

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal Nos.756, 757, 758 and 759 of 2013,
2077/14, 2098, 2099, 2100 and 2101 of 2013

C.M.A.No.756 of 2013

The New India Assurance Co. Ltd.,
Rathna Buildings,
No.231, TTK Road,
Alwarpet, Chennai 18. ... Appellant/2nd Respondent

Vs

1.Elavarasi
2.Vijaya
3.K.Chandrasekar ... Respondents 1to3/1st Respondent

4.Vetrivel Constructions (P) Ltd.,
No.417-A, Anna Salai,
Nandhanam,
Chennai 35. ... 4th Respondent/1st Respondent
(4th respondent was set ex-parte
before the Tribunal)

Civil Miscellaneous Appeal filed u/s.173 of the Motor
Vehicles Act, 1988, against the judgment and decree in
M.C.O.P.No.77 of 2010 dated 27.09.2012 on the file of Motor
Accident Claims Tribunal, (II Additional District Judge),
Tiruvallur at Poonamallee.

C.M.A.No.757 of 2013

The New India Assurance Co. Ltd.,
Rathna Buildings,
No.231, TTK Road,
Alwarpet,
Chennai 18. .. Appellant/2nd respondent

Vs

1.Amutha
2.Lakshminarayanan ... Respondents 1&2/Claimants
3.Vetrivel Constructions (P) Ltd.,
No.417-A, Anna Salai,
Nandhanam,
Chennai 35. ...3rd respondent/1st respondent

(3rd respondent was set ex-parte
before the Tribunal)

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.80 of 2010 dated 27.09.2012 on the file of Motor Accident Claims Tribunal, (II Additional District Judge), Tiruvallur at Poonamallee.

C.M.A.No.758 of 2013

The New India Assurance Co. Ltd.,
Rathna Buildings,
No.231, TTK Road,
Alwarpet,
Chennai 18.

.. Appellant/2nd Respondent

Vs

1.M.Duraikannu
2.D.Malliga

..Respondents 1&2/Claimants

3.Vetrivel Constructions (P) Ltd.,
No.417-A, Anna Salai,
Nandhanam, Chennai 35. ..3rd Respondent/1st Respondent

(3rd respondent was set ex-parte
before the Tribunal)

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.95 of 2010 dated 27.09.2012 on the file of Motor Accident Claims Tribunal, (II Additional District Judge), Tiruvallur at Poonamallee.

C.M.A.No.759 of 2013

The New India Assurance Co. Ltd.,
Rathna Buildings,
No.231, TTK Road,
Alwarpet,
Chennai 18.

.. Appellant/2nd Respondent

Vs

1.P.Mohandoss
2.M.Amsa

.. Respondents 1&2/Claimants

3.Vetrivel Constructions (P) Ltd.,
No.417-A, Anna Salai,
Nandhanam,
Chennai 35. ..3rd Respondent/1st Respondent

(3rd respondent was set ex-parte
before the Tribunal)

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.102 of 2010 dated 27.09.2012 on the file of Motor Accident Claims Tribunal, (II Additional District Judge), Tiruvallur at Poonamallee.

C.M.A.No.2077 of 2014

1.P.Rajeswari
2.Minor P.R.Saisaran @ Logeswaran
(Minor petitioner is rep. by
his mother 1st petitioner as
next friend.) amended as per order
dated 22.4.2013

3.L.Amudha

4.Lakshminarayanan

.. Appellants/Claimants

Vs

1.Vetrivel Constructions (P) Ltd.,
No.417-A, Anna Salai,
Nandhanam, Chennai 35.

2.The New India Assurance Co. Ltd.,
Rathna Buildings,
No.231, TTK Road,
Alwarpet, Chennai 18.

.. Respondents/Respondent

(1st respondent was set
exparte before the Tribunal)

Civil Miscellaneous Appeal filed u/s.173 of the Motor
Vehicles Act, 1988, against the judgment and decree in
M.C.O.P.No.89 of 2010 dated 27.09.2012 on the file of Motor
Accident Claims Tribunal, (II Additional District Judge),
Thiruvallur at Poonamallee.

C.M.A.No.2098 of 2014

1.Elavarasi

2.Vijaya

3.K.Chandrasekar

.. Appellants/Claimants

Vs

1.Vetrivel Constructions (P) Ltd.,
No.417-A, Anna Salai,
Nandhanam, Chennai 35.

2.The New India Assurance Co. Ltd.,
Rathna Buildings,
No.231, TTK Road,
Alwarpet, Chennai 18.

.. Respondents/Respondent

(1st respondent was set
exparte before the Tribunal)

Civil Miscellaneous Appeal filed u/s.173 of the Motor
Vehicles Act, 1988, against the judgment and decree in
M.C.O.P.No.77 of 2010 dated 27.09.2012 on the file of Motor

Accident Claims Tribunal, (II Additional District Judge),
Thiruvallur at Poonamallee.

C.M.A.No.2099 of 2014

1.L.Amutha
2.Lakshminarayanan .. Appellants/Claimants

Vs

1.Vetrivel Constructions (P) Ltd.,
No.417-A, Anna Salai,
Nandhanam, Chennai 35.

2.The New India Assurance Co. Ltd.,
Rathna Buildings, No.231, TTK Road,
Alwarpet, Chennai 18.

.. Respondents/Respondents

(1st respondent was set
exparte before the Tribunal)

Civil Miscellaneous Appeal filed u/s.173 of the Motor
Vehicles Act, 1988, against the judgment and decree in
M.C.O.P.No.80 of 2010 dated 27.09.2012 on the file of Motor
Accident Claims Tribunal, (II Additional District Judge),
Thiruvallur at Poonamallee.

C.M.A.No.2100 of 2014

1.M.Duraikannu
2.D.Malliga .. Appellants/Claimant

Vs

1.Vetrivel Constructions (P) Ltd.,
No.417-A, Anna Salai,
Nandhanam, Chennai 35.

2.The New India Assurance Co. Ltd.,
Rathna Buildings,
No.231, TTK Road,
Alwarpet, Chennai 18.

.. Respondents/Claimants

(1st respondent was set
exparte before the Tribunal)

Civil Miscellaneous Appeal filed u/s.173 of the Motor
Vehicles Act, 1988, against the judgment and decree in
M.C.O.P.No.95 of 2010 dated 27.09.2012 on the file of Motor
Accident Claims Tribunal, (II Additional District Judge),
Thiruvallur at Poonamallee.

C.M.A.No.2101 of 2014

1.P.Mohandoss
2.M.Ammsa

.. Appellants/Claimants

Vs

1.Vetrivel Constructions (P) Ltd.,
No.417-A, Anna Salai,
Nandhanam, Chennai 35.

2.The New India Assurance Co. Ltd.,
Rathna Buildings,
No.231, TTK Road,
Alwarpet, Chennai 18.

.. Respondents/Respondents

(1st respondent was set
exparte before the Tribunal)

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.102 of 2010 dated 27.09.2012 on the file of Motor Accident Claims Tribunal, (II Additional District Judge), Thiruvallur at Poonamallee.

Appearance :
C.M.A.Nos.756 to 759 of 2013

For Appellants : Mr.N.Vijayaraghavan
For Respondents : Mr.K.Varadha Kamaraj
[R1 to R3 in C.M.A.No.756 of 2013]
[R1 & R2 in C.M.A.Nos.757, 758 and 759
of 2013]
C.M.A.Nos.2077, 2098, 2099, 2100 and 2101 of 2014
For Appellants : Mr.K.Varadha Kamaraj
For Respondents : Mr.N.Vijayaraghavan
[R2 in all appeals]

COMMON JUDGMENT

[Judgment of the Court was made by C.T.SELVAM, J.]

These Civil Miscellaneous Appeals arise against the common judgment of Motor Accident Claims Tribunal, (II Additional District Judge), Poonamallee, passed in M.C.O.P.Nos.77, 80, 89, 95 and 102 of 2010 dated 27.09.2012.

2. In an accident of 13.12.2009 at about 18.45 hours involving a lorry used for carrying drain water, bearing registration No.TN-07-H-9762 and an Indica Car bearing registration No.TN-03-B-4639, the driver and five other occupants of the Car died. Appellants in C.M.A.No.2077 of 2014 are legal heirs of one of the deceased by name L.Pradeep and are aggrieved by the order of the Tribunal passed in

M.C.O.P.No.89 of 2010 on 27.09.2012. Appellants in C.M.A.No.2098 of 2014 are legal heirs of one of the deceased by name C.Suresh and are aggrieved by the order of the Tribunal passed in M.C.O.P.No.77 of 2010 on 27.09.2012. Aggrieved by the award passed in favour of appellants in such appeal/claimants, the Insurance Company has preferred C.M.A.No.756 of 2013. Appellants in C.M.A.No.2099 of 2014 are legal heirs of one of the deceased by name Sathislakshminarayanan @ L.Sathish and are aggrieved by the order of the Tribunal passed in M.C.O.P.No.80 of 2010 on 27.09.2012. Aggrieved by the award passed in favour of appellants in such appeal/claimants, the Insurance Company has preferred C.M.A.No.757 of 2013. Appellants in C.M.A.No.2100 of 2014 are legal heirs of one of the deceased by name D.Mahesh and are aggrieved by the order of the Tribunal passed in M.C.O.P.No.95 of 2010 on 27.09.2012. Aggrieved by the award passed in favour of appellants in such appeal/claimants, the Insurance Company has preferred C.M.A.No.758 of 2013. Appellants in C.M.A.No.2101 of 2014 are legal heirs of one of the deceased by name M.Suresh and are aggrieved by the order of the Tribunal passed in M.C.O.P.No.102 of 2010 on 27.09.2012. Aggrieved by the award passed in favour of appellants in such appeal/claimants, the Insurance Company has preferred C.M.A.No.759 of 2013.

3. Before the Tribunal, on the side of the appellants 11 witnesses were examined and 48 exhibits were marked. On the side of respondents, 2 witnesses were examined and 11 exhibits were marked. On appreciation of materials before it, Tribunal, on the reasoning that the Tata Indica car owned by Vignesh, brother of P.K.Arun and another son of P.W.1, who drove the car without valid and effective licence and without badge under influence of alcohol, fixed negligence on the part of driver (P.K.Arun) of car at 50% and on the part of the driver of the lorry insured with the Insurance Company at 50% and arrived at loss of income on the following reasoning:

M.C.O.P.No.89 of 2010:

Tribunal, taking into consideration Ex.P29 which clearly proved that the deceased was employed with TCS, fixed his monthly income at Rs.17,500/- p.m. after deduction of income tax, as the number of dependents are 5, deducted Rs.3,500/- towards his personal expenses, applied multiplier 18 and arrived at loss of income at Rs.30,24,000/- (14,000*12*18). The amount awarded under the other heads are also justified.

M.C.O.P.No.77 of 2010:

Tribunal, taking into consideration Ex.P46, salary certificate, fixed his monthly income at Rs.20,000/-, as the number of dependents are 4, deducted Rs.5,000/- towards his personal expenses and 10% towards tax, applied multiplier 17 and arrived at loss of income at Rs.27,54,000/- (13,500*12*17). The amount awarded under the other heads are also justified.

M.C.O.P.No.80 of 2010:

Tribunal, taking into consideration Exs.P23 to 32, which proved the educational qualification, employment and monthly salary of the deceased, fixed his monthly income at Rs.35,000/-, deducted Rs.11,666/- towards his personal expenses and 10% towards income tax, applied multiplier 15 and accordingly, arrived at loss of income at Rs.37,80,180/- (Rs.21,001*12*15). The amount awarded under the other heads are also justified.

M.C.O.P.No.95 of 2010:

Though the deceased has resigned his job and was not employed on the date of accident, Tribunal taking into consideration Ex.P6 - Salary Certificate, Ex.P7 - Salary Adjustment Certificate, Ex.P8 - Statement of Certificates under Keppel Shipyard issued to the deceased and Ex.P9 - Appointment order, held that the deceased was potentially an employable and experienced skilled worker capable of earning a monthly salary of not less than Rs.30,000/- and accordingly, fixed his income at Rs.30,000/- p.m. and deducted 1/3rd towards his personal expenses, deducted 10% towards income tax and applied multiplier 13 and accordingly, arrived at loss of income at Rs.28,08,000/- (Rs.18,000*12*13). The amount awarded under the other heads are also justified.

M.C.O.P.No.102 of 2010:

Tribunal, taking into consideration Ex.P37 - Appointment order issued by Kotak Mahindra Bank appointing the deceased as Assistant Manager, Ex.P38 - Joining Report and Ex.P39, Salary Certificate, and the evidence of PW-9, Deputy Manager of Kotak Mahindra Bank, who deposed that the total monthly salary of deceased Suresh was Rs.51,540/-, fixed his income at Rs.51,500/-, deducted 1/3rd towards his personal expenses and 10% towards income tax, applied multiplier 13 and arrived at loss of income at Rs.48,22,116/- (Rs.30,911*12*13). The amount awarded under the other heads are also justified.

4. The total compensation awarded by Tribunal:

Description	M.C.O.P.Nos.				
	89/2010	77/2010	80/2010	95/2010	102/2010
Loss of Income	30,24,000	27,54,000	37,80,180	28,08,000	48,22,116

Description	M.C.O.P.Nos.				
	89/2010	77/2010	80/2010	95/2010	102/2010
Loss of love and affection to 2 nd petitioner	25,000		25,000	25,000	25,000
Loss of love and affection to petitioners 3 and 4	5,000				
Loss of love and affection to petitioners 2 and 3		10,000			
Transport expenses	10,000	10,000	10,000	10,000	10,000
Funeral expenses	10,000	10,000	10,000	10,000	10,000
Medical bills					32,500
Loss of consortium to 1 st petitioner	50,000	50,000			
Total	31,24,000	28,34,000	38,25,180	28,53,000	48,99,616
50% compensation	15,62,000	14,17,000	19,12,590	14,26,500	24,49,808

The Insurance Company was directed to pay 50% of the compensation together with interest at 7.5% p.a. from the date of claim petition till the date of payment.

5. Heard learned counsel on either side and perused materials on record.

6. While it is the contention of appellants/claimants that Tribunal erred in attributing contributory negligence to the driver of the Car and in affording inadequate compensation, that of the appellant/insurance company is the accident occurred owing to an unlicensed person driving the Indica Car in a drunken state and the Tribunal erred in attributing negligence to the driver of the lorry.

7. This Court finds that the Tribunal has taken a just and reasonable approach in attributing contributory negligence both to the deceased/driver of the Car as also the driver of the lorry. In finding so, vis-a-vis, the driver of the Car, it has taken note of the position that he did not hold a valid license and had been under the influence of alcohol even while taking note of the position that First Information Report had been registered against the driver of the lorry and PW-11 has spoken to the same having been driven in a rash and negligent manner.

In the result, these Civil Miscellaneous Appeals are dismissed. Insurance Company is directed to deposit 50% of the award amount with interest from the date of petition till the date of deposit within a period of eight weeks from the date of receipt of this judgment. Claimants are permitted to withdraw their respective shares as apportioned by Tribunal on due application. Sum payable to second petitioner in C.M.A.No.2077 of 2014/minor shall be held in deposit with a nationalised bank till he attains majority. First petitioner/mother may withdraw the interest on such deposit once in three months towards defraying the expenses of such petitioner/minor. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

cla/gm

To

The II Additional District Judge,
Motor Accident Claims Tribunal,
Tiruvallur at Poonamallee.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 4 ccs to Mr.K. Varadhakamaraj, Advocate Sr.7627 to 76273
+ 4 ccs to Mr.N. Vijayaraghavan, Advocate Sr.76641

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and 759 of 2013, 2077, 2098, 2099, 2100
and 2101 of 2014

SSI (CO)
EU (05/02/2018)

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