

**(2010) 03 MAD CK 0236**

**Madras High Court**

**Case No:** C.M.A. No. 814 of 2004 and C.R.P. No. 847 of 2006

Oriental Insurance Co. Limited

APPELLANT

Vs

Jayapriya represented by next  
friend and guardian

Maruthambal and Others

<BR>Mr. J. Jeyaprakasam Vs M.

Lakshmanan, The Managing  
Director, Annai Sathya Transport  
Corporation, P. Thangavel and  
The Oriental Insurance Company  
Limited

RESPONDENT

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**Date of Decision:** March 2, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27, Order 41 Rule 33
- Divorce Act, 1869 - Section 32
- Evidence Act, 1872 - Section 114
- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 40, 41
- Motor Vehicles Act, 1988 - Section 166, 168
- Penal Code, 1860 (IPC) - Section 279, 304A, 337
- Succession Act, 1925 - Section 373

**Citation:** (2010) 2 LW 888

**Hon'ble Judges:** R. Banumathi, J; A. Arumughaswamy, J

**Bench:** Division Bench

**Advocate:** K.S. Narasimhan, in C.M.A. and P. Veeraraghavan, in C.R.P, for the Appellant;  
Mythili Suresh, for R1 and R2, P. Veeraraghavan, for R6 in CMA and K.S. Narasimhan in  
C.R.P., for the Respondent

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**Judgement**

R. Banumathi, J.

Being aggrieved by the award of compensation of Rs. 8,96,560/- for the death of

deceased Jagadambal in the road traffic accident, Appellant - Insurance Company has filed C.M.A. No. 814 of 2004. The estranged husband of deceased Jagadambal, whose Claim Petition in M.C.O.P. No. 439 of 2006 was dismissed, has preferred C.R.P. No. 847 of 2006. Since common points arise for consideration, both C.M.A. and revision were heard together and shall stand disposed of by this Common Judgment.

2. What would otherwise been a simple case for compensation and apportionment of compensation has become slightly complicated because of the inter se dispute between the claimants in M.C.O.P. No. 90 of 1995, who are the adopted daughter and mother of deceased Jagadambal and erstwhile husband -Jeyaprakasam, who is the claimant in M.C.O.P. No. 439 of 1996. Before we deal with the inter se dispute between the claimants, we may firstly consider the negligence and the liability to pay the compensation and also the quantum of compensation payable.

3. The relationship between deceased Jagadambal and her husband was strained, which led to filing of matrimonial dispute, which we would refer to shortly. The deceased Jagadambal was living along with her mother and adopted daughter - Jayapriya in Dharmapuri. She was working as a staff nurse in Government Headquarters Hospital at Dharmapuri.

4. The brief facts are that on 22.4.1994 at about 8.10 A.M., Jagadambal was travelling in the Annai Sathya Transport Corporation bus bearing Registration No. TN. 29-226 from Mettur to Dharmapuri. While the bus was nearing Sanisandai, it has collided with the lorry bearing Registration No. TNC 5467. Due to the accident, Jagadambal had sustained fatal injuries. Deceased - Jagadambal died instantaneously on the spot. Alleging that the accident was due to the rash and negligent driving of the bus driver as well as the lorry driver, claimants have filed M.C.O.P. No. 90 of 1995 claiming compensation of Rs. 10 lakhs. In the said Claim Petition, Revision Petitioner - husband of deceased Jagadambal was shown as 5th Respondent.

5. In the Claim Petition M.C.O.P. No. 90 of 1995, mother of deceased - Maruthambal was examined as P.W.1 and driver of the bus was examined as R.W.1. On the side of Claimants, Exs.A.1 to A.9 were marked. Upon consideration of oral and documentary evidence, Tribunal held that the Criminal case was registered only against lorry driver and held that the accident was due to negligent driving of the lorry driver and held that the Insurance Company and the owner of the lorry are jointly and severally liable to pay the compensation. Insofar as the compensation, Tribunal has awarded total compensation of Rs. 8,96,560/-.

6. The learned Counsel for Appellant Insurance Company submitted that no independent eye witness was examined to fix negligence on the part of drivers of either vehicle. It was further argued that even though Ex.P.1 -F.I.R. was marked, the author of F.I.R. was not examined and while so based upon the interested testimony of R.W.1 - the driver of the bus, Tribunal erred in finding that the accident was due

to negligence driving of lorry driver. It was further argued that the negligence ought to have been apportioned equally between lorry and bus.

7. Insofar as the question of negligence, R.W.1 - driver of the bus has clearly spoken about the negligent driving of the lorry driver which came in the opposite direction. Regarding the accident, Criminal case in Cr. No. 152 of 1994 of Thoppur Police Station under Sections 279, 337 and 304-A of IPC was registered only against the lorry driver. Based upon oral evidence of R.W.1 and pointing out registration of criminal case against the lorry driver, the Tribunal has held that the accident was due to negligent driving of the lorry driver. In our considered view, no rebuttable evidence was adduced by the 2nd Respondent - owner of the lorry to substantiate their defense. In fact, the 2nd Respondent - owner of the lorry remained *exparte* before the Tribunal. In our considered view, in the absence of any rebuttable evidence, Tribunal has rightly held that the accident was due to negligent driving of the lorry driver and we do not find any reason to take a different view. So far as the question of coverage of policy and fastening of liability, Tribunal has rightly held that the Appellant Insurance Company and the owner of the lorry are jointly and severally liable to pay the compensation amount to the claimants.

8. Coming to the question of quantum, Jagadambal was working as a staff nurse in Dharmapuri Government Headquarters Hospital. As seen from Ex.P.6, she was getting salary of Rs. 4,645/- per month. At the time of accident, Jagadambal was aged 40 years. Considering the age of Jagadambal, Tribunal has adopted multiplier 16 and calculated the total loss of income at Rs. 8,91,840/-. After deducting 1/3rd for personal expenses i.e., Rs. 2,97,280/-, Tribunal has calculated loss of dependency at Rs. 5,94,560/-. Tribunal has awarded Rs. 1,50,000/- for loss of love and affection and Rs. 1,50,000/- for loss of future income and Rs. 2,000/- for funeral expenses and awarded total compensation of Rs. 6,560/-.

9. Expressing concern over lack of consistency and uniformity laying guidelines as to the factors to be taken into consideration for arriving at the compensation, in [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#), the Supreme Court has held as under:

18. Basically only three facts need to be established by the Claimants for assessing compensation in the case of death:

- (a) age of the deceased;
- (b) income of the deceased; and
- (c) the number of dependants.

The issues to be determined by the Tribunal to arrive at the loss of dependency are:

- (i) additions/deductions to be made for arriving at the income;

(ii) the deduction to be made towards the personal living expenses of the deceased; and

(iii) the multiplier to be applied with reference to the age of the deceased.

If these determinants are standardized, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.

19. To have uniformity and consistency, the Tribunals should determine compensation in cases of death, by the following well-settled steps:

#### Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

#### Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

#### Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the "loss of dependency" to the family.

Thereafter, a conventional amount in the range of Rs. 5000 to Rs. 10,000 may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5000 to 10,000 should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also be added.

10. Applying the ratio of the above decision, in the instant case, we have examined the multiplicand and multiplier adopted by the Tribunal. Insofar as income of the deceased, there is no denial that she was getting Rs. 4,645/- per month and Ex.A.6 is the salary certificate of deceased Jagadambal from which it is seen that she was getting gross salary of Rs. 4,645/- per month. The Tribunal has taken the monthly income as Rs. 4,645/- and adopted multiplier 16. It is fairly well settled that while

assessing future loss of income, the Court should bear in mind future prospects like promotion, increments and revision of pay. After the Sixth Pay Commission, after revision of pay, Jagadambal would have got more salary. Having regard to the future prospects, giving 50 percent increase to the salary, the monthly income of Jagadambal is taken as Rs. 6,960/- (Rs. 4,645/- + Rs. 2,315/-). Deducting 1/3rd for personal expenses i.e., Rs. 2,320/-, the monthly income of the deceased is calculated at Rs. 4,640/- rounded off to Rs. 5,000/-. Loss of annual dependency is calculated at Rs. 60,000/- (Rs. 5,000/- x 12).

11. Jagadambal was aged 40 years. Based upon her age, the Tribunal has adopted multiplier 16. The claimants are adopted daughter and mother, aged 10 years and 75 years respectively. After few years, the 1st Claimant would have got married and she would have been no more dependent on the mother - Jagadambal. Likewise, 2nd Claimant Maruthambal-mother of Jagadambal is aged 75 years and the Tribunal ought to have kept in view the age of the mother. While adopting the multiplier, the Courts will have to take into consideration the age of the deceased or the age of the claimants, whichever is high. Having regard to the age of the claimants, it would be appropriate to adopt the multiplier 12. The total loss of dependency is quantified at Rs. 7,20,000/-. The total compensation is calculated at Rs. 7,75,000/- as under:

|                             |                 |
|-----------------------------|-----------------|
| Loss of dependency:         | Rs. 7,20,000.00 |
| Loss of love and affection: | Rs. 50,000.00   |
| Funeral expenses:           | Rs. 5,000.00    |
| Total:                      | Rs. 7,75,000.00 |

12. The next question to be considered is, who are the legal representatives of deceased Jagadambal and whether Jayaprakasam - estranged husband, though Class I heir can claim the entire compensation or major portion of the compensation.

13. Admittedly, Jagadambal and 6th Respondent belong to Indian Christian community and they were married on 29.11.1973 and their marriage was also entered before the Marriage Registrar. After Jagadambal converted to Christianity, their marriage was also solemnized on 11.5.1974. Both of them lived amicably and happily for a period of five years after the marriage and thereafter differences arose between the spouses and Jagadambal went to her parents house and she was living with her mother - 2nd Claimant. Alleging that 6th Respondent had developed illicit intimacy with another lady and that 6th Respondent is living with some other lady, Jagadambal filed O.P. No. 2 of 1993 u/s 32 of Indian Divorce Act before District Court, Dharmapuri at Krishnagiri for restitution of conjugal rights. Prior to filing of the matrimonial petition, there was exchange of notices between the parties. The 6th Respondent resisted the matrimonial petition contending that only Jagadambal deserted him and with some ulterior motive to grab money from the 6th Respondent, Jagadambal has filed petition for restitution of conjugal rights. The 6th

Respondent has also alleged that the petition for restitution of conjugal rights was not filed with good intention to live with him and he prayed for dismissal of the petition. Even though in the reply notice, 6th Respondent stated that he was ready to live with Jagadambal, despite filing of petition -O.P. No. 2 of 1993, the 6th Respondent never reconciled with Jagadambal till her death. During her life time, from 1993 till her death, Jagadambal was trying for restitution of her conjugal rights with the 6th Respondent, but the 6th Respondent has been evasive in reconciling with Jagadambal. Only death of Jagadambal in road traffic accident on 22.4.1994 brought an end to the matrimonial dispute between the parties.

14. Be that as it may, as we pointed out earlier, after separation from her husband, Jagadambal was living with her mother - 2nd Claimant. In the year in or about 1986, Jagadambal has adopted a female orphan child available in the Government Headquarters Hospital, Salem (I.P. No. 4383). Jagadambal submitted an application to adopt the said female orphan child. Ex.A.5 is the copy of the proceedings of District Collector in Roc. No. 53882/86/C.6 dated 15.7.1986, wherein the District Collector has permitted Jagadambal to adopt two year old female orphan child available in the Government Hospital, Salem, who is the 1st Claimant. However, in Ex.A.5, the District Collector has imposed condition that the child should be returned to its parents or relatives should they be found or appear and claim it. In the correspondence of the Joint Director, Government Hospital, Dharmapuri dated 30.3.1998, the Joint Director has referred the above proceedings of District Collector to reiterate the adoption of 1st Claimant by Jagadambal. Ex.A.8 -Legal heir Certificate issued by Tahsildar, Dharmapuri would also strengthen that the 1st Claimant is the adopted daughter of deceased Jagadambal. In our considered view, Exs.A.5 and A.8 and the proceedings of Joint Director, Medical Services, Government Headquarters Hospital, Dharmapuri would amply strengthen the case that the 1st Claimant is the adopted daughter of Jagadambal.

15. Before we examine the arguments advanced assailing the adoption, we may briefly refer to the filing of the claim petitions and orders passed thereon. Alleging that death of his wife - Jagadambal has caused pecuniary loss and also loss of consortium, 6th Respondent has filed M.C.O.P. No. 3439 of 1995 claiming compensation of Rs. 12,00,000/-, but restricted his claim to Rs. 5,00,000/- payable with interest at the rate of 18 percent per annum. In M.C.O.P. No. 439 of 1996, Insurance Company has entered appearance through its counsel on 23.7.1997. After several adjournments, a memo dated 22.9.2002 was filed on 22.8.2003 by the counsel for Oriental Insurance Company stating about the filing of M.C.O.P. No. 90 of 1995 by the adopted daughter and mother.

16. Drawing our attention to the proceedings in M.C.O.P. No. 439 of 1996, learned Counsel for 6th Respondent submitted that M.C.O.P. No. 439 of 1996 was pending for quite some time and the memo dated 22.9.2002 was sought to be served raising objection as to the maintainability of O.P., and thereafter the matter was adjourned

from 7.11.2002 to 22.8.2003 for filing counter. But the memo was filed only on 22.8.2003. According to the 6th Respondent, till the filing of memo on 22.8.2003, he had no knowledge of M.C.O.P. No. 90 of 1995 filed by Claimants -adopted daughter and mother. M.C.O.P. No. 439 of 1996 was dismissed on 30.9.2003 pointing out that in M.C.O.P. No. 90 of 1995 filed by the adopted daughter and mother, 6th Respondent has been set exparte and he has also filed a petition to set aside the exparte order. Further, while dismissing M.C.O.P. No. 439 of 1996 on 30.9.2003, it was also observed by the Tribunal that the 6th Respondent has to seek remedy only in M.C.O.P. No. 90 of 1995 and he cannot independently pursue M.C.O.P. No. 439 of 1996.

17. The grievance of 6th Respondent is that M.C.O.P. No. 439 of 1996 was filed against the State Transport Corporation, Insurance Company and driver and in the said M.C.O.P. No. 439 of 1996, the same counsel, who appeared for Insurance Company in M.C.O.P. No. 90 of 1995 appeared. It was further submitted that in M.C.O.P. No. 439 of 1996 the same counsel has repeatedly taken adjournments for filing counter. The main grievance of the 6th Respondent is that even the pendency of O.P. No. 90 of 1995 was not brought to the notice of the Court or the 6th Respondent. Further grievance of 6th Respondent is that the memo was filed raising objection as to the maintainability of the petition only after disposal of OP. No. 90 of 1995 (20.6.2002) and after filing of the Appeal in the High Court in January 2003. The main grievance of the 6th Respondent is that the memo raising objection to the maintainability of M.C.O.P. No. 439 of 1996 was filed long after disposal of M.C.O.P. No. 90 of 1995. Taking us through various dates and events, the learned Counsel for 6th Respondent made elaborate submissions contending that Insurance Company had deliberately taken time to file counter in M.C.O.P. No. 439 of 1996 and the memo was filed on 22.8.2003 with deliberate intention of depriving the 6th Respondent of claiming compensation.

18. Learned Counsel for 6th Respondent also submitted that in M.C.O.P. No. 90 of 1995, even though Jeyaprakasam was shown as 5th Respondent, since proper address was not furnished in the Claim Petition, notice was not served. In M.C.O.P. No. 90 of 1995, Jayaprakasam has been impleaded as 6th Respondent giving his address as No. 12, Bajanai Madam Street, Fort, Namakkal Post, Salem District. Since notice was not served in the said address, service was effected by substituted service by paper publication. When claimants in M.C.O.P. No. 90 of 1995 took steps for withdrawing the compensation amount deposited in Court, on 22.10.2002, the 6th Respondent filed application in I.A. No. 76 of 2002 to implead him as a party in OP. No. 90 of 1995 and another application I.A. No. 68 of 2003 seeking for stay of disbursement of compensation lying in Court. The 6th Respondent has also filed application to set aside the award dated 20.6.2002 along with application to condone the delay in filing the application to set aside the award. The grievance of 6th Respondent is that the correct address was not properly given in O.P. No. 90 of 1995 and therefore he did not have the opportunity of putting forth his case nor was

he given the opportunity in his Claim Petition in M.C.O.P. No. 439 of 1996. The main contention of learned Counsel for 6th Respondent is that the 6th Respondent was deprived of all opportunities in both the M.C.O. Ps and the Claimants have withdrawn the amount by playing fraud upon the Court and therefore the learned Counsel prayed for setting aside the award and remitting the matter back to the Tribunal.

19. By perusal of records, we find that in M.C.O.P. No. 90 of 1995 filed by the Claimants, the 6th Respondent was set exparte and thereafter service was effected by substituted service. The proceedings before the Motor Accident Claims Tribunal, being summary in nature, we do not find any error or illegality in the mode of effecting service upon the 6th Respondent. In any event, as per Section 114 illustration (e) of Evidence Act, the Court may presume that all judicial and official acts have been regularly performed. In fact, in M.C.O.P. No. 439 of 1996 - the claim Petition filed by the 6th Respondent, he has not even chosen to implead mother of deceased Jagadambal. We do not find any merit in the contention of the 6th Respondent that the Claimants have obtained award behind the back of 6th Claimant.

20. Claimants have filed Succession O.P. No. 6 of 1995 before Sub-Court, Dharmapuri u/s 373 of Indian Succession Act praying for issuance of Succession Certificate. In the said O.P., the claimants have averred that since the husband of deceased Jagadambal was divorced as per caste customs and his whereabouts were not known, the claimants are entitled to succeed to the estate of Jagadambal. Much argument was advanced stating that the claimants have averred incorrect facts in the Succession OP. saying that the 6th Respondent was already divorced and the marriage was dissolved. The contention is that the husband was not made a party in S.O.P. No. 6 of 1996 and the Claimants have clandestinely obtained Succession Certificate and therefore Succession Certificate issued in S.O.P. No. 6 of 1995 is not binding. It was further argued that the Court ought to have seen that notice was served upon the husband, both in S.O.P and Motor Accident Claim Petition and the 6th Respondent was deprived of his opportunity in putting forth his case and fraud has been played upon the Court.

21. Placing reliance upon a decision of the Supreme Court in [S.P. Chengalvaraya Naidu \(dead\) by L.Rs. Vs. Jagannath \(dead\) by L.Rs. and others](#), and 2007 (4) L.W. 139 (A.V. Papayya Sastry and Ors. v. Govt. of A.P. and Ors.), the learned Counsel reiterated his submission that fraud has been played upon the Court in obtaining Succession Certificate behind the back of 6th Respondent to deprive him of the money and prayed for remanding the matter. It was also contended that even most solemn proceedings stand vitiated if they are actuated by fraud. As we pointed out earlier, the 6th Respondent was impleaded in M.C.O.P. No. 90 of 1995 and he was set exparte. The accident was in the year 1994 and already 17 years had passed. At this distant point of time, we are not inclined to set aside the award and remit the

matter back to the Tribunal for hearing the matter afresh.

22. In this Appeal, the 6th Respondent has filed C.M.P. No. 1881 of 2006 under Order XLI Rule 27 of Code of Civil Procedure. to receive the additional documents. Since much grievance was raised as to non-affording of opportunities, with a view to afford opportunity to the 6th Respondent, during the course of arguments in the appeal, the application in C.M.P. No. 1881 of 2006 was allowed on 24.2.2010 and the additional documents filed by the 6th Respondent - Exs.B.1 to B.5 were received as additional evidence.

23. As we pointed out earlier that there is no dispute as to the marriage and the status of 6th Respondent as the husband of deceased - Jagadambal. Ex.B.2 is the L.I.C. Policy taken by 6th Respondent, wherein he has shown Jagadambal - wife as nominee. Laying emphasis upon Ex.B.2, learned Counsel for 6th Respondent submitted that the 6th Respondent had all love and affection for his wife and that the 6th Respondent, being the Class I heir, is entitled to get the entire compensation. Main contention is that even though there were differences between the spouses, deceased Jagadambal was only intending to rejoin her husband. Ex.B.2 is the Life Insurance Policy taken by the 6th Respondent on 30.10.1985 before strains in the relationship of the spouses. At the time when there were no differences between the spouses, in 1985, quite naturally 6th Respondent would have shown his wife as a nominee in the L.I.C. Policy. Of course, the marriage was subsisting and the status of the 6th Respondent as husband - Class I heir cannot be disputed.

24. As pointed out earlier, due to differences, Jagadambal was living with her mother and adopted daughter. The question falling for consideration is, "whether the estranged husband living separably can claim to be the dependent and can he claim the compensation, if so, what is the pecuniary loss and loss of dependency.

25. Assailing the adoption, the learned Counsel for the 6th Respondent submitted that Jagadambal and 6th Respondent being Christians, law of adoption is not applicable to them and while so, the plea of adoption was put forth mainly to deprive the 6th Respondent from claiming compensation. It was further argued that adoption has not been recognised in India among Christians and just only to siphon the compensation amount, the adoption has been put forth. Contending that a married Hindu female during the subsistence of her marriage, although staying separately from her husband is devoid of the capacity to adopt, learned Counsel for 6th Respondent placed reliance upon [Brajendra Singh Vs. State of M.P. and Another,](#)

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26. Insofar as the plea regarding the validity of adoption, as we pointed out earlier, for adopting the female orphan child, Jagadambal made application before District Collector, Salem in 1986 and by Ex.A.5 proceedings dated 15.7.1986, the District Collector has granted permission to adopt the 1st Claimant. Insofar as the plea that

there cannot be any valid adoption amongst Christians, and particularly by a woman, whose marriage was in subsistence, in a summary proceedings, validity or otherwise of adoption cannot be gone into. As we pointed out earlier, the Claimants have produced overwhelming documentary evidence to substantiate the plea of adoption.

27. The contention that the adoption has not been recognised in India among Christians does not merit acceptance. In (2009) 8 MLJ 309: 2010 2 L.W. 881 (R.R. George Christopher), referring to Sections 40 and 41 of Juvenile Justice (Care and Protection of Children) Act, 2000, Justice K. Chandru has held that the said Act itself was enacted with a view to fulfil the international obligations as well as the constitutional goal envisaged in Part IV of the Constitution. Aspiring parents who intend to adopt children, without being inhibited by their personal laws, are entitled to adopt a child in terms of the provisions of the said Act. The learned single Judge has further held that Sections 40 and 41 of Juvenile Justice (Care and Protection of Children) Act, 2000 are not restricted to persons belonging to particular religion alone and upheld the plea of adoption by the applicants therein, who are Christians and held as under:

... 13. The JJ Act for the first time provides "adoption" as a means to rehabilitate and socially reintegrate a child. It had empowered the "State Government" and the JJ Board to give a child for adoption. This is the first secular law in India providing for adoption. The provision in Sections 40 and 41 are not restricted to persons belonging to particular religion alone....

28. In our considered view, the stand taken by the learned Counsel for 6th Respondent that there cannot be valid adoption among the Christians is not in consonance with the Constitution and the various judicial pronouncements. As pointed out by the learned single Judge, the Canon Law, which is applicable to Jagadambal and 6th Respondent provides for adoption if the Civil Law of the Country permit the same. In the light of Sections 40 and 41 of Juvenile Justice Act, we do not find any embargo for adoption. In any event, the proceeding, being summary in nature, the validity or otherwise of the adoption needs no further elaboration.

29. As pointed out earlier, Ex.A.5 is the proceedings of District Collector permitting adoption. The proceedings of Joint Director, Headquarters Hospital, Dharmapuri in Na. Ka. No. 5131/Spl./97 dated 30.3.1998 also refers to the proceedings of the District Collector and that the 1st Claimant - adopted daughter - Jayapriya was made as a nominee by Jagadambal along with other nominees viz., husband Jeyaprakasam and mother. The above said proceedings of employer pointing out the adopted daughter as one of the nominee is a strong piece of evidence strengthening the plea of adoption and the claim of claimants. The validity or otherwise of the same cannot be challenged in this summary proceedings. It is not as if the 1st Claimant has been brought to the fore just only to make a claim. She has been the adopted daughter of Jagadambal right from 1986 till the death of deceased - Jagadambal.

30. Learned Counsel for 6th Respondent placed reliance upon Ex.B.3 telegram sent by one relative Kulandaivelu informing death of Jagadambal in the accident and asking Jeyaprakasam to come to Namakkal. Ex.B.3 Telegram would show that the husband has been informed about the death of Jagadambal and in the said telegram, the 6th Respondent was also asked to inform others. The contents in Ex.B.3 Telegram would itself show that the 6th Respondent has to be informed about the death of Jagadambal indicating that he was no way closer to Jagadambal during her life time.

31. The learned Counsel for 6th Respondent has laid emphasis upon Ex.B.5 proceedings of Joint Director, Medical Services, Dharmapuri dated 19.10.1994 sent to 6th Respondent calling upon him to submit the legal heirship certificate to proceed further. Of course, the 6th Respondent was also one of the nominees for receiving the death benefits of Jagadambal and therefore the employer has sent the communication to the 6th Respondent calling upon him to produce the legal heirship certificate. Of course, the 6th Respondent, being one of the nominees, the said communication was sent to him. In our considered view, Ex.B.5 would not lead to the conclusion that the 6th Respondent was a dependent upon Jagadambal and that he suffered pecuniary loss.

32. Placing reliance upon [Rajasthan State Road Transport Corporation and Others Vs. Kiran Lata and Others](#), it was contended that even though there was no Cross Objection by the 6th Respondent in the Appeal, the Appellate Court could invoke the provisions of Order 41 Rule 33 of Code of Civil Procedure. to pass an order to deliver justice to the litigants irrespective of the fact that the parties have filed Appeal or Cross objection. The learned Counsel for 6th Respondent contended that even though the 6th Respondent has not filed any appeal, invoking the provisions of Order 41 Rule 33 of Code of Civil Procedure, the Court could still direct the payment of compensation to the 6th Respondent, who is the Class I heir. It was further argued that by invoking provisions of Order 41 Rule 33 of Code of Civil Procedure., substantial justice could be rendered to the 6th Respondent, who has been deprived of the compensation by the fraud played upon the Court by other Claimants. We have no quarrel in the proposition that the Appellate Court could invoke provisions of Order 41 Rule 33 of Code of Civil Procedure. to pass an order to deliver justice irrespective of the fact that the parties have filed Appeal or Cross Objection. In fact, only to render substantial justice, in C.M.A. No. 814 of 2004, we have ordered petition in C.M.P. 1881 of 2006 for receiving additional evidence.

33. From the averments in the Matrimonial O.P. No. 2 of 1993, the service of notice preceded the filing of the said O.P. and it is made clear that the 6th Respondent has deserted the deceased and she was living separately. As the 6th Respondent was working as Health Inspector, he cannot be said to be dependent on deceased Jagadambal.

34. Learned Counsel for 6th Respondent contended that the claimants are not the legal representatives in view of the fact that the husband of the deceased is alive. Placing reliance upon [Rajasthan State Road Transport Corporation and Others Vs. Kiran Lata and Others](#), it was further argued that re-marriage of 6th Respondent would not be an impediment and re-marriage does not come in the way of awarding compensation. Of course, in the said case, the re-marriage of the widow was considered and a single Judge of Rajasthan High Court held that the question of re-marriage does not come in the way and compensation should not be based on the question of marriage or possibility of re-marriage. Of course, re-marriage is not an impediment for getting compensation to which the husband would be entitled in the normal course. But in the instant case, it has to be kept in view that during life time of Jagadambal, 6th Respondent deserted her and resisting the matrimonial petition for restitution of conjugal rights.

35. In [Pappu and Others Vs. A. Thirunavukkarasu and Others](#), this Court considered a case where the challenge in the appeal was whether husband of the deceased, who is a Class I heir, driven the deceased out of his house and re-married another lady, can be said to be a Legal Representative of the deceased. In the reported case, the claimants were mother, two minor sons and brother of the deceased. Husband of the deceased made a separate claim. After considering the decisions of various Courts and following the decision of the Supreme Court in Gujarat State Road Transport Corporation's case, this Court held that both the parties are Legal Representatives of the deceased and entitled to compensation. Explaining the difference between the term "Legal Representatives" and the term "Legal Heir", in Paragraph 37 and 38 of the Judgment, this Court held that the term "Legal Heir" is not used in Section 166 of the Motor Vehicles Act and the said Section merely provides that an application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased.

36. At Paragraph 41, 42, 44 and 45 of the above said judgment, this Court held as follows:

41. As a matter of fact, Section 168 of the Act provides that Tribunal is authorised to make an award determining the amount of compensation which appears to it to be just and specifying the persons or persons who whom the compensation shall be paid. Therefore, the Tribunal is not invariably called upon to decide who is the legal heir.

42. But, in the facts and circumstances of the case, it has to be decided whether the claimant would be the legal representative of the deceased. Every legal representative who suffers on account of death of a person due to motor vehicle accident should have remedy for realisation of compensation and that is provided in Section 166. It is true that the Act does not specify as to who is to be treated as legal representative for the purpose of Section 166 of the Act.

44. The Supreme Court has also added that the expression "legal representative" contained in Section 166 of the Act should be given a wider meaning and should not be confined to the spouse, parent and children of the case.

45. Applying the above principles in the present case, the mother of the deceased cannot be denied of her right of claiming compensation merely because she is Class III heir. In these accident claim cases, the Tribunal cannot reject the claim petition as the Class I heir is available.

(emphasis added)

37. Of course, the 6th Respondent - husband is a Class I heir. But the fact remains that Jagadambal was separated from her husband and living with her mother, aged 75 years and adopted daughter. Claimants were dependants on Jagadambal. In an application for compensation arising out of Motor Vehicle accident, it is suffice if Claimants prove that they are dependants on the income of the deceased. Motor Vehicles Act being a beneficial legislation, does not contemplate any stringent condition that the claimants should be "solely dependant" on the income of the deceased. In this case, the aged mother and adopted daughter were solely dependent on the income of the deceased. In such facts and circumstances, the contention that Claimants cannot maintain a Claim Petition as long as husband is alive is untenable and against the principles of equity and good conscience.

38. While deciding the pecuniary loss, the loss of dependency is a factor to be proved by the beneficiary. Court has to make estimate of the pecuniary loss and the Court has to evaluate the pecuniary loss resulting from death on the basis of proper appreciation of relevant circumstances and realities of the life. As we pointed out earlier, though the 6th Respondent is a Class I heir, it is averred that he has married another lady and said to be living with her. During the life time of Jagadambal, 6th Respondent deserted her and she was forced to take shelter with her aged mother. During her life time, Jagadambal was fighting out the litigation for restitution of conjugal rights, which the 6th Respondent was resisting while working as Health Inspector. When it is averred that he has married another lady, the contention of the 6th Respondent that he has suffered substantial pecuniary loss is untenable. In such circumstances, it cannot be said that he was dependant of Jagadambal and there was loss of consortium.

39. Having regard to the facts and circumstances of the case, the total compensation of Rs. 7,75,000/- is ordered to be apportioned as under:

1st Claimant - adopted daughter: Rs. 2,50,000.00

2nd Claimant - mother: Rs. 4,00,000.00

6th Respondent - Husband: Rs. 1,25,000.00

The compensation amount is payable with interest at the rate of 9 percent per annum as ordered by the Tribunal.

40. As per the interim order of this Court dated 31.1.2007 in C.M.P. No. 10808 of 2006 in C.M.A. No. 814 of 2004, an order of interim injunction was granted restraining the adopted daughter and mother - claimants in O.P. No. 90 of 1995 on the file of Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court, Dharmapuri from withdrawing the balance deposited amount of Rs. 11,47,658/- lying to the credit of O.P. No. 90 of 1995, which is the subject matter of C.M.A. No. 814 of 2004 by directing that the balance amount lying in deposit to the credit of O.P. No. 90 of 1995 shall be re-invested in any nationalised Bank in a fixed deposit untidily for a period of three years and shall be renewed periodically thereafter pending disposal of the appeal.

41. From the deposited compensation amount, mother - 2nd Claimant has withdrawn Rs. 3 lakhs and the 1st Claimant -daughter- Jayapriya is said to have withdrawn Rs. 2 lakhs. It was stated before us that around Rs. 15 lakhs is available to the credit of M.C.O.P. No. 90 of 1995. The claimants and the 6th Respondent are to be permitted to withdraw the compensation amount in the ratio of their apportionment.

42. In the result, the compensation amount awarded by the Tribunal in M.C.O.P. No. 90 of 1995 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Dharmapuri is reduced to Rs. 7,75,000/- payable with interest at the rate of 9 percent per annum from the date of filing M.C.O.P. No. 90 of 1995 and in C.M.A., Claimants - adopted daughter and mother - Respondents No. 1 and 2 and the 6th Respondent - husband of deceased are permitted to withdraw their respective compensation amount lying in the credit of M.C.O.P. No. 90 of 1995 in the ratio of their apportionment as stated in para (39) along with accrued interest. While ordering payment from out of the compensation amount deposited, the Tribunal shall take note of the amount of compensation already withdrawn by the claimants-adopted daughter and mother and shall deduct the amount already withdrawn by them from their respective share of compensation. The Appellant Insurance Company is permitted to withdraw the excess amount along with accrued interest, if any.

C.M.A. is partly allowed. Order in M.C.O.P. No. 439 of 1996 is set aside and the Revision Petition C.R.P. No. 847 of 2006 is allowed on the above terms. In the facts and circumstances of the case, the parties are directed to bear their respective costs.