

(2008) 06 MAD CK 0059

In the Madras High Court

Case No : C.M.A. No. 130 of 2004 and C.M.P. No. 955 of 2004

National Insurance Company Ltd.

APPELLANT

Vs

Jabakani Bakiam, Ebenezer Latha, Evangeline Geetha and
Thangaperumal

RESPONDENT

Date of Decision : 19-06-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 165

Penal Code, 1860 (IPC) — Section 120B, 302, 304A, 307, 34

Citation : (2008) 06 MAD CK 0059

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : N. Vijayaraghavan, for the Appellant; G. Venugopal, for K. Srinivasan, for R.1 to R.3 and T. Selvakumaran, for R.4, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—This Civil Miscellaneous Appeal is filed by the appellant/second respondent/National Insurance Company Limited,

Tuticorin, as against the award passed in M.C.O.P. No. 165 of 2002 dated 10.02.2003 by the Motor Accident Claims Tribunal, Additional

District Court cum Chief Judicial Magistrate, Tuticorin.

2. The respondents 1 to 3/claimants who are the wife and the children of the deceased Devaraj Balasundaram, have filed the claim petition claiming

a compensation of Rs. 18,00,600/- (Rupees Eighteen Lakhs and Six Hundred only) and has restricted the compensation claim to a sum of Rs.

6,00,000/- (Rupees Six Lakhs only).

3. The Motor Accident Claims Tribunal, Additional District Court cum Chief Judicial Magistrate, Tuticorin, has passed an award of Rs. 2,97,500/-

directing the fourth respondent/first respondent and the appellant/second respondent Insurance Company to pay the same with interest at 9% p.a.

from the date of filing of the petition till date of payment.

4. Aggrieved against the award passed by the Tribunal, the appellant/second respondent Insurance Company has preferred this Civil

Miscellaneous Appeal.

5. The short facts of the case are as follows:

The husband of the first respondent/first claimant and the father of the respondents 2 and 3/claimants 2 and 3 namely, Devaraj Balasundaram,

served as an Agricultural Officer at Tiruchendur Panchayat Union and retired on 31.03.1998. Devaraj Balasundaram went to Tiruchendur

Additional District Munsif Court to tender evidence in a civil case and returned from Tiruchendur to his native place namely Kadakshapuram in a

Rajdoot Motor Bike bearing Registration No. TCT- 8689 which belonged to one Stalin Jebaraj, brother-in-law of Devaraj Balasundaram's

brother. While Devaraj Balasundaram was coming in Veppankadu road in between Veppankadu and Kadakshapuram in the motor cycle, the

fourth respondent/first respondent's driver driving the van bearing Registration No. TN- 69-B-3322 in a rash and negligent manner dashed against

the said motor cycle driven by the said Devaraj Balasundaram at about 05.30 p.m on 29.01.1999. The accident took place only due to the rash

and negligent driving of the van driver. Devaraj Balasundaram with severe injuries on his head and other parts of the body was almost in an

unconscious stage. Devaraj Balasundaram's brother's son Jeyakumar coming to know of the accident, came to the spot and took Devaraj

Balasundaram in a trucker to Udankudi Karpagam Hospital for treatment and on the advice of the Medical Officer of Karpagam Hospital, the said

Devaraj Balasundaram was taken to Nagercoil Krishnakumar Hospital and on the way, Devaraj Balasundaram expired. After the death of Devaraj

Balasundaram, the mental calibre of the first respondent/first claimant was very much affected. The first respondent/first claimant retired from

service in February 1999. The second and third respondents/the claimants 2 and 3 who are the daughters of the deceased Devaraj Balasundaram

had also suffered mental agony due to the unexpected death of their father. The fourth respondent/first respondent is the owner of Tata 407 van

bearing Registration No. TN-69-B-3322. The appellant/second respondent is the Insurance Company with whom the van of the fourth

respondent/first respondent had been insured. Hence, the fourth respondent/first respondent and the appellant/second respondent are liable to pay

the compensation severally and jointly. Hence, the restricted compensation of Rs. 6,00,000/- (Rupees Six Lakhs only) is claimed.

6. The fourth respondent/first respondent (owner of the van) has filed a counter inter alia stating that the driver of the van has driven the same

without his knowledge and consent at the time of the alleged occurrence and hence, he is not liable to pay any sum towards compensation and that

if any compensation is awarded, then the appellant/second respondent Insurance Company is liable to pay the same to the claimants.

7. The appellant/second respondent Insurance Company in its counter has inter alia taken the pleas that the driver of the van bearing Registration

No. TN-69-B-3322 was not in possession of driving license at the time of the accident and that it is not true to state that the accident has taken

place due to the rash and negligent driving of the van driver and that the claim petition is not maintainable in law and facts and further that the death

of the deceased Devaraj Balasundaram as per the case in Cr. No. 23 of 1999 on the file of Meignanapuram Police Station, is only due to the

preplanned murder by the driver of the vehicle and Ors. and not due to the accident and therefore, it is not liable to pay any sum towards

compensation to the claimants.

8. Before the Tribunal, on the side of the claimants, witnesses P.W.1 and P.W.2 were examined and Exs.P.1 to P.3 were marked and on the side

of the respondents, witness R.W.1 was examined and Exs.R.1 to R.9 were marked.

9. On appreciation of oral and documentary evidence, after contest, the Tribunal has passed the impugned award of Rs. 2,97,500/- with interest at

9% p.a from the date of petition till date of payment.

10. According to the learned Counsel for the appellant/second respondent Insurance Company, the Tribunal has erred in fastening the liability on

the appellant/Insurance Company in a case where the deceased Devaraj Balasundaram was murdered with dominant intention to kill and the same

has been proved by Ex.R.2, charge sheet and that the Tribunal has failed to take

note of the fact that there was no accidental murder bearing nexus with the use of the motor cycle and that it has also erred in not properly appreciating the evidence of witness R.W.1, the Inspector of Police and the Exs.R.1 to R.9 and therefore, prays for allowing the appeal in the interest of justice.

11. In order to prove the issue of negligence, P.W.1 Jabakani Bakiam (the first respondent/first claimant) and P.W.2 Jeyakumar have been examined as witnesses on the side of the claimants before the Tribunal. In her evidence, P.W.1 Jabakani Bakiam, (the wife of the deceased Devaraj Balasundaram), has deposed that on 29.01.1999 at about 05.30 p.m, in the evening, in between Veppankadu and Kadakshapuram, when her husband was returning from Tiruchendur in his motor bike, the water tank lorry dashed as against her husband's motor cycle and that her sister's son Jeyakumar took her husband to Udankudi Karpagam Hospital and after receiving the first aid and on the way to different hospital, her husband died and that she has not witnessed the accident and that she has known about the accident only after Jeyakumar informed her.

12. P.W.2, Jeyakumar, in his evidence has stated that the deceased Devaraj Balasundaram is his uncle and that he has known the accident and that one Jeyakandan has informed him that his uncle sustained injuries in the vehicle accident and that he has not seen the occurrence and that after the occurrence, he has lodged the complaint on the next day and that he has given the complaint, because a vehicle was there at the place of his uncle's death and that he does not know about the inclusion of Poul and Sudhakar who conspired and killed his uncle and that they have been arrayed as accused in Cr. No. 23 of 1999 on the file of the Meignanapuram Police Station. In fact, P.W.2, Jeyakumar, in his cross- examination has specifically denied the suggestion that he is tendering false evidence in describing the murder case as an accident.

13. Likewise, P.W.1 Jabakani Bakiam (the wife of the deceased Devaraj Balasundaram) in her cross-examination has specifically denied the suggestion that "knowing her husband's murder, only to claim compensation, she has shown his death as an accident.

14. However, R.W.1, Andi, (the Inspector of Police), in his evidence has stated that the van bearing Registration No. TN-69-B-3322 has dashed

against the motorcyclist Devaraj Balasundaram, in the motor cycle bearing Registration No. TCT-8689 and that a case has been registered and

Ex.R.1 is the F.I.R and that as against Sudhakar and Dharmaraj, a charge sheet has been filed under Sections 120B and 302 read with Section 34

I.P.C and that at time of the accident, Sudhakar has driven the vehicle and that the observation mahazar is Ex.R.3 and that the Motor Vehicle

Inspector's report is Ex.R.4 and that Express Report sent by the Inspector of Police, Meignanapuram Police Station dated 03.11.1999 is Ex.R.5

and the remand report in respect of accused Dharmaraj is Ex.R.8 and that the inquest report in respect of the deceased Deveraj Balasundaram is

Ex.R.9.

15. It is pertinent to point out that in Ex.R.1, the certified copy of F.I.R, the name of the complainant is mentioned as Jeyakumar, who has figured

as witness P.W.2 before the Tribunal. The name of the accused in Ex.R.1, F.I.R, is mentioned as the driver of the van bearing Registration No.

TN-69-B-3322. In Ex.R.1, F.I.R the complainant Jeyakumar inter alia stated that on 29.01.1999 at about 05.30 p.m., in the evening, when he

was in his house, he came to know that from his village at a distance of 1 K.m, north in Veppankadu road, his uncle Devaraj Balasundaram was

lying after being hit by a van bearing Registration No. TN-69-B-3322 and that he visited the spot and found his uncle was lying near the fence and

that he sustained injuries on his head, hands and legs and that he was murmuring and that the Rajdoot Bike bearing Registration No. TCT-8689

driven by his uncle was in badly damaged condition lying near his uncle and that immediately he took his uncle in a trucker and gave first aid

treatment in Udankudi Karpagam Hospital and later, his uncle was taken to Nagercoil Krishnakumar Hospital by him and his aunt's son

Jeyakandan for further treatment and that his uncle died on the way to the Hospital and that the accident on 29.01.1999 has taken place at 05.00

p.m, because of the negligent and high speed driving of the Van bearing Registration No. TN-69-B-3322 by its driver which dashed against the

Rajdoot Bike bearing Registration No. TCT-8689 driven by his uncle.

16. In Ex.R.4, the Motor Vehicle Inspector's report in Cr. No. 23 of 1999 under Sections 304A I.P.C in respect of the two vehicles namely the

Rajdoot Bike bearing Registration No. TCT-8689 and the van bearing Registration

No. TN-69- B-3322, the Motor Vehicles Inspector has

opined that "this accident or incident was not due to any mechanical defect of this vehicle".

17. In Ex.R.9, inquest report in respect of the deceased Devaraj Balasundaram, it is inter alia concluded by the Panchayatars that the enemy of the

deceased Devaraj Balasundaram, one Poul S/o.Satyanathan thought that if Devaraj Balasundaram had been alive, then he could not become the

Secretary of Pastate etc., and decided to murder the said Devaraj Balasundaram and that bringing the driver of the Van bearing Registration No.

TN-69-B-3322 under his control, on 29.01.1999 when Devaraj Balasundaram came in his Rajdoot motor bike bearing Registration No. TCT-

8689 in the road, at that time, the van bearing Registration No. TN-69-B-3322 dashed as against the motor bike bearing Registration No. TCT-

8689 which was coming in the road and as a result of which the deceased would have died.

18. The learned Counsel for the respondents 1 to 3/claimants 1 to 3 contends that the appellant/National Insurance Company is liable to pay

compensation for the death of the deceased Devaraj/Balasundaram, even if it is a murder, since motor vehicle has been used, his murder is an

accident and in support his contention, he relies on the decision in Oriental Insurance Co. Ltd. Vs. Archana Rajan and Others, , at pages 801 and

802, wherein it is observed as follows:

In these Letters Patent Appeals all controversies raised by the insurance company for the purposes of impugning the judgment on the

Miscellaneous Appeal No. 457 of 1998; Oriental Insurance Co. Ltd. v. Archana Rajan and Miscellaneous Appeal No. 458 of 1998; Oriental

Insurance Co. Ltd. v. Anita Devi stand answered by the recent judgment of the Apex Court in Smt. Rita Devi and Others Vs. New India

Assurance Co. Ltd. and Another, . The contention in the present appeal is that the fact that a cold blooded murder may have taken place inside the

vehicle which has been insured with the company does not cast any obligation on the insurance company under a contract of indemnity. The

impugned order is dated 17.5.1999.

The Apex Court in its recent judgment has held that the insurance company is liable to pay compensation to the heirs of a person murdered with

intent of causing violence upon the occupants, as this is an accident. In the circumstances the Court cannot accept the narrow interpretation put

forward that the liability of the insurance company is limited and does not entail a situation like an incident in the present case. Clearly, the scope of

indemnity clause stands enlarged after the judgment of the Apex Court. In the circumstances, there is no merit in these appeals. These are

accordingly dismissed. (Paras 1 and 2)

19. He also further urges that since the death of Devaraj Balasundaram arose out of use of motor vehicle namely Tata 407 van bearing Registration

No. TN-67-B-3322, the respondents 1 to 3/claimants are entitled for compensation and cites the decision in United India Insurance Company

Limited Vs. Amir Basha, Sahira Bi, Balakrishnan, Ravi and Amir Bai, , wherein it is laid down as follows:

The object of the enactments, both under the Motor Vehicles Act, 1939 and 1988 the expression "caused by" and "arising out of" have a wider

connotation. Though the accident should be connected with the use of motor vehicle, but the said connection need not be direct and immediate.

The expression "arising out of use of motor vehicle" as mentioned in Section 92-A of the 1939 Act and Section 165 of 1988 Act enlarges the field

of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment. From the

expression employed namely "accident arising out of the use of a motor vehicle" in the place of "accident caused by the use of motor vehicle", it is

clear that the Legislature wanted to enlarge the scope of the word "use" and not to restrict it for denying compensation in deserving cases;

accordingly we are of the view that the test should be whether the accident was reasonably proximate to the use of a motor vehicle, whether or not

the motor vehicle was in motion then. The Court should not forget that these provisions are made in order to help the victims. The Court also of the

view that restrictive interpretation should not be given for the word "use". The Court also of the view that the expression "arising out of the use of

motor vehicle" has to be given a wider meaning. The Court is also of the view that "use of motor vehicle" need not necessarily be so intimate and

closely direct as to make it "a motor accident" in the sense in which that expression is used in common parlance. Accordingly, the Court held that

the death of "A" arose out of the use of motor vehicle, and the claimants/respondents 1 and 2 herein are entitled to compensation for the death of their son "A".(para 13)

20. The learned Counsel for the respondents 1 to 3/claimants 1 to 3 presses into service the decision in Smt. Rita Devi and Others Vs. New India

Assurance Co. Ltd. and Another, , whereunder the Honourable Supreme Court has inter alia observed that "the deceased, a driver of the

autorickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During

the course of this duty, if the passengers had decided to commit an act of felony of stealing the autorickshaw and in the course of achieving the said

object of stealing the autorickshaw, they had to eliminate the driver of the autorickshaw, then it cannot but be said that the death so caused to the

driver of the autorickshaw was an accidental murder. The stealing of the autorickshaw was the object of the felony and the murder that was caused

in the said process of stealing the autorickshaw is only incidental to the act of stealing of the autorickshaw. Therefore, it has to be said that on the

facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of

the autorickshaw.

21. Further, the learned Counsel for the respondents 1 to 3/claimants 1 to 3, places reliance on the decision in United India Insurance Company

Limited v. Kanshi Ram I (2004) ACC 527 wherein it is inter alia observed that "as the driver of the truck, Sohan Lal was under an obligation to

look after the truck and the goods that he was transporting, nevertheless, the truck was taken away, some goods therein were stolen and Sohan

Lal was murdered, etc.

22. The learned Counsel for the respondents 1 to 3/claimants 1 to 3, draws the attention of this Court to the decision in New India Assurance

Company Limited v. Alexander M.P and Ors. II(2004) ACC 718 , it is inter alia observed that "the difference between a "murder" which is not an

accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In the opinion of the Supreme Court, if the

dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if

the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such

murder is an accidental murder" and that "contention of Mr.Seth, therefore, is that as the intention of the driver of the offending vehicle was to kill it

is a clear case of "murder" and not "accident". I have carefully considered this argument of Mr.Seth, but I have not been able to make myself

agreeable with him. I have also carefully gone through the Trial Court file to examine whether there was any material to hold that the unfortunate

incident was "murder" and not "accident" but I find that there is no evidence whatsoever on record to prove that it was a case of murder. The only

witness who has appeared before the Court states that the vehicle was being driven rashly and negligently by its driver and it came at a speed and

hit the deceased. No suggestion was given in cross-examination to this witness that the driver had intentionally hit the deceased or had any intention

to kill those persons nor any evidence is produced by the appellant to prove that it was a case of "murder" and not "accident". No doubt, the

police had registered an FIR under Sections 302/307, Indian Penal Code, however, merely because of registration of FIR under Sections

302/307, Indian Penal Code will not mean that the person against whom the FIR was registered had murdered the deceased or had any intention

to kill such person. FIR is only an information given to the police about the incident that had happened and the offence has to be proved in a Court

of law beyond reasonable doubt to convict the person against whom the FIR has been registered. In the absence of evidence on record, merely

recording of an FIR will not make it a case of murder.

23. He also relies on the decision in Sneh Sharma and Others Vs. Sewa Ram and Others, , whereunder it is held as follows:

Now the question is whether the facts of the cases before us attract the application of these principles. The bus came from a place where the

militant activities were going on. Obviously, strict vigilance should have been exercised before admitting the passengers into the vehicle. It ought to

have been searched to find out whether any bomb had been planted inside it. The incoming and outgoing passengers should have been kept under

vigil and their articles kept under gaze. Passengers should have been warned to be careful about their belongings and anything which did not belong

to them be pointed out to the crew of the vehicle. All such precautions were not made. Contention that there was no legal duty to do so is hardly convincing. The owner of the vehicle had to take care of the safety of the passengers. His duty is not limited to take the passengers against payment of money without paying attention towards their safe passage. Such a duty is implicit in the nature of the services offered to the general public and one does not have to look to any express provision of law in this regard. The facts clearly point out that the owner and the crew of the bus did not pay any attention towards taking precautions for the safety of the passengers, although it was well-known and militant activities were gaining ground and immediate precautions against such activities were necessary. The accident arose out of the use of the vehicle and there is no doubt about it and the respondents are squarely responsible for the same. (para 9)

24. On the side of the respondents 1 to 3/claimants 1 to 3, reliance is placed on the decision in *United India Insurance Company Limited v.*

Ummadi Shankunthala and Ors. I (2005) ACC 112, wherein it is inter alia observed that "murder which is an unexpected event from the stand

point of victim, is an accident. In the instant case, it is not in dispute that the deceased was killed allegedly by group of persons belonging to other

faction. Indisputably as the injuries being vital, the deceased died. Though it is on record that somebody attacked, the reasons are not known and

further it is also very difficult to discern as to whether the intention of the person who attacked the deceased was only to cause injuries or to

completely annihilate the deceased or for some other reason. Of course from the injuries caused it could be provisionally understood that the

deceased was attacked to annihilate him. However, it would be totally a different subject, which has to be dealt with separately in the criminal

adjudication. But when it comes to the purpose of contractual obligation by the Insurance Company under the policy, the death of the deceased

should only be understood, as already discussed above, as an "accident". The occurrence in my considered view satisfies all the conditions laid

under the policy and hence it is inescapable for this Court to hold that the murder of the deceased in the present case shall be treated as an

accident for the purpose of awarding compensation under the Janatha Personal Accident Policy. (para 28)

25. It is pertinent to point out that in Halbury's Laws of England Fourth Edition, Volume No. 25 under the caption 5. Personal Accident

Insurance, under the heading "(2) Policies Insuring Against Accidental Injury", the meaning of "accident" is defined at Sr. No. 594 and "violent

means" is defined at Sr. No. 602 and "external and visible means" is defined at Sr. No. 604 and the same are as follows:

594. Meaning of "accident"-- The event insured against may be indicated in the policy solely by reference to the phrase "injury by accident" or the

equivalent phrase "accidental injury" or it may be indicated as "injury caused by or resulting from an accident". The word "accident", or its

adjective "accidental", is no doubt used with the intention of excluding the operating of natural causes such as old age, congenital or insidious

disease or the natural progression of some constitutional physical or mental defect; but the ambit of what is included by the word is not entirely

clear. It has been said that what is postulated in the intervention of some cause which is brought into operation by chance so as to be fairly

describable as fortuitous. The idea of something haphazard is not necessarily inherent in the word; it covers any unlooked for mishap or an

untoward event which is not expected or designed, or any unexpected personal injury resulting from any unlooked for mishap or occurrence. The

test of what is unexpected is whether the ordinary reasonable man would not have expected the occurrence, it being irrelevant that a person with

expert knowledge, for example of medicine, would have regarded it as inevitable. The standpoint is that of the victim, so that even wilful murder

may be accidental as far as the victim is concerned.

602. Violent means -- As used in this connection, "violent" has been interpreted as connoting the anti-thesis to "without any violence at all". It does

not therefore, postulate the presence of brutal strength or savage temper, as when the victim is bitten by a dog. Again, an external cause of death,

such as the inhalation of gas, may, it seems, be violent inasmuch as it does violence to the human frame by rendering it incapable of functioning.

Similarly, where the cause of injury is some extra exertion or exercise of effort on the part of the assured, as where he stoops to pick up a marble,

it is violent in the sense that it does damage impairing the bodily functions, however impaired they may have been before.

604. External and visible means -- "External means" is used to point the contrast with something internal. Any cause which is not internal must be

external, but this does not mean that the injury must be external; there may be, and often is, nothing externally visible to indicate the presence of

internal inquiry at all.... Where it is shown that the effective cause of the injury is external, the fact that it operates internally is irrelevant; indeed all

poisons operate internally, and the cause of death in every case is failure of the heart.

26. As a matter of fact, there exists a difference between the term "accident" and the term "accidental". In P.Ramanathan Aiyar's Law Lexicon,

the term "accident" is explained as "undersigned, sudden or unexpected event; mishap; misfortune; disaster. It is further stated that "the word

"accident" generally denotes an event that takes place without one's foresight or expectation; an event which proceeds from an unknown cause, or

is an unusual effect of a known cause, and, therefore, not expected; chance casualty, contingency (Webster Dict); an event happening without the

concurrence of the Will of the person by whose agency, it was caused. It differs from mistake in that the latter always supposes the operation of

the Will of the agent in producing the event although that Will is caused by an erroneous impression on the mind."

27. According to the New Lexicon Webster's Dictionary, the term "accidental" means happening by chance. It denotes that there will be any

direct nexus between the act and the result and the result is the accident.

28. In the decision in *Nisbet v. Rayne and Burn* (1910) 2 KB 689, wherein a cashier while travelling in a railway to a colliery with a large sum of

money for the payment of his employer's workmen, was robbed and murdered. On that set of facts, the Court of appeal held that the murder

therein shall be treated as an accident and it was also held that the accident the accident did arise out of employment."

29. Per contra, the learned Counsel for the appellant/Insurance Company, takes a plea that since the deceased Devaraj Balasundaram was

murdered with dominant intention to kill, the respondents 1 to 3/claimants 1 to 3 are not entitled to claim any amount as compensation.

30. The significant expression conferring the jurisdiction upon the Motor Accident Claims Tribunal constituted under the Motor Vehicles Act is the

accident "arising out of use of motor vehicle" as per Section 165 of the Motor Vehicles Act, 1988 and therefore, logically the expression "arising out of the use of motor vehicle" has to be given an extended meaning, in the considered opinion of this Court. Further, the term "arising out of" under the Motor Vehicles Act, is in true spirit of the object of the beneficial welfare legislation and that narrow meaning ought not to be assigned for the employment of the word "use".

31. Ex.R.5, express report of the Inspector of Police, Meignanapuram Police Station, in Cr. No. 23 of 1999, refers to the alteration of provisions from Section 304A I.P.C to Section 302 I.P.C. In the said report, it is among other things, stated that the deceased Devaraj Balasundaram was the Pastate Secretary of Kadakshapuram C.S.I.Church and that he had more experience in the Pastate Management affairs and that in the Pastate Member Diacosis Election and connected affairs, there was previous enmity between him and one Poul, S/o.Sathyanathan Nadar of Anbin Nagar and on account of the previous motive on 29.01.1999, the driver of the water tank van bearing Registration No. TN-69-B- 3322 was brought under the control and the van driver Sudhakar, S/o.Parthasarathy, cleaner Dharmaraj and Poul conspired and on 29.01.1999 at about 05.00 p.m., in the evening when the deceased Devaraj Balasundaram was proceeding in his Rajdoot motor cycle bearing Registration No. TCT-8689 to Kadakshapuram and at that time, the said water tank van was driven on the opposite side of Devaraj Balasundaram and by turning on the right side, dashed against him and they have committed murder as revealed in the course of the investigation by the Inspector of Police, Meignanapuram Police Station.

32. The said Poul has expired during the course of the case as spoken to by P.W.1 Jabakani Bakiam in her cross-examination. In fact, the motive of previous enmity attributed between the deceased Devaraj Balasundaram and Poul has gone into by the appropriate criminal forum and that is a different issue, in the considered opinion of this Court.

33. Moreover, this Court opines that in order to fulfil the contractual obligation by the Insurance Company as per policy, the death of the deceased Devaraj Balasundaram ought to be construed as an "accident". Admittedly, in the accident on 29.01.1999, the motor vehicle, the water tank van

bearing Registration No. TN-69-B-3322 has been used and driven by its driver Sudhakar who has been arrayed as first accused in Cr. No. 23 of

1999 on the file of Meignanapuram Police Station under Sections 120B, 302 read with 34 I.P.C.

34. Looking at from any point of view, the death/wilful murder of the deceased Devaraj Balasundaram is an unexpected happening and therefore,

this Court opines that it is an accident arising out of the use of motor vehicle namely water tank van bearing Registration No. TN-69-B-3322 and

comes to the conclusion that the accident has taken place because of the negligent driving of the van by its driver and that the driver of the said van

is squarely responsible for the accident and the point is answered accordingly.

35. Coming to the aspect of quantum, the respondents 1 to 3/claimants have claimed a restricted sum of Rs. 6,00,000/- (Rupees Six Lakhs only)

as compensation. P.W.1/first respondent/first claimant/Jabakani Bakiam, in her evidence has deposed that at the time of the accident, her

husband's age is 59 and that she has retired as Secondary Grade Teacher receiving a pension of Rs. 4,000/- p.m and that she receives her

husband's pension and that Ex.P.3 is her husband's Pay Certificate. In the claim petition, the age of the deceased Devaraj Balasundaram is

mentioned as 59 at the time of the accident. In Ex.P.2, certified copy of the post-mortem certificate also, the age of the deceased Devaraj

Balasundaram is mentioned as 59. In the absence of any other documentary evidence apart from Ex.P.2, post-mortem certificate, this Court by

placing reliance on Ex.P.2, post-mortem certificate determines the age of the deceased Devaraj Balasundaram at the time of the accident as 59. In

Ex.P.3, pay certificate of the deceased Devaraj Balasundaram, the pay for the month of March" 1998 is mentioned as Rs. 8,346/- inclusive of pay

and other allowances.

36. In fact, P.W.1, the wife of the deceased Devaraj Balasundaram, in her evidence has not stated as to what exact amount she receives as her

husband's pension, though she has stated that she is receiving her husband's pension. It is not in dispute that the deceased Devaraj Balasundaram

has retired as an Agricultural Officer. Certainly, he would have received 50% of his last drawn salary namely Rs. 4,173/- (Rupees Four Thousand

One Hundred and Seventy Three only) as pension after retirement and he would

have easily contributed a sum of Rs. 3,000/- p.m, to the family.

Therefore, this Court fixes the monthly dependency at Rs. 3,000/- p.m and adopts multiplier 8 and accordingly, the same works out to Rs.

2,88,000/- (Rs. 3,000/- X 12 X 8 = Rs. 2,88,000/-) [Rupees Two Lakhs and Eighty Eight Thousand only], to which sum the respondents 1 to

3/claimants 1 to 3 are entitled to receive towards loss of income payable by the appellant/second respondent Insurance Company as insurer.

Towards funeral expenses, this Court awards a sum of Rs. 2,000/-, grants a sum of Rs. 5,000/- towards loss of consortium and awards a sum of

Rs. 2,500/- towards loss of estate. Thus, in all, the respondents 1 to 3/claimants 1 to 3 are entitled to get a sum of Rs. 2,97,500/- (Rs. 2,88,000/-

+ Rs. 2,000/- + Rs. 5,000/- + Rs. 2,500/- = Rs. 2,97,500/-) [Rupees Two Lakhs Ninety Seven Thousand and Five Hundred only], as total

compensation together with interest at 9% p.a from the date of petition till date of payment, payable by the appellant/Insurance Company. The

lawyer's fee of Rs. 8,950/- (Rupees Eight Thousand Nine Hundred and Fifty only) fixed by the Tribunal is not altered by this Court.

37. Earlier, in C.M.P. No. 955 of 2004, this Court has passed an order of interim stay on condition that "the appellant/Insurance Company

deposits the entire compensation amount, including interest and costs to the credit of M.A.C.O.P. No. 165 of 2002 on the file of the Motor

Accident Claims Tribunal, Additional District Court cum Chief Judicial Magistrate, Tuticorin, within a period of eight weeks from today."

38. In fine, the Civil Miscellaneous Appeal fails and the same is dismissed. Consequently, the award passed in M.C.O.P. No. 165 of 2002 dated

10.02.2003 by the Motor Accident Claims Tribunal, Additional District Court cum Chief Judicial Magistrate, Tuticorin, is affirmed for the reasons

assigned by this Court in this appeal. The connected C.M.P. No. 955 of 2004 is dismissed. Having regard to the facts and circumstances of the

case, the parties are directed to bear their own costs in this appeal.