



C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14.03.2024

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

**C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013**

**and**

**M.P(MD)Nos.1 of 2011 & 4 of 2013**

C.M.A(MD)No.1052 of 2011:

ICICI Lombard General Insurance  
Company Limited,  
No.16, North Veli Street,  
Madurai-1.

... Appellant/3rd Respondent

Vs.

1.Kamilajai

2.Minor Duruzilla Vinisha

3.Minor Carston Solomonraj

*(Minor Respondents 2 & 3 are  
represented by their mother first  
respondent herein)*

4.Durairaj Nadar (died)

5.T.Vasantha

6.Jeyakumar



C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013

7.Rajakumar

8.Prem Kumar

... Respondents/Petitioners 1 to 8

9.Minor Anastis John

10.Minor Aristavania

... Respondents/Petitioners 9 to 10

*(Minor respondents 9 & 10 are represented by their mother and guardian Tmt.Jelastin)*

11.The Managing Director,  
Tamil Nadu State Transport Corporation,  
Vannarpet, Tirunelveli Junction.

12.Mallika Jelastin

... Respondents/Respondents 1 & 2

**Prayer :** This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order, dated 26.07.2010 made in M.C.O.P.No.1434 of 2005 on the file of the Motor Accident Claims Tribunal (Fast Tract Court-II/Additional District Judge), Tirunelveli and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For R-1, R-2, R-3  
R-5, R-9, R-10 & R-12 : Mr.R.T.Arivu Kumar

R-4 : Died

For R-6 to R-8 : Mr.S.Senthil Sankaranatha Kumar  
For R-11 : Mr.M.Prakash



C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013

C.M.A(MD)No.1706 of 2013:

WEB COPY

The Managing Director,  
Tamil Nadu State Transport Corporation,  
Vannarpettai, Tirunelveli.

... Appellant/Respondent

Vs.

1.Mallika Jelastin

2.Minor Aastish John

3.Minor Arishtavania

Durairaj Nadar (died)

4.D.Vasantha

5.Jeyakumar

6.Rajkumar

7.Premkumar

*(2 & 3 minor respondents represented by  
their mother / guardian - 1st respondent  
herein)*

*(As per decree above fourth respondent  
declared as died - notice given up)*

8.Kameela Joy

9.Minor Trusilla Vinisha

10.Minor Salomon Raj

... Respondents/Petitioners

*(Minor respondents 9 & 10 are*



C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013

*represented by their mother and guardian eighth respondent herein)*

11.M/s.ICICI Lombord General Insurance  
Company Limited,  
16-North Veli Street,  
Madurai-1.

... Respondent

*(11th respondent is suo motu impleaded as per the order of this Court, dated 07.03.2024 made in C.M.A(MD)No.1706 of 2014)*

**Prayer :** This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.1433 of 2005, dated 26.07.2010 on the file of the Motor Accident Claims Tribunal/Additional District Judge cum Fast Track Court No.2, Tirunelveli.

For Appellant : Mr.M.Prakash

For R-1 to R-4 : Mr.R.T.Arivu Kumar

R-5 to R-10 : Given up

For R-11 : Mr.V.Muthukamatchi

C.M.A(MD)No.1707 of 2013:

The Managing Director,  
Tamil Nadu State Transport Corporation,  
Vannarpettai, Tirunelveli.

... Appellant/1st Respondent



WEB COPY



C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013

Vs.

1.Kameela Joy

2.Minor Trusilla Vinisha

3.Minor Salomon Raj

Durairaj Nadar (died)

4.D.Vasantha

5.Jeyakumar

6.Rajkumar

7.Premkumar

8.Minor Aastish John

9.Minor Arishtavania

... Respondents / Petitioners

*(2 & 3 minor respondents represented by their mother / guardian - 1st respondent herein)*

*(8th and 9th minor respondents represented by their mother/guardian-Jelastin)*

10.Mallika Jelastin

11.M/s.ICICI Lombord General Insurance  
Company Limited,  
16-North Veli Street,  
Madurai-1.

... Respondents 11 & 12/  
Respondents 2 & 3



*C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013*

WEB COPY

**Prayer :** This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.1434 of 2005, dated 26.07.2010 on the file of the Motor Accident Claims Tribunal/Additional District Judge cum Fast Track Court No.2, Tirunelveli.

For Appellant : Mr.M.Prakash  
For R-1 to R-4 : Mr.R.T.Arivu Kumar  
R-5 to R-9 : Given up  
For R-10 : No appearance  
For R-11 : Mr.V.Muthukamatchi

### **COMMON JUDGMENT**

These Civil Miscellaneous Appeals have been preferred as against the common order passed by the Tribunal in M.C.O.P.Nos.1433 and 1434 of 2005, the respondents in M.C.O.P.No.1433 has filed C.M.A(MD)No. 1706 of 2013 and the third respondent in M.C.O.P.No.1434 of 2005 has filed the appeal in C.M.A(MD)No.1052 of 2011 and the first respondent in M.C.O.P.No.1433 of 2005 has filed the appeal in C.M.A(MD)No.1707 of 2013.



*C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013*

**2.** For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.

**3.** M.C.O.P.No.1433 of 2005 has been filed by the claimants for the death of one Anand Kumar. M.C.O.P.No.1434 of 2005 has been filed by the claimants for the death of one Sreedhar Babu.

**4. The brief averments of the petition filed by the petitioner before the Tribunal are as follows:**

On 15.06.2005, when the deceased Ananda Kumar along with brother Sreedhar Babu were proceeding Tata Indica Car from Thoothukudi Ettayapuram Main road. At the time of about 03.30 pm, the bus bearing Registration No.TN 29 N 0995 came in a rash and negligent manner dashed against the Tata Indica Car and thereby, both the petitioners travelled in the car died in the accident. The accident took place due to the negligence on the part of the bus driver. The FIR also registered as against the bus driver. The deceased Anand Kumar was aged about 34 years on the date of accident and he was earning a sum of Rs.5,00,000/- per year. The petitioners are the legal heirs of the deceased Ananda Kumar. Therefore,



*C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013*

they are claiming compensation of Rs.50,00,000/-. The Sreedhar Babu was aged about 31 years and he was earning a sum of Rs.7,50,000/- per year. The petitioners are the legal heirs of the deceased Sreedhar Babu. Therefore, they are claiming compensation of Rs.50,00,000/-.

**5. The counter filed by the second respondent in both the petitions are as follows:**

These petitions are not maintainable either in law or on facts. The driver of the bus drove the vehicle in a slow speed and the driver of the Tata Indica Car drove the vehicle in a rash and negligent manner and caused the accident. The driver of the bus is noway liable for the accident. The respondent denied the age, income and occupation of the deceased. Therefore, the petition is liable to be dismissed.

**6. The counter filed by the third respondent in M.C.O.P.No.1434 of 2005 are as follows:**

The petition is not maintainable. The driver of the car drove the vehicle in a slow speed and the accident took place due to the negligence on the part of the driver of the first respondent. Therefore, the petition is



*C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013*

liable to be dismissed as against the second and third respondents. The FIR also registered as against the first respondent. Since there is no any registration certificate for the vehicle, the respondent is not liable to pay any compensation.

7. Before the Tribunal, joint trial was conducted and common order was passed in both the claim petitions. On the side of the petitioners, they examined P.W.1 to P.W.3 and marked Exhibits P.1 to P.20. On the side of the respondents, R.W.1 was examined and marked Exhibits R.1 to R.14.

8. After analyzing the evidences, the Tribunal fixed the liability as against the driver of the car as well as the bus, thereby, fixed the liability 50% each vehicle. In M.C.O.P.No.1433 of 2005, awarded a sum of Rs. 13,92,500/-. In M.C.O.P.No.1434 of 2005, awarded a sum of Rs. 34,60,000/- towards compensation. As against the award passed by the Tribunal, the Insurance Company in M.C.O.P.No.1434 of 2005 (i.e.,) third respondent had filed an appeal in C.M.A(MD)No.1052 of 2011 and the TNSTC has preferred the appeals as against the order passed in both the M.C.O.P.Nos.1433 and 1434 of 2005.



*C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013*

WEB COPY

9. The learned Counsel appearing for the appellant in C.M.A(MD)No.1052 of 2011 has contended that the accident was took place due to the negligence on the part of the driver of the bus but the Tribunal has fixed the liability as against the driver of the bus and the car and the Tribunal also awarded excess compensation and thereby, the award passed by the Tribunal is liable to be set aside.

10. The learned Counsel appearing for the appellant in C.M.A(MD)Nos.1706 and 1707 of 2013 would contend that the accident took place due to the negligence on the part of the driver of the car but the Tribunal has fixed 50% negligence as against the driver of the bus and the same is liable to be set aside. On the side of the appellant / respondent, they examined the driver of the bus but the Tribunal fixed the liability as against both the vehicles. Further, the Tribunal has awarded an excess compensation and thereby, the award passed by the Tribunal is liable to be set aside.



*C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013*

WEB COPY

**11.** The learned Counsel appearing for the first respondent / petitioner in all the appeals would contend that the Tribunal has awarded fair compensation and based on the evidence adduced on both sides, fixed the liability as against both the vehicles and he has not filed any appeal as against the quantum of the amount. Therefore, the order passed by the Tribunal is in order and the present appeals are liable to be dismissed.

**12.** This Court had heard both sides and perused the records. Upon hearing both sides and perusing the records, the point for determination in C.M.A(MD)No.1052 of 2011 is:

- i) Whether the accident took place due to the negligence on the part of the bus driver or car driver?
- ii) Whether the quantum of award passed by the Tribunal is sustainable or not?

**13.** The point for determination in C.M.A(MD)No.1706 of 2013 is:

- i) Whether the accident took place due to the negligence on the part of the bus driver or car driver?
- ii) Whether the quantum of award passed by the Tribunal is



*C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013*

sustainable or not?

WEB COPY

**14.** The point for determination in C.M.A(MD)No.1707 of 2013 is:

i) Whether the accident took place due to the negligence on the part of the bus driver or car driver?

ii) Whether the quantum of award passed by the Tribunal is sustainable or not?

**Point No.1 in all the appeals:**

**15.** In this case, before the Trial Court, joint trial was conducted and common evidence adduced and common order passed, since both the claims are arising out of same accident. Two persons died in the accident, thereby, two claim petitions were filed by the legal heirs of the deceased. The Trial Court partly allowed the petitions and awarded compensation. The Trial Court fixed the negligence on both the vehicle drivers and Insurance Company of the car and Transport Corporation of the bus have preferred these appeals by challenging the negligence and the quantum of the amount. The Insurance Company / the third respondent in M.C.O.P.No. 1434 of 2005 has preferred the appeal in C.M.A(MD)No.1052 of 2011 by



*C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013*

disputing the liability and the quantum of the amount. Similarly, the Transport Corporation has preferred the appeals in C.M.A(MD)Nos.1706 and 1707 of 2013 against the orders passed in both the petitions. The Tribunal after analyzing the evidences adduced on both sides and particularly the eye witness, categorically stated about the manner of the accident and the Trial Court after considering the evidences, came to a conclusion that the accident took place due to the negligence on the part of the driver of the bus, based on the evidences.

**16.** This Court also perused the records. The petitions in both the claim petitions have pleaded that the accident took place due to the negligent driving of the bus and FIR also registered as against the driver of bus. The P.W.1 and P.W.2 have deposed that the accident took place due to the negligent driving of bus driver, but they are not eye witnesses. Further, on the side of petitioners, they also examined P.W.3, who is eye witness to the occurrence and he deposed about the negligence of the bus driver. However, he admitted in the cross-examination that the Indica car was overtaking the another vehicle, at that time, the accident was occurred. The driver of the bus also examined as R.W.1 and he deposed



*C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013*

that the Indica car was came in a high speed by overtaking the vehicle, at that time, he applied the brake but before stopping the bus the car dashed against the bus and again dashed against the tree. Therefore, the evidences shows that both vehicles were negligent. Further, the Motor Vehicle Inspector's Report and other documents also reveals the negligence on the part of both the vehicles. In view of the said reasons, this Court is of the opinion that the accident took place due to the negligence of both the vehicle drivers. Therefore, the findings of the Tribunal in respect of the negligence is in order and the same is confirmed. Thus the point No.1 in all the appeals is answered.

**Point No.2 in C.M.A(MD)Nos.1052 of 2011 & 1707 of 2013:**

17. As far as quantum in M.C.O.P.No.1434 of 2005 is concerned, the Tribunal only fixed 50% of the award as against the third respondent Insurance Company and the 50% of award as against the TNSTC bus. According to the claimants, the deceased was aged about 31 years and earning a sum of Rs.7,50,000/- per year and the Tribunal based on the evidences adduced on either side fixed the monthly income as Rs.25,000/- and adopted the multiplier of 15 and also deducted 1/3rd income for his



*C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013*

personal expenses. In other heads also awarded reasonable amount. The claimants have not preferred any appeal as against the findings of the Tribunal. Therefore, the Tribunal awarded just and fair compensation by fixing the monthly income of Rs.25,000/- and also deducted 1/3<sup>rd</sup> of the income for his personal expenses and awarded a fair compensation. Therefore, the award passed by the Tribunal is just and fair compensation and warrants no interference.

**Point No.2 in C.M.A(MD)No.1706 of 2013:**

18. As far as the quantum in M.C.O.P.No.1433 of 2005 is concerned, already the Tribunal has exonerated the Insurance Company since the deceased himself is tort-feasor and only awarded 50% of amount and the same has to be paid by the TNSTC. The Tribunal has taken income of the deceased as Rs.20,000/- based on the available evidence and deducted 1/3<sup>rd</sup> for the personal expenses and also adopted multiplier of 15 and the same is in order and in other heads also, the Tribunal has awarded a reasonable amount and also dismissed the petition as against 6 to 11 respondents and no appeal is preferred by the claimants. Thereby, the award passed by the Tribunal is just and fair compensation and warrants



*C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013*

no interference.

WEB COPY

**19.** Therefore, the appeals filed by the appellants in C.M.A(MD)No. 1052 of 2011 and C.M.A(MD)Nos.1706 and 1707 of 2013 are dismissed the award passed in M.C.O.P.Nos.1433 of 2005 and 1434 of 2005 are confirmed.

**20.** The appellant in C.M.A(MD)No.1052 of 2011 is directed to deposit the entire amount as awarded by the Tribunal after deducting the amount already deposited. The appellant in C.M.A(MD)Nos.1706 and 1707 of 2013 is directed to deposit the entire amount of his share as fixed by the Tribunal, within two months from the date of this judgment after deducting the amount, if any already deposited.

**21.** In the result, all the appeals stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

**14.03.2024**



*C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013*

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
BTR

To

- 1.The Motor Accident Claims Tribunal  
(Fast Tract Court-II/Additional District Judge),  
Tirunelveli.
- 2.The Section Officer,  
Vernacular Record Section,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



*C.M.A(MD)Nos.1052 of 2011 & 1706 and 1707 of 2013*

**P. DHANABAL, J.**

BTR

**C.M.A(MD)Nos.1052 of 2011 & 1706**  
**and 1707 of 2013**

**14.03.2024**