



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA Nos.915, 1093, 1096, 1097, 1099 & 1101 of 2023
and CMP Nos.8470, 10479, 10558, 10515, 10541 & 10546 of 2023
and Cros.Obj.No.38 of 2024

CMA No.915 of 2023

The New India Assurance Co., Ltd.,
Divisional Office
Sethu Krishna Trade Centre,
Trichy Main Road,
Gugai, Salem – 6.

..Appellant

.VS.

1.Mion Raviganesh

2.Yuvaraj

..Respondents

[Minor rep. by N-F/Guardian her mother Lakshmi]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order dated 14.03.2022 made in MCOP No.402 of 2018 on the file of Motor Accident Claims Tribunal, Special District Court, Salem.



For Appellant : Mr.S.Dhakshnamoorthy
in all CMAs

For Respondents : Mr.N.Chandrasekar for R1 to R5
in CMA No.1101 of 2023

Mr.J.Prithivi for R6
in CMA No.1101 of 2023

Mr.J.Prithivi for R2
in CMA Nos.915, 1093, 1096, 1097 &
1099 of 2023

Cros.Obj.No.38 of 2024 in CMA No.1101 of 2023

1.Thangam

2.R.Perumal

3.Yasutha

4.R.Kamalakannan

5.Vijayalakshmi

..Appellants

.VS.

1.The New India Assurance Co., Ltd.,
Divisional Office
Sethu Krishna Trade Centre,
Trichy Main Road,
Gugai, Salem – 6.

2.Yuvaraj

..Respondents



Prayer: This petition filed under Section Order 41 Rule 22 of C.P.C., to enhance the compensation amount awarded in the judgment and Decree dated 14.03.2022 made in MCOP No.1887 of 2018 on the file the Motor Accident Claims Tribunal/Special District Court, Salem.

For Appellants : Mr.N.Chandrasekar

For Respondents : Mr.S.Dhakshnamoorthy for R1

JUDGMENT

These appeals arises out of the common Award passed by the Tribunal in MCOP Nos.398, 399, 400, 401, 402, 1887 of 2018 and the Award passed in all the claim petitions have been put to challenge in these appeals by the Insurance Company. Hence, this common judgement is passed.

2.MCOP Nos.398, 399, 400, 401 and 402 of 2018 are injury cases and MCOP No.1887 of 2018 is a fatal case. The Insurance Company has questioned the very liability that has been saddled against the Insurance Company on the ground that the car was registered as a private car and it is covered under the terms and conditions of a Private Car Package Policy and the Insurance Company is only bound by the contractual liability under the terms of the



policy. In the instant case, the car was put to hire which is not covered under the contractual liability. Therefore, the Insurance Company has questioned the finding of the Tribunal by invoking the principle of pay and recovery. Insofar as the MCOP No.1887 of 2018, the Insurance Company has also questioned the quantum of compensation awarded by the Tribunal.

3.Heard Mr.S.Dhakshnamoorthy, learned counsel appearing on behalf of the appellant, Mr.N.Chandrasekar, learned counsel appearing on behalf of the respondents 1 to 5 in CMA No.1101 of 2023 and Mr.J.Prithivi, learned counsel appearing on behalf of the 2nd respondent in CMA Nos.915, 1093, 1096, 1097 & 1099 of 2023 and appearing on behalf of the 6th respondent in CMA No.1101 of 2023.

4.This Court has carefully considered the submissions made on either side and also the materials available on record.

5.The case of the claimants is that on 07.01.2018, the claimants and the deceased Ramasamy were travelling in a omni van at Harur-Thaniapadi main road and this omni van was driven in a rash and negligent manner and at about 9.30 a.m., omni van dashed on a road side coconut tree. One of the passenger



viz., Ramasamy died during the accident and all the other claimants sustained serious injuries. It is under these circumstances, the claim petitions came to be filed before the Tribunal.

6.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident in this case had taken place only due to the rash and negligent driving on the part of the driver who drove the omni van. Having rendered the above finding, the Tribunal fixed the total compensation in each claim petition as follows:

S.No	MCOP Nos.	Awarded Amount
1	MCOP No.398 of 2018	Rs.3,85,000/-
2	MCOP No.399 of 2018	Rs.3,05,200/-
3	MCOP No.400 of 2018	Rs.1,00,000/-
4	MCOP No.401 of 2018	Rs.90,000/-
5	MCOP No.402 of 2018	Rs.90,000/-
6	MCOP No.1887 of 2018	Rs.15,18,500/-

7.The above compensation was directed to be paid by the Insurance Company with interest at the rate of 7.5% per annum and the Insurance Company was also permitted to pay the compensation and recover the same



from the owner of the omni van on the ground of violation of policy condition.

WEB COPY

8.The first issue to be gone into is with regard to the finding of the Tribunal applying the principle of pay and recover in this case. The learned counsel for the Insurance Company submitted that one of the witness who was examined before the Tribunal had specifically admitted in his evidence that the driver of the van was none other than the brother of the owner of the van and he had taken it on hire and had driven the van. In view of the same, the policy does not cover the van being used under hire or for reward. Therefore, it was contended that the Tribunal ought not to have applied the pay and recovery principle.

9.To appreciate the submission made by the learned counsel for the appellant, it is necessary to consider the oral evidence of the witnesses as well as Ex.P1 which is the FIR that was registered based on the complaint given by the owner of the vehicle.

10.One Senthil who was examined on the side of the claimants has stated in the cross-examination as follows:

காலை 8.00 மணியளவில் 1ம் எதிர்மனுதாரரின்



ஓட்டுனர் வேனை மரத்தில் கொண்டுபோய் மோதிவிட்டார். வேனில் ஓட்டுனருடன் சேர்ந்து பெரியவர்கள் ஆறு பேரும் சிறியவர்கள் மூன்று பேரும் பயணம் செய்தோம். மேற்படி வேன் ஓட்டுனர் சந்திரனின் தம்பிக்கு சொந்தமானது. சந்திரனின் தம்பி யார் என்று தெரியாது.

11. One Lakshmi has stated during the cross-examination as follows:

என் வயது, வருமானம், தொழில் குறித்த ஆவணம் தாக்கல் செய்யவில்லை. நாங்கள் பயணம் செய்த வாகனம் என் தங்கையின் கணவரின் தம்பியின் வாகனம். அவர் பெயர் யுவராஜ். எப்படி விபத்து ஏற்பட்டது என்று எனக்கு தெரியாது.

12. One Perumal in his cross-examination has stated as follows:

1ம் மனுதாரரிடம் அவரது தம்பியான சந்திரன் என்பவர் வாடகை பேசி வாகனத்தை ஓட்டிச்சென்றார் என்றால் சரிதான். சொந்த வாகனத்தை வாடகைக்காக பயன்படுத்த முடியாது என்றால் எனக்கு தெரியாது. 1ம் மனுதாரர் தரப்பில் பாலிசி வதிமீறல் இருப்பதால் 1ம் மனுதாரர்தான் இழப்பீடு வழங்கவேண்டும் என்றால் சரியல்ல.

13. It will also be relevant to take note of the specific allegation that was



made in the FIR that was marked as Ex.P1 and the same is extracted hereunder:

WEB COPY

TN30-AH-8434 என்ற அமினி வேன் சொந்தமாக வைத்து ஓட்டி வருகிறேன் எனது மனைவி பெயர் பாலசகன்யா எங்களுக்கு மோகவர்ஷினி, தெனிஷ்கா என்ற இரண்டு மகள்கள் உள்ளனர். மேற்படி எண் வேனை என் உடன் பிறந்த அண்ணன் சந்திரன் s/o கோவிந்தசாமி என்பவரும் சமயத்தில் ஓட்டுவார் இன்று 07.01.2018 தேதி மேற்படி வேனில் மேல்மலையனூர் குலதெய்வ கோவிலுக்கு சாமி கும்பிட வண்டியை என் அண்ணன் சந்திரன் என்பவர் ஓட்ட வண்டியில் எங்களது உறவினர்கள் கடையம்பட்டி கிராமத்தை சேர்ந்த சென்ராயன் மகன் ராமசாமி பூசாரிபட்டியை சேர்ந்த ரங்கன் மகன் பெருமாள், பூஜா த/பெ. பெருமாள் ரவிகணேஷ் த/பெ. பெருமாள் சின்னதம்பி மகன் செந்தில் மற்றும் எங்கள் அண்ணன் சந்திரன் மகன் கோகுலகிருஷ்ணன் ஆகியோர் பயணம் செய்தனர். வேன் எங்கள் ஊரில் இருந்து காலை சுமார் 5.00 மணியளவில் புறப்பட்டு மேல்மலையனூர் கோவிலுக்கு சென்று கொண்டிருந்தபோது காலை சுமார் 9.30 மணி அளவில் அருர் to தானிப்பாடி ரோட்டில் குபேரபட்டினம் கிராமம் திருப்பதி என்பவரின் நிலத்திற்கு எதிரில் அதிவேகமாகவும் அஜாக்கிரதையாகவும் எங்கள் அண்ணன் வேனை ஓட்டி வந்ததாலும் சற்று கண் அசந்து விட்டதாலும் ரோடின் இடது பக்கம் இருந்த தென்னைமரத்தில் மோதி விட்டுள்ளார். இந்த விபத்தில் மேற்படி நபர்கள் அனைவருக்கும் இரத்த காயங்கள்



ஏற்பட்டு எல்லோரையும் அநீர் அரசு மருத்துவமனையில் சிகிச்சைக்கு சேர்த்து உள்ளதாக தகவல் கேள்விபட்டு நானும் என் உறவினர்களும் மருத்துவமனையில் வந்து பார்த்தோம். விபத்தில் ராமசாமிக்கு இரண்டு கால்களிலும் பலத்த காயங்கள் ஏற்பட்டிருந்ததால் அவரை மேல்சிகிச்சைக்காக கோயம்புத்தூர் கங்கா மருத்துவமனைக்கு அனுப்பப்பட்டுள்ளார். என்னுடைய வேன் முன்பகுதி முழுவதும் சேதமடைந்தது. எனவே மேற்படி விபத்து குறித்த தாங்கள் நடவடிக்கை எடுக்குமாறு பணிவுடன் கேட்டுக்கொள்கிறேன்.

14.The Tribunal on appreciation of the above evidence has taken note of one stray statement made by the above said Perumal and has come to a conclusion that one Chandran who is the younger brother of the owner of the van had taken a van on hire and had driven the van and the accident had taken place. While undertaking the exercise of appreciation of evidence, one stray statement cannot be taken and the Court is expected to appreciate the entire evidence and come to a conclusion.

15.The earliest version regarding the accident which took place on 07.01.2018 was the version of the owner of the van. This is found in the FIR that was marked as Ex.P1. The relevant portions have already been extracted



supra. The owner of the van has specifically stated that he had given the van to his brother Chandran and the said Chandran had taken the relatives in the van to a temple. Unfortunately, the van dashed on a tree and met with an accident. There is no doubt that the said Chandran is the brother of the owner of the van and it was the said Chandran who had driven the van at the time of the accident. The fact that Chandran alone drove the van at the time of the accident has also been spoken by the other witnesses. One of the witness while being confronted with a leading question that Chandran had taken the van on hire from the owner of the vehicle, has mechanically stated as 'Yes'. This answer by itself cannot result in coming to a conclusion that the omni van was taken on hire by Chandran from his own brother. Even if this Court is to appreciate the evidence from the stand point view of a prudent man, it is too unnatural for the own brother to have taken the van on hire. This is more so since that the persons who had travelled in the van were all relatives and therefore, it is quite ill-logical to conclude them the brother Chandran had taken the van on hire from his own brother and had driven the van along with his relatives to the temple. In view of the same, the conclusion arrived at by the Tribunal as if Chandran had taken the van on hire and therefore, there was violation of the policy condition by the owner of the van, is hereby set aside.



16. In the light of the above finding, it cannot be said that there was any violation of the terms of the policy. Chandran was authorised to drive the van by the owner of the vehicle and he is a representative of the owner of the van. Therefore, it cannot be held that there is violation of terms of the policy. In view of the same, the Insurance Company alone must pay the compensation fixed by the Tribunal and the same cannot be recovered from the owner of the van.

17. Insofar as the quantum of compensation is concerned, there is no serious challenge to the compensation that has been fixed in the injury cases in MCOP Nos. 398, 399, 400, 401 and 402 of 2018. The main challenge is with regard to the compensation that was fixed in MCOP No. 1887 of 2018 which was filed by the claimants/legal representatives of the deceased Ramasamy. The learned counsel for the appellant submitted that the Tribunal had wrongly fixed the age of the deceased as 60 years. To substantiate the same, the learned counsel brought to the notice of this Court, the evidence of one Perumal who is one of the sons of the deceased. During cross-examination, a question was put to him to the effect that the mother was aged about 60 years and therefore, the father must be elder by at least 15 years and therefore, his age must be 75 years and for this question, this witness mechanically says 'Yes'. It must be borne in mind that the Court is dealing with the evidence of rustic villagers. Many a



times, they do not understand the question properly and they mechanically give their answers without any application of mind. The Tribunal had taken into consideration Ex.P5 which was the Post-mortem Certificate and in that, it has been specifically stated that the age of the deceased was 60 years. Therefore, in the absence of any contra-evidence, there is no scope to come to a conclusion that the deceased must have been aged about 75 years based on the evidence of Perumal.

18.The learned counsel for the claimants in MCOP No.1887 of 2018 submitted that the Tribunal ought to have ordered a sum of Rs.6,92,739/- towards medical bills based on Ex.P12 and whereas, the Tribunal had ordered only a sum of Rs.5,50,000/- That apart, the learned counsel also questioned the compensation fixed under the head of loss of love and affection and contended that the same is on the lower side.

19.The learned counsel for the appellant submitted that the Tribunal ought to have deducted 1/3rd towards the personal expenditure of the deceased considering the fact that all the daughters and son were married and were not dependent on the deceased. Therefore, it was contended that while calculating the compensation under the head of loss of income/dependency, the Tribunal



ought to have deducted 1/3rd towards personal expenditure of the deceased.

WEB COPY

20.The Tribunal had fixed the age of the deceased as 60 years. The claimants had put-forth a stand that the deceased was an agriculturist and was also drawing pension and he was earning not less than Rs.20,000/- per month. There was no evidence to substantiate this stand taken by the claimants. Therefore, the Tribunal had fixed the notional monthly income at Rs.10,000/- This Court finds that the notional monthly income fixed by the Tribunal is reasonable. The Tribunal while calculating the compensation under the head of loss of income has deducted 1/4th towards the personal expenditure of the deceased. As rightly contended, except the wife, all the other children are major and strictly speaking, they may not be dependants on the deceased. Therefore, this Court is of the view that 1/3rd ought to have been deducted towards personal expenditure of the deceased. Thus, the compensation under the head of loss of income is calculated as follows:

$$\text{Rs.10,000/-} \times 12 \times 9 \times \frac{1}{3} = \text{Rs.7,20,000/-}$$

21.The next issue pertains to the compensation granted under the head of medical expenses. This Court carefully went through Ex.P12 and it is seen that the total expenditure towards medical bills runs to Rs.6,92,739. Therefore, there



WEB CODE

is no reason to reduce it to Rs.5,50,000/- The finding of the Tribunal to that effect is hereby set aside.

22.The other issue is with regard to the compensation fixed under the head of loss of love and affection and loss of consortium. This Court is inclined to consolidate both the heads and grant compensation under a single head viz., Loss of Love and Affection and for each of the claimant, this Court is inclined to fix a sum of Rs.40,000/-. Accordingly, the total compensation under this head works out to a sum of Rs.2,00,000/- (Rs.40,000 x 5).

23.The Tribunal has fixed a sum of Rs.25,000/- under the head of funeral expenses and the same is reduced to Rs.15,000/-. The Tribunal has not granted any compensation under the head of Loss of Estate and this Court is inclined to fix a sum of Rs.15,000/- under this head.

24.In the light of the above discussion, the compensation awarded by the Tribunal in MCOP No.1887 of 2018 is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income	7,20,000



S.No	Compensation awarded under the head	Amount (in Rs.)
	Rs.10,000/- x 12 x 9 x 1/3 =	
2.	Loss of Love and Affection	2,00,000
3.	Medical Expenses	6,92,739
4.	Transportation Charges	18,500
5.	Funeral Expenses	15,000
6.	Loss of Estate	15,000
	Total	16,61,239

25.Insofar as CMA Nos.915, 1093, 1096, 1097 and 1099 of 2023, the compensation fixed by the Tribunal shall be deposited along with interest, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment On such deposit, the claimants will be entitled to withdraw the same. Accordingly, the above appeals are dismissed.

26.Insofar as CMA No.1101 of 2023 is concerned, the compensation awarded by the tribunal at Rs.15,18,500/- is enhanced to Rs.16,61,239/-. The appellant insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is



concerned, the deficit court fee, if not paid, shall be paid by the claimants. The

other directions issued by the Tribunal with regard to the mode of payment of



WEB COPY



N. ANAND VENKATESH., J

ssr

compensation remains unaltered. Accordingly, CMA No.1101 of 2023 is dismissed. In view of the order passed in CMA No.1101 of 2023, the Cross Objection petition is allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

04.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accident Claims Tribunal, Special District Court, Salem.

CMA Nos.915, 1093, 1096, 1097, 1099 & 1101 of 2023
and CMP Nos.8470, 10479, 10558, 10515, 10541 & 10546 of 2023
and Cros.Obj.No.38 of 2024