

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 26.05.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Tr. CMP. Nos.264 to 281 of 2020

M/s. Chola mandalam MS Genl Ins Co Ltd,
No:154, Shaw Wallace building,
Thambu Chetty Street,
Chennai - 600001.

.....Petitioner in all Tr. CMPs

.Vs.

- 1.Mr. Ayyannar S (MCOP No. 5259 of 2019) Respondents in
Tr.CMP No.264/2020
- 2.Mr.Vinayaga Moorthy & 3 others (MCOP No.445 of 2020)
..... Respondents in
Tr.CMP No.265/2020
3. Mr. Raghupathi (MCOP No. 793 of 2016) Respondents in
Tr.CMP No.266/2020
4. Mr. Veerasamy (MCOP No. 414 of 2019) Respondents in
Tr.CMP No.267/2020
5. Mr. Balu (MCOP No. 576 of 2019) Respondents in
Tr.CMP No.268/2020
6. Mr. M Pandian (MCOP No. 13 of 2016) Respondents in
Tr.CMP No.269/2020
7. Mrs. Alamelu (MCOP No. 433 of 2019) Respondents in
Tr.CMP No.270/2020
8. Mrs. Manjula (MCOP No. 436 of 2019) Respondents in
Tr.CMP No.271/2020
9. Mrs. Jayalakshmi (MCOP No. 437 of 2019) Respondents in
Tr.CMP No.272/2020
10. Mr. Minor , Ajay (MCOP No. 253 of 2019) Respondents in
Tr.CMP No.273/2020
11. Mr. Kandhasamy (MCOP No. 254 of 2019) Respondents in
Tr.CMP No.274/2020
12. Mr. Palani (MCOP No. 660 of 2019)
..... Respondents in
Tr.CMP No.275/2020

- 13 Mr. Pattan@ Pattappan (MCOP No. 265 of 2019) Respondents in
Tr.CMP No.276/2020
14. Mr. Somasundaram (MCOP No. 266 of 2019) Respondents in
Tr.CMP No.277/2020
15. Mr. Shanmugam (MCOP No. 267 of 2019) Respondents in
Tr.CMP No.278/2020
16. Mr. Gopalakrishnan (MCOP No. 268 of 2019)..... Respondents in
Tr.CMP No.279/2020
17. Mr. Rathinamoorthi (MCOP No. 269 of 2019)..... Respondents in
Tr.CMP No.280/2020
- 18 Mr. Saravanan S (MCOP No. 2721 of 2019) Respondents in
Tr.CMP No.281/2020

...Respondents in Tr.CMPs/Petitioners in MCOPs

1) Prayer in Tr.CMP No.264 /2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 5259 of 2019, on the file of the learned Motor Accidents Claims Tribunal III Judge, Court of Small Causes, Chennai.

2) Prayer in Tr.CMP No.265/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 445 of 2020, on the file of the learned Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai.

3) Prayer in Tr.CMP No.266 /2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 793 of 2016, on the file of the learned Motor Accidents Claims Tribunal/ Chief Judicial Magistrate Court, Perambalur.

4) Prayer in Tr.CMP No.267 /2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No.414 of 2019, on the file of the learned Motor Accidents Claims Tribunal, Subordinate Judge, Perambalur.

5) Prayer in Tr.CMP No.268/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 576 of 2019, on the file of the learned Motor Accidents Claims Tribunal, Subordinate Judge, Perambalur.

6) Prayer in Tr.CMP No.269/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 13 of 2016 , on the file of the learned Motor Accidents Claims Tribunal Principal subordinate Judge, Mayiladuthurai.

7) Prayer in Tr.CMP No.270/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C ., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 433 of 2019, on the file of the learned Motor Accidents Claims Tribunal/ III Additional District Judge, Kallakuruchi.

8) Prayer in Tr.CMP No.271 /2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 436 of 2019, on the file of the learned Motor Accident Claims Tribunal, III Additional District Judge, Kallakurichi.

9) Prayer in Tr.CMP No.272 /2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 437 of 2019, on the file of the learned Motor Accidents Claims Tribunal, III Additional District Judge, Kallakuruchi.

10) Prayer in Tr.CMP No.273/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 253 of 2019, on the file of the learned Motor Accidents Claims Tribunal/ Sub Court, Rasipuram.

11) Prayer in Tr.CMP No.274/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 254 of 2019, on the file of the learned Motor Accidents Claims Tribunal/ Sub Court, Rasipuram.

12) Prayer in Tr.CMP No.275/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 660 of 2019 , on the file of the learned Motor Accident Claims Tribunal /Sub Court, Ponneri.

13) Prayer in Tr.CMP No.276/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 265 of 2019 , on the file of the learned Motor Accidents Claims Tribunal / Subordinate Judge, Dharapuram.

14) Prayer in Tr.CMP No.277/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 266 of 2019 , on the file of the learned Motor Accidents Claims Tribunal / Subordinate Judge, Dharapuram.

15) Prayer in Tr.CMP No.278/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 267 of 2019, on the file of the learned Motor Accidents Claims Tribunal / Subordinate Judge, Dharapuram.

16) Prayer in Tr.CMP No.279/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 268 of 2019 , on the file of the learned Motor Accidents Claims Tribunal / Subordinate Judge, Dharapuram.

17) Prayer in Tr.CMP No.280/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 269 of 2019 , on the file of the learned Motor Accidents Claims Tribunal / Subordinate Judge, Dharapuram.

18) Prayer in Tr.CMP No.281/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of The Constitution of India , to withdraw and transfer the petition in MCOP No. 2721 of 2019, on the file of the learned Motor Accidents Claims Tribunal / II Court of Small Causes, Chennai.

For Petitioners :Mr R. Sankaranarayanan,

Senior Advocate, (in 2 Tr.CMPs)
(in Tr. CMP Nos.275 & 277/2020 against
MCOP Nos.660 of 2019 & 266 of 2019) .

Mr. N.Vijayaraghavan (in 14 Tr. CMPs)
(in Tr.CMP Nos.264, 266, 267, 268, 269,
270, 271, 272, 274, 276, 278, 279,
280/2020 & 281/2020 against MCOP
Nos.5259/2019,793/2016,414/2019,576/2019,
13/2016,433/2019,436/2019,437/2019,
254/2019,265/2019, 267/2019, 268/2019,
269/2019 & 2721/2019).

Mr V. Lakshminarayanan (1 Tr.CMP)
(in Tr. CMP No.273/2020 against MCOP
No.253/2019).

Mr N.P. Vijayakumar (1 Tr.CMP)
(in Tr. CMP No.265/2020 against MCOP No.
445/2020)

Tr.CMP.Nos.261 to280 of 2020

This Court while passing a common order in the above petitions, gave certain directions which are extracted here under ;

"38.That being so, I need to make it clear that it is not as if this Court alone has the power to order the recording of such compromise settlements. The Claims Tribunals where the claims are pending in Tamil Nadu are actually better placed. Ordinarily, the compromise made in cases are recorded when the claimants and the other parties appear in person with their counsel. The Claims Tribunal by itself or through Mediation or LokAdalatas Alternate Dispute Resolution methods, record such compromise awards.

39.I am of the view that the Claims Tribunals are as competent as this Court to allow such reliefs. All that this court did, was to examine the digital consent of parties and on satisfaction of consensus as genuine, accorded compromise. The Claims Tribunals can also do the same and possibly more effectively as the victims may be closer to the forums, in most cases. The Claims Tribunals can entertain compromise applications, without the need for any transfer petitions. They can examine and entertain digital consent and if satisfied that they were true and trustworthy, could go ahead and record the compromise, without need or

insistence on physical appearance or signing of Joint Memos of Compromise. It is up to the respective Claims Tribunals to examine such requests and be satisfied on the truth and veracity of consent and grant them the benefit of compromise. There is no need or compulsion of every one to move this Court by way of a transfer petition. I commend this course to all the Claims Tribunals.

40. Hence, I am inclined to direct the Registrar General to take the permission of the Honourable Chief Justice and send an appropriate circular to all the Claims Tribunals on this recommendation for implementation by the Claims Tribunals in these lockdown times. It would help the stakeholders in a major way to seek closure closer home than being compelled to come to this court all the time."

2. Alongside, however, it was guardedly pointed out that this practice and procedure shall be Covid19 time specific, in these words, from the orders dated 05.05.2020 made in Tr CMP No.231/2020 batch, which orders were relied upon while passing orders dated 11.05.2020 making it clear that the above procedure cannot be treated as a precedent for all times to come. For better appreciation, the same is extracted here under ;

"It goes without saying that this is an extraordinary order passed under extraordinary circumstances and it cannot be taken as a precedent for the future cases dealt with under normal circumstances wherein the regular procedure for recording compromise should be undertaken."

3. It appears that the Motor Accidents Claims Tribunals in Tamil Nadu have received requests and petitions for recording compromise in motor accidents claims petitions (MCOPs) pending on the files of respective claims tribunals. And some have been taken up and even orders passed.

4. While so, some issues have arisen since there is no uniform digital platform in place before the claims tribunals, unlike before this court. The unevenness in the availability of this technology tool, is an issue of concern.

5. In addition to this foundational fault line, it appears that each claims tribunals appear to be following its own

practice, to try and serve the cause of compromise of motor accidents for the litigant public. There is lack of consistency, uniformity and therefore an unavoidable element of ad hocism. The stakeholders do not have a uniform template to adopt and follow. There is therefore need for clarity in this regard for a uniform practice.

6. This court has become alive to this unbalanced support base to the claims tribunals and there is already an established law and procedure in place to record such compromise. This court therefore apprehends that the directions may tend to create inconsistencies resulting in prejudice to the claimants who under certain circumstances may not be clear about the actual compromise arrived at, due to lack of personal communication. The directions given by this court keeping in mind the interests of the claimants during these difficult times, should not turn out to be counterproductive to their rights and interests. It has therefore become necessary for this court to recall the Paras 38 to 40 of the orders dt.11/5/2020 and they stand hereby withdrawn w.e.f. 26th May,2020.

7. For any and all the reasons above stated, this court deems it fit to recall Paras 38 to 40 from its orders dt.11/5/2020 made in the above petitions. They shall cease to exist for claims tribunals to apply and follow from this day onwards. However, it is made clear that all orders of compromise already passed by the claims tribunals in Tamil Nadu till 26th, May,2020 shall hold the field, as valid and enforceable. It is further made clear that the regular procedure for recording compromise should be undertaken. This order shall apply to Motor Accident Claims Tribunals in Puduchery also. The registry is directed to immediately bring this clarification order to the notice of the Hon'ble Chief Justice.

The petitions shall accordingly stand disposed of subject to the above clarification.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

To

- 1.III Court of Small Causes, Chennai
- 2.II Court of Small Causes, Chennai
- 3.Chief court, Court of Small Causes, Chennai
- 4.Chief Judicial Magistrate Court, Perambalur
- 5.Subordinate judge perambalur
- 6.Principal subordinate judge Mayiladuthurai
- 7.III Additional District Judge, Kallakuruchi
- 8.Sub judge , Rasipuram
- 9.Sub Court, Ponneri
- 10.Subordinate Judge, Dharapuram
- 11.Mr. N Vijayaraghavan - Counsel for Petitioners
(vijayaraghavan.nv@gmail.com)
- 12.M/s. Chola mandalam MS General Insurance Ltd - Petitioner
(srinivasanal@cholams.murugappa.com)
- 13.The Union Territory of Pondicherry.
- 14.The Registrar General, High Court, Madras.
- 15.The Registrar (Judicial), High Court, Madras.
- 16.The Section Officer, Judicial Section, High Court, Madras.
- 17.The Motor Accident Claims Tribunal, Pondicherry.

Common Order (clarification) in
Tr. CMP. Nos.264 to 281 of 2020

VSNII (CO)

NS (13/05/2021)