



CMA.No.713 of 2023

In the High Court of Judicature at Madras

DATED : 25.6.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Civil Miscellaneous Appeal No.713 of 2023
and CMP No.6277 of 2023

The Oriental Insurance Co.,Ltd.,
Divya Towers
IInd Floor,15-1, Fort Main Road
Salem 636 001.

...Appellant

.Vs.

- 1.S.Vijayalakshmi
W/o.late Sundaram
- 2.Minor Prithi
D/o.late Sundaram
(minor rep.by her mother S.Vijayalakshmi)
- 3.Pothiyammal
- 4.Sivakumar
- 5.Palanisamy
- 6.S.Sarasu

...Respondents



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.4.2017 made in M.C.O.P.No.1 of 2014, on the file of the Motor Accident Claims Tribunal (Sub Court), Harur.

For Appellant	:	Mr.K.Vinod
For Respondents R1 to R4	:	Mr.C.Prabakaran
R5	:	Mr.J.Pradeep

JUDGMENT

The Insurance Company aggrieved by the award passed by the Motor Accidents Claims Tribunal (Sub Court), Harur, in M.C.O.P.No.1 of 2014, dated 27.01.2017, has filed the present appeal before this Court.

2.The claimants are the wife, minor daughter and the parents of the deceased Sundaram. The case of the claimants is that the deceased Sundaram had travelled in the Tata Ace Vehicle on 01.11.2013 and he had taken flowers along with him in order to load the same in a lorry which was proceeding towards Chennai. After completing this work, the deceased was coming back in the same vehicle and at about 23.00 hours, when the vehicle reached opposite to Gandhi Nagar, the offending vehicle which belongs to the 1st and 2nd respondents in the claim petition was driven in a rash and negligent manner and



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it dashed against a tamarind tree and the deceased was thrown out of the vehicle and he sustained fatal injuries and he scummed to the injuries. An FIR came to be registered in Crime No.385 of 2013 against the driver of the Tata Ace Vehicle. It is under these circumstances, the claim petition 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 Tata Ace Vehicle. Having come to such a conclusion, the Tribunal proceeded to fix the total compensation at Rs.14,25,000/- under various heads as follows:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Dependency	11,70,000/-
2	Loss of Consortium for 1 st petitioner	1,00,000/-
3.	Loss of care and guidance for minor child	1,00,000/-
4.	Love and affection to the 3 rd petitioner	40,000/-
5.	Funeral Expenses	10,000/-
6.	Transportation	5,000/-
	Total	14,25,000/-



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4.The above compensation was directed to be paid with interest at the rate of 7.5% p.a.

5.The Insurance Company aggrieved by the award passed by the Tribunal has filed the present appeal before this Court mainly questioning the very liability to pay the compensation. Incidentally, the Insurance Company has also questioned the quantum of compensation that has been fixed under certain heads.

6.Heard Mr.K.Vinod, learned counsel for the appellant, Mr.C.Prabakaran, learned counsel for R1 to R4 and Mr.J.Pradeep, learned counsel for R5.

7.This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the award passed by the Tribunal.

8.The learned counsel for the appellant submitted that it is an admitted case that at the time when the accident took place, there were no goods carried in the offending vehicle and the deceased was only travelling as a gratuitous passenger and therefore the insurance company is not liable to pay any compensation in this case. To substantiate his submission, the learned counsel relied upon the judgment of the Apex Court in **National Insurance Co., Ltd.,**



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v. Kaushalaya Devi and Others reported in **2008 ACJ 2144**. The learned counsel also relied upon the judgment of this Court in **New India Assurance Co., Ltd., v. Mohamudha Fajila** reported in **2020 2 TANMAC 777**.

9.The learned counsel for the appellant further submitted that the Tribunal has awarded excess compensation under three heads to the tune of Rs.2,40,000/- which also requires the interference of this Court.

10.Per contra, the learned counsel for the claimants submitted that the evidence of PW.1 and PW.2 makes it clear that the deceased travelled in Tata Ace Vehicle along with flowers and it was loaded into a lorry and thereafter the deceased returned back in the very same vehicle at which point of time the accident had taken place. Therefore, it was contended that the policy covers such an eventuality. To substantiate his submission, the learned counsel relied upon the judgment of this Court in **Oriental Insurance Co., Ltd., v. Nalluchamy and Another** reported in **2015 (1) TN MAC 843**.

11.The first issue is with regard to the liability that has been questioned by the insurance company. It was submitted that the deceased was admittedly not travelling along with any goods at the time of the accident and therefore, he must only be considered to be a gratuitous passenger. In view of the same, the policy will not cover the liability that is sought to be enforced against the



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insurance company.
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12.To appreciate this ground taken on the side of the appellant, it is necessary to take note of the evidence of PW.1 and PW.2. PW.1 is the wife of the deceased. She has stated in her evidence that her husband had taken the flowers in the Tata Ace Vehicle in order to load the same in a lorry and send it to Chennai and after completing his work, he was returning back in the same vehicle at which point of time the accident had taken place. Even during the cross examination, she has reiterated the same stand and she has stated that when her husband returned back in the vehicle, no goods were available in the vehicle.

13.The evidence of PW.2 who is an eye witness to this case is also in the same lines. He also talks about the fact that the deceased was engaged in selling flowers and he used to sell flowers on wholesale basis by loading the same in a lorry which was send to Chennai. In the cross examination, PW.2 also states that after the flowers were loaded in the lorry, the Tata Ace Vehicle returned without any goods and at that point of time, the accident had taken place.

14.There is no contra evidence available to discredit the evidence of PW.1 and PW.2.



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15.It was contended on the side of the appellant that since there were no goods available at the time when the Tata Ace Vehicle was returning back, the insurance company cannot be made liable to pay the compensation in this case.

16.This Court had an occasion to deal with similar facts in Nalluchamy case referred supra. That was also a case where the goods were unloaded and while returning back in the vehicle after unloading the goods, the accident took place. This Court took into consideration the object behind Section 147 of the Motor Vehicles Act, 1988 and held as follows:

13.In this case, it has to be decided whether the Insurance Company is liable if on facts the owner or the authorised representative who travelled in the vehicle after unloading the vehicle died or suffered injuries, is entitled to be paid compensation from the Insurance Company.

14.The provisions of [Section 147\(1\)\(b\)\(i\)](#) of the Motor Vehicles Act has to be construed liberally. It is not the case of the Insurance Company that the load auto did not carry the goods, ie., 3 bags of tomatoes of the claimant. Their case is that after unloading only he travelled and therefore he is not covered.

15.The judgment relied on by the learned counsel for the appellant is of no use. In that case, though the claimant made a claim that he travelled in the lorry along with the rice bags, this Court came to the conclusion that there was no evidence to claim that he travelled along with the goods. In those circumstances, this Court in [United India Insurance Co. Ltd. v. Annamalai](#),



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reported in 2011 (2) TN MAC 737 came to the conclusion that the Tribunal has erred in fastening the liability on the Insurance Company when there is absolutely no evidence to the effect that the claimant travelled along with the goods in the lorry. But, in the present case, it is admitted that the tomato bags carried by the load auto belongs to the claimant. The only contention is that the accident took place when he travelled after unloading the goods and hence, he could not claim coverage.

16.In an identical circumstance, the Kerala High Court, in [United India Insurance Co. Ltd. v. Velayudhan](#), reported in 2011(1) TN MAC 233 (Ker.) has held that though the accident took place while the lorry was returning after unloading the rice which was carried in the said vehicle, the Insurance Company is still liable. It is relevant to extract a portion of paragraph-5 of [the said judgment](#), as under:

?It is true that nothing happened when the goods were taken. But the unfortunate incident took place while the lorry was returning after unloading the rice there.?

17.In my view, the judgment of the Kerala High Court (cited supra), covers the issue. Further, I am of the view that provisions of [Section 147](#) of the Motor Vehicles Act has to be interpreted liberally and the main purpose is to grant compensation to the unfortunate accident victims. Unless it is established by the Insurance Company that they are not at all liable, the Insurance Company cannot escape from its liability to pay compensation, particularly when it is admitted that the tomato bags carried by the load auto belongs to the claimant and he being an agriculturist, took these bags to the market and



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returned in the auto, which carried the tomato bags and that the said auto got involved in the accident at the time of return. Hence, in my view the Insurance Company is liable to pay compensation.

17.Insofar as the judgment of the Apex Court which was relied upon by the learned counsel for the appellant, that was a case where the deceased was not the owner of any goods and he was travelling in the truck for the purpose of collecting the empty boxes. He was not travelling in the truck as the owner of the goods. This vital fact was taken into consideration by the Apex Court and it was held that the deceased in that case was not a person who was travelling as owner of the goods and therefore it was held that the insurance company is not liable to pay the compensation.

18.The above judgment of the Apex Court turns on its own facts. In the instant case, the deceased was the owner of the goods viz., the flowers which was taken in the vehicle and it was loaded in a lorry and while returning back, the accident had taken place. Therefore, the judgment of the Apex Court will not apply to the facts of the present case.

19.Insofar as the other judgment that was relied upon by the learned counsel for the appellant in Mohamudha Fajila case referred supra, that was also a case where the deceased had neither purchased any goods nor loaded any goods in the vehicle and therefore, this Court held that he was travelling only as



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a gratuitous passenger. That judgment also will not apply to the facts of the present case and it can be differentiated on facts.

20.This Court is in complete agreement with the judgment in Nalluchamy case. The object behind Section 147 of the Motor Vehicles Act, 1988, must be taken into consideration. The Court must bear in mind that the Act is a welfare legislation and strict interpretation cannot be done to deprive the payment of compensation to the family of the deceased. In a case where the vehicle is used for the purpose of carrying goods and the goods are unloaded and in the same vehicle, the injured/deceased returns back, the insurance company will still be liable to pay compensation. A hyper technical stand that there were no goods available at the time when the accident took place and thereby deprive the payment of compensation, will defeat the very object of the welfare legislation.

21.In the case in hand there is sufficient evidence to show that the goods were in fact carried in the vehicle by the deceased and it was loaded into a lorry and was sent to Chennai and while returning back in the same vehicle, the accident had taken place. Under such circumstances, the insurance company cannot wash of their hands in paying the compensation under the policy.

22.In the light of the above discussion, the finding rendered by the



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Tribunal to the effect that the insurance company is liable to pay compensation does not warrant the interference of this Court. It must also be stated that the Tata Ace Vehicle falls under the category of light goods vehicle and therefore, the driver of the vehicle possessed a license to drive this vehicle. This has also been spoken to by RW.1.

23.The next issue pertains to the quantum of compensation fixed by the Tribunal. Insofar as the compensation fixed under the head 'loss of dependency' is concerned, this Court finds that the same is reasonable and does not warrant the interference of this Court. The Tribunal had granted a total compensation of Rs.2,40,000/- spread out under three heads viz., loss of consortium to the 1st claimant, loss of care and guidance for minor children and love and affection to the 3rd claimant. In the considered view of this Court, all these three heads can be consolidated under one head as 'loss of love and affection' and a sum of Rs.40,000/- each can be granted to claimants 1 to 3 and a sum of Rs.20,000/- to the 4th claimant. Thus, a total compensation of Rs.1,40,000/- can be fixed under this head.

24.The Tribunal has granted only a sum of Rs.10,000/- under the head 'funeral expenses' and this Court is inclined to enhance the same to Rs.15,000/-. The Tribunal has not granted any compensation under the head 'loss of estate' and this Court is inclined to fix a sum of Rs.15,000/- under this head.



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25. In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

Sl. No.	Compensation awarded under the head	Amount awarded by this Court (in Rs.)
1.	Loss of Dependency	11,70,000/-
2.	Loss of love and affection [40,000 x 3 (claimants 1 to 3)] [20,000 x 1 (4 th claimant)]	1,40,000/-
3.	Funeral Expenses	15,000/-
4.	Loss of Estate	15,000/-
5.	Transportation	5,000/-
	Total	13,45,000/-

26. The compensation awarded by the Tribunal at Rs.14,25,000/- is reduced to Rs.13,45,000/-. The appellant insurance company is directed to deposit the reduced compensation, less the amount already deposited, together with interest at the rate of 7.5% p.a., from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

27. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.



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Consequently, connected miscellaneous petition is closed.

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
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To

Motor Accident Claims Tribunal
(Sub Court), Harur.



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N.ANAND VENKATESH,J
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