28.The Hon'ble Supreme Court in a judgement reported *in 2021 (2) TN MAC 639(SC) (N.Jayasree & others Vs. Cholamandalam MS General Insurance Co.,Ltd.)* while considering the issue whether the mother-in-law of the deceased could be considered to be a legal heir, in

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Paragraph Nos.14, 16 and 21 has held as follows:

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“14. The MV Act does not define the term ‘legal representative’. Generally, ‘legal representative’ means a person who in law represents the estate of the deceased person and includes any person or persons in whom legal right to receive compensatory benefit vests. A ‘legal representative’ may also include any person who intermeddles with the estate of the deceased. Such person does not necessarily have to be a legal heir. Legal heirs are the persons who are entitled to inherit the surviving estate of the deceased. A legal heir may also be a legal representative.

16. In our view, the term ‘legal representative’ should be given a wider interpretation for the purpose of Chapter XII of MV Act and it should not be confined only to mean the spouse, parents and children of the deceased. As noticed above, MV Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the MV Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfil its legislative intent. We are also of the view that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. Section 166 of the MV Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realization of compensation.



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21. Coming to the facts of the present case, the fourth appellant was the motherinlaw of the deceased. Materials on record clearly establish that she was residing with the deceased and his family members. She was dependent on him for her shelter and maintenance. It is not uncommon in Indian Society for the motherinlaw to live with her daughter and soninlaw during her old age and be dependent upon her soninlaw for her maintenance. Appellant no.4 herein may not be a legal heir of the 8 AIR 1987 Pat 239 deceased, but she certainly suffered on account of his death. Therefore, we have no hesitation to hold that she is a “legal representative” under [Section 166](#) of the MV Act and is entitled to maintain a claim petition.”

29. The Division Bench of Karnataka High Court in a judgement reported in **2016 ACJ 79 (Lalita Vs. M.R.Sunilkumar and others)** while considering the issue whether the second wife is entitled to maintain a claim petition or not in Paragraph No.49 has held as follows:

“49. Therefore, in the instance case, on fact, it is established that the deceased was living with the second wife: and the second wife and children were pending solely on the income of the deceased. Having regard to the provisions contained in [Section 168](#) of the 1988 Act, it cannot be said that the second wife is not entitled to any maintenance or that she has to be excluded from the compensation payable by the Tribunal. Therefore, we are of the view having regard to the intention of the legislature as



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reflected in Section 168 of the 1988 Act, where it is a legal representative of the deceased and not a legal heir, who is entitled to maintain a petition and when the definition of the term ' legal representative' includes intermeddler, the second wife, as she would be intermeddling with the estate of the deceased by virtue of the fact that she was living with him at the time of his death would be entitled to maintain a petition. She also would be entitled to compensation, as a dependant, as she was depending on him for her living and sustained loss on account of his death. At the same time the first wife, who had been living separately, for whatever reason and even if she was not dependent on the deceased, would be entitled to compensation, as a legally wedded wife and also as a person entitled to the estate of the deceased. Similarly, the daughter of the second wife, though illegitimate, by virtue of Section 16(1) of Hindu Marriage Act, is to be treated as legitimate child. She would be entitled to a share in the estate of the father as class-I her and the petition filed by her can neither be dismissed nor she can be denied the compensation. In the light of the aforesaid discussion, we are of the view that in the facts of this case, the order passed by the Tribunal holding that the petition filed by the second wife is not maintainable is not correct and therefore, it has to be set aside. The second wife, as dependent on the deceased and an intermeddler of his estate and who has sustained loss is entitled to compensation along with the first wife and her own daughter. Therefore all of them are entitled to



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compensation. We therefore have to first determine the amount of compensation payable and then specify the person or person to whom, compensation is payable and then specify the amount payable to such persons out of the compensation so determined” .

30.The Hon'ble Division Bench of Karnataka High Court *in Miscellaneous First Appeal No.7749 of 2016 dated 07.09.2022 (The Managing Director, Bangalore Metropolitan Vs. P.Shanthi and others)* in Paragraph No.22 has held as follows:

“22.In the present case PW1 the first wife of the deceased has categorically stated that the claimants are dependant upon the deceased and when the first wife itself does not dispute the relationship of claimant No.4 -Smt.Kamakshi.P with that of the deceased and in view of the fact that the claimants were residing together and were dependant on the deceased and in the light of the judgement of the Apex Court in Jayashree's case we are of the considered as dependants and are entitled for compensation. Thus the deduction of 1/4th arrived by the Tribunal is justifiable”

31.A perusal of the judgement of the Hon'ble Supreme Court and the Division Bench Judgement of our High Court would clearly indicate that the right to file a claim petition is not restricted to the legal heirs like wife, parents and children alone, but it has been given a wider meaning to include all the dependents who had suffered on account of death of a



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person due to a motor accident. It could also be seen that the dependency is the criteria to award compensation and mere status of legal heir alone is not sufficient to make a claim. Therefore, the basis for entitlement of the compensation is dependency. If a legal heir is not depending upon the deceased, he/she is not entitled to receive compensation for loss of dependency. Whether the claimants are dependents or not has to be examined on a case to case basis. The Motor Vehicles Act being a benevolent legislation enacted with the object of providing monetary relief to the victims, it calls for a liberal and wider interpretation to serve the real purpose. Therefore, it is clear that in order to maintain a claim, it is sufficient for the claimant to establish his/her loss of dependency. Hence, every legal heir who suffered on account of death of a person in a motor vehicle accident should have a remedy for realisation of the compensation. A legal representative even as per the definition under Section 2(11) of C.P.C may include any person who intermeddles with the estate of the deceased and therefore, such a person does not necessarily have to be a legal heir.

32. In the present case, it could be seen from the records that the deceased was living with the second wife and the same is evidenced by

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the ration card and the voter list filed on the side of the second wife. The birth certificate of the fourth respondent has also been produced which would indicate that the son was born in the year 2004 and the accident has taken place in the year 2010. At the time of accident, the deceased was driving the bike and the second wife was the pillion rider. The second wife has sustained grievous injuries and claiming compensation, she filed an independent claim petition in MCOP.No.239 of 2012 and she was awarded compensation. Therefore, it is clear that the deceased was residing with his second wife and the son born through the second wife at the time of accident.

33.In view of the above said facts, it is clear that the second wife and her minor son were solely dependent upon the income of the deceased person. Though the second wife cannot be considered to be a legal representative under the Hindu Succession Act, certainly she is a dependent. As pointed out by the Hon'ble Supreme Court, it is sufficient for the claimant to establish her loss of dependency for maintaining a claim petition. Therefore, this Court is of the view that the share in the award amount to the second wife cannot be found to be illegal or unsustainable in the eye of law. However, the grant of award under the



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Motor Vehicles Act based upon the loss of dependency would not confer any right upon the second wife for claiming any share in the property of the deceased husband, unless she independently establishes the said relationship in accordance with law.

34.As far as the case of the fourth respondent who is the son born to the second wife is concerned, there cannot be any dispute that he is entitled to receive compensation even assuming that he is an illegitimate son. Therefore, this Court is not inclined to interfere in the award in favour of the said fourth respondent. The Tribunal without assigning any reasons has not granted share in the award amount to the children born through the first wife who are claimants 2 to 5 in the claim petition. The claimants 2 to 5 are entitled to receive compensation for the death of their father.

35.The Tribunal has awarded Rs.3,00,000/- each to the first wife and the second wife. He had further awarded a sum of Rs.1,75,000/- to the fifth respondent claimant who is the father of the deceased person. This claimant namely the father of the deceased had passed away. The Tribunal has awarded Rs.4,00,000/- to the minor son of the second wife.



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Therefore, a total compensation of Rs.11,59,000/- has to be apportioned as follows:

- (i). The first claimant/first wife shall be entitled to Rs.4,00,000/-.
- (ii).The third respondent in the claim petition/second wife shall be entitled to Rs.2,00,000/-
- (iii).The claimants 2 to 5 and the fourth respondent in the claim petition shall be entitled to Rs.1,11,800/- each.

36.The total award amount and the interest awarded are confirmed and the apportionment alone is reworked as stated above. The Civil Miscellaneous Appeal is allowed to the extent as stated above. No costs.

10.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To
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1. The IV Additional District Judge, Madurai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.681 of 2019

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