



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.09.2020

Judgment Delivered on : 03.11.2020

Coram:

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and
THE HONOURABLE Mr. JUSTICE C.SARAVANAN

C.M.A. Nos.1599 of 2017 & 1501 of 2018
and
CMP.No.8424 of 2017

The United India Insurance Company Ltd.,
Sreeji Chambers, Mount Road,
Coonoor, Nilgiris. ... Appellant/2nd Respondent
in CMA.No.1599 of 2017

Versus

1. Padmini
W/o. Bharathan
2. B.Gokul
S/o. Bharathan
3. B.Gopinath
S/o.Bharathan ...Respondents 1 to 3/Petitioners
4. Chandramohan,
S/o. Dhanabalan ..4th Respondent/1st Respondent
in CMA.No.1599 of 2017

1. Padmini
W/o. Bharathan
2. B.Gokul
S/o. Bharathan
3. B.Gopinath
S/o.Bharathan .. Appellants /petitioners
in CMA.No.1501 of 2018

Versus

1. Chandra Mohan,
S/o. Dhanapalan



WEB COPY

2. The United India Insurance Company Ltd.,
Sreeji Chambers, Mount Road,
Coonoor, Nilgiris.

.. Respondents/Respondents
in CMA.No.1501 of 2018

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the order and decree dated 30.11.2012 made in MCOP.No.60 of 2010 on the file of Motor Accidents Claims Tribunal / Sub Court, Sathyamangalam, Erode District.

For appellant : Mr.S.Arun Kumar in C.M.A.No.1599 of 2017

For respondents: Mr.R.Bharanidharan for M/r.MA.P.Thangavel
for RR-1 to 3 in C.M.A.No.1599 of 2017
: R-4 Set ex-parte before the Tribunal in
C.M.A.1599 of 2017

For appellants : Mr.R.Bharanidharan
for M/r.MA.P.Thangavel in C.M.A.No.1501 of 2018

For respondents: R1 Set ex-parte before the Tribunal in
C.M.A.No.1501 of 2018
Mr.S.Arun Kumar for R-2 in C.M.A.No.1501 of 2018

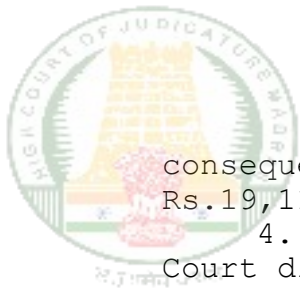
COMMON JUDGMENT

R.SUBBIAH, J

These appeals are heard through Video Conferencing.

2. CMA.No.1599 of 2017 has been filed by the Insurance Company questioning the direction given by the Tribunal to pay the compensation amount, arrived by it for a sum of Rs.19,11,624/- to the respondents 1 to 3 / claimants by order dated 30.11.2012 in MCOP.No.60 of 2010. The sum and substance of the case of the appellant in this appeal is that, the Tribunal having come to the conclusion that the deceased had travelled as a gratuitous passenger in the mini door auto bearing Registration No.TN-43-B-6419, ought not to have directed the Insurance Company to pay the compensation and recover the same from the owner of the Vehicle.

3. Assailing the very same order, the claimants have filed CMA1501 of 2018, questioning the findings rendered by the Tribunal that the deceased had travelled as a gratuitous passenger in the vehicle. Thus, in CMA1501 of 2018, the claimants prayed to set aside the findings of the Tribunal and



consequently, inter alia to enhance the compensation amount of Rs.19,11,624/-.

4. Since both the appeals arise out of the same order, this Court disposes of the appeals by way of this common judgment.

5. For the sake of convenience, the parties are referred to as per the ranking before the Motor Accident Claims Tribunal, i.e. the claimants and the respondents.

6. The case of the claimants before the Tribunal is that on 26.04.2007, the deceased Bharathan travelled in a mini door auto bearing Registration No.TN-43-B-6419, by carrying household articles and water drum and the said mini door auto belongs to one Chandra Mohan/first respondent therein, from Ariayatti to Coimbatore. While the said mini door auto was proceeding on the Mettupalayamm-Coimbatore Main Road, near Petathapuram, Annanagar, due to the rash and negligent driving of the driver of the mini door auto, it capsized. In the accident, the deceased, who travelled on the said mini door auto, died on the spot.

7. It is the further case of the claimants that the deceased travelled in the said auto carrying household articles and water drum from Ariayatti to Coimbatore, where his son is residing. Therefore, according to the claimants, the deceased travelled as a person accompanying goods. The further case of the claimants is that the deceased was working as Headmaster in an Elementary School and receiving a salary of Rs.15,588/-. Hence, they made a claim for a sum of Rs.15,00,000/ as compensation.

8. The said claim petition was resisted by the Insurance Company by filing a counter statement stating that it is false to state that the deceased had travelled in the mini door auto as a person accompanying the goods. The mini door auto is a goods carrying vehicle and the deceased being a passenger in the goods vehicle, is not covered under Section 147 of the Motor Vehicles Act. In fact, the mini door auto bearing registration No.TN-43-B-6419 is not permitted to carry passengers and no additional premium was paid for the passengers. The deceased travelled only as a gratuitous passenger and hence, no insurance coverage is available to him. Therefore, the claimants are not entitled for any compensation. They also questioned the quantum of compensation claimed by the claimants. Thus, the Insurance Company sought for dismissal of the claim petition.

9. In order to prove the claim on the side of the claimants, wife of the deceased examined herself as PW1, besides examining 3 other witnesses, namely the eye-witness as PW.2 and two other witnesses as P.Ws.3 and 4 and 11 documents were marked as Exs.P1 to P11. On the side of the Insurance Company, RW1, the



Administrative Officer of the Insurance Company and RW2, Junior Assistant from Regional Transport Office were examined and 6 documents were marked as Exs.R1 to R6. The Tribunal, after analysing the evidence, has come to the conclusion that the accident is the result of the rash and negligent driving of the driver of the mini door auto. It has also come to the conclusion that the deceased was a gratuitous passenger in the said auto. After coming to such conclusion, the Tribunal calculated the compensation under different heads and passed an award for a sum of Rs.19,11,624/- with 7.5% interest per annum and directed the appellant Insurance Company to pay the compensation amount to the claimants and permitted them to recover the same from the owner of the vehicle.

10. The break-up details of the amount awarded by the Tribunal under various heads are as follows:

S.No .	Heads under which the amount is awarded by the Tribunal	Amount (in Rs.)
1.	Loss of Dependency	17,11,072
2.	Loss of Consortium to first claimant	10,000
3.	Loss of Love and Affection to the claimants 2 and 3	30,000
4.	Funeral Expenses	5,000
5.	Loss of Estate	1,55,552
	Total	19,11,624

11. Now, it is the submission of the learned counsel for the Insurance Company that in order to prove that the deceased had travelled in the mini door auto, accompanying goods, the claimants had examined 2 witnesses, viz., PW2 and PW4. PW2, Suresh, who was the complainant, had spoken about the negligence of the driver of the mini door auto. During cross examination, PW2 had admitted that in the complaint lodged by him, he had not made any statement about the deceased travelling in the mini door auto for the purpose of transporting household articles from his Village to his son's house. Hence, in order to get over the admission of PW2, a futile attempt was made by the claimants by examining PW4. However, PW4 also admitted in his cross-examination that the deceased was his teacher and he was not present at the time of the accident. Hence, if the deceased hired the vehicle and travelled along with the goods, PW2 would have definitely stated about the same in the First Information Report (FIR), but it does not contain any such statement.



12. Though it is the case of the claimants that the deceased had travelled in the goods vehicle to transport the goods to the place where his son was residing, no evidence was produced before the Tribunal to show that the son of the deceased was staying separately in Coimbatore and studying. The Tribunal, after analysing all the evidence, has come to the correct conclusion that the deceased had travelled only as a gratuitous passenger at the time of the accident. However, after coming to such conclusion, by wrongly understanding the scope of the judgment rendered by this Court in the case of Royal Sundaram Insurance Company vs. Meenakshi and others, reported in 2009 (2) LW 353 = 2009 (2) MLJ 293 = 2009 ACJ 2218 = MANU/TN/0501/2009, directed the Insurance Company to pay compensation and recover the same from the owner of the vehicle. The factual aspects of that case show that the occupants of the private Car are covered by a package policy. But in the present case, the vehicle involved in the accident is a commercial vehicle, and hence, the said judgment relied upon by the Tribunal is not relevant to the issue on the hand. Apart from that, mini door auto bearing registration No. TN-43-B-6419 is not permitted to carry passengers and no additional premium was paid for covering the risk of such passengers and hence, the claimants are not entitled for any compensation.

13. Further, the seating capacity in the mini door auto is only one and the driver alone can travel in the mini door auto and therefore, on that account also, claimants are not entitled for compensation from the Insurance Company. Thus, they sought for setting aside the direction given by the Tribunal to the Insurance Company to pay the compensation and recover the same from the owner of the Vehicle, and consequently exonerate the Insurance Company from paying the compensation.

14. The learned counsel appearing for the claimants submitted that the FIR is not an Encyclopaedia to be relied on. It is only a primary piece of document to show the cause of the accident and it need not contain the entire facts. PW2, the eye witness, clearly deposed in his evidence about the fact that the victim travelled as the owner of goods and in the cross-examination, he had stated that all the goods were kept in the Police Station and thereafter only, they were taken to home. The evidence let in by PW2 on oath, who subjected himself to cross examination, should be kept in higher pedestal than the complaint or the FIR.

15. In support of the above submissions, the learned counsel for the claimants relied upon the judgment in Bimla Devi and other vs. Himachal Road Transport Corporation, reported in 2009 (13) SCC 530, wherein, it has been held that it is necessary to be borne in mind that strict proof of an accident caused by a



particular vehicle in a particular manner, may not be possible to be done by the claimants. The claimants have to merely establish their case on the touchstone of preponderance of probability. For the same proposition, he also relied upon the judgment of the Apex Court in the case of Parameswari vs. Amarchand & others, reported in 2011 (11) SCC 635.

16. The learned counsel appearing for the claimants, by relying upon the judgment of the Supreme Court in National Insurance Co. Ltd. vs. Lakhuben Punabhai Vaghari and others, reported in 2007 ACJ 2253, submitted that a specific averment was made in the claim petition that the deceased travelled in the mini door auto along with goods, but the Insurance Company had not taken any steps to disprove the same. Furthermore, the Insurance Company had not let in any oral or documentary evidence to establish the breach as alleged in the counter statement and hence, without any evidence, the Tribunal wrongly held that the deceased was travelling as gratuitous passenger. Therefore, the said finding is liable to be set aside.

17. In the above context, the learned counsel appearing for the claimants invited the attention of this Court to Section 147 of the Motor Vehicles Act, which reads as follows:

"Section 147 of Motor Vehicle Act: Requirements of policies and limits of liability:

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

.....

(b) (i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;"

18. With regard to the seating capacity in the mini door auto, the learned counsel appearing for the claimants submitted that the Insurance Company is liable to pay compensation to the injured person, including the owner of the goods or his authorised representative carried on in the vehicle. He also drew attention to Rule 236 of the Tamil Nadu Motor Vehicles Rules, 1989 and submitted that if the Insurance Company fails to prove that a person seated along with the driver, was the cause of the accident, the Insurance Company is liable to pay compensation. Under such circumstances, the Insurance Company has to be directed to pay compensation and recover the same from the owner of the vehicle.



19. With regard to the quantum of compensation, the learned counsel appearing for the claimants submitted that the Tribunal, has not added any amount towards future prospects while calculating the compensation amount, under the head "Loss of Dependency". Hence, by adding 15% towards future prospects, the amount awarded by the Tribunal under the head "Loss of Income" has to be enhanced. That apart, the amount awarded by the Tribunal under the other heads also, is on the lower side. Hence, the same has to be enhanced.

20. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record.

21. It is the case of the claimants that on 26.04.2007, the deceased Bharathan travelled in the mini door auto carrying household articles and water drum from Ariyatti to Coimbatore. Thus, he travelled as the owner of the goods in the mini door auto and in order to prove the same, PW2 and PW4 were examined.

22. Per contra, it is the submission of the learned counsel for the Insurance Company that the deceased travelled only as a gratuitous passenger, and not as a person carrying goods or as the owner of the goods. In fact, the Tribunal, after examining the deposition of PW2 and PW4, had come to the conclusion that the deceased travelled only as a gratuitous passenger, but surprisingly, directed the Insurance Company to pay compensation and recover it from the owner of the vehicle.

23. If really the deceased had travelled as the owner of the goods, the same would have been stated in the complaint/FIR lodged by PW2. But, in the FIR, absolutely there was no whisper about it. Furthermore, if really the deceased had hired the mini door auto for the purpose of carrying goods to his son's house at Coimbatore, the claimants would have produced some documentary evidence. However, no document or receipt for the same had been marked before the Tribunal to show that the deceased had booked mini door auto for the purpose of taking goods to his son's residence at Coimbatore. Hence, the Tribunal has rightly come to the conclusion that, had the deceased travelled in the hired vehicle along with goods, the same would have been mentioned in the FIR. PW2, is the niece of the deceased and PW4, is a student of the deceased. They were examined purposely by the claimants to get compensation from the Insurance Company.

24. It is settled legal proposition that each case has to be decided based on the factual aspects of that case and that being



so, the judgment relied upon by the claimants is not applicable to the facts of the case. Absolutely, we do not find any infirmity in declaring that the deceased was a gratuitous passenger in the mini door auto. After having come to such conclusion, the Tribunal ought not to have directed the Insurance Company to pay compensation amount and thereafter, recover the same from the owner of the vehicle. Hence, when absolutely there is no liability on the part of the Insurance Company to pay the compensation, the question of directing the Insurance Company to pay the compensation and recover the same from the owner of the vehicle, does not arise in this case. Therefore, the finding rendered by the Tribunal that the deceased was a gratuitous passenger is sustained, however, the consequent direction given by the Tribunal to the Insurance Company to pay the compensation amount to the claimants and recover the same from the owner of the vehicle, is set aside and thus, the Insurance Company is totally exonerated from paying the compensation amount.

25. So far as the quantum of compensation is concerned, we find that the deceased was working as a Headmaster in the Elementary School and receiving a sum of Rs.19,444/- per month as salary on March 2007. But the Tribunal, while calculating the compensation amount, has not added any amount towards future prospects. We find that the deceased was 54 years at the time of the accident and was a permanent Government employee. Therefore, the compensation awarded has to be re-calculated by adding 15% towards future prospects. If a sum of sum of Rs.19,444/- is taken as the monthly income of the deceased and 15% of the same is added towards future prospects, the amount comes to Rs.22,360/- [19,444 + 2,916] and the annual income of the deceased comes to Rs.2,68,320/- [22,360 x 12]. If 1/3 is deducted towards personal expenses, the amount comes to Rs.1,78,880/- [2,68,320 - 89,440]. Considering the age of the deceased being 54 years at the time of the accident, if multiplier "11" is applied, the amount comes to Rs.19,67,680/- [1,78,880 x 11]. Therefore, the sum of Rs.17,11,072/- awarded by the Tribunal under head "Loss of Dependency" is hereby enhanced to a sum of Rs.19,67,680/-.

26. Taking into account the facts and circumstances of the case, the sum of Rs.10,000/- awarded by the Tribunal towards "Loss of Consortium" to the wife /first claimant is enhanced to Rs.40,000/-.

27. Further, the total sum of Rs.30,000/- awarded by the Tribunal towards "Loss of Love and Affection" to the claimants 2 and 3 is set aside and consequently, a sum of Rs.80,000/- is awarded for "Loss of Love and Affection" to the claimants 2 and 3, by awarding each of them a sum of Rs.40,000/-.



28. The sum of Rs.1,55,552/- awarded by the Tribunal towards "Loss of Estate" is on the higher side and hence, the same is set aside and consequently a sum of Rs.15,000/- is awarded under the said head.

29. Further, the Tribunal has not awarded any amount under the head Transportation and hence, a sum of Rs.5,000/- is awarded under the head "Transportation".

30. The sum of Rs.5,000/- awarded by the Tribunal towards "Funeral Expenses" is just and fair. Hence, the same is confirmed.

31. Thus, the total compensation is tabulated below:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Income	17,11,072	19,67,680
2	Loss of Consortium to wife	10,000	40,000
3	Love and Affection	30,000	80,000
4	Transportation	-	5,000
5	Funeral Expenses	5,000	5,000
6	Loss of Estate	1,55,552	15,000
	Total	19,11,624	21,12,680

32. Since, as discussed above, the Insurance Company is exonerated from the liability to pay compensation, they are permitted to withdraw the amount of compensation, if any deposited already before the Tribunal. The owner of the vehicle is directed to pay the above said compensation amount.

33. Thus, the total sum of Rs.19,11,624/- awarded by the Tribunal towards compensation is hereby enhanced to Rs.21,12,680/-, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The claimants shall pay necessary Court fee, if any, on the enhanced compensation. The first respondent in CMA.No.1501 of 2018/owner of the vehicle is directed to deposit the total compensation as awarded by this Court above, before the Tribunal, together with interest, and costs, if any as awarded by the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the entire



amount. The apportionment of shares fixed by the Tribunal to the claimants is hereby confirmed. Since the Insurance Company had been exonerated from the liability to pay the compensation as discussed above, they are permitted to withdraw the amount if any already deposited by them before the Tribunal.

34. With the above observations and directions, the Civil Miscellaneous Appeal No.1501 of 2018 filed by the claimants is partly allowed and the Civil Miscellaneous Appeal 1599 of 2017 filed by the Insurance Company is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pvs/cs
To

The Presiding Officer,
The Motor Accidents Claims Tribunal,
Sub Court, Sathyamangalam,
Erode District.

+1cc to Mr.S.Arunkumar, Advocate Sr.35728

C.M.A. Nos.1599 of 2017
and 1501 of 2018

mp[col]
srg 13/08/2021