



C.M.A.(MD) Nos.834 and 835 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD) Nos.834 and 835 of 2017

and

C.M.P(MD) No.2626 of 2019 in C.M.A(MD) No.835 of 2017

In C.M.A.(MD) No.834 of 2017:

V.Pandi

S/o.Viswanathan

... Appellant/Petitioner

-vs-

1. M.Pandiyarajan

2. Shriram General Insurance Company Ltd.,
Represented through its Manager,
30 HAK Road, Ground Floor,
Near ICICI Bank Ltd.,
Chinna Chokkikulam,
Madurai – 625 002.

3. M.Eswaran

4. The Manager,
Tata AIG General Insurance Company Ltd.,
Through its Manager,
A.A.Tower, Aparna Tower,
Byepass Road,
Madurai.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 (1) of Motor Vehicles Act, against the judgment and decree passed in M.C.O.P.No.100 of



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2011 on the file of the I Additional District Court (Motor Accident Claim Tribunal), Madurai, dated 28.03.2017.

For Appellant : Mr.C.Vakeeswaran

For Respondents : Mr.D Sivaraman– for R2
: Mr.B.Vijayakarthiskeyan – for R4
: No appearance – for R1 and R3

In C.M.A.(MD) No.835 of 2017:

P.Pandi

S/o.C.Paulsamy

... Appellant/Petitioner

-vs-

1. M.Pandiyarajan

2. Shriram General Insurance Company Ltd.,
Represented through its Manager,
30 HAK Road, Ground Floor,
Near ICICI Bank Ltd.,
Chinna Chokkikulam,
Madurai – 625 002.

3. M.Eswaran

4. The Manager,
Tata AIG General Insurance Company Ltd.,
Through its Manager,
A.A.Tower, Aparna Tower,
Bypass Road,
Madurai.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 (1) of Motor Vehicles Act, against the judgment and decree passed in M.C.O.P.No.101 of 2011 on the file of the I Additional District Court (Motor Accident Claim Tribunal), Madurai, dated 28.03.2017.



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For Appellant : Mr.C.Vakeeswaran

For Respondents : Mr.D Sivaraman– for R2
: Mr.B.Vijayakarthiskeyan – for R4
: No appearance – for R1 and R3

COMMON JUDGMENT

Both the appeals have been filed by the claimant arising out of award passed by the Motor Accidents Claims Tribunal/I Additional District Court, Madurai, in M.C.O.P.Nos. 100 and 101 of 2011 seeking to shift the liability upon the Insurance Company and also for enhancement of the award amount.

2. One M.Panchavarnam and V.Pandi have travelled in a Matador van on 06.06.2010 at about 05.30.p.m., after attending Cinema outdoor shooting at Kazhukarkadai division. Due to the rash and negligent driving on the part of the driver of the two wheeler which was coming from the opposite direction, the driver of the Matador Van lost his control and capsized on the right side of the road. In the said accident, one of the occupant viz., M.Panchavarnam had passed away and the other occupant viz., V.Pandi sustained grievous injuries. The legal heirs of the Panchavarnam viz., son of Panchavarnam had filed M.C.O.P.No.100 of 2011 seeking a compensation of



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Rs.4,00,000/- (Rupees Four Lakhs only). The injured claimant viz., V.Pandi had filed M.C.O.P.No.101 of 2011 seeking a compensation of Rs.2,00,000/- (Rupees Two Lakhs only).

3. The Insurance Company of the bike which is said to have crossed the Matador van had filed a counter contending that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Matador Van. The Insurance Company of the Matador Van had filed a counter contending that the deceased Panchavarnam and the injured V.Pandi have travelled as unauthorized persons in a goods carriage and therefore, they are not liable to pay any compensation.

4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the Matador Van, in which, the deceased and the injured claimant have travelled. The Tribunal proceeded to hold that the deceased as well as the injured claimant have travelled as a gratuitous passengers and therefore, the Insurance Company is not liable to pay any compensation.



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5. The Tribunal had fixed the compensation at Rs.1,25,000/- (Rupees One Thousand and Twenty Five Thousand only) for the claimant in M.C.O.P.No.100 of 2011 and a sum of Rs.1,46,991/- (Rupees One Lakh Forty Six Thousand Nine Hundred and Ninety one only) for the injured claimant in M.C.O.P(MD) No.101 of 2011. Challenging the said award the present appeals have been filed by the claimants seeking to shift the liability upon the Insurance Company and for enhancement of compensation.

6. The learned counsel appearing for the appellant after relying upon Rule 236 of the Tamil Nadu Motor Vehicle Rules had contended that there is no prohibition for travelling on the top of the Motor Vehicle, in case permission has been granted by the Transport Authorities. In fact, the Rules provide for travelling of passengers in a goods vehicle if in the sitting position, height does not exceed 300 c.m from the road level. Therefore, the deceased as well as the injured claimant can never be considered the gratuitous passengers. Since the rules provide for travelling on the top of the vehicle, he prayed for setting aside the award of the Tribunal with regard to the exoneration of the Insurance Company and shift the liability upon the



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Insurance Company.

7. The learned counsel appearing for the appellant had further contended that in M.C.O.P.No.100 of 2011, the notional income is of the year 2011, the deceased was aged about 55 years and notional income can be taken at Rs.3,000/- (Rupees Three Thousand only) per month and the award should have been passed like in any other death case. However, only a sum of Rs.50,000/- (Rupees Fifty Thousand only) has been awarded towards loss of estate, love and affection and another sum of Rs.50,000/- (Rupees Fifty Thousand only) under no fault liability clause and a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards funeral expenses and transport expenses without following the multiplier method. Hence, he prayed for enhancement of compensation and for awarding compensation under the conventional heads.

8. The learned counsel appearing for the appellant had further contended that in M.C.O.P.No.101 of 2011, no amount has been paid either towards attendar charges, transport expenses or towards extra nourishment, especially, when the injured claimant was hospitalized for more than three



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weeks. Hence, he prayed for enhancement of the award under the above said heads.

9. Per contra, the learned counsel appearing for the respondents 2 and 4/Insurance Company contended that even as per the claim petition, the deceased as well as the injured claimant have travelled as a gratuitous passengers in a goods carriage. Therefore, the policy does not cover for the said gratuitous passengers and hence, the question of invoking the principle of pay and recovery would not arise. When the owner of the Matador van had taken the claimant in violation, without any insurance coverage, any compensation amount that is fixed by the Court has to be paid only by the owner of the Matador Van.

10. Though the owner of the Matador van has been served he had not chosen to appear either in person or through counsel.

11. I have carefully considered the submissions made by the learned counsel for the appellant and the learned counsel for the respondents 2 and 4 and perused the materials on record.



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12. A perusal of the claim petition indicates that the deceased Panchavarnam and injured V.Pandi had travelled in a goods carriage as gratuitous passengers. Though the learned counsel for the appellant had relied upon Rule 236 of Tamil Nadu Motor Vehicles Rules, it permits only the travelling of the loadman or the owner or authorized representative of the goods. If any other person would like to travel on the top of the vehicle, the prior permission has to be obtained from the RTO officials. Admittedly, in the present case, no such permission has been obtained.

13. The Hon'ble Division Bench of this Court in a judgment reported in **2018 (2) TANMAC 731 (Bharati Axa General Insurance Company Limited vs. Aandi and two others)** has categorically held that as far as the gratuitous passengers in a goods vehicle are concerned, the insurer is not liable to pay any compensation and therefore, they cannot be directed to pay and recover. In view of the categorically pronouncement of the judgment of the Hon'ble Division Bench, this Court is not inclined to accept the contention of the learned counsel for the appellant for shifting the liability upon the Insurance Company.



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14. As far as the quantum is concerned, the Tribunal has not applied the multiplier method in the case of death of one Panchavarnam in M.C.O.P.No. 100 of 2011. Therefore, this Court is inclined to follow the multiplier method and fix the compensation as follows:

(i) The notional income of the deceased person who is said to be an agricultural coolie and vegetable vendor can be fixed at Rs.3,000/- (Rupees Three Thousand only) and adding 10% towards future prospects as monthly income would be at Rs.3,300/- and applying multiplier of “11”, the annual income total compensation would be at Rs.4,35,600/- (Rupees Four Lakhs Thirty Five Thousand and Six Hundred only) after deducting 1/3rd towards personal expenses the compensation under the head of loss of income would be at Rs.2,90,400/- (Rupees Two Lakhs Ninety Thousand and Four Hundred only).

15. Therefore, this Court is inclined to modify the award as follows:-

Loss of income	: Rs.2,90,400/-
Loss of estate	: Rs. 15,000/-
Loss of love and Affection	: Rs. 40,000/-
Funeral Expenses	: Rs. 15,000/-



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Transport Expenses : Rs. 10,000/-

Total : **Rs.3,70,400/-**

Therefore the award of the Tribunal is modified from Rs.1,25,000/- to Rs.3,70,400/- (Rupees Three Lakhs Seventy Thousand and Four Hundred only).

16. As far as the quantum of compensation in M.C.O.P.No.101 of 2011 is concerned, the Tribunal has not awarded any amount for attendar charges, transportation expenses and extra nourishment. This Court is inclined to award a sum of Rs.5,000/- towards attendar charges, a sum of Rs.5,000/- towards Transport Expenses and a sum of Rs.5,000/- towards extra nourishment. Therefore, the award of the Tribunal is modified as follows:

Loss of income : Rs.45,000/-

Medical Expenses : Rs.46,991/-

Future Medical Expenses : Rs.25,000/-

Pain and suffering : Rs.15,000/-

Loss of expectation of life : Rs.15,000/-

Attendar charges : Rs. 5,000/

Transport charges : Rs.5,000/-



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Extra Nourishment : Rs.5,000/-

Totally : **Rs.1,61,991/-**

Therefore, the award of the tribunal is enhanced from Rs.1,46,991/- to Rs.1,61,991/- (Rupees One Lakh Sixty One Thousand Nine Hundred and Ninety One only)

17. In view of the above said deliberations, this Court is inclined to pass the following order:

(i) In M.C.O.P.No.100 of 2011 the compensation amount is enhanced from Rs.1,25,000 to Rs.3,70,400/- (Rupees Three Lakhs Seventy Thousand and Four Hundred only) and the award amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

(ii) In M.C.O.P No.101 of 2011 the compensation award amount is enhanced from Rs.1,46,991/- to Rs.1,61,991/- (Rupees One Lakh Sixty One Thousand Nine Hundred and Ninety one only) and the award amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

(iii) in other respects, the award of the Tribunal in both the claim petitions stand confirmed.



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18. Accordingly, both the Civil Miscellaneous Appeals stand partly allowed to the extent as stated above. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

28.06.2023

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

1. The I Additional District Court,
(Motor Accident Claim Tribunal),
Madurai,
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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