IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2887, 2888 and 2890 of 2019

and CMP Nos.15268, 15262 and 15263 of 2019

CMA No.2887 of 2019

Shriram General Insurance Co Ltd
II Floor, City Centre Complex,
66, Thirumala Pillai Road,
Near Vani Mahal, T.Nagar,
Chennai 600 017 ..Appellant/2nd respondent

versus

1. S.Prabakaran ..1st respondent /Petitioner

2. S.K.Sampathkumar ..2nd respondent /1st respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.791 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mrs.Ramya V Rao for R1

CMA No.2888 of 2019

Shriram General Insurance Co Ltd
II Floor, City Centre Complex,
66, Thirumala Pillai Road,
Near Vani Mahal, T.Nagar,

Chennai 600 017 ..Appellant/2nd respondent

versus

1. Palaniyammal ..1st respondent/1st petitioner

2. Jayakumar ..2nd respondent/2nd petitioner

3. E.Jayakodi ..3rd respondent/3rd petitioner

4. S.K.Sampathkumar ..2nd respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.793 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mrs.Ramya V Rao for R1 to R3

<u>CMA No.2890 of 2019</u>

Shriram General Insurance Co Ltd
II Floor, City Centre Complex,
66, Thirumala Pillai Road,
Near Vani Mahal, T.Nagar,
Chennai 600 017 ..Appellant/2nd respondent

versus

1. S.Gajendran ..1st respondent/1st petitioner

2. K.Dhanasundari ..2nd respondent/2nd petitioner

3. M.Kanimozhi ..3rd respondent/3rd petitioner

4. K.Pradeep ..4th respondent/4th petitioner

5. S.K.Sampathkumar ..2nd respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP No.792 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Court, Cuddalore.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mrs.Ramya V Rao for R1 to R4

COMMON JUDGMENTS

The Insurance company has filed the appeals, aggrieved by the award passed by the Motor Accident Claims Tribunal, Principal District Court, Cuddalore in MCOP No.791 to 793 of 2013 dated 06.03.2018 questioning its liability and quantum.

2. The case of the claimants is that on 30.12.2012 at about 18.15 hours when one Prasath was riding the Hero Honda Splendor + motorcycle bearing Reg. No. PY 01 BR 3601 with pillion riders viz., Jayaprakash and Prabakaran from south to north near Mariamman Koil, Cuddalore to Puducherry Main Road, the bus bearing Reg. No.PY 01 BR 6779 came from the opposite direction in a rash and negligent manner, dashed against the motorcycle, due to which, an accident had happened. As a result, one Prasath and Jayaprakash died on the spot. One

Prabakaran sustained fractures and grievous injuries all over the body. It is under these circumstances, a separate claim petitions came to be filed before the Tribunal seeking for payment of compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the bus. Having rendered such a finding, the Tribunal proceeded to determine the total compensation payable at Rs.6,74,700/-, 9,24,000/- and 6,98,000/- respectively under various heads. The Tribunal directed the above compensation to be paid by the insurance company and its owner with interest at the rate of 7.5% p.a.

4. The Insurance company aggrieved by the award passed by the Tribunal, has filed the present appeal questioning their liability and quantum.

5. The learned counsel for the appellant submitted that admittedly, the owner of the vehicle viz., Sampathkumar took a policy

from the appellant insurance company from 17.09.2012 to 16.09.2013, for which, the owner of the bus issued a cheque dated 17.09.2012 for a sum of Rs.55,415/- in favour of the insurance company. Thereafter, the appellant deposited the said cheque for collection on 30.10.2012 and the same was returned with an endorsement "funds insufficient" on 31.10.2012, for which, the appellant cancelled the existing policy on 02.12.2012 and the same was intimated to the owner of the bus and RTO through registered post with acknowledgment card. In order to prove the same, the appellant has produced Ex.R4 and R5 before the Tribunal. Even then, the Tribunal has fixed the entire liability as against the insurance company which is not sustainable. Further, the owner of the bus has not paid the premium amount for renewal of the insurance policy. The accident had happened after cancellation of the policy. Therefore, the appellant is not liable to pay any compensation to the claimants.

6. The learned counsel further submitted that the three persons were travelled in the motorcycle which is in violation of Motor Vehicle's Act. Hence, the Tribunal ought to have considered the fact that the victims were also equally responsible for causing the accident. The

compensation awarded by the Tribunal is very meager, which needs interference. Further, in MCOP. No.791/2013, the Doctor assessed the disability of the injured which is too high and the same is contrary to the decisions rendered by the Hon'ble Apex Court in the case of *Rajkumar Vs. Ajaykumar.* Therefore, this Court may set aside the impugned award by allowing the appeals.

7. In support of the aforesaid submissions, learned counsel appearing for the appellant placed reliance on the following decisions :-

i) Deddappa & Ors. – National Insurance Co. Ltd. (2008 (2) TN MAC 138 (SC));

ii) United India Insurance co. Ltd. – Vs – Laxmamma & Ors. (2012 (1) TN MAC 481 (SC));

iii) New India Assurance Co. Ltd. – Vs – Tara Devi & Ors. (2016 (2) TN MAC 520 (SC));

iv) IFFCO-TOKIO Gen. Insurance Co. – Vs – Shanas (2021 (2) TN MAC 28 (DB));

v) Prasanna B – Vs – Kabeer & Anr. (2019 (1) TN MAC 274 (FB) (Ker.));

vi) United India Insurance Co. Ltd. – Vs – Golla Nattala Gopal & Ors. (2016 (1) TN MAC 557 (Hyd.);

vii) *National Insurance Co. – Vs – Kothai Nayaki & Ors. (2023 (1) TN MAC 646 (DB)*

8. Without prejudice to the aforesaid contention, it is the submission of the learned counsel that the compensation awarded on various heads is grossly high. In respect of MCOP. No.791 of 2013, the multiplier adopted by the Tribunal is highly excessive. In support of the aforesaid contention, learned counsel placed reliance on the Constitution Bench decision of the Supreme Court in ***National Insurance Co. Ltd. – Vs – Pranay Sethi & Ors. (2017 (2) TNMAC 609 (SC))***.

9. Per contra, learned counsel appearing for the claimants submitted that the Tribunal had rightly appreciated the decisions in line with the facts of the present case and had come to the conclusion that the benevolent provision u/s 147 (5) and 149 (1) of the Motor Vehicles Act should be construed leniently in favour of the third party and Section 64 VB of the Motor Vehicles Act should not be made to erode the benevolent legislation and had, therefore, directed the appellant to make good the compensation to the claimants and to recover the same from the insured/owner of the vehicle, which is just and reasonable and, therefore, no interference is warranted with the said finding.

10. On the aspect of higher fixation of future prospects for the deceased and the multiplier method adopted by the Tribunal and awarded compensation under the other heads, learned counsel submitted that all the heads of compensation have been carefully tabulated by the Tribunal by following the ratio laid down in the various decisions and, therefore, no interference is warranted with the quantum of compensation awarded.

11. The insured/owner of the vehicle, who was set ex-parte before the Tribunal. Even before this Court, inspite of notice, he had not turned up to contest the case.

12. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record and also the various decisions relied on by the learned counsel for the appellant.

13. The main grievance put forth before this Court on behalf of the appellant/insurance company is that the order directing payment of compensation to the claimants and subsequent recovery is wholly erroneous, as on the date of the accident, viz., 30.12.2012, there was no

policy subsisting in the eye of law, as the policy, which was issued by receiving the cheque was cancelled subsequently on 02.12.2012, due to dishonour of the cheque and communication with regard to the cancellation of the policy had been given to the insured/owner of the vehicle and the Regional Transport Officer.

14. However, inspite of the above dicta, it is the stand of the claimants that the intimation had not reached the hands of the insured, as is evident from Ex.R-4, and R5/reply to the first respondent issued by the Branch Manager and rep;y to the RTO issued by the Branch Manager and, therefore, in the absence of any Rules, which says mere intimation is sufficient, the service of intimation could not be held to be complete service in the eye of law. The citations referred by the appellant is not relecant to the present case on hand. Therefore, the liability of the insurance company would not stand absolved.

15. True it is that no Rules or Regulations with regard to the appellant has been placed before this Court to show as to what would be effective service with regard to intimation of cancellation of a policy. It is to be pointed out that in the absence of any specific rule, which

mandates what effective service would be, necessarily, this Court has to turn its attention to the General Clauses Act, which prescribes the interpretation to be given with regard to service. Section 27 of the General Clauses Act relates to meaning of service by post and for better understanding and appreciation, the said provision is quoted hereunder :-

> "***27. Meaning of service by post.-*** *Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."*

16. From the above it is evident that in the absence of any Act or Regulation made, service of any document would be deemed to have been effected properly on it being addressed and sent by registered post and proof thereof is filed and unless the contrary is proved, service would be deemed to have been effected.

17. In the absence of any proof, the Tribunal has rightly fastened the liability as against the insurance company and the owner of the vehicle is confirmed.

18. In respect of quantum of compensation, in respect of MCOP. Nos.792 and 793 of 2013, the Tribunal has awarded compensation to the legal heirs which is just and reasonable and this Court does not warrant any interference. However, in respect of CMA. No.791 of 2013, the Tribunal has awarded a sum of Rs.6,48,000/- towards disability for the injured persons which needs interference. The Tribunal has fixed the monthly income at Rs.6000/- and adopted multiplier method, which is not sustainable one. This Doctors, who treated the injured, have assessed the disability at 40% and 50% respectively. This Court is fixed the disability at 70% and fixed the income at Rs.3,000/- per month. Further the Tribunal has not awarded any compensation towards attender charges and transportation, which has to be awarded. The Tribunal has awarded very meager compensation towards extra nourishment, pain and sufferings and loss of earning during treatment period, which has to be modified and increased. This Court modifies the award as follows:

Heads	***Amount awarded by the Tribunal (Rs.)***	***Modified Award Amount (Rs.)***
Disability	6,48,000	**2,10,000**
Loss of income	6,000	**30,000**
Extra nourishment	5,000	**20,000**
Pain and sufferings	5,000	**40,000**
Transportation	5,000	10,000
Medical bills	5,700	5,700
Total	6,74,700	3,15,700

19.The compensation awarded by the Tribunal at Rs.6,74,700/- is **reduced** to Rs. 3,15,700/-. The liability fixed by the Tribunal is confirmed.

20. In the result, CMA.No.2887 of 2019 is partly allowed. CMA. Nos.2888 and 2890 of 2019 is dismissed. No costs.

03.12.2024

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To

Motor Accident Claims Tribunal, Principal District Court, Cuddalore

M.DHANDAPANI.,J.

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C.M.A.Nos.2887, 2888 and 2890 of 2019

DATED :03.12.2024