IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.Nos.619 and 620 of 2023 and
C.M.P.Nos.5107 and 5109 of 2023

C.M.A. No.619 of 2023

Cholamandalam MS General Insurance Company Limited
II Floor, Shaw Wallace Building,
154, Thambu Chetty Street
Parry's Corner, Chennai 600 001. ... Appellant

vs.

1. M. Arokkiyam
2. John Kennedy
3. A. Sophia Mary
4. A. Joisy
5. Sebasthiyan ... Respondents

C.M.A. No.620 of 2023

Cholamandalam MS General Insurance Company Limited
II Floor, Shaw Wallace Building,
154, Thambu Chetty Street
Parry's Corner, Chennai 600 001. ... Appellant

vs.

1. Kanikkaimary
2. Minor S. Salethbenita
3. Minor S. Margiret
4. Minor S. Jerome

5. Sebasthiyan ... Respondents

PRAYER in C.M.A.No.619 of 2023: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 21.12.2021 in M.C.O.P.2192/2017 on the file of the Principal Subordinate Court, Motor Accident Claims Tribunal, Cuddalore.

PRAYER in C.M.A.No.620 of 2023: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 21.12.2021 in M.C.O.P.2191/2017 on the file of the Principal Subordinate Court, Motor Accident Claims Tribunal, Cuddalore.

Appearance in both the appeals

For Appellant	: Ms.C.Harini
For R1 to R4	: Mrs. Ramya V. Rao
R5	: No appearance.

COMMON JUDGMENT

The appellant, the Cholamandalam MS General Insurance Company Limited, Chennai is the second respondent in M.C.O.P. No.2191/2017 and M.C.O.P. No.2192/2017 on the file of the Principal Subordinate Court, Motor Accident Claims Tribunal, Cuddalore.

2. The respondents 1 to 4 in both the appeals filed the claim petitions in M.C.O.P. No.2191/2017 and M.C.O.P. No.2192/2017 under Section 166(3) of the Motor Vehicles Act seeking compensation of

Rs.15,00,000/- each for the death of one Sengolrayar (M.C.O.P.2191/2017) and Alangaramary @ Rani (M.C.O.P.2192/2017) in a road accident that occurred on 28.09.2015.

3. According to the claimants Sengolrayar and Alangaramary @ Rani (since deceased) were travelling in a TATA Ace Goods Vehicle bearing Registration No.TN-48-U-1908 on Vridhachalam-Jayankondam Main Road. The driver of the vehicle drove the same in a rash and negligent manner as a result of which the vehicle capsized resulting in the instantaneous death of Sengolrayar and Alangaramary @ Rani.

4. According to the claimants, the accident took place due to the rash and negligent driving of the driver of the TATA Ace Goods Vehicle bearing Registration Number TN-48-U-1908 and that since the said vehicle was insured with the present appellant, the Cholamandalam MS General Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to them.

5. In the Tribunal, the owner of the TATA Ace Goods Vehicle remained absent and was set *exparte*. The appellant/Insurance Company resisted the claim petitions on all the grounds available to the insurer under Section 170 of the Motor vehicles Act.

6. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the TATA Ace Goods Vehicle bearing Registration number Number TN-48-U-1908. However, since the driver of the said vehicle did not have a valid driving license on the date of accident, the Tribunal directed the appellant Insurance Company to pay compensation to the claimants, as stated below, together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first instance, and then recover the same from the first respondent, the owner of the vehicle, under the same cause of action, vide its orders dated 21.12.2021.

MCOP No.	***Award amount***
2191/2017	14,77,900/-
2192/2017	14,77,900/-

7. Questioning the liability to pay compensation, the present appeals have been filed by the by the Cholamandalam MS General Insurance Company Limited.

8. Heard Ms.C. Harini, learned counsel for the appellant and Mrs.Ramya V Rao, learned counsel for the respondents 1 to 4 in both the appeals.

9. Ms. C.Harini, learned counsel for the appellant Insurance Company contended that the seating capacity in the TATA Ace Goods vehicle is two including the driver and that the Insurance policy covers only the owner and the driver of the vehicle. It is her further contention that admittedly both the deceased were travelling along with six others in the load area of the vehicle with the goods and in the circumstances, the Tribunal was wrong in directing the Insurance Company to pay the Award in the first instance and then recover the same from the owner of the vehicle. She also relied on the decision of this Court in ***Royal Sundaram Alliance General Insurance Company Limited vs. P. Ayyakannu and***

others reported in MANU/TN/1344/2009 and contended that no person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation and that in the instance case both the deceased were travelling in the load area and therefore the Insurance Company is not liable to pay compensation. She therefore, prayed for setting aside the order of the Tribunal.

10. Per contra, Mrs. Ramya V Rao learned counsel for the respondents/claimants in both the appeals contended that the deceased were actually travelling as owners of the goods and therefore, they are entitled to claim compensation from the appellant Insurance Company. She, therefore, prayed for dismissal of the present appeals.

11. A perusal of the records shows that around 8 persons were travelling in TATA Ace Goods vehicle and Sengolrayar and Alangaramary @ Rani died in the accident. A perusal of the Policy of Insurance (Ex.R3) shows that the insurance covers only the driver and the owner of the goods. In the decision in ***Royal Sundaram Alliance General Insurance Company Limited vs. P. Ayyakannu and others***

(cited supra), it has been held thus:

> *"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, In the paragraph extracted above from Anjana Shyam's case, the Supreme Court held that Section 149 cannot be understood as imposing a liability on the insurere to make payment even in respect of those who have been loaded into the vehicle against the terms of the permit and against the terms of the condition of registration of the vehicle and that though the insurer is bound to cover the third party risks in respect of passengers, the risks can only be understood to mean risks of passengers authorized or permitted to be carried in the said vehicle. We are bound by this judgment and therefore, we hold that the insurer is liable to indemnify the liability only with regard to Ayyakannu who sat in the cabin of the vehicle and along with the driver and whose liability alone the insurer was bound to cover."*

In the instant case, two persons died and the Insurance Company can be directed to pay compensation only for one deceased since the seating capacity in the vehicle was two including the driver. A perusal of the records shows that in M.C.O.P. No.2191/2017 there are three minor claimants for the deceased Sengolrayar and therefore the Insurance Company can be directed to pay compensation to the claimants. As far as the claimants in M.C.O.P No.2192/2017 is concerned, the owner of the TATA Ace Vehicle is liable to pay compensation and the Insurance Company is absolved of its liability.

11.1 As far as the quantum of compensation awarded by the Tribunal is concerned, the Tribunal had followed proper multiplier as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121*** and awarded Rs.11,97,900/- towards loss of income. However, the Tribunal has awarded a sum of Rs.2,00,000/- towards loss of love and affection and Rs.40,000/- towards loss of consortium. This is not as per the dictum laid down by the Hon'ble Supreme Court of India in ***National Insurance Co.***

vs Pranay sethi and others reported in ***2017 (2) TNMAC 601.*** Therefore a sum of Rs.1,60,000/- (40,000 x 4), Rs.15,000/- and Rs.15,000/- for 'loss of Consortium', 'loss of Estate' and 'funeral Expenses' respectively are awarded as per the decision in ***National Insurance Co. vs Pranay sethi and others*** (cited supra).

12. The modified amount under the different heads in both the M.C.O.Ps are detailed hereunder:

S.No.	***Head***	***Amount granted by this court (Rs.)***
1.	Loss of dependency	11,97,900/-
2.	Loss of consortium	1,60,000/- (40,000x4)
3.	Funeral expenses	15,000/-
4.	Loss of Estate	15,000/-
	Total	13,87,000/-

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

13. In the result,

C.M.A. No.620/2023

i. The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently connected miscellaneous petition is closed.

ii. The quantum of compensation awarded by the Tribunal is scaled down to Rs.13,87,000/- from Rs.14,77,900/-.

iii. The appellant/Insurance company is directed to deposit a sum of Rs.13,87,000 /-with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order, to the credit of M.C.O.P.2191/2017 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Cuddalore.

iv. The modified compensation amount of Rs.13,87,000/-, is apportioned to the claimants as stated below:

Kanikkaimary (first claimant)	Rs.4,87,000/- with costs and interest
Minor. S. Salesthbenita (second claimant)	Rs.3,00,000/-
Minor S, Margiret (third claimant)	Rs.3,00,000/-
Minor S. Jerome	Rs.3,00,000/-

v. On such deposit being made, the first claimant is at liberty to withdraw her share as per the apportionment made by this Court, with costs and interest, after filing a proper petition for withdrawal. Since the claimants 2 to 4 are minors, their share, shall be deposited in a fixed deposit in any one of the Nationalised banks until they attain majority.

C.M.A. No.619/2023

i. The Civil Miscellaneous Appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.

ii. The order of the Tribunal is set aside.

iii. The quantum of compensation awarded by the Tribunal is scaled down to Rs.13,87,000/- from Rs.14,77,900/-.

iv. The owner of the TATA Ace Goods Vehicle, the fifth respondent herein, is liable to pay compensation of Rs.13,87,000/- to the claimants and is directed to pay the said amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order, to the credit of M.C.O.P.2192/2017 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Cuddalore.

v. On such deposit being made, the respondents 1 to 4/claimants are at liberty to withdraw their share as per the apportionment made by the Tribunal.

10.09.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
bga

To

1. Motor Accidents Claims Tribunal,
   Principal Subordinate Court, Cuddalore.
2. The Section Officer, VR Section, Madras High Court, Chennai.

R.HEMALATHA, J.

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