



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

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C.M.A. (MD) No.102 of 2017 and C.M.P (MD) No.1091 of 2017
C.M.A. (MD) No.103 of 2017 and C.M.P (MD) No.1093 of 2017
C.M.A. (MD) No.104 of 2017 and C.M.P (MD) No.1094 of 2017
C.M.A. (MD) No.105 of 2017 and C.M.P (MD) No.1095 of 2017
C.M.A. (MD) No.106 of 2017 and C.M.P (MD) No.1096 of 2017
C.M.A. (MD) No.107 of 2017 and C.M.P (MD) No.1097 of 2017
C.M.A. (MD) No.108 of 2017 and C.M.P (MD) No.1098 of 2017
C.M.A. (MD) No.109 of 2017 and C.M.P (MD) No.1099 of 2017

and

C.M.A. (MD) No.244 of 2012

National Insurance Co. Ltd.,
represented by its
Divisional Manager,
No.37 C, S.N.High Road,
Tirunelveli.

... Appellant/ 2nd Respondent
in CMA(MD) Nos.102 to 109/2017.

Vs.

C.M.A. (MD) No.102 of 2017

- 1.Ismail Beevi
- 2.Yasin Beevi
- 3.Samsudeen
- 4.Ayisha Begam
- 5.Ahmed Pareeth

... Respondents 1 to 4/ Petitioners
... Respondent No.5/ Respondent 1

C.M.A. (MD) No.103 of 2017

- 1.CHELLAMMAL
 - 2.MARIAMMAL
 - 3.MINOR. MUTHUMARIAMMAL
 - 4.MINOR MUTHUGANESAN
 - 5.AHMED PAREETH
- (MINORS R3 & R4 REP. BY THEIR MOTHER AND NATURAL GUARDEAN IST RESPONDENT)

... Respondents 1 to 4/ Petitioners
... Respondent No.5/ Respondent 1

C.M.A. (MD) No.104 of 2017

- 1 PADMAVATHI
- 2 MINOR VARSHA
- 3 MINOR MANISHA
- 4 MARIAPPA NADAR
- 5 PADMA
- 6 AHMED PAREETH

... Respondents 1 to 5/ Petitioners
... Respondent 6/ Respondent 1

**C.M.A. (MD) No.105 of 2017**

- 1 THANGAPANDIAN @ RAMAIAH PANDIAN
 2 NALLATHAI ... Respondents 1 & 2/ Petitioners
 3 AHMED PAREETH ... Respondent 3/ Respondent 1

C.M.A. (MD) No.106 of 2017

- 1 M.PEER MOHAIDHEEN
 2 P.RAHUMA BEEVI
 3 MINOR FATHIMA SABEETHA ... Respondents 1 to 3/ Petitioners
 4 AHMED PAREETH ... Respondent 2/ Respondent 1
 (R3 MINOR REP. BY HER FATHER & GUARDIAN R1)

C.M.A. (MD) No.107 of 2017

- 1 NAGOOR MOHAIDHEEN ... Respondents 1/ Petitioner
 2 AHMED PAREETH ... Respondent 2/ Respondent 1

C.M.A. (MD) No.108 of 2017

- 1 JOTHI
 2 SATHEESH
 3 KAMALAM @ ABIRAMI ... Respondents 1 to 3/ Petitioners
 4 AHMED PAREETH
 5 PETCHIAMMAL ... Respondent 5/ Respondent 3

C.M.A. (MD) No.109 of 2017

- 1 SYED IBRAHIM
 2 S.AMINA
 3 S.SEYED RABIA
 4 S.PEER MOHAMMED ALI ... Respondents 1 to 4/ Petitioners
 5 AHMED PAREETH ... Respondent 5/ Respondent 1

C.M.A. (MD) No.244 of 2012

- Nagoor Mohideen ... Appellant/ Petitioner

-Vs-

- 1.Ahameed Barith
 2.National Insurance Company Ltd.,
 through its Divisional Manager,
 No.37 C, S.N.High Road,
 Tirunelveli. ... Respondents / Respondents

PRAYER: Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 14.05.2010 made in M.C.O.P.No.871, 873, 829, 830, 919, 935, 971 and 994 of 2008 respectively by the Motor Accident Claims Tribunal - cum - Additional District Court/Fast Track Court No.II, Tirunelveli.



For Appellant : Mr.A.K.Baskarapandian
in CMA(MD) Nos.102 to 109 of 2017
Mr.T.Selvakumaran in CMA(MD)244/2012

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For Respondents : Mr.T.Selvakumaran,

For R1 to R4 in CMA(MD) No.102/17,
103/17 and 109/17

For RR1 & R2 in CMA(MD) 105/17.

For RR1 to R3 in CMA(MD) 108/17.

For R1 to R5 in CMA(MD) 104/17.

Mr.S.Karthick for R1 to R3
in CMA(MD) No.106/2017.

For Respondents : Mr.S.Sankar Prakash,
in CMA(MD) Nos.102, 103 & 109 of 2017-R5
R-6 in CMA(MD) No.104 of 2017
R-3 in CMA(MD) No.105 of 2017
R-4 in CMA(MD) Nos.106 of 2017
& 108 of 2017
R-2 in CMA(MD) No.107 of 2017
R1- No Appearance in CMA(MD) No.107/2017
& 244/2012.

: Mr.A.K.Baskarapandian
for R2 in CMA(MD) No.244 of 2012.

* * * * *

COMMON JUDGMENT

C.M.A(MD)Nos.102 to 109 of 2017 have been filed against the common award dated 14.05.2010 passed by the Motor Accident Claims Tribunal - Additional District Court/Fast Track Court No.II, Tirunelveli, as stated hereunder:

Sl. No.	C.M.A (MD) No.	M.C.O.P.No.	Nature of Case	Amount Awarded by the Tribunal (Rs.)
1.	102 of 2017	871 of 2008	Death Case	3,10,000.00
2.	103 of 2017	873 of 2008	Death Case	5,45,000.00
3.	104 of 2017	829 of 2008	Death Case	6,10,000.00
4.	105 of 2017	830 of 2008	Death Case	4,00,000.00
5.	106 of 2017	919 of 2008	Death Case	6,00,000.00
6.	107 of 2017	935 of 2008	Injury Case	1,08,000.00
7.	108 of 2017	971 of 2008	Death Case	4,70,000.00
8.	109 of 2017	994 of 2008	Death Case	2,83,500.00



2. C.M.A(MD)No.244 of 2012 has been filed against the award dated 14.05.2010 passed in M.C.O.P.No.935 of 2008 by the Motor Accident Claims Tribunal - Additional District Court/Fast Track Court No.II, Tirunelveli, seeking enhancement.

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3. Since all the above appeals arise out of a common award, they are disposed of by this common judgment.

4. For the sake of convenience, the parties are referred to according to their litigative status in the claim petitions.

5. According to the claimants, on 27.06.2008 at 06.45 p.m., the injured claimant in M.C.O.P.No.935 of 2008 along with the deceased persons travelled in a Qualis car bearing Registration No.TN-72-F-6465 belonging to the first respondent insured with the second respondent-Insurance Company. The driver of the said vehicle drove the same in a rash and negligent manner and dashed against a tree. In the said accident, the claimant in M.C.O.P.No.935 of 2008 [C.M.A(MD)No.107 of 2017/C.M.A(MD)No.244 of 2012], sustained injuries and the other seven persons died. The injured claimant as well as the dependants of the deceased filed the respective claim petitions claiming compensation for the injuries as well as for the death of the deceased persons.

6. According to the injured claimant and dependants of the deceased persons, except the claim petition in M.C.O.P.No.919 of 2008, all of them were doing scrap business and earning a sum of Rs.10,000/- (Rupees Ten Thousand only). The claimant in M.C.O.P.No.919 of 2008, is a Diploma holder in Mechanical Engineering and got an appointment order with a salary of Rs.10,000/- (Rupees Ten Thousand only). As far as the claim petition in M.C.O.P.No.994 of 2008, he has completed +2. All the claimants furnished their details of the age of the deceased and depending upon the proof of dependants as mentioned in the claim petitions. The injured claimant furnished his age and nature of injuries and produced the bills for medical expenses and disability certificate with regard to the disability.

7. According to the claimants, the accident took place only due to the rash and negligent driving of the driver of the car bearing Registration No.TN-72-F-6465 belonging to the first respondent insured with the second respondent-Insurance Company and therefore, they claimed the compensation against the respondents 1 and 2 stating that both of them are liable to pay the compensation.

8. As far as the claim petitions in M.C.O.P.Nos.919 and 994 of 2008 are concerned, the claimants therein contended that the deceased persons had a bright future and they would have supported by the claimants, after they got the job.



9. The first respondent/owner of the offending vehicle remained exparte.

10. The second respondent-Insurance Company in the counter statement submitted that the driver of the offending vehicle drunk at the time of the accident and the insurance was taken for the offending vehicle as 'Private Use', but it was used as a Hired Vehicle to travel on payment. Therefore, the first respondent violated the conditions of the insurance policy and hence, the second respondent-Insurance Company is not liable to pay any compensation to the claimants.

11. Before the Tribunal, P.W.1 to P.W.9 were examined and Exs.P.1 to P.50 were marked on the side of the claimants. However, neither oral nor documentary evidence was let in on behalf of the respondents.

12. The Tribunal, considering the pleadings, oral and documentary evidence, especially, Ex.P.1 - F.I.R filed against the driver of the offending vehicle and the oral evidence of P.W.1 - injured claimant who travelled in the car at the time of the accident, held that the accident took place only due to the rash and negligent driving of the driver of the car belonging to the first respondent insured with the second respondent-Insurance Company.

13. The Tribunal further took note of the failure of the second respondent - Insurance Company to let in evidence to substantiate their claim that the driver of the offending vehicle drunk at the time of the accident and also held that a valid insurance policy was issued by the second respondent at the time of the accident. The Tribunal, considering the materials on record in each and every claim petition, awarded the respective compensation amounts to the claimants in the respective claim petitions.

14. Aggrieved over the same, the second respondent - Insurance Company filed C.M.A(MD)Nos.102 to 109 of 2017. Similarly, the injured claimant in M.C.O.P.No.935 of 2008 filed C.M.A(MD)No.244 of 2012 seeking enhancement of compensation.

15. Heard the learned Counsel for all the parties and perused the materials available on record.

16. According to the learned Counsel for the second respondent - Insurance Company, the seating capacity of the offending vehicle, viz., Qualis car, is only 8 (7 + 1) including the driver. However, P.W.1 himself admitted that 10 persons had travelled in the offending vehicle at the time of the accident. However, the



claimants filed eight claim petitions and the Tribunal, without considering the contentions of the second respondent - Insurance Company with regard to the seating capacity of the offending vehicle, awarded the compensation to the claimants in all the eight claim petitions. Therefore, in the facts and circumstances of the case, the second respondent - Insurance Company is not liable to pay any compensation.

17. Admittedly, the seating capacity of the offending vehicle is 8 (7 + 1). However, from the contentions of the learned Counsel for the second respondent - Insurance Company and the evidence of P.W.1, it is seen that 10 persons had travelled at the time of the accident.

18. In support of his contentions, the learned Counsel for the second respondent - Insurance Company relied on the judgment of the Honourable Supreme Court in **National Insurance Co. Ltd., v. Anjana Shyam & others** reported in **2007 (2) TN MAC 193 (SC)**, wherein it is held as follows:

"15. In spite of the relevant provisions of the statute, insurance still remains a contract between the owner and the insurer and the parties are governed by the terms of their contract. The statute has made insurance obligatory in public interest and by way of social security and it has also provided that the insurer would be obliged to fulfil his obligations as imposed by the contract and as overseen by the statute notwithstanding any claim he may have against the other contracting party, the owner, and meet the claims of third parties subject to the exceptions provided in Section 149(2) of the Act. But that does not mean that an insurer is bound to pay amounts outside the contract of insurance itself or in respect of persons not covered by the contract at all. In other words, the insured is covered only to the extent of the passengers permitted to be insured or directed to be insured by the statute and actually covered by the contract. The High Court has considered only the aspect whether by overloading the vehicle, the owner had put the vehicle to a use not allowed by the permit under which the vehicle is used. This aspect is different from the aspect of determining the extent of the liability of the insurance company in respect of the passengers of a stage carriage insured in terms of Section 147(1)(b)(ii) of the Act. We are of the view that the insurance company can be made liable only in respect of the number of passengers for whom insurance can be taken under the Act and for whom insurance has been taken as a fact and not in respect of the other



passengers involved in the accident in a case of overloading.

16. Then arises the question, how to determine the compensation payable or how to quantify the compensation since there is no means of ascertaining who out of the overloaded passengers constitute the passengers covered by the insurance policy as permitted to be carried by the permit itself. As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind, we think that the practical and proper course would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy. Illustratively, we may put it like this. In the case on hand, 42 passengers were the permitted passengers and they are the ones who have been insured by the insurance company. 90 persons have either died or got injured in the accident. Awards have been passed for varied sums. The Tribunal should take into account, the higher of the 42 awards made, add them up and direct the insurance company to deposit that lump sum. Thus, the liability of the insurance company would be to pay the compensation awarded to 42 out of the 90 passengers. It is to ensure that the maximum benefit is derived by the insurance taken for the passengers of the vehicle, that we hold that the 42 awards to be satisfied by the insurance company would be the 42 awards in the descending order starting from the highest of the awards. In other words, the higher of the 42 awards will be taken into account and it would be the sum total of those higher 42 awards that would be the amount that the insurance company would be liable to deposit. It will be for the Tribunal thereafter to direct distribution of the money so deposited by the insurance company proportionately to all the claimants, here all the 90, and leave all the claimants to recover the balance from the owner of the vehicle. In such cases, it will be necessary for the Tribunal, even at the initial stage, to make appropriate orders to ensure that the amount could be recovered from the owner by ordering attachment or by passing other restrictive orders against the owner so as to ensure the satisfaction in full of the awards passed ultimately."



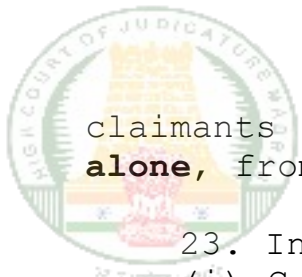
19. Per contra, the learned Counsel for the injured claimant/appellant in C.M.A(MD)No.244 of 2012 submitted that the liability of the second respondent - Insurance Company may be limited to the highest seven awards and the second respondent - Insurance Company be directed to pay the amount of all the awards to the claimants and recover the amount in excess of its liability from the owner in execution without filing a separate suit and in support of the same, he placed reliance on the judgment of the Honourable Supreme Court in **United India Insurance Co. Ltd., v. K.M.Poonam and others reported in 2011 ACJ 917**, wherein it is laid down thus:

"27. In other words, appellant insurance company shall deposit with the Tribunal the total amount of the amounts awarded in favour of the awardees within two months from the date of this order and the same is to be utilized to satisfy the claims of those claimants not covered by the insurance policy along with the persons so covered. The insurance company will be entitled to recover the amounts paid by it, in excess of its liability, from the owner of the vehicle, by putting the decree into execution. For the aforesaid purpose, the total amount of the six awards which are the highest shall be construed as the liability of the insurance company. After deducting the said amount from the total amount of all the awards deposited in terms of this order, the insurance company will be entitled to recover the balance amount from the owner of the vehicle as if it is an amount decreed by the Tribunal in favour of the insurance company. The insurance company will not be required to file a separate suit in this regard in order to recover their amounts paid in excess of its liability from the owner of the vehicle."

20. Keeping in mind the dictum laid down by the Honourable Supreme Court in **United India Insurance Co. Ltd., v. K.M.Poonam and others reported in 2011 ACJ 917**, this Court is of the view that the second respondent - Insurance Company is liable to pay all the award amounts to the respective claimants and recover the amount in excess of its liability from the owner in execution without filing a separate suit.

21. As far as the quantum of compensation awarded in all the claim petitions, this Court finds that the Tribunal, considering the oral and documentary evidence available on record, awarded the just compensation and hence, the same is confirmed.

22. Accordingly, the second respondent - Insurance Company is directed to pay the respective award amounts in M.C.O.P.Nos.871, 873, 829, 830, 919, 971, 935 and 994 of 2008 to the respective



claimants and recover the award amount in M.C.O.P.No.935 of 2008 **alone**, from the first respondent/owner of the offending vehicle.

23. In the result,

(i) C.M.A(MD)Nos.102, 103, 104, 105, 106, 108 and 109 of 2017 are dismissed with the above directions. No costs. Consequently, the connected civil miscellaneous petitions are dismissed;

(ii) C.M.A(MD)No.107 of 2017 is partly allowed to the extent indicated above. No costs. Consequently, the connected civil miscellaneous petition is dismissed;

(iii) C.M.A(MD)No.244 of 2012 is dismissed. No costs;

(iv) The second respondent-Insurance Company is directed to deposit the respective entire award amounts along with accrued interest and costs, less the amount deposited, if any, to the credit of the respective claim petitions on the file of the Motor Accident Claims Tribunal - cum - Additional District Court/Fast Track Court No.II, Tirunelveli, within a period of **eight weeks** from the date of receipt of a copy of this judgment;

(v) On such deposit, the Tribunal is directed to transfer the respective entire award amounts along with accrued interest and costs directly to the respective Personal Savings Bank Account Numbers of the respective claimants, through RTGS/ NEFT system, after getting their Account Details, within a period of **two weeks thereafter**; and

(vi) Insofar as the respective shares of the minor claimants in all the claim petitions are concerned, the Tribunal shall deposit the same in Fixed Deposits in any one of the nationalised banks till they attain majority and the respective guardians of the minor claimants be permitted to withdraw the interest accrued thereon once in three months for their welfare.

Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To:

1. The Motor Accident Claims Tribunal - cum -
Additional District Court/Fast Track Court No.II,
Tirunelveli.



2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.K.BASKARA PANDIAN, Advocate, SR No. 14678.
+6 CC to M/s.T.SELVAKUMARAN, Advocate, SR No. 14626 TO 14631
+1 CC to M/s.S.KARTHIK, Advocate, SR No. 14525.

RSB

PSM/SKN/SAR1/02.06.2017/10P/11C

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and

C.M.A. (MD) No.244 of 2012

14.03.2017