

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	04.03.2021
Date of Judgment	09.06.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.2058 of 2013
and Cross Objection(MD)No.14 of 2018
and
MP(MD)No.1 of 2013

(1) CMA(MD)No.2058 of 2013:-

The National Insurance Company Limited,
Rep. by its Branch Manager
North Car Street,
Nagercoil-1,
Kanyakumari District.

: Appellant/3rd Respondent

Vs.

1.S.Janaki
2.S.Kannan
3.S.Nirmala
4.S.Anitha

5.S.Maheswari
6.S.Paul Thurai

: R1 to R5/Petitioners

7.K.V.Guruswamy Nadar (Died)
8.National Insurance Company
Limited,

Represented by its Branch Manager,
North Car Street, Nagercoil,
Kanyakumari District. (Deleted)

9.N.Baskar (Exonerated)

(R8 is deleted and R9 is exonerated,
vide court order, dated 23.06.2014
made in MP(MD)No.1 of 2014 in
CMA(MD)No.2058 of 2013)

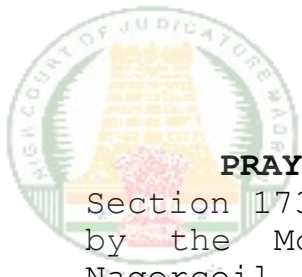
10.Cholan Roadways Corporation Limited,
Represented by its Managing Director,
Railway Station New Road,
Kumbakonam, Thanjavur District.

11.G.Ebanazar Vaikundam

: R6 to R11/R1 to R6

12.G.Balachandra Mohandhas

: R12/7th Respondent



PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Principal Sub Court), Nagercoil, made in MCOP No.7 of 2009, dated 08.02.2013.

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For Appellant : Mr.S.Srinivasa Raghavan
For R1 to R5 : Mr.Sudhagar Nagaraj
for Mr.I.Robert Chandrakumar
For 6th Respondent : No appearance
For 7th Respondent, : Died
For 8th Respondent : Deleted
For 9th Respondent : Exonerated, vide court order,
dated 23.06.2017
For 10th Respondent : Mr.P.Prabhakaran
For R11 and R12 : Mr.M.Suri

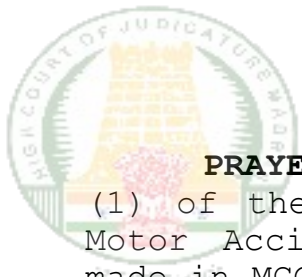
(2)Cross Objection(MD)No.14 of 2018:-

1.S.Janaki
2.S.Kannan
3.S.Nirmala
4.S.Anitha
5.S.Maheswari : Cross Objectors/Petitioners

Vs.

1.The National Insurance Company Limited,
Rep. by its Branch Manager
North Car Street,
Nagercoil-1,
Kanyakumari District. : 1st Respondent/3rd Respondent

2.S.Paul Thurai
3.K.V.Guruswamy Nadar (Died) : R2 and R3/Respondents 1 and 2
4.N.Baskar
5.Cholan Roadways Corporation Limited,
Represented by its Managing Director,
Railway Station New Road,
Kumbakonam, Thanjavur District.
6.G.Ebanezar Vaikundam
7.G.Balachandra Mohandhas : R4 to R7/Respondents 4 to 7



PRAYER:- Cross Objection has been filed under Order 41 Rule 22 (1) of the Civil Procedure Code, against the award passed by the Motor Accident Claims Tribunal (Principal Sub Court), Nagercoil, made in MCOP No.7 of 2009, dated 08.02.2013.

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For Cross Objectors : Mr.Sudhagar Nagaraj
for Mr.I.Robert Chandrakumar

For 1st Respondent : Mr.S.Srinivasa Raghavan

For 2nd Respondent : No appearance

For 3rd Respondent, : Died

For 4th Respondent : Exonerated, vide court order,
dated 23.06.2017

For 5th Respondent : Mr.P.Prabhakaran

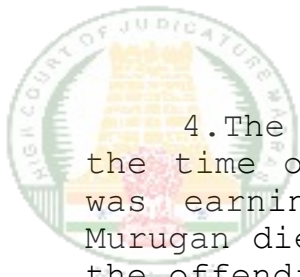
For R6 and R7 : Mr.M.Suri

COMMON JUDGMENT

CMA(MD)No.2058 of 2013 has been filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal (Principal Sub Judge), Nagercoil, made in MCOP No.7 of 2009, dated 08.02.2013, whereas the Cross Objection (MD)No.14 of 2018 has been filed by the claimants for enhancement of compensation.

2.Since both the Civil Miscellaneous Appeal and the Cross Objection arising out of the same award, they heard jointly and disposed of by this common judgment.

3.The short facts of the case is that on 22.04.1995 at about 6.45 hours, the deceased was sitting as a loan man at the left side of the Mini Lorry TN-74-A-0954 and when the Lorry was proceeding from Tuticorin towards Velangkanni through Patchai Kottai Village, the Omni Bus TN-49-N-0043 was going in front of the Mini Lorry and the Bus was stopped for the passengers to get down near Salaimangalam High School Bus Stopping of Patchai Kottai Village and at that time, the driver of the Mini Lorry drove it in a rash and negligent manner and dashed against the rear right side of the Bus. As the deceased was sitting at the left side of the Mini Lorry, he sustained multiple grievous injuries and immediately, he was taken to the Government R.M Hospital, Thanjavur and subsequently, he was taking treatment in a private hospital, however, he succumbed to injury on 11.05.1995. The legal heirs of the deceased filed a claim petition seeking compensation of Rs.7,00,000/- for the death of the deceased.



4.The claimants have stated that the deceased was 23 years at the time of accident and he was working as a load man, thereby he was earning Rs.6,000/- per month. It is alleged that the said Murugan died only due to the negligence on the part of the driver of the offending vehicle.

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5.In the counter filed by the Appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

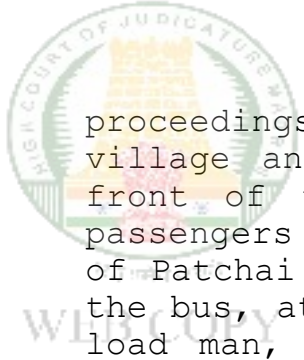
6.Before the tribunal, on the side of the claimants, 4 witnesses were examined and marked 11 documents. On the side of the Appellant Insurance Company, 1 witness was examined and 6 documents were marked.

7.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.4,00,000/- together with interest @ 7.5% p.a and dismissed the claim petition as against the respondents 4 and 5 in the claim petition.

8.Heard both sides and perused the materials available on record.

9.In this case, the dispute is in respect of liability and quantum. The learned counsel appearing for the appellant/3rd respondent Insurance Company submitted that the driver of the Mini Lorry TN-74-A-0954 drove it from Perumalpuram to Tuticorin and then to Velangkanni and the owner and driver of the Mini Lorry permitted the passengers to board in the goods vehicle in gross violation of the Motor Vehicles and for such violation of the Rules and Regulations, the appellant/3rd respondent Insurance Company is not liable to indemnify the owner of the vehicle and that the 1st and 2nd respondent in the claim petition permitted more number of persons to travel in the cabin and the driver of the Mini Lorry lost his control and dashed against rear side of the stationary bus, thereby injuring the occupants of the Goods Carrier and hence, the appellant/3rd Respondent Insurance Company is not liable to pay the compensation to the claimants and to indemnify the owner of the vehicle and further, no proof was filed on the side of the claimants to prove that the deceased is a load man and the deceased travelled as an gratuitous passenger and hence, the appellant/3rd respondent Insurance Company is not liable to pay the compensation and prays that the Civil Miscellaneous Appeal has to be allowed.

10.On the other hand, the learned counsel appearing for the Cross Objectors/Claimants submitted that on 22.04.1995 at about 6.45 hours, the deceased was sitting as a load man at the left side of the body of the Mini Lorry TN-74-A-0954 and the Mini Lorry was



proceedings from Tuticorin to Velangkakanni through Patchai Kottai village and at that time, an Omni Bus TN-49-N-0043 was going in front of the Mini Lorry and the Omni Bus was stopped for the passengers to get down near Saliangalam High School Bus stopping of Patchai Kottai Village and the passengers were getting down from the bus, at that time, the Mini Lorry in which the deceased was the load man, driven by the driver, in a rash and negligent manner, dashed against the rear right side of the above said bus and as the deceased was sitting at the left of the Mini Lorry, he sustained multiple grievous injuries and then, died and prays that the Cross Objection may be allowed.

11.The main contention of the appellant/3rd respondent Insurance Company is that at the time of the accident, the deceased was not travelled as a load man, but the driver of the Mini Lorry permitted more persons to travel in the Mini Lorry and hence, due to more sitting of persons in the cabin, the driver of the Mini Lorry lost his control and only due to it, the accident occurred and hence, the Insurance Company is not liable to pay the compensation to the claimants.

12.Further, the learned counsel appearing for the appellant Insurance Company submitted that at the time of accident, the deceased is not working as a load man and he only travelled as an unauthorized passenger. To prove that at the time of accident, the deceased was working as a load man, the owner of the Mini Lorry was examined as PW4. PW4 during his evidence stated that at the time of accident, the deceased was working under him and he only paid the salary and he had not maintained any records for payment of salary to the deceased. On perusal of Ex.P1, it is stated that at the time of accident, the deceased was working as load man. In the claim petition, the claimants have stated that at the time of accident, the deceased was working as a load man. The said fact was not denied by the Insurance Company in the counter and only at the time of arguing this appeal, he raised the said plea. On perusal of records, it is seen that the driver of the vehicle was not examined on the side of the respondents. On perusal of the evidence of PW4, it reveals that at the time of accident, the deceased was working as a load man. PW4 is the employer of the deceased and he only issued salary certificate (Ex.P7). On perusal of Ex.P7 salary certificate, the deceased was working as a load man and he was getting Rs.200/- daily. However, without considering the relevant documents, the tribunal has totally awarded Rs.4,00,000/- as compensation to the claimants.

13.It is not in dispute that the deceased was working as a load man and he died at the age of 23 years. As seen from Ex.P7 Salary Certificate, this court finds that the deceased was getting Rs.200/- per day. Based on the above evidence, this court fixed the monthly income of the deceased at Rs.6,000/-.



14. It is settled law that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warranted where the deceased was below the age of 40 years. Hence, this court is of the considered view that 40% has to be added towards future prospects to calculate the income of the deceased, as per the decision of the Hon'ble Supreme Court reported in **2017(6) CTC 493 (National Insurance Company Limited vs. Pranay Sethi and others)**. By doing so, the monthly loss of income of the deceased is calculated at Rs.8,400/- (Rs.6,000/- + Rs.2,400/-). Since the deceased is a batcholer, 50% has to be deducted towards his personal and living expenses. By doing so, the the monthly income is arrived at Rs.4,200/- (Rs.8,400/- x 1/2). By applying proper multiplier 18, this court awards **Rs.9,07,200/-** (Rs.4,200/- x 12 x 18) towards loss of income. In addition to that, under the conventional heads, as per the decisions in **Pranay Sethi's case and Magma General Insurance's case**, this Court awards each Rs.40,000/- towards filial of consortium to the 1st and 5th claimant alone; Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. In total, the claimants would be entitled for **Rs.10,17,200/-** together with interest @ 7.5% p.a.

15. In the result, both the Civil Miscellaneous Appeal and the Cross Objection are disposed of. The award of the tribunal is enhanced to Rs.10,17,200/- from Rs.4,00,000/-. The appellant Insurance Company is directed to deposit the modified award amount together with interest @ 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the 1st claimant is entitled to withdraw Rs.6,17,200/- and the claimants 2 to 5 are each entitled to withdraw Rs.1,00,000/- with accrued interest and costs without filing any formal petition before the tribunal. The claimants shall pay additional court fee for the enhanced compensation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AE)

// True Copy //

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To,

1.The Motor Accident Claims Tribunal/
Principal Sub Court, Nagercoil.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to M/s.M.SURI, Advocate (SR-19161[F] dated 10/06/2021)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-19149[F] dated 10/06/2021)

+1 CC to M/s.I.ROBERT CHANDRAKUMAR, Advocate (SR-19183[F] dated 11/06/2021)

Judgement made
in CMA(MD)No.2058 of 2013
and
Cross Objection(MD)No.14 of 2018
09.06.2021

sss(CO)
TR(26.07.2021) 7P 7C