

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.Nos.3479 to 3485 and 3662 of 2012
and
M.P.No.1 of 2012 (7 Mps)

The New India Assurance Co.Ltd.,
Dindigul. ...2nd Appellant in C.M.A.3480/2012.

...Sole Appellant in C.M.A.Nos.
3479/2012, 3481/2012 to 3485/2012/
2nd Respondent

T.D. Ganesh Kumar ...1st Appellant in C.M.A.3480/2012/
1st Respondent

Versus

1.Ashwathaman (died)
[Recorded vide court order dated
04/04/2018 made in CMA.No.3479 to 3485/2012]

2.R.Ramya
3.R.Aravinthan
[2nd and 3rd respondents are declared as major
and their maternal uncle Ramasamy discharged
from the guardianship vide court order dated 14.03.2018
made in CMP.No.15934 and 15935 of 2017 in
CMA.No.3479 of 2012]

4.T.D.Ganeshkumar

5.P.J.Selvin

6.The United India Insurance Co.Ltd.,
Divisional Office, 144-B, Kalpana Road,
Udumalpet.

[4th and 5th respondents remained exparte
and notice dispensed with for them]

...Respondents in C.M.A.3779/2012.

1 R.SANTHAMANI
W/O LATE RAJAGOPAL BALAMANGALAM
SAYAPPATTARAIM (DYEING FACTORY) AMARAVATHI
NAGAR UDUMALPET.

- 2 G.PRIYA
W/O. LATE GURUNATHN. BALAMURUGAN
SAYAPPATTARAI (DYEING FACTORY) AMARAVATHI
NAGAR UDUMALPET.
- 3 MINOR G. NITHIN
AND NATURAL GUARDIAN REP. BY MOTHER &
NATURAL GUARDIAN.G.PRIYA BALAMANGALAM
SAYAPPATTARAIM (DYEING FACTORY) AMARAVATHI
NAGAR UDUMALPET.
- 4 P.J. SELVIN
S/O J. PANDIAN 5 S.N.R. NAGAR UDUMALPET.
- 5 THE UNITED INDIA INSURANCE
CO. DIVISIONAL OFFICE 144-B AKLPANA
ROAD UDUMALPET ..Respondent in C.M.A. 3480/2012.
- 1 KUPPUTHAI
W/O LATE MUTHUSAMY BALAMURUGAN
SAYAPPATTARAI (DYEING FACTORY) AMARAVATHI
NAGAR UDUAMALPET.
- 2 VANITHA
W/OLATE RANGARAJ BALAMURUGAN SAYAPPATTARAI
(DYEING FACTORY) AMARAVATHI NAGAR
UDUAMALPET.
- 3 PRIYA
W/O LATE GURUNATHAN BALAMURUGAN
SAYAPPATTARAI (DYEING FACTORY) AMARAVATHI
NAGAR UDUAMALPET.
- 4 T.D. GANESHKUMAR
S/O. M. DURAICHAMY 326 PALANI ANDAVR NAGAR
SIVAGIRIPPATTI PALANI.
- 5 P.J. SELVIN
S/O J. PANDIAN 5 S.N.R. NAGAR UDUMALPET.
- 6 THE UNITED INDIA INSURANCE
CO. DIVISIONAL OFFICE 144-B AKLPANA
ROAD UDUMALPET ..Respondent in CMA.3481/2012
- 1 MINOR R. RAMYA
D/O LATE RANGANATHAN MINORS REP.BY
THEIR MATERNAL UNCLE RAMASAMY WEST GARDEN
THOTTAMPATTI UDUMALPET.

- 2 MINOR R. ARAVINTHAN
S/O LATE RANGANATHAN MINORS REP. BY THEIR
MATERNAL UNCLD RAMSAMY WEST GRDEN
THOTTAMPATTI UDUMALPET.
- 3 P. GNANAMBAL
W/O. WEST GARDEN THOTTAMPATTI UDUMALPET.
- 4 T.D. GANESHKUMAR
S/O M. PALANISAMY WEST GARDEN
TOTTAMPATTI UDUMALPET.
- 5 P.J. SELVIN
S/O J. PANDIAN 5 S.N.R. NAGAR UDUMALPET.
- 6 THE UNITED INDIA INSURANCE
CO. DIVISIONAL OFFICE 144-B AKLPANA
ROAD UDUMALPET ..Respondent in CMA.3482/2012.
- 1 G.PRIYA
W/O. LATE GURUNATHN. BALAMURUGAN
SAYAPPATTARAI (DYEING FACTORY) AMARAVATHI
NAGAR UDUMALPET.
- 2 MINOR G. NITHIN
AND NATURAL GUARDIAN REP. BY MOTHER &
NATURAL GUARDIAN.G.PRIYA BALAMANGALAM
SAYAPPATTARAIM (DYEING FACTORY) AMARAVATHI
NAGAR UDUMALPET.
- 3 R.SANTHAMANI
W/O LATE RAJAGOPAL BALAMANGALAM
SAYAPPATTARAIM (DYEING FACTORY) AMARAVATHI
NAGAR UDUMALPET.
- 4 T.D. GANESHKUMAR
S/O. M. DURAICHAMY 326 PALANI ANDAVR NAGAR
SIVAGIRIPPATTI PALANI .
- 5 P.J. SELVIN
S/O J. PANDIAN 5 S.N.R. NAGAR UDUMALPET.
- 6 THE UNITED INDIA INSURANCE
CO. DIVISIONAL OFFICE 144-B AKLPANA
ROAD UDUMALPET ..Respondent in C.M.A. 3483/2012.
- 1 SENTHIL KUMAR
S/O LATE KRISHANAMY OPP TO TELEPHONE
EXCHANGE 1A1 SR LAY OUT MADHATHUKULAM
UDUMALPET

2 RENUGADEVI
W/O RAMASAMY 1/218 L WEST GARDEN
THOTTAMPATTI UDUMALPET.

3 EAELAMMAL (died)
W/O.LATE VENKATASAMY A1 S.R. LAYOUT
MADATHUKULAM UDUMALPET.

4 T.D. GANESHKUMAR
S/O M. DURAICHAMY 326 PALANI ANDAVAR NAGAR
SIVAGIRIPATTI PALANI.

5 P.J. SELVIN
S/O J. PANDIAN 5 S.N.R. NAGAR UDUMALPET.

6 THE UNITED INDIA INSURANCE
CO. DIVISIONAL OFFICE 144-B AKLPANA
ROAD UDUMALPET

...Respondent in C.M.A.3484/2012.

1 RENUGADEVI
W/O RAMASAMY 1/218 L WEST GARDEN
THOTTAMPATTI UDUMALPET.

2 SENTHIL KUMAR
S/O LATE KRISHANAMY OPP TO TELEPHONE
EXCHANGE 1A1 SR LAY OUT MADHATHUKULAM
UDUMALPET

3 T.D. GANESHKUMAR
S/O M. DURAICHAMY 326 PALANI ANDAVAR NAGAR
SIVAGIRIPATTI PALANI.

4 P.J. SELVIN
S/O J. PANDIAN 5 S.N.R. NAGAR UDUMALPET.

5 THE UNITED INDIA INSURANCE
CO. DIVISIONAL OFFICE 144-B AKLPANA
ROAD UDUMALPET

...Respondent in C.M.A.3485/2012.

1 VANITHA
W/O LATE RANGARAJ BALAMANGALAM
SAYAPPATTARAIM (DYEING FACTORY) AMARAVATHI
NAGAR UDUMALPET.

2 PRIYA
W/O LATE GURUNATHAN BALAMANGALAM
SAYAPPATTARAIM (DYEING FACTORY) AMARAVATHI
NAGAR UDUMALPET.

- 3 T.D. GANESHKUMAR
S/O M. DURAICHAMY 326 PALANI ANDAVAR NAGAR
SIVAGIRIPATTI PALANI.
- 4 P.J. SELVIN
S/O J. PANDIAN 5 S.N.R. NAGAR UDUMALPET.
- 5 THE UNITED INDIA INSURANCE
CO. DIVISIONAL OFFICE 144-B AKLPANA
ROAD UDUMALPET

..Respondent in C.M.A.3662/2012.

Prayer in CMA.No.3479/2012: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.10.2010 made in M.C.O.P.No.361 of 2008 to 368 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Udumalpet.

For Appellants : Mr.M. Krishnamoorthy in all C.M.As

For Respondents: Mr.S. Prasanth for RR1 to 3 in
C.M.A.3479/2012 to 3483/2012 for
RR1 & 2 in 3484/2012,
3485/2012 and 3662/2012.

: Mr.T. Ravichandran for R6 in
C.M.A.3479, 3481, 3482, 3483 & 3484/2012

and for R5 in C.M.A. 3480, 3485, 3662/2012

3479/2012 & 3483/2012 : R4 & R5 Exparte

3480/2012 : R4 Exparte

3485/2012 & 3662/2012 : R3 & R4 Exparte

C O M M O N J U D G M E N T

The above Civil Miscellaneous appeals are filed by the Insurance company who is the 2nd respondent before the Tribunal against the Judgment and Decree made in M.C.O.P.Nos.361/2008, 362/2008, 363/2008, 364/2008, 365/2008, 366/2008, 367/2008 and 368/2008 dated 08.10.2010, on the file of Motor Accidents claims Tribunal, Subordinate Judge, Udumalpet.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the petitioners/claimants is that on 20.08.2008, while the deceased persons were proceeding in a

Maruti Omni van bearing Registration No.TN-07-F-2711 from Balamangalam to Karattuvallasu to attend temple festival and as they were returning home at about 12.45 p.m., while coming near Ramalingam Thottam, the Maruti Omni Van Bearing Registration No. TN-07-F-2711 was followed by a Ambassador Car and at that time the 1st respondent-bus bearing Registration No.TN-57-X-7755 came at high speed in South-North direction and as the Maruti Omni Van was over taking a bullock cart, the 1st respondent bus dashed against the van, resulting in the death of eight persons. According to the petitioners/claimants, while the deceased were returning in the above said Maruti Omni van, as the driver of the van attempted to overtake a bullock cart going ahead of them, the 1st respondent bus came at high speed in the opposite direction and dashed against the said Maruti Omni van, resulting in the occurrence. The accident occurred due to the negligence of the 1st respondent bus driver only. The Police registered case against the Maruti Omni van driver only and all the passengers in the Maruti Omni died in the occurrence. The said Maruti van belongs to the 3rd respondent and the same was insured with the 4th respondent. The 1st respondent is the owner of the offending vehicle (Bus) and the 2nd respondent is the insurer of the said vehicle. Thus, the petitioners/claimants contends that the accident occurred due to the negligence of the 1st respondent bus driver only and sought for compensation from the respondents 1 to 4. The Petitioners/claimants have sought for a compensation of Rs.10,00,000/- in MCOP.Nos.361/2008, 362/2008, 363/2008, 365/2008, 366/2008, 367/2008, 368/2008 and 364/2008.

3. On the other hand, opposing the claim of the petitioners/claimants, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur in the manner alleged by the petitioners/claimants. The driver of the 1st respondent bus is no way responsible for the accident. As the negligence of the 3rd respondent - Maruti Omni vehicle driver alone caused the accident, the 2nd respondent/Insurance Company is not liable to pay any compensation. The Maruti vehicle in which the deceased persons travelled was insured with the 4th respondent and the said Insurance Company alone is liable to pay the compensation. The claim of the petitioners/claimants is highly excessive. Thus, the 2nd respondent/Insurance Company seeks dismissal of all the petitions.

4. Before the Tribunal M.C.O.P.Nos.361/2008, 362/2008, 363/2008, 364/2008. 365/2008. 366/2008, 367/2008 and 368/2008 were taken up for joint trial and the petitioners/claimants examined P.Ws.1 to 18 and produced documents Exs.P.1 to P.84. On the side of the respondents R.W.1 to R.W.3 were examined and documents Exs.R.1 to R.3 were marked, but no document was produced. The Tribunal, after analysing the evidence on record found that the negligence of the 1st respondent - bus driver

alone caused the accident passed an Award as detailed below:-

Sl.No	CMA.No.	MCOP.No.	Award passed by the Tribunal
1.	3479/2012	361/2008	7,12,000/-
2.	3480/2012	362/2008	4,36,000/-
3.	3481/2012	363/2008	5,89,000/-
4.	3482/2012	365/2008	4,24,000/-
5.	3483/2012	366/2008	8,56,000/-
6.	3484/2012	367/2008	6,34,000/-
7.	3485/2012	368/2008	2,80,000/-
8.	3662/2012	364/2008	3,66,000/-

The Tribunal directed that the award amount is payable by the owner and insurer of the offending vehicle namely the 1st and 2nd respondent, while dismissing the petition against the 3rd and 4th respondents who are the owner and insurer of the Maruti Omni van in which the deceased travelled. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with the present Appeals.

5. Heard both sides and perused the available materials on record.

6. The learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal wrongly fixed the negligence on the 1st respondent bus driver, while both the vehicles involved in the accident were moving at that point of time and as the 3rd respondent - Maruti Omni van was trying to over take a bullock cart without noticing the on coming bus, the Tribunal ought to have held that the negligence of the 3rd respondent vehicle driver alone caused the accident and fixed the liability on the 3rd and 4th respondents. While the contents of F.I.R, Rough Sketch and Final Report of the Police clearly shows that the negligence on the part of the 3rd respondent- Maruti Omni van driver only caused the accident, the Tribunal ought to have fixed the negligence on the van driver only. The Tribunal failed to appreciate the evidence let in by the respondent to prove that there was no negligence on the part of the 1st respondent bus driver. At the least, the Tribunal could have held that both the drivers are responsible for the accident. Thus, appellant/the 2nd respondent/Insurance Company seeks to set aside the award passed by the Tribunal by entertaining the appeals.

7. Per contra, the learned counsel for the petitioners/claimants contended that the accident occurred due

to negligence of the 1st respondent bus driver and as such, the Tribunal has correctly fixed the negligence on the 1st respondent bus driver and provided a just and fair compensation to the petitioners/claimants. Thus they sought for dismissal of the appeal.

8. Likewise, the learned counsel for the 4th respondent/Insurance Company contends that the accident occurred only due to negligence of the 1st respondent bus driver which was clearly established by evidence let in before the Tribunal and therefore, there is no need to entertain the Appeal.

9. The appeals have been preferred by the 2nd respondent/Insurance company only on the ground of apportionment of negligence on the drivers of the respective vehicles. The Petitioners/claimants and the respondent/Insurance company have not come forward with any appeal regarding the quantum of the award passed by the Tribunal. Thus, the only issue to be considered in the appeal is as to whether the Tribunal is justified in fixing the entire negligence for the accident on the 1st respondent/bus driver only. As stated earlier, the contention of the 1st and 2nd respondent is that the accident occurred only due to negligence of the 3rd respondent/Maruti van driver. Thus, it is to be seen as to which vehicle driver was negligent resulting in the accident.

10. The petitioners/claimants in order to prove the manner of accident, examined P.Ws.1, 5, 7 and 8 who were travelling in the Ambassador car bearing Reg.No.TME-2828, following the Maruti Omni Van bearing Registration No.TN-07-F-2711 belonging to the 3rd respondent in which all the deceased travelled and all of them deposed that the accident occurred only due to negligence of the 1st respondent bus driver. The Police registered F.I.R on the basis of complaint given by the Village Administrative Officer of that area, who deposed as R.W.2. The copy of F.I.R is marked as Ex.P.8. It is admitted by R.W.2 - VAO that he did not witness the occurrence. As such, the allegations in the F.I.R that the deceased driver of the Maruti Van, one Gurunathan is responsible for the accident cannot be entertained. It is evident from Ex.P.1 - Rough Sketch of the occurrence spot that the accident occurred, while the 3rd respondent - Maruti Omni van moved to the wrong side of the road (towards its Right side) as it was attempting to over take the bullock cart and at that time dashed with the 1st respondent bus which was coming in the opposite direction. However, there is no explanation as to why the persons who are the relative of deceased, who were following the Maruti van in another car bearing Registration No.TN-ME2828 failed to give any complaint to the Police. It is contended that after the occurrence, P.W.8 - Rangaraj gave the written complaint with lot of corrections and the same is Ex.P.5 but no action was taken. It is also evident from Ex.P.20 that a Private

complaint was lodged. Subsequently, the petitioners/claimants also lodged complaint with the Superintendent of Police as evidenced by Exs.P.10 and P.11. It is therefore clear from the above said evidence on record that the accident occurred when two vehicles which were moving in the opposite direction collided and dashed against each other head on. It is also evident from P.W.1 evidence that the crew of the 1st respondent bus absconded from the occurrence spot.

11. As stated earlier, it is clear from Ex.P.1 - Rough Sketch that the accident took place on the wrong side of the road as the 3rd respondent Maruti Omni van came to the other side of the road attempting to over take bullock cart going ahead of it. It is also pointed out that Ex.P.1-F.I.R was registered against him. In such circumstances, it is apparent that the driver of both the vehicles were negligent, resulting in the accident. As such, the conclusion of the Tribunal that the driver of the Maruti van alone is the cause for the accident is unsustainable. If only both the vehicle drivers have been careful and driven the vehicle with care they would have easily avoided the accident. In such circumstances, considering the evidence available on record, it is clear that both the drivers contributed equally to the accident. As such, the negligence is apportioned on the 1st and 3rd respondents vehicles drivers at 50% each and the 2nd and 4th respondents as Insurer of the 1st and 3rd respondents vehicles are liable to pay compensation accordingly.

12. The Tribunal, considering the evidence on record passed award in the above said MCOPs as stated above.

13. The quantum of the award passed by the Tribunal is not challenged by either side. On careful analysis of the reasons stated by the Tribunal for the quantum arrived at in each of the above petitions, the same is appropriate and this Court finds no reason to interfere with the same. Hence, the quantum of the award passed by the Tribunal in the above said petitions is confirmed.

14. In the result, as per the conclusion arrived at in the preceding paragraphs, as drivers of the 1st and 3rd respondents vehicles are liable at 50% each, the insurer of the said vehicles namely the 2nd and 4th respondents are liable to pay the award amount at 50% each. The point is answered accordingly.

15. In the result,

(i) The Civil Miscellaneous Appeals are Partly Allowed.

(ii) The quantum of the award granted by the Tribunal in each MCOP is confirmed.

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

(iv) Since negligence ratio is refixed by this court as 50% : 50% on respondents 1 and 3 before the Tribunal, on behalf of 1st and 3rd respondents, the 2nd and 4th respondents before the Tribunal viz., the Insurance companies are liable to pay 50% each of the compensation amount in each case. Therefore, respondents 2 and 4 are directed to deposit the award amount in each CMA/MCOP with proportionate interest and cost, within six weeks from the date of receipt of a copy of this order, less the amount already deposited. It is seen from the order of this court dated 23.01.2013 passed in CMA.Nos.3479 to 3485 of 2012, that the appellant/Insurance company was directed to deposit the respective award amounts in each of the claim petitions to the credit of above said MCOPs. Hence, the appellant/Insurance company is entitled for refund of excess amount lying in deposit, after satisfying the direction of this court viz., to deposit 50% of the compensation amount in each case.

(iv) Insofar as apportionment of the award amount to the claimants is concerned, the order of the Tribunal shall stand confirmed. However, in CMA.No.3479/2012(MCOP No.361/2008) since 1st respondent-Ashwathaman/claimant died, his share shall be given to claimant Nos.2 and 3 in equal ratio. Likewise, in CMA.No.3484/2012 (MCOP.No.367/2008) since 3rd respondent-Eaelammal/claimant died, her share shall be given to respondents 1 and 2/claimants in equal ratio.

(v) The claimants are entitled to withdraw their respective share by filing necessary application before the Tribunal. The Tribunal shall follow appropriate procedure for disbursal of the award amount.

(vi) No costs. Consequently, connected MPs are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Subordinate Judge, Udumalpet.

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2. The Section Officer, (2 copies)
V.R.Section, High Court, Madras.

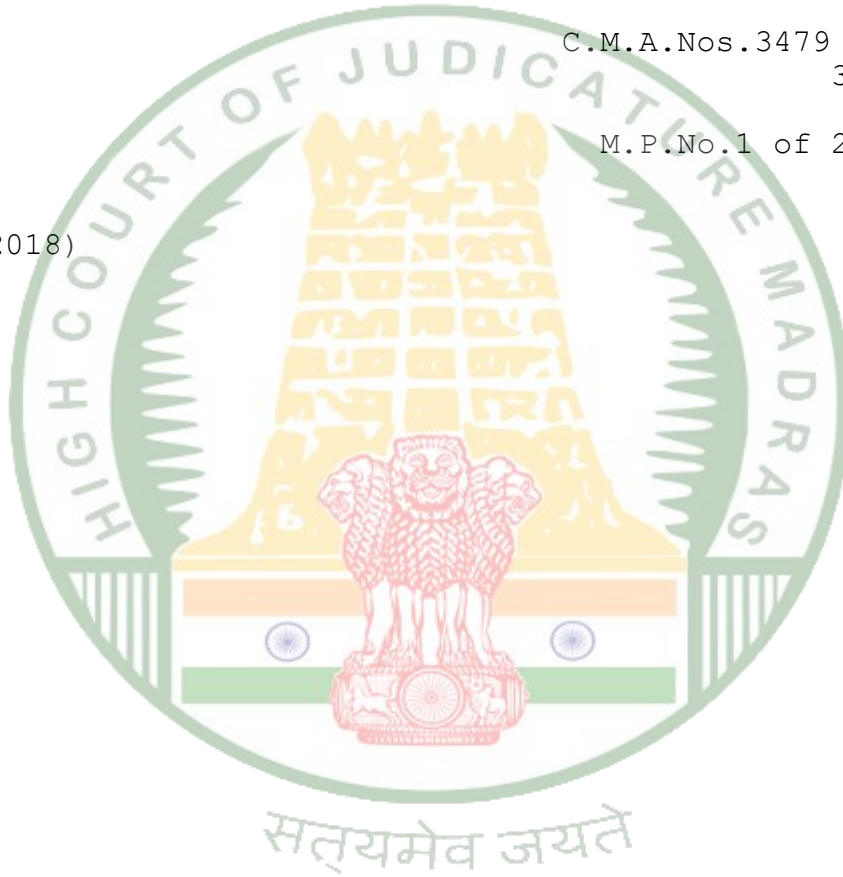
+1 CC to Mr. Karthikai Balan, Advocate sr 52495

+7 CCS to Mr.M. Krishnamoorthy, Advocate sr 51190, 51185, 51186,
51187, 51183, 51184 & 51189.

+8 CCS to Mr.T. Ravichandran, Advocate sr 51160 to 51167/2018.

C.M.A.Nos.3479 to 3485 and
3662 of 2012
and
M.P.No.1 of 2012 (7 Mps)

SJ(CO)
SP(30/10/2018)



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