



C.M.A.2497 of 2014 & C.M.A.No.405 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 31.01.2023	Pronounced on 13.02.2023
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.2497 of 2014 & 405 of 2020

and

C.M.P.No.2458 of 2020

C.M.A.Nos.2497 of 2014

1.K.Ellappan, aged 42, S/o.Kuppan
2.Maragadam, aged 40, D/o.Kuppan
3.Vanamayil, aged 38, D/o.Kuppan
all are residing at
No.6, Pillaiyar Koil Street,
Poonamallee, Chennai 56.

... Appellants

Vs.

1.ATH Leader Fabric

2.United India Insurance Company Ltd.,
Chennai 93.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 11.07.2012 made in MCOP.No.500 of 2009, on the file of the Motor Accident Claims Tribunal (II Addl. District Court) Poonamallee.



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C.M.A.2497 of 2014 & C.M.A.No.405 of 2020

For Appellants

: Mr.Ma.P.Thangavel

For Respondents

: Mr.P.Sankaranarayanan (for R2)

R1 - No appearance

C.M.A.No.405 of 2020

United India Insurance Co. Ltd.,
Divisional Office,
No.48, Arcot Road,
Saligramam, Chennai 600 093.

... Appellant

Vs.

1.K.Ellappan

2.Maragadam

3.Vanamayil

Respondents 1 to 3 are residing at
New No.6, Pillaiyar Koil Street,
Poonamallee,
Chennai 600 056.

4.ATH Leader Fabirc,
Kathvadi Road,
Melvisharam,
Vellore District.
Tamil Nadu 632 509.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 11.07.2012 in M.A.C.T.O.P.No.500 of 2009, on the file of the Motor Accident Claims Tribunal, II Addl. District Court,



C.M.A.2497 of 2014 & C.M.A.No.405 of 2020

Thiruvallur at Poonamallee.

For Appellant : Mr.P.Sankaranarayanan

For Respondents : Mr.Ma.P.Thangavel (for R1 to R3)

R4 – No appearance

COMMON JUDGMENT

These Appeals have been filed against the Decree and Judgment dated 11.07.2012 made in MCOP.No.500 of 2009, on the file of the Motor Accident Claims Tribunal (II Addl. District Court), Poonamallee.

2.CMA.No.2497 of 2014 has been filed by the claim Petitioners, seeking enhancement of compensation and CMA.No.405 of 2020 has been filed by the Insurance Company on the point of liability.

3.For the sake of convenience, the parties are referred to as per their ranking before the trial Court. The Factum and manner of the accident are not under challenge.



C.M.A.2497 of 2014 & C.M.A.No.405 of 2020

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4.During the trial, on the side of the claim Petitioner, PW1 & PW2 were examined, Ex.P1 to Ex.P.8 were marked and on the side of the Respondents, RW1 was examined and Ex.R.1 to Ex.R.4 were marked.

5.Heard the learned counsel for the claim Petitioners and the learned counsel for the Insurance Company .

6.MCOP.No.500 of 2009 was filed by the legal representatives of the deceased/Kuppan, who died in a road traffic accident on 19.12.2008. To prove the rash and negligence on the part of the driver of the insured vehicle, PW2, who is the occurrence witness was examined and Ex.P.1 to Ex.P.5 were marked. After trial, the Tribunal has fixed the total compensation at Rs.3,01,000/-, with 7.5% per annum.

7.At the time of the accident, the deceased was working as a coolie and hence, this Court re-fixes the notional income at Rs.6,500/- per month and since the deceased was aged about 60 years, at the time of the accident, as per the Constitution Bench's judgment of the Hon'ble Apex Court in the case of



C.M.A.2497 of 2014 & C.M.A.No.405 of 2020

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National Insurance Company Limited V. Pranay Sethi and others, reported in **2017 (2) TN MAC 609 (SC)**, 10% has to be added towards future prospects and as per the judgment of the Hon'ble Apex Court in the case of **Sarla Verma & Others .Vs. Delhi Transport Corporation & another**, reported in **2009 (2) TNMAC 1 (SC)**, proper multiplier is "9". There are three persons in the family of the deceased and hence, 1/3rd has to be deducted towards personal expenses of the deceased. Accordingly, the pecuniary loss sustained by the claim Petitioner is hereby re-assessed as follows:

$$\text{Rs.6,500/-} + 10\% \text{ of } 6500 = \text{Rs.7,150/-}$$

$$\text{Rs.7,150/-} \times 12 \times 9 \times \frac{2}{3} = \text{Rs.5,14,800/-}$$

8.The claim Petitioners as children of the deceased are entitled to Rs.40,000/- each towards loss of love and affection, a sum of Rs.15,000/- is awarded towards transportation, a sum of Rs.15,000/- is awarded towards funeral expenses and a sum of Rs.15,000/- is awarded towards loss of estate.

S.No.	Head	Amount (Rs.)
1	Pecuniary loss	514800
2	Loss of love and affection 40000 x 3	120000
3	Transportation	15000



C.M.A.2497 of 2014 & C.M.A.No.405 of 2020

S.No.	Head	Amount (Rs.)
4	Funeral expenses	15000
5	Loss of Estate	15000
	Total Compensation	679800

In total, the claim Petitioners are entitled to a sum of Rs.6,79,800/- (Rupees six lakh seventy nine thousand and eight hundred only) and the interest awarded by the Tribunal at the rate of 7.5% per annum is hereby confirmed.

9.The Insurance Company draw my attention to the evidence of RW1 and Ex.R3/D.L.Extract to show that the driver of the offending vehicle does not possess valid driving license at the time of the accident, which leads to violation of policy condition and prayed to order pay and recover.

10. A perusal of Ex.P.7/Copy of driving license and Ex.R.3/D.L. Extract issued by the Public Information Officer, Regional Transport Office, Vellore, reveals the following:

Name of the License holder	:	Mr.S.Afroze
Date of birth of the License holder	:	20.03.1981
Date of issuance of license	:	18.09.2000
Date of expiry of license	:	17.09.2020



C.M.A.2497 of 2014 & C.M.A.No.405 of 2020

Vehicle authorized to drive : Light Motor Vehicle

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As per the above details, on the date of the accident ie., 19.12.2008, the driver of the offending vehicle is having driving license, but he is having the same for driving a Light Motor Vehicle only and not TATA Ace lorry, which is the insured vehicle and hence, at the time of the accident, the driver of the offending vehicle is not having valid badge to drive TATA Ace lorry, which is the violation of policy condition. Therefore, following the judicial decisions made by the Apex Court in various cases, pay and recover is ordered and hence, the Insurance Company is required to pay the award amount and recover the same from the owner of the vehicle.

11. In fine,

(i) these Civil Miscellaneous Appeals are partly allowed, enhancing the award amount from Rs.3,01,000/- to Rs.6,79,800/-, to the extent indicated above. No Costs. Consequently, connected Miscellaneous Petition is also closed.

(ii) the Insurance company is directed to deposit the enhanced award amount of Rs.6,79,800/-, with interest and costs before the Tribunal, within a period of



C.M.A.2497 of 2014 & C.M.A.No.405 of 2020

eight weeks from the date of receipt of a copy of this order, and recover the same from the owner of the vehicle.

(iii) on such deposit being made, the claim Petitioners are entitled to get their share, as per the ratio of apportionment made by the Tribunal. The claim Petitioners are permitted to withdraw their entire share with proportionate interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal.

(iv) the claim Petitioners are directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

13.02.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

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C.M.A.2497 of 2014 & C.M.A.No.405 of 2020

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The Motor Accident Claims Tribunal ,
II Additional District Court,
Poonamallee.



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C.M.A.2497 of 2014 & C.M.A.No.405 of 2020

RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

C.M.A.Nos.2497 of 2014 & 405 of 2020

and

C.M.P.No.2458 of 2020

Dated:13.02.2023