



IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 15.07.2020

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE  
C.M.A.Nos.3066 & 3067 of 2012  
&  
M.P.Nos.1 & 1 of 2012

Iffco Tokio General Insurance Co. Ltd.,  
Sahas Embassy,  
No.145/131, Ground Floor,  
Nelson Manickam Road,  
Metha Nagar, Chennai.

... Appellant in both C.M.As/2<sup>nd</sup> Respondent  
vs.

S.Kadhirvel

... 1<sup>st</sup> Respondent in C.M.A.No.3066 of 2012/ Petitioner

S.Elumalai

... 1<sup>st</sup> Respondent in C.M.A.No.3067 of 2012/ Petitioner

2.R.Sundar ... 2<sup>nd</sup> Respondent in both C.M.As/1<sup>st</sup> Respondent

Common Prayer: Civil Miscellaneous Appeals filed against the  
Judgments and Decrees in MCOP.No.102 & 365 of 2009 dated  
23.12.2011 on the file of the Motor Accident Claims Tribunal,  
Subordinate Court, Ponneri.

For Appellant  
in both the Appeals : Mr.Rajadurai  
for Mr.M.B.Gopalan

R1 in both the Appeals: Exparte  
R2 in both the Appeals: unclaimed

COMMON JUDGMENT

(These Appeals have been taken up for hearing through Video  
Conferencing)

These appeals have been filed by the insurance company  
challenging two different awards both dated 23.12.2011 passed  
by the Motor Accident Claims Tribunal (Sub Court, Ponneri) in  
MCOP.Nos.102 & 365 of 2009.

2. Since both the claims arising out of the same  
accident, both the appeals are disposed of by this common  
judgment.

3. Both the claimants sustained injuries as a result of  
an accident caused by a vehicle owned by the second respondent  
in both the appeals and insured with the Appellant. Insofar as



the award passed in MCOP.No.102 of 2009 is concerned, the claimant in his claim petition has claimed that he was a loadman. Insofar as the award passed in MCOP.No.365 of 2009 is concerned, the claimant in his claim petition has claimed that he was the owner of the goods who accompanied the driver of the insured vehicle. By two separate awards, the Tribunal has awarded compensation to the respective claimants.

4. The details of the compensation awarded to the respective claimants in MCOP.No.102 of 2009 are as follows:

| Sl.No. | Heads                 | Award Amount |
|--------|-----------------------|--------------|
| 1      | Loss of earnings      | 4,500/-      |
| 2      | Transport to Hospital | 1,000/-      |
| 3      | Extra nourishment     | 1,000/-      |
| 4      | Medical Expenses      | 1,000/-      |
| 5      | Pain & Sufferings     | 3,000/-      |
|        | Total                 | 10500        |

5. The details of the compensation awarded to the respective claimants in MCOP.No. 365 of 2009 are as follows:

| Sl.No. | Heads                 | Award Amount                          |
|--------|-----------------------|---------------------------------------|
| 1      | Loss of earnings      | 3,12,000/-<br>(4,000 x 50% x 13 x 12) |
| 2      | Transport to Hospital | 2,000/-                               |
| 3      | Extra nourishment     | 3,000/-                               |
| 4      | Medical Expenses      | 3,000/-                               |
| 5      | Pain & Sufferings     | 20,000/-                              |
|        | Total                 | 3,40,000/-                            |

6. Aggrieved by the respective awards passed by the Tribunal, these appeals have been filed by the insurance company.

7. Heard Mr.Rajadurai representing Mr.M.B.Gopalan, learned counsel for the Appellant.

8. The only contention raised by the Appellant insurance company in both these appeals is that the respective claimants



who sustained injuries while travelling in the insured vehicle were unauthorised persons. According to them, the insured vehicle is permitted to carry only two persons whereas the vehicle had carried three persons. It is also their case that the claimant in MCOP.No.102 of 2009 has not adduced any evidence to prove that he was a loadman and it is also their case that the claimant in MCOP.No.365 of 2009 has also not adduced any evidence that he was the owner of the goods accompanying the driver. However, according to them, the Tribunal has erroneously held that the Appellant insurance company liable to compensate the respective claimants, eventhough they were unauthorised passengers.

9. This Court has perused the impugned Award passed in MCOP.No.365 of 2009. As seen from the impugned award passed in MCOP.No.365 of 2009, the claimant namely Elumalai who claimed that he was the owner of the goods has filed 10 documents namely Ex.P1 to Ex.P10 and two witnesses were also examined on his side namely Elumalai, the claimant himself as PW1 and the doctor who treated him as PW2.

10. In his oral evidence, the claimant Elumalai has categorically deposed that he was the owner of the goods and was accompanying the driver in the said goods vehicle insured with the Appellant. As seen from the evidence available on record, the Appellant has been unable to disprove the contention of the claimant Elumalai that he was the owner of the goods by letting in any contra evidence. Admittedly, the vehicle is permitted to carry two persons including the driver. Being the owner of the goods, who had accompanied the driver in the insured vehicle at the time of the accident, the claimant is certainly entitled to receive the compensation from the Appellant insurance Company. The Tribunal has rightly considered the evidence available on record and held that the Appellant insurance company liable to compensate the claimant in MCOP.No.365 of 2009 who is Elumalai. The Tribunal has awarded a sum of Rs.3,40,000/- as compensation together with interest and cost to the claimant in MCOP.No.365 of 2009.

11. This Court has perused and examined the quantum of compensation awarded by the Tribunal to Elumalai, the claimant in MCOP.No.365 of 2009 and finds the same to be a just compensation.

12. Further C.M.A.No.3067 of 2012 which is the subject matter of the award passed in MCOP.No. 365 of 2009 is concerned, the Appellant insurance company has also not challenged the quantum of compensation awarded by the Tribunal. In such circumstances, this Court is of the considered view that the Tribunal has rightly passed an award in favour of Elumalai who is the claimant in C.M.A.No.3067 of 2012 and therefore, there is no scope for any interference by this Court. Accordingly this Appeal C.M.A.No.3067 of 2012 has to be dismissed.



13. Insofar as other award dated 23.12.2011 passed in MCOP.No.102 of 2009 in favour of S.Kadhirvel which is the subject matter of C.M.A.No.3066 of 2012 is concerned, the quantum of compensation awarded by the Tribunal to Kadhirvel is only Rs.10,500/- which is very meagre. The accident was happened on 16.10.2007. It is the contention of S.Kadhirvel, the claimant in MCOP.No.102 of 2009 that he was a loadman. As seen from the evidence available on record, no contra evidence has been produced by the Appellant insurance company to disprove the said contention. Considering the quantum of compensation awarded by the Tribunal to S.Kadhirvel, the claimant in MCOP.No.102 of 2009 is concerned, which is a meagre sum, the question of challenge to the said compensation at this stage, that too, after a lapse of almost 13 years from the date of the accident will not arise and this court does not find any merit in C.M.A.No.3066 of 2012 also. Accordingly, this appeal also has to be dismissed.

14. For the foregoing reasons, this court does not find any merit in both the appeals. Accordingly these appeals are dismissed. The Appellant insurance company is directed to deposit the award amount after deducting the amount already deposited, if any, together with interest from the date of claim till the date of deposit and costs to the credit of MCOP.Nos.102 & 365 of 2012 within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the first respondents in both the appeals are permitted to withdraw their award amount along with accrued interest lying to the credit of MCOP.Nos.102 & 365 of 2009 by filing appropriate applications. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,  
Subordinate Court, Ponneri.

2.The Section Officer,  
V.R.Section, High Court of Madras.

C.M.A.Nos.2393 & 2394 of  
2012

BP (CO)  
A.SK(06.08.2021)