

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.08.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.238 to 256 of 2008
and M.P.Nos.1 to 1 of 2008

Branch Manager,
United India Insurance Co.Ltd.,
Kumbakonam Town & Taluk. ... Appellant in all appeals/
Respondent No.2

Vs

Ramachandran ... R1 in CMA No.238/2008/Claimant
Saroja ... R1 in CMA No.239/2008/Claimant
Parvathi ... R1 in CMA No.240/2008/Claimant
Mallika ... R1 in CMA No.241/2008/Claimant
Sangeetha (Minor)
rep.by her mother and guardian
Saraswathy ... R1 in CMA No.242/2008/Claimant
Palanichamy ... R1 in CMA No.243/2008/Claimant
Natarajan ... R1 in CMA No.244/2008/Claimant
Anand @ Muruganandam ... R1 in CMA No.245/2008/Claimant
Krishnamurthy ... R1 in CMA No.246/2008/Claimant
Elangovan ... R1 in CMA No.247/2008/Claimant
Manikandan (Minor) rep.by
his mother and guardian
Parvathy ... R1 in CMA No.248/2008/Claimant
Pitchaiyammal ... R1 in CMA No.249/2008/Claimant
Lalitha ... R1 in CMA No.250/2008/Claimant
Prema ... R1 in CMA No.251/2008/Claimant
Rengammal ... R1 in CMA No.252/2008/Claimant

Savarinathan (Minor)
rep.by his mother and guardian
Prema ... R1 in CMA No.253/2008/Claimant

Karthy ... R1 in CMA No.254/2008/Claimant

Selvakumar (Minor)
rep.by his mother and guardian
Saraswathy ... R1 in CMA No.255/2008/Claimant

Vedavalli ... R1 in CMA No.256/2008/Claimant

K.Kanimozhi ... R2 in all appeals/Respondent No.1

C.M.A.No.238 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.4 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.239 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.5 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.240 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.6 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.241 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.8 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.242 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.9 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.243 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.10 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.244 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.11 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.245 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated

24.03.2005 made in MCOP No.12 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.246 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.13 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.247 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.14 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.248 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.16 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.249 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.19 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.250 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.20 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.251 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.23 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.252 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.25 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.253 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.26 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.254 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.27 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.255 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.30 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

C.M.A.No.256 of 2008 filed under Section 173 of the Motor Vehicles Act against the fair and decreetal order dated 24.03.2005 made in MCOP No.31 of 2005 on the file of the Motor Accidents Claims Tribunal, District Judge, Nagapattinam.

For Appellant : Mr.S.Arunkumar

For Respondents: Mr.G.Periyaperumal for R1 and
Mr.S.Umapathy for R2 in all appeals

COMMON JUDGMENT

The case in brief, is as follows:

On 03.07.2003, the first respondent in these appeals were travelling from Kovilur to Vilakkudi in the van bearing Reg.No.TN-51-Z-7848, belonging to the second respondent in these appeals and insured with the appellant Insurance Company. When the van reached near the Welcome Board of Uthayamarthandapuram Village, due to the rash and negligent driving of the driver of the van, the van dashed against a tamarind tree in the right side of the road. Due to the said impact, the first respondent in these appeals sustained injuries. Some of them sustained fractures and some of them sustained grievous injuries. They filed claim petitions before the Tribunal claiming compensation for the injuries sustained. On consideration of the materials and evidence available on record, the Tribunal awarded compensation and the details of the same are as under:

CMA No.	MCOP No.	Amount of compensation (Rs.)
238/2008	4/2005	60,998/-
239/2008	5/2005	30,499/-
240/2008	6/2005	9,500/-
241/2008	8/2005	9,250/-
242/2008	9/2005	9,250/-
243/2008	10/2005	1,14,782/-
244/2008	11/2005	81,079/-
245/2008	12/2005	65,541/-
246/2008	13/2005	38,443/-
247/2008	14/2005	25,000/-

CMA No.	MCOP No.	Amount of compensation (Rs.)
248/2008	16/2005	9,250/-
249/2008	19/2005	56,935/-
250/2008	20/2005	9,000/-
251/2008	23/2005	59,118/-
252/2008	25/2005	9,034/-
253/2008	26/2005	50,000/-
254/2008	27/2005	10,500/-
255/2008	30/2005	9,500/-
256/2008	31/2005	16,395/-

These amounts have been awarded, with interest at the rate of 9% per annum from the respective dates of petitions. The said sum has been directed to be paid by the owner of the vehicle and the appellant Insurance Company, jointly and severally.

2.Challenging the awards passed by the Tribunal, the appellant Insurance Company has come up with the present Civil Miscellaneous Appeals.

3.The learned counsel for the appellant Insurance Company has submitted that the vehicle involved in the accident is a Mahindra van with a seating capacity of 12 persons and a driver and hence the owner is permitted to allow only 12 persons alone to be travelled in the vehicle. It is also submitted that as per the Insurance Policy, the insurance coverage is extended only for 12 persons and a driver and therefore, the insurer is not liable to indemnify in excess of 12 persons carried in the vehicle. Thus, according to the learned counsel for the appellant, the appellant's liability is only in respect of 12 persons and for the rest of the claims, the Tribunal ought to have passed the awards only against the owner of the vehicle.

4.The learned counsel for the first respondent/claimants in these appeals, has submitted that the Tribunal has rightly considered the materials and evidence and has rightly awarded the compensation which is just, fair and reasonable and hence the awards passed by the Tribunal does not require any interference in the hands of this Court.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.The finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the van is not disputed by the learned counsel for the appellant. The learned counsel has also not disputed the quantum of compensation awarded by the Tribunal in these appeals. Hence, this Court is not inclined to interfere with the same.

7.Now the point put forth by the learned counsel for the appellant is, as per the Insurance Policy, the insurance coverage for the van in question, is extended only for 12 persons and a driver and therefore, the insurer is not liable to indemnify in excess of 12 persons carried in the vehicle. But 19 claimants are before this Court. Since the liability of the Insurance Company is limited to only 12, the Insurance Company is liable to pay the compensation to only 12 claimants out of these 19 claimants. To ensure the maximum benefit to be derived from the Insurance Company, these 12 awards to be satisfied by the Insurance Company would be the 12 awards in the descending order starting from the highest of the awards. In other words, the higher of the 12 awards will be taken into account and it would be the sum total of those 12 awards that would be the amount that the Insurance Company would be liable to deposit. The said 12 awards are listed as under:

CMA No.	MCOP No.	Amount of compensation (Rs.)
243/2008	10/2005	1,14,782/-
244/2008	11/2005	81,079/-
245/2008	12/2005	65,541/-
238/2008	4/2005	60,998/-
251/2008	23/2005	59,118/-
249/2008	19/2005	56,935/-
253/2008	26/2005	50,000/-
246/2008	13/2005	38,443/-
239/2008	5/2005	30,499/-
247/2008	14/2005	25,000/-
256/2008	31/2005	16,395/-
254/2008	27/2005	10,500/-

8.But, even though the Insurance Company is not liable to pay compensation to the claimants for the rest of the appeals, this Court deems it fit to direct the appellant Insurance Company to pay the compensation to those claimants also and

thereafter recover the same from the owner of the vehicle, considering the meagre amount of compensation involved in those appeals.

9. Accordingly, the Insurance Company is directed to deposit the entire compensation amounts involved in all the above appeals with interest, as ordered by the Tribunal, less the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The minors in CMA Nos.242 of 2008, 248 of 2008, 253 of 2008 and 255 of 2008 would have attained majority by now. Hence, on such deposit being made by the Insurance Company, the first respondent in these appeals shall withdraw their respective shares on making proper application before the Tribunal. Thereafter, the Insurance Company shall recover the amount of compensation involved in CMA Nos.240, 241, 242, 248, 250, 252 and 255 of 2008, from the owner of the vehicle in accordance with law.

10. In the result, C.M.A.Nos.238, 239, 243 to 247, 249, 251, 253, 254 and 256 of 2008 are dismissed and C.M.A.Nos.240, 241, 242, 248, 250, 252 and 255 of 2008 are partly allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

KM

To

1.The District Judge
Motor Accidents Claims Tribunal
Nagapattinam

+1 cc to Mr.S.Arunkumar Advocate sr73362

+1 cc to Mr.S.Umapathy Advocate sr72614

C.M.A.Nos.238 to 256 of 2008
and M.P.Nos.1 to 1 of 2008

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