



C.M.A.(MD).Nos.1100 of 2011 and 402 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)Nos.1100 of 2011 and 402 of 2012

C.M.A(MD) No. 1100 of 2011:

The National Insurance Company Limited,
Through its Divisional Manager,
No.37 C, S.N.High Road,
Tirunelveli.

... Appellant/2nd Respondent

-VS-

1. Shahilarani
2. Sathiyarayanan
3. Bhuvaneswari
4. Pappa

... Respondents 1 to 4/Petitioners

(R3 declared as major and her mother discharged from
guardianship vide order of this Court dated 26.02.2014
in M.P(MD) No.1 of 2014 in C.M.A(MD) No.1100/11)

5. Madasamy
6. Meeran Mydeen

... 5th Respondent/1st Respondent

... 6th Respondent/3rd Respondent

7. United India Insurance Company Limited,
Through its Divisional Manager,
Door No.1, Post Office Road,
Palayamkottai,



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Tirunelveli – 2.

... 7th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the order and decree dated 01.12.2010 passed in M.A.C.O.P.No.446 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court/Fast Track Court No.II, Tirunelveli.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.T.Selvakumaran
for R2 to R4
: Mr.Jawahar Ravindran – for R7
: Died – R1 and R5
: Dismissed - R6

C.M.A(MD) No.402 of 2012:

1. Shkila Rani
2. Sathiya Narayanan
3. Minor Bhuvaneswari
(Minor represented by her mother
and next friend 1st appellant)

4. Pappa

... Appellants/Petitioners

- vs-

1. Madasamy
2. The National Insurance Company Limited,
Through its Divisional Manager,
No.37 C, S.N.High Road,



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Tirunelveli.

3. Meeran Maideen (died)

4. United India Insurance Company Limited,
Through its Divisional Manager,
No.1, Post Office Street,
Palayamkottai,
Tirunelveli – 2.

5. Jayalakshmi

... Respondents 1 to 5 / Respondents

6. Mydeen Fathi

... 6th Respondent

(6th respondent is brought on record as
legal heir of the deceased 3rd respondent
vide order of this Court dated 30.11.2021
made in C.M.P(MD) Nos.10526 to 10528
of 2017 in C.M.A(MD) No.402 of 2012)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 01.12.2010 passed in M.C.O.P.No.446 of 2008 on the file of the Motor Accidents Claims Tribunal, (Fast Track Court No.II), Tirunelveli.

For Appellants

: Mr.T.Selvakumaran

For Respondents

: Mr.D.Sivaraman – for R2

: Mr.Jawahar Ravindran – for R4

: No appearance – For R5 and R6

: Died R1 and R3



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COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellants as against the order passed in M.C.O.P.No.446 of 2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court/Fast Track Court No.2, Tirunelveli, wherein, the appellants in C.M.A(MD) No.402 of 2012 and the respondents 1 to 4 in C.M.A(MD) No.1100 of 2011 have filed petition seeking compensation for the death of one Nagarajan who died in a road accident.

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. The Tribunal has awarded a sum of Rs.4,40,000/- (Rupees Four Lakhs Forty Thousand only) towards compensation by directing the respondents 2 and 4 in the claim petition to pay the award amount equally. As



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against the order passed by the Tribunal, the Insurance Company/second respondent in the claim petition has filed C.M.A(MD) No.1100 of 2011 questioning liability and the petitioners in the claim petition have filed C.M.A(MD) No.402 of 2012 for enhancement of the award amount.

4. The brief facts of the averments made in the petition before the Tribunal are as follows:

On 05.07.2000, the deceased Nagarajan was returning from Courtallam to Tirunelveli by a Tata Sumo Car bearing Registration No.TN-59-F-8299 belonging to the first respondent. At that time, the driver of the said Tata Sumo Car drove the vehicle in a rash and negligent manner and dashed against the Lorry bearing Registration No.T.C.T.4889. The said Tata Sumo Car was insured with the second respondent and the Lorry was insured with the fourth respondent. The deceased was aged about 35 years at the time of accident and he was earning a sum of Rs.15,000/- per month. The petitioners are the legal heirs of the deceased. Therefore, filed the petition for compensation of a sum of Rs.10,00,000/- (Rupees Ten Lakhs only).



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5. The gist of the counter filed by the first respondent are as follows:

The petition is not maintainable either in law or on facts. The age, income and occupation of the deceased all are denied. The Tata Suo Car belongs to one Jeyakannan. He died in the road accident. The legal heirs of the deceased Jeyakannan are proper and necessary parties. The accident took place due to the negligence on the part of the driver of the Lorry and not on the part of the driver of the Tata Sumo. The first respondent vehicle was insured with the second respondent and thereby the petition is liable to be dismissed as against the first respondent.

6. The brief averments made in the counter filed by the second respondent are as follows:

The petition is not maintainable either in law or on facts. The petitioners are put to strict proof of the age, income and occupation of the deceased. The Tata Sumo Car involved in the accident, was driven by the insured Jayakannan, but he had no valid driving licence to drive the vehicle on the date of accident and he had only license of LMV but the Tata Sumo is a Tourist Taxi. Therefore, badge is necessary to drive the vehicle. Since there



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is violation of policy condition, the second respondent is in no way liable to pay compensation to the petitioners.

7. The gist of the counter filed by the fourth respondent are as follows:

The petition is not maintainable either in law or on facts. The petitioners are put to strict proof of the income and occupation of the deceased. The accident took place due to the negligence on the part of the driver of the Tata Sumo and the FIR was also registered as against the driver of the Tata Sumo. The third respondent is a formal party. The third respondent's vehicle is insured with the fourth respondent. Since there is no negligence on the part of the driver of the third respondent. The 4th respondent is in no way liable to pay the compensation to the petitioners.

8. Before the Tribunal, on the side of the petitioners, P.W.1 and P.W.2 were examined and documents Ex.P.1 to P.8 were marked. On the side of the respondents R.W.1 and R.W.2 were examined and documents R.1 to R5 were marked.



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9. After evaluating the oral and documentary evidence adduced on the either side, the Tribunal has fixed the liability as against both the drivers of the vehicle and awarded a sum of Rs.4,40,000/- (Rupees Four Lakhs Forty Thousand only) towards compensation by directing the respondents 2 and 4 in the claim petition to pay each 50% of award amount. As against the order passed by the Tribunal, the Insurance Company/second respondent has preferred an appeal on the ground of liability and the petitioners have also preferred the appeal for enhancement of the award amount.

10. The learned counsel appearing for the appellants in C.M.A(MD) No.402 of 2012 and the respondents 2 to 4 in C.M.A(MD) No.1100 of 2011 would contend that the appellants/petitioners are the legal heirs of the deceased, who died in the accident. The deceased was aged about 35 years and he was earning a sum of Rs.15,000/- per month. While he was proceeding in the Tata Sumo belonging to the first respondent, which was insured with the second respondent, he met with an accident due to the negligence on the part of the driver of the first respondent. Therefore, the petitioners are entitled



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to get compensation. The trial Court awarded only a meager amount and the Tribunal has awarded a sum of Rs.3,000/- per month as monthly income and the same is only meager amount. The Tribunal failed to consider the future prospectus. Therefore, the award passed by the Tribunal is liable to be enhanced.

11. The learned counsel appearing for the second respondent in C.M.A(MD)No. 402/2012 and the appellant in C.M.A(MD) No.1100 of 2011 would contend that the accident took place due to the negligence on the part of the driver of the Lorry and the first respondent vehicle was insured with the appellant/second respondent. However, the driver of the first respondent had no valid license and badge on the date of accident. Since the vehicle is commercial vehicle the badge endorsement is essential. Since there is violation of policy condition the second respondent is in no way liable to pay the compensation to the petitioners. But the trial Court failed to consider the above said aspect and fixed the liability as against the appellant/second respondent at 50% and directed them to pay 50% of the award amount.



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Therefore, the order passed by the Tribunal is liable to be set aside.

12. This Court heard both sides and perused the materials on record. Upon hearing both sides and perusing the records, the points for determination in this appeal are:

- “1. Whether there is a violation of policy condition?
2. Whether the order passed by the Tribunal in respect of the quantum is adequate?
3. Whether the appeal in C.M.A(MD) No. 402 of 2012 is liable to be allowed or not?
4. Whether the appeal in C.M.A.(MD) No.1100 of 2011 is liable to be allowed or not?

Point No.1:

13. In this case, it is an admitted fact that both the vehicles involved in the accident and the deceased, who travelled in the Tata Sumo died in the accident and thereby the petitioners have filed the claim petition. Before the Tribunal, on the side of the petitioners P.W.1 and P.W.2 were examined and documents Ex.P.1 to P.8 were marked. On the side of the respondents R.W.1



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and R.W.2 were examined and documents R.1 to R5 were marked.

14. The Tribunal after analyzing the evidences adduced on either side fixed the liability as against both the vehicles. There is no appeal filed as against the findings of the Tribunal in respect of the quantum by the appellant/insurance Company in C.M.A(MD) No.1100 of 2011 who is also the second respondent in C.M.A(MD) No.402 of 2012 and they are only disputing the liability on the ground that the driver of the first respondent has no endorsement of the badge and thereby there is violation of condition of policy. The claimants are not disputing the negligence. The Tribunal also fixed liability as against both the drivers of the vehicles. Therefore, this Court need not go into the aspects of the negligence. According to the appellant /second respondent in C.M.A(MD) No.1100 of 2011, the driver of the first respondent has no valid driving license at the time of accident and since the vehicle is commercial vehicle, badge endorsement is necessary. As per the judgment of the Hon'ble Supreme Court reported in **2017 14 SCC 663 (Mukund Dewangan Vs. Oriental Insurance Company Limited)** as far as the LMV vehicle is concerned, a person with any type of LMV License can drive



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the vehicle and no separate badge is necessary for the commercial vehicle.

15. In view of the above said judgment, the contention of the learned counsel appearing for the appellant/second respondent that the driver of the first respondent has no valid driving license at the time of accident and thereby the violation of condition of policy is not acceptable. There is no dispute that the driver of the first respondent has license for driving LMV vehicle and thereby there is no violation of condition of policy as per the above said judgment. There is no dispute that the first respondent's vehicle was insured with the second respondent on the date of accident. Therefore, the liability of the appellant/ second respondent in C.M.A(MD) No.1100 of 2011 is fixed by the Tribunal at 50% does not warrants interference.

Point No.2:

16. The Appellants/Petitioners have preferred the appeal in C.M.A(MD) No. 402 of 2012 on the ground of enhancement of compensation. The Tribunal has awarded a sum of Rs.4,40,000/- towards compensation and taken a sum of Rs.3,000/- as monthly income. The age of



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the deceased was mentioned as 35 years. There is no document produced by the petitioners to prove the age. However, the Tribunal fixed the age between 36 to 40. Considering the same the appropriate multiplier is “15” and considering the dependency of the deceased 1/3 of the income was deducted towards personal expenses of the deceased. As per the judgment of the Hon'ble Supreme Court reported in **2017 (16) SCC 680 (National Insurance Company Limited Vs. Pranay Sethi and others)** the future prospects has to be added at 40% but the Tribunal failed to consider the same. By adding 40% to Rs.4,200/- the annual income comes to Rs.50,400/-. After deducting 1/3rd amount towards personal expenses, the annual income comes at Rs.33,600/- and adopting appropriate multiplier “15”, the loss of income comes to Rs.5,04,000/-. As per the judgment of the Hon'ble Supreme Court reported in **2017 (16) SCC 680 (National Insurance Company Limited Vs. Pranay Sethi and others)** a sum of Rs.40,000/- was awarded towards loss consortium and hence, the petitioners are entitled to a sum of Rs.40,000/- towards loss of consortium and love and affection, a sum of Rs.15,000/- is awarded towards funeral expenses and a sum of Rs.15,000/- is awarded towards loss of estate.



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17. In view of the above said discussion, the appellants/petitioners are entitled to the award amount as follows:

Sl.No.	Descriptions	Amount
1.	Loss of income	Rs.5,04,000/-
2.	Loss of Consortium and Loss of Love and Affection (40,000x4)	Rs.1,60,000/-
3.	Funeral Expenses	Rs. 15,000/-
4.	Loss of Estate	Rs. 15,000/-
	Total	Rs.6,94,000/-

In total, the petitioners are entitled for Rs.6,94,000/- (Rupees Six Lakhs and Ninety Four Thousand only) rounded off to **Rs.7,00,000/- (Rupees Seven Lakhs only)** towards compensation.

18. In the result, this Civil Miscellaneous Appeal in C.M.A(MD) No. 402 of 2012 stands partly allowed and the order passed by the Motor Accidents Claims Tribunal, Additional District Court/Fast Track Court No.II, Tirunelveli, in M.C.O.P.No.446 of 2008, dated 01.12.2010 is hereby modified and the petitioners are entitled to award a sum of Rs.7,00,000/- (Rupees



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Seven Lakhs only) with interest at the rate of 7.5% p.a from the date filing of the petition till realization of payment. The second respondent/ Insurance Company is directed to deposit the entire award amount within a period of two months from the date of this order. The petitioners 1 to 3/appellants 1 to 3 each are entitled to a sum of Rs.2,00,000/- (Rupees Two Lakhs only only) with proportionate interest and costs and the 4th petitioner/4th appellant is entitled to a sum of Rs.1,00,000/- (Rupees One Lakh only) with proportionate interest and costs. The appellants/petitioners are directed to pay the balance Court fee within ten days from the date of this judgment.

19. C.M.A(MD) No.1100 of 2011 stands dismissed. There shall be no order as to costs.

07.03.2024

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

1. The Motor Accidents Claims Tribunal,
Additional District Court/Fast Track Court No.II,
Tirunelveli.

15/17



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2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

P.DHANABAL,J.

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