BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.01.2023

Pronounced on : 28.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)Nos.1173 and 1409 of 2011

C.M.A(MD)No.1173 of 2011

1.Ponuthayee
2.Karupasamy
3.Muniasamy
4.Minor.Indira
5.Minor.Panchavarnam
6.Minor.Vadivel
7.Minor.Suriyakala

(The 1st Appellant is filing
this appeal for herself and as a
natural guardian of Appellant Nos.4 to 7) ... Appellant / Claimants

Vs.

1.Vijaya Ramu

2.The Branch Manager,
Solamandalam MS General Insurance Company,
2nd Floor, Alangal Building,
No.551, B.B.Road, R.S.Puram,
Kovai. ... Respondents 1 and 2 / Respondents 1 and 2

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the fair and decreetal order passed by the Motor Vehicle Accident Claims Tribunal / Sub-Court, Arupukottai in M.A.C.O.P.No.22 of 2006 dated 02.04.2007 and allow this Civil Miscellaneous Appeal.

C.M.A(MD)No.1409 of 2011

1.Mallika
2.Minor Muniyaaye @ Muneeswaran
3.Minor. Muniasamy
4.Minor.Kasthur
5.Minor.Murugavalli

(The 1st Appellant is filing
this appeal for herself and as a
natural guardian of Appellant Nos.2 to 5) ... Appellant / Claimants

Vs.

1.Vijaya Ramu

2.The Branch Manager,
Solamandalam MS General Insurance Company,
2nd Floor, Alangal Building,
No.551, B.B.Road, R.S.Puram,
Kovai. ... Respondents 1 and 2 / Respondents 1 and 2

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the fair and decreetal order passed by the Motor Vehicle Accident Claims Tribunal / Sub-Court, Arupukottai in M.A.C.O.P.No.21 of 2006 dated 02.04.2007 and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.M.Jothi Basu

For R1 : Mr.A.Saravanan

For R2 : Mr.S.Srinivasa Raghavan

(in both CMAs)

COMMON JUDGMENT

C.M.A(MD)No.1173 of 2011 is filed against the judgment and decree passed in M.C.O.P.No.22 of 2006 on the file of the Special Sub Judge, Aruppukottai. The appellants are the claimants. Respondents are the respondents in the claim petition.

2.C.M.A(MD)No.1409 of 2011 is filed against the judgment and decree passed in M.C.O.P.No.21 of 2006 on the file of the Special Sub Judge, Aruppukottai. The appellants are the claimants. Respondents are the respondents in the claim petition.

3.Brief substance of the claim petition is as follows:

On 02.08.2005, at about 10.30 a.m., one Muthumani and Muniyasami travelled in a vehicle bearing registration number TN 65 E 2939 has a loadman. The driver of the vehicle drove the vehicle in a rash and negligent manner and capsized the vehicle. Both the loadmen Muthumani and Muniyasamy sustained injuries and they died in the hospital. The claimants are the dependants and the claimant in M.C.O.P.No.22 of 2006 claimed a sum of Rs.6,00,000/- as compensation and the claimant in M.C.O.P.No.21 of 2006 claimed a sum of Rs.6,00,000/- as compensation.

4.Brief substance of the counter filed by the second respondent in both the cases is as follows:

The vehicle was permitted to carry only two passengers including the driver. At the time of accident, 11 persons travelled in the vehicle which is against the policy conditions. The vehicle involved in the accident, is a goods carrier. The deceased were unauthorized passengers and the claimants are not entitled to claim compensation. The manner of accident as narrated in the petition, is denied. The accident did not happen due to the rash and negligent driving of the auto driver. The age, profession and income of the deceased are all denied.

5.In both the cases, a joint trial was conducted and a common judgment was pronounced by the Tribunal. In the common trial, three witnesses were examined and five documents were marked on the side of the petitioner. Two witnesses were examined and two documents were marked on the side of the respondent. The Tribunal has awarded a sum of Rs.2,27,000/- as compensation in each of the claim petition.

6.Against the award, both the claimants preferred there appeals on the following grounds:

The Tribunal failed to consider that it is not easy to receive compensation from the owner of the vehicle. The Tribunal failed to consider that the policy was in force. The driver of the vehicle is having valid driving licence. It was the owner of the vehicle who allowed the driver to carry more number of passengers in the vehicle. The insurance company failed to prove the clause in which the policy was violated. The Motor Vehicles Act is a beneficial legislation.

7.On the side of the appellant it is stated that both the deceased travelled as load men. They were not unauthorized passengers. P.W.3 was examined as an eye witness who deposed that both the deceased travelled as loadmen. On the side of the appellant it is stated that in the FIR, charge sheet and in the evidence of P.W.1 and P.W.2, it is clearly stated that the deceased travelled only as a load men. On the side of the respondent it is stated that there is no proof that both the deceased travelled as load men.

8.On the side of the appellant it is stated that the deceased who travelled as an employee under the owner, is not an unauthorized passenger. A judgment of this Court reported in **2019 (2) TNMAC 92** , in the case of **Papathi Vs P.Velumani, and others**, is cited, wherein it is held as follows:

> *"Tribunal failed to consider material on record in proper perspective and erroneously dismissed claim as against Insurer - Insurer liable in respect of deceased, who travelled as an Employee under Owner and not as an unauthorized passenger - Setting aside Order of Tribunal, Insurer directed to pay Award amount within period of 6 weeks."*

9.From the evidence of P.W.1 and 3, it is decided that both the deceased have travelled only as load men and they were not unauthorized passengers.

10.On the side of the respondent it is stated that only one passenger along with the driver was permitted to travel in the vehicle. P.W.1 to P.W.3 have deposed that seven persons travelled in the vehicle at the time of accident and that when there is no seating capacity, a person travelling in a cargo area in the vehicle, is not entitled to compensation.

11.On the side of the respondent a judgment of this Court reported in **2012 (1) TNMAC 89** in the case of **Royal Sundram Alliance and others Vs. Ayyakannu and others,** is cited, wherein it is held as follows:

> *"10.Rule 236 provides that no person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation."*

12.On the side of the appellant it is stated that if at all there is any violation, the insurance company is to be directed to pay compensation at the first instance and the insurance company may be permitted to recover the same from the owner of the vehicle. A judgment of the Hon'ble Supreme Court reported in **2019 SAR Civil 33** in the case of **Shivaraj Vs Rajendra and another**, is cited.

13.On the side of the appellant it is stated that carrying extra passengers in a vehicle and when the liability of the insurance company is limited to a number of persons covered by the policy, the owner is to be held liable to pay for the extra passengers and the insurance company should be directed to deposit the total compensation award to all the claimants and to recover the extra amount from the owner of the vehicle. A judgment of the Hon'ble Supreme Court reported in **2011 (4) MLJ 710(SC)** in the case of **United India Insurance Co. Ltd., Vs K.M.Poonm and Others,** is cited, wherein it is held that,

> *"Liability of insurer towards third parties - Accident causing injuries and death - Carrying passengers in excess in vehicle - Breach of policy terms - Liability of insurer limited to number of person covered by insurance policy - Owner held liable for paying other passengers in excess - Insurer directed to deposit total compensation awarded to all claimants and recover the amount in*

excess of its liability from owner of vehicle."

14.A similar judgment of this Court reported in **2013(1) TN MAC 850** in the case of **Senior Divisional Manager, United India Insurance Co.Ltd., Vs Ajay Bihani**, is cited, wherein it is held that,

> *"Insurance Policy only for 12 persons + one driver - No Insurance coverage for excess passengers - 13 claims already satisfied by Insurer - Whether Insurer liable to pay compensation in respect of excess claims - Though liability of Insurer confined to 13 persons, excess person to be treated as third parties - And, Insurer liable to pay in respect of such person and recover same from owner."*

15.On the side of the insurance company it is stated that there is no insurance coverage for two persons and that premium was paid only for one person and that the insurance company is to be exonerated from the liability. The copy of the policy was marked as Ex.R2.

16.On the side of the claimants, it is stated that when more passengers were carried in a vehicle, against the permitted capacity, the insurer may be directed to deposit the amount in a lumpsum and the amount so deposited may be directed to be distributed to all the claimants and the claimants can recover the same. A judgment of the Hon'ble Supreme Court reported in **2007(2) TN MAC 193 (SC)** in the case of **National Insurance Co.Ltd Vs Anjana Shyani and others,** is cited.

17.On the side of the claimant, it is stated that the claimants are ready to share the amount to be deposited by the insurance company proportionately and that they are ready to recover the balance from the owner of the vehicle.

18.Admittedly, more number of persons travelled in the goods carrier against the permitted capacity. There was insurance coverage for one person and the driver. Since two persons alone have filed claim petitions to meet the ends of justice, the insurance company is held liable to pay the compensation amount for one person that is for the claimants in C.M.A(MD)No.1409 of 2011 (M.C.O.P.No.21 of 2006) and the owner of the vehicle is held liable to pay compensation for another person that is for the claimants in C.M.A(MD)No.1173 of 2011 (M.C.O.P.No.22 of 2006)

19.On the side of the appellants it is stated that the monthly income of both the deceased is to be fixed as Rs.6000/- per month each. P.W.1 and P.W. 2 have deposed that the income of both the deceased is Rs.4,000/- per month. Considering the notional income prevailing at the time of accident and considering the evidence of P.W.1 and P.W.2 it is decided that both the deceased were getting a salary of Rs.4000/- per month each.

20.C.M.A(MD)No.1173 of 2011:

(i)The income of the deceased Muniyasamy is fixed as Rs.4,000/- per month. After deducting 1/3 for his own expenses, he might have contributed Rs.2667/- to his families. The age of the deceased Muniyasamy, as per Ex.A5 - Post Mortem Report, is 45 years. Hence, multiplier 14 is applicable. After applying multiplier 14, the loss of income is calculated as Rs.4,48,056/-(2667 x 12 x 14).

(ii)The Tribunal has awarded Rs.50,000/- for claimants 2 to 7 for loss of love and affection, Rs.25,000/- for the first claimant towards loss of consortium. The Tribunal has awarded Rs.2,000/- towards funeral expenses which are all excessive. As per the dictum of the Hon'ble Supreme Court, the claimants are entitled to Rs.70,000/- towards conventional charges. Including the conventional charges, the claimants are entitled to **Rs.5,18,056/-** (448056

+ 70000) as compensation.

21.C.M.A(MD)No.1409 of 2011:

(i)The income of the deceased Muthumani is fixed as Rs.4,000/- per month. After deducting 1/3 for his own expenses, he might have contributed Rs.2667/- to his families. The age of the deceased Muthumani, as per Ex.A4, Post mortem Report is 40 years. Hence multiplier 15 is applicable. After applying multiplier 15, the loss of income is calculated as Rs.4,80,060/- (2667 x 12 x 15).

(ii)The Tribunal has awarded Rs.40,000/- for each of the claimants 2 to 5 towards loss of love and affection, Rs.25,000/- to the first claimant towards loss of consortium, Rs.2,000/- towards funeral expenses, which are all excessive. As per the decision of the Hon'ble Supreme Court in Pranay Sethi case, the claimants are entitled to Rs.70,000/- towards conventional charges. In total, the claimants are entitled to **Rs.5,50,060/-** (480060 + 70000) as compensation.

22.The insurance company is directed to deposit the award amount passed by this Court in C.M.A.(MD)No.1409 of 2011 and the owner of the vehicle is directed to pay the award amount passed by this Court in C.M.A.(MD)No.1173 of 2011.

23.Accordingly, C.M.A(MD)No.1173 of 2011 (M.C.O.P.No.22 of 2006), is allowed.

(i)The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,27,000/- to **Rs.5,18,056/-(Rupees Five Lakhs Eighteen Thousand and Fifty Six only)** which shall carry an interest of 7.5% per annum from the date of filing of the petition till the date of deposit with costs.

(ii)The **first respondent / owner of the vehicle** is directed to deposit the compensation amount i.e., **Rs.5,18,056/-(Rupees Five Lakhs Eighteen Thousand and Fifty Six only)** (less the amount already deposited) together with proportionate interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with proportionate cost to the credit of M.C.O.P.No.22 of 2006 dated 02.04.2007 on the file of the Motor Accident Claims Tribunal cum

Subordinate Court, Aruppukottai, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) The appellant is directed to pay additional Court fee for the enhanced amount within a period of three weeks from the date of receipt of a copy of this order;

(iv) On such deposit being made, **the first appellant / first claimant** is entitled to a share of **Rs.2,18,056/- (Rupees Two Lakhs Eighteen Thousand and Fifty Six only)**, with proportionate interest and costs and the **second and third appellants / second and third claimants** are entitled to a share of **Rs.50,000/- (Rupees Fifty Thousand only)each with** proportionate interesst after following the due process of law, less any amount already received by him.

(v) The **respondents 4 to 7/claimants 4 to 7 (minors)** herein are entitled to a share of **Rs.50,000/- (Rupees Three Lakhs only)each**, with proportionate interest, which is ordered to be deposited in any one of the nationalized bank until they attain majority and the first appellant / claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

(vi) The appellants are not entitled for any interest for the default period, if there is any.

24.Accordingly, C.M.A(MD)No.1409 of 2011 (M.C.O.P.No.21 of 2006), is partly allowed.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,27,000/- to **Rs.5,50,060/-(Rupees Five Lakhs Fifty Thousand and Sixty only)** which shall carry an interest of 7.5% per annum from the date of petition till the date of deposit and with costs.

(ii) The **second respondent / Insurance Company** is directed to deposit the compensation amount i.e., **Rs.5,50,060/-(Rupees Five Lakhs Fifty Thousand and Sixty only)** (less the amount already deposited) together with proportionate interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with proportionate costs to the credit of M.C.O.P.No.21 of 2006 dated 02.04.2007 on the file of the Motor Accident Claims Tribunal cum Subordinate Court, Aruppukottai, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) The appellant is directed to pay additional Court fee for the enhanced amount within a period of three weeks from the date of receipt of a copy of this order;

(iv) On such deposit being made, **the first appellant / first claimant** is entitled to a share of **Rs.3,50,060/- (Rupees Three Lakhs Fifty Thousand and Sixty only)**, with proportionate interest and with costs, after following the due process of law, less any amount already received by him.

(v) The **respondents 2 to 5/claimants 2 to 5 (minors)** herein are entitled for an amount of **Rs.50,000/- (Rupees Three Lakhs only)<u>each</u>**, with proportionate interest, which is ordered to be deposited in any one of the nationalized bank until they attain majority and the first appellant/claimant is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

(vi) The appellants are not entitled for interest for the default period, if there is any.

28.04.2023

NCC: Yes / No
Index: Yes / No
Internet : Yes / No
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To

1.The Motor Accident Claims Tribunal cum Sub-Court, Arupukottai.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

R.THARANI, J.

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Pre - Delivery Judgment made in
C.M.A(MD)Nos.1173 and 1409 of 2011

28.04.2023