



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. Nos. 1240 & 1312 of 2016 and
C.M.P. Nos. 10057 & 9379 of 2016

1. M/s. United India Insurance Company Ltd.,
No.38, Anna Salai, Chennai -2.

... Appellant/2nd Respondent in
both the appeals

Vs

1. R. Gothandaraman (died)
2. M/S. Lakshmi Nursing Home,
11/6, Shenoy Road,
Pallavaram, Chennai.

...Respondent/Petitioner

...Respondent/1st Respondent

3. G. Rathinamala
4. G. Hariharaputhiran
5. G. Vaishnavi
6. R. Saraswathy
(R1 Died

R3 to R6 brought on record as LR's of
the deceased R1 vide court order dated
29.06.2021 made in CMPs 22644,22648
and 22650/2019 in CMA 1240/2016 AQJ)

... Respondents/3 to 6 Respondents
in CMA 1240 of 2016

1. G. Rathinamala
2. M/s. Lakshmi Nursing Home,
11/6, Shenoy Road,
Pallavaram, Chennai.

...Respondent/Petitioner

...Respondent/1st Respondent

... Respondents in CMA 1312 of 2016

Prayer in both the appeals: Civil Miscellaneous Appeals filed
under Section 173 of the Motor Vehicles Act, 1988, to set aside
the common Decree and Judgment dated 31.08.2015, passed in
M.C.O.P. Nos. 3438 of 2006 and 3439 of 2006 on the file of Motor
Accidents Claims Tribunal / V Judge, Court of Small Causes,
Chennai .



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For Appellant : Mr. G. Udaya Sankar
in both appeals
For R1 in : Died, Steps taken
CMA No.1240 of 2016

For R2 in
CMA No.1240 of 2016 : Served, No Appearance
& CMA.No.1312 of 2016

For R3 to R6 in : Mr. A.A. Venkatesan
CMA No.1240 of 2016
& R.1 in CMA No.1312 of 2016

COMMON JUDGMENT

These appeals have been filed by the Insurance Company, challenging the common award dated 31.08.2015 passed in M.C.O.P. Nos. 3438 of 2006 and 3439 of 2006 by the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

2. The claimants in M.C.O.P. No. 3438 and 3439 of 2006, are injured accident victims. According to them, a vehicle, insured with the appellant, was responsible for the cause of the accident, which happened on 08.08.2005, which resulted in them sustaining injuries.

3. The Tribunal under the impugned common award directed the appellant Insurance Company to pay the following compensation to the claimants in M.C.O.P. No.3438 of 2006 which corresponds to CMA No.1240 of 2016, and its details of compensation are hereunder:-

Heads	Amount awarded by the Tribunal (Rs.)
Transportation, nourishing food and miscellaneous expenditure	50,000/-
Medical Expenses	5,000/-
Damages for pain, suffering and trauma	50,000/-
Disability	90,000/-
Loss of income during treatment period	45,000/-



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Heads	Amount awarded by the Tribunal (Rs.)
Loss of amenities	50,000/-
Total Compensation	2,90,000/-

and in M.C.O.P. No.3439 of 2006 which corresponds to CMA No. 1312 of 2016, the details of compensation are hereunder:-

Heads	Amount awarded by the Tribunal (Rs.)
Transportation, nourishing food and miscellaneous expenditure	50,000/-
Medical Expenses	60,000/-
Attender Charges	10,000/-
Damages for pain, suffering and trauma	50,000/-
Disability	1,35,000/-
Loss of income during treatment period	60,000/-
Loss of amenities	50,000/-
Total Compensation	4,15,000/-

4. The appellant Insurance Company has challenged the impugned award passed in M.C.O.P. No.3438 of 2016 on the ground that in the First Information Report, the name of R.Gothandaraman (since deceased) is not found and his name is also not found in the charge sheet and Section 161 statement given before the police and therefore he is not entitled for any compensation from the Insurance Company.

5. Insofar as the CMA No.1312 of 2016 is concerned, the appellant Insurance Company has challenged the impugned award passed in M.C.O.P. No. 3439 of 2006, only questioning the quantum of compensation awarded by the Tribunal. According to them, the quantum of compensation awarded by the Tribunal is excessive.

6. Insofar as the award passed in M.C.O.P. No.3438 of 2006 in favour of R.Gothandaraman, the claimant who died during the pendency of the this appeal, is concerned, the Tribunal based on preponderance of probabilities has held that the Insurance Company is liable to pay compensation though in the First



Information Report, charge sheet and Section 161 statement given before the police, the name of R.Gothandaraman (claimant) does not find a place. The Tribunal has taken into consideration the hospital documents viz., the discharge summary, accident register copy and the wound certificate, which have been marked as Ex.P5, Ex.P4 and Ex.P2, where the name of R.Gothandaraman is shown and disclosed that he sustained injuries due to the accident caused by a vehicle, insured with the appellant. Only after giving due consideration to the same and on preponderance of probabilities, the Tribunal has held the Insurance Company liable to pay the compensation to R.Gothandaraman.

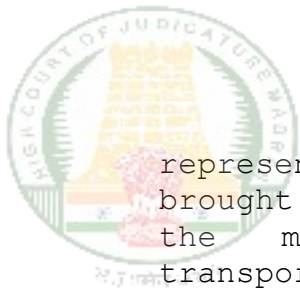
7. The evidence produced by the appellant Insurance Company does not prove that R.Gothandaraman/claimant did not sustain injuries as a result of an accident caused by the insured vehicle. Therefore, the first contention raised by the appellant that they are not liable to pay the compensation to R.Gothandaraman(claimant) is rejected by this Court.

8. Insofar as the quantum of compensation awarded by the Tribunal to R.Gothandaraman at Rs.2,90,000/- (Rupees Two Lakhs Ninety Thousand only) is concerned, the said compensation cannot be granted now in view of the fact that during the pendency of this appeal, R.Gothandaraman (claimant) died and his legal representatives have been brought on record. The principle "Actio Personalis Moriton-cum-personna" will now come into play.

9. The accident happened on 08.08.2005 and R.Gothandaraman died during the pendency of this appeal on 22.01.2016. Hence, there is no nexus between the cause of death and the injuries sustained by R.Gothandaraman. Therefore, the legal representatives of the deceased R.Gothandaraman, who have been brought on record in CMA No. 1240 of 2016, are only entitled to medical expenses, transportation expenses and extra nourishment charges.

10. Insofar as the compensation awarded by the Tribunal to R.Gothandaraman under the various other heads viz., loss of income, loss of amenities, pain and sufferings and disability compensation are concerned, the legal representatives of the deceased R.Gothandaraman are not entitled for any compensation under those heads, in view of the fact that the injured accident victim (R.Gothandaraman) is no more.

11. This Court after giving due consideration to all the aforementioned factors, awards a consolidated sum of Rs.30,000/- (Rupees Thirty Thousand only) to the legal



representatives of the deceased, R.Gothandaraman, who have been brought on record in CMA No. 1240 of 2016 which will cover only the medical expenses, extra nourishment charges and transportation expenses. Accordingly, the compensation awarded by the Tribunal in M.C.O.P. No. 3438 of 2006 is reduced from Rs.2,90,000/- (Rupees Two Lakhs Ninety Thousand only) to Rs.30,000/- (Rupees Thirty Thousand only) by this Court.

12. Insofar as compensation awarded by the Tribunal in M.C.O.P. No. 3439 of 2006, where the appellant Insurance Company has challenged only the quantum of compensation is concerned, this Court does not find any scope for interference for the following reasons:-

a) The Tribunal has awarded a total compensation of Rs.4,15,000/- (Rupees Four Lakhs Fifteen Thousand only) to the claimant G.Rathinamala, who has sustained Fracture anterior pillar of right acetabulum, multiple fractures of right and left pubic rami, deep-cut injury near right eye, blunt injury on the head and multiple injuries all over the body as a result of the very same accident on 08.08.2005.

b) The Doctor has assessed the disability of G.Rathinamala, who is the claimant in M.C.O.P. No. 3439 of 2006, which corresponds to CMA No. 1312 of 2016, at 45% which has been accepted by the Tribunal. The Tribunal has awarded disability compensation at Rs.1,35,000/- (Rupees One Lakh Thirty Five Thousand only), calculated at Rs.3,000/- (Rupees Three Thousand only) per percentage for the 45% disability suffered by G.Rathinamala. The same cannot be considered to be excessive as alleged by the appellant Insurance Company. Accordingly, the same is confirmed by this Court.

13. The Tribunal has awarded a compensation of Rs.60,000/- towards loss of income to G.Rathinamala, calculated for a period of six months at Rs.10,000/- per month. The accident happened in the year 2005 and G.Rathinamala (Claimant) was a Central Government employee. Therefore, the compensation towards loss of income awarded by the Tribunal at Rs.60,000/- calculated Rs.10,000/- per month for a period of six months cannot be



considered to be excessive and therefore, the same is confirmed by this Court.

14. The Tribunal has awarded a compensation of Rs.50,000/- towards transportation and extra nourishment charges, Rs.60,000/- towards medical expenses, supported by medical bills, Rs.10,000/- towards attender charges, Rs.50,000/- towards loss of amenities, Rs.50,000/- towards pain and sufferings which cannot be considered to be excessive and therefore the same is confirmed by this Court.

15. Considering the nature of injuries sustained by G.Rathinamala, the claimant in M.C.O.P. No. 3439 of 2006, the total compensation of Rs.4,15,000/- awarded to G.Rathinamala cannot be considered to be excessive in the considered view of this Court. Therefore there is no merit in CMA No.1312 of 2016.

16. For the foregoing reasons, the compensation awarded by the Tribunal in M.C.O.P. No. 3438 of 2006 which corresponds to CMA No. 1240 of 2016, is reduced to Rs.30,000/- (Rupees Thirty Thousand only) instead of Rs.2,90,000/- (Rupees Two Lakhs Ninety Thousand only) erroneously assessed by the Tribunal.

17. Insofar as M.C.O.P. No. 3439 of 2006, which corresponds to CMA No. 1312 of 2016 is concerned, there is no merit in the appeal, as observed supra. Accordingly, CMA No.1312 of 2006 is dismissed and CMA No.1240 of 2016 is partly allowed.

18. The compensation amount reassessed by this Court in M.C.O.P. No. 3438 of 2006, which corresponds to CMA No. 1240 of 2016 has to be shared equally among the legal representatives of the deceased R.Gothandaraman, who have been brought on record in this appeal.

19. Since the learned counsel for the appellant Insurance Company submits that the Insurance Company has already deposited 50% of the award amount in respect of both the awards passed in M.C.O.P. Nos. 3438 of 2006 and 3439 of 2006, the Tribunal shall transfer the reduced compensation of Rs.30,000/- along with accrued interest to the bank account of the respondents/claimants in CMA No.1240 of 2016 through RTGS as per the ration apportioned by the Tribunal, within a period of one week from the date of receipt of a copy of this Judgment and the Insurance Company is permitted to withdraw the excess amount along with accrued interest lying to the credit of M.C.O.P. No. 3438 of 2006.



20. Insofar as CMA No.1312 of 2016 (MCOP No.3439 of 2006) is concerned, the appellant Insurance Company is directed to deposit the remaining 50% of the amount awarded by the Tribunal together with interest from the date of claim till the date of deposit and costs, to the credit of M.C.O.P. No. 3439 of 2006 on the file of the Motor Accidents Claims Tribunal/ V Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P. No. 3439 of 2006 directly to the bank account of the respondent/claimant in CMA No.1312 of 2016 through RTGS, within a period of one week thereafter.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

rgi

To

1. Motor Accidents Claims Tribunal/
V Judge, Court of Small Causes,
Chennai

2. The Section Officer,
V.R.Section, High Court, Madras - 104.

+2cc to Mr.G.Udaya Sankar, Advocate SR.No.55228, 55227

+2cc to Mr.A.A.Venkatesan, Advocate SR.No.55689, 55690

C.M.A. Nos. 1240 & 1312 of 2016

PP(CO)

CB(08/12/2021)