



C.M.A.(MD) Nos.886 & 887 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 09.08.2024

CORAM

**THE HON'BLE MR.JUSTICE SUNDER MOHAN**

**C.M.A.(MD) Nos.886 & 887 of 2013**

and

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

The Branch Manager,  
The Oriental Insurance Co.Ltd.,  
Madurai.

... Appellant in  
both C.M.As.

Vs.

1.Kannagi  
W/o.Late Balu

2.Minor Naveen  
S/o.Late Balu

3.Minor Suria  
S/o.Late Balu

4.Minor Manikandan  
S/o.Late Balu

5.Kaliamoorthy (Died)  
S/o.Chinnaiyan

6.Andal  
W/o.Kaliamoorthy

... R1 to R6 in  
C.M.A.(MD) No.886/13



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7.Soundarajan  
S/o.Vaithilingam

... R1 in  
C.M.A.(MD) No.887/13

8.Gopi  
S/o.Rasu

... R7 in  
C.M.A.(MD) No.886/13  
& R2 in  
C.M.A.(MD) No.887/13

[R5 in C.M.A(MD) No.886 of 2013 died.  
R1 to R4 & R6 in C.M.A.(MD) No.886 of  
2013, who are already on record, were  
recorded as legal heirs of R5 *vide* order of  
this dated 01.08.2024]

Common Prayer:- Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the Award of Rs. 4,23,000/- (Rupees Four Lakhs Twenty Three Thousand Only) in M.C.O.P.NO.408 of 2004 dated 24.02.2006 and the Award of Rs.10,000/- (Rupees Ten Thousand Only) in M.C.O.P.No.608 of 2024 dated 24.02.2006, on the files of the Motor Accident Claims Tribunal (Principal Sub Court), Kumbakonam.

For Appellant  
in both C.M.As. : Mr.Prabhakaran  
Standing Counsel

For R1 to R6 in  
C.M.A.(MD) No.886/13 : Mr.P.Prabhakaran

For R1 in  
C.M.A.(MD) No.887/13 : No appearance



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For R7 in  
C.M.A.(MD) No.886/13  
& For R2 in  
C.M.A.(MD) No.887/13 : No appearance

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### **COMMON JUDGMENT**

These two appeals arose from claim petitions in M.C.O.P.Nos.408 & 608 of 2004 filed before the Motor Accident Claims Tribunal (Principal Sub Court), Kumbakonam, due to the death and injury of two individuals.

2. M.C.O.P.No.408 of 2004 was filed by the legal heirs of the deceased Balu who died in the accident. M.C.O.P.No.608 of 2004 was filed by the injured claimant stating that he has sustained injuries in the accident.

3. C.M.A.(MD) No.886 of 2013 has been filed challenging the compensation awarded in M.C.O.P.No.408 of 2004. C.M.A.(MD) No.608 of 2013 has been filed challenging the compensation awarded in M.C.O.P.Nos.608 of 2004.



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4. In both cases, the claimants had stated that on 02.05.2004, while the deceased Balu and the injured claimant were travelling along with others in a tractor bearing Registration No.TN-31-T-7587 insured with the appellant Insurance Company, the driver of the tractor had driven the same in a rash and negligent manner, as result of which, the tractor capsized; and that in the accident, the said Balu died on the spot and others had sustained grievous injuries.

5. The owner of the tractor who was shown as the first respondent in both claim petitions had filed counter denying the averments made in the claim petitions and stating that he did not permit the deceased and others to travel in the tractor.

6. The appellant Insurance Company had filed counter before the Tribunal stating that the owner of the tractor had violated the policy conditions by taking the passengers in the tractor and therefore, they are not liable to pay compensation and in any case, the claimants have not established that the accident took place due to the negligent driving of the driver of the tractor.



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7. Before the Tribunal, in all the claims petitions including M.C.O.P.Nos.408 & 608 of 2004, five witnesses were examined. The first claimant in M.C.O.P.No.408 of 2004 who is the wife of the deceased Balu was examined as P.W.1. The insured claimant in M.C.O.P.No.608 of 2004 was examined as P.W.3. On the side of all the claimants, Exs.P1 to P19 were marked. The appellant Insurance Company has examined one witness as R.W.1 and marked Exs.R1 to R3 to show that the owner of the tractor had violated the policy conditions.

8. The Tribunal after taking into consideration of oral and documentary evidence, awarded a compensation of Rs.4,23,000/- in M.C.O.P.No.408 of 2004 which is under challenge in C.M.A.(MD) No. 886 of 2013 and Rs.10,000/- in M.C.O.P.No.608 of 2004 which is under challenge in C.M.A.(MD) No.887 of 2013.

9. The learned counsel for the appellant Insurance Company submitted that the compensation awarded by the Tribunal is excessive and in any case, the Tribunal ought not to have directed the appellant to pay and recover the compensation and should have fully exonerated the appellant Insurance Company.



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10. The learned counsel for the first to sixth respondents in C.M.A. (MD) No.886 of 2013 who are the claimants in M.C.O.P.No.408 of 2004, per contra, submitted that even assuming that there is a violation of policy condition, the direction to the appellant to make the payment and recover the same from the owner of the vehicle is in accordance with law.

11.The learned counsel for the claimants/first to sixth respondents also pointed out that the compensation awarded by the Tribunal was very meagre and this Court while considering the award may enhance the compensation as the method adopted by the Tribunal while calculating the compensation is erroneous. He submitted that the future prospects and the compensation under the head of loss of consortium were not awarded by the Tribunal.

12. This Court has carefully considered the rival submissions.

13. The questions involved in the instant appeals are as follows:-

- i. Whether the Tribunal was right in directing the appellant Insurance Company to pay and recover the compensation from the owner of the tractor?
- ii. Whether the Tribunal has awarded a just and reasonable compensation?



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14. As regards the first question, it is seen that the owner of the tractor had admittedly violated the policy conditions as could be seen from the claim petitions and also the policy conditions which have been incorporated in Ex.R1. Therefore, the finding of the Tribunal that the owner of the tractor had violated the conditions is in accordance with law. However, the question is whether the appellant Insurance Company should be exonerated. It is well settled law that when there is violation of policy conditions, the Insurance Company can be directed to pay and recover the amount from the insured person/policy holder. Therefore, this Court finds that the finding of the Tribunal in that regard does not call for any interference.

15. As regards the compensation awarded in M.C.O.P.No.408 of 2004 which pertains to the death of Balu, it is seen that there were six original claimants, of whom one is no more.

16. The Tribunal had fixed the notional income of the deceased at Rs.3,000/- per month on the basis of statement made in the claim petition. It is noticed that the deceased was only 35 years old. However, the Tribunal has failed to consider the future prospects. The Tribunal has also



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deducted 1/3<sup>rd</sup> towards personal expenses although there were more than 4 dependants. The Tribunal ought to have deducted 1/4<sup>th</sup> towards personal expenses.

17. Since the one of the claimants died, this Court enhances the compensation under the head of loss of love and affection to the remaining 5 claimants at Rs.40,000/- each. The Tribunal has not awarded any compensation towards loss of estate. This Courts awards a sum of Rs. 15,000/- towards loss of estate. The compensation awarded towards funeral expenses is meagre which is enhanced to Rs.15,000/-.

18. Therefore, though the claimants have not challenged the award, in order to award just and reasonable compensation, this Court is of the view that the compensation can be enhanced in the following manner:-

| <i>Heads and Calculation</i> | <i>Amount</i> |
|------------------------------|---------------|
|------------------------------|---------------|



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Loss of Dependency:-

(Age of the deceased - 35)

Notional Monthly Income : Rs.3,000/-

Add: Future Prospects at 40%  
[Rs.3,000/- x 40/100] : Rs.1,200/-

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: Rs.4,200/-

Less : Personal Expenses at 1/4<sup>th</sup>  
[4,200 x 1/4] : Rs.1,050/-

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: Rs.3,150/-

Annual contribution to the family  
[Rs.3,150/- x 12] - Rs.37,800/-

Multiplier - 17 [37,800 x 17] - Rs.6,42,600/-

Rs.6,42,600/-

Loss of Consortium [Rs.40,000/- x 5]

Rs.2,00,000/-

Loss of Estate

Rs. 15,000/-

Funeral Expenses

Rs. 15,000/-

**Total**

**Rs.8,72,600/-**

| <i>Sl. No</i> | <i>Description</i>         | <i>Amount awarded by the Tribunal</i> | <i>Amount awarded by this Court</i> | <i>Award confirmed, enhanced or granted</i> |
|---------------|----------------------------|---------------------------------------|-------------------------------------|---------------------------------------------|
| 1             | Loss of Dependency         | Rs.4,08,000/-                         | Rs.6,42,600/-                       | Enhanced                                    |
| 2             | Loss of Love and Affection | Rs. 10,000/-                          | Rs.2,00,000/-                       | Enhanced                                    |
| 3             | Loss of Estate             | -                                     | Rs. 15,000/-                        | Granted                                     |
| 4             | Funeral Expenses           | Rs. 5,000/-                           | Rs. 15,000/-                        | Enhanced                                    |
| <b>Total</b>  |                            | <b>Rs.4,23,000/-</b>                  | <b>Rs.8,72,600/-</b>                | Enhanced by <b>Rs.4,49,600/-</b>            |



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WEB COPY 19. As regards the compensation awarded to the claimant in M.C.O.P.No.608 of 2004, this court finds that the Tribunal has awarded a sum of Rs.10,000/- for the injuries suffered by him which is just and reasonable and is therefore confirmed.

20. The appellant Insurance Company is directed to deposit the compensation awarded by the Tribunal in M.C.O.P.No.608 of 2004 together with interest and proportionate costs, less the amount already deposited, if any, within a period of 6 weeks from the date of receipt of a copy of this order.

21. On such deposit, the first respondent in C.M.A.(MD) No.887 of 2013/claimant in M.C.O.P.No.608 of 2004 is permitted to withdraw the same together with interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.

22. The appellant Insurance Company is directed to deposit the enhanced compensation amount of Rs.8,72,600/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization and proportionate costs, after deducting the amount already



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deposited if any, within a period of 6 weeks from the date of receipt of copy of this order.

23. The claimants in M.C.O.P.No.408 of 2004 are entitled to compensation, interest, and costs in the same proportion ordered by the Tribunal. Since the fifth claimant in M.C.O.P.No.408 of 2004 has died, the remaining claimants are entitled to receive his share equally.

24. The first and sixth claimants in M.C.O.P.No.408 of 2004/ first and sixth respondents in C.M.A.(MD) No.886 of 2013 are permitted to withdraw their shares, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal.

25. The second to fourth claimants in M.C.O.P.No.408 of 2004/ second to fourth respondents in C.M.A.(MD) No.886 of 2013 were minor when the claim petition was filed in the year 2004. They would have attained the age of majority now. Hence, they are directed to file appropriate application for recording their majority and to withdraw their shares.



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26. The claimants in M.C.O.P.No.408 of 2004/the first to sixth respondents in C.M.A.(MD) No.886 of 2013 are directed to pay the court fee for the enhanced amount of compensation, within a period of four weeks from the date of receipt of a copy of this order.

27. In the result, both these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

09.08.2024

Index: Yes/ No  
Neutral Citation: Yes / No  
Speaking Order/Non-Speaking Order

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Copy To:

The Principal Sub Judge,  
Motor Accident Claims Tribunal,  
Kumbakonam.



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**SUNDER MOHAN, J.**

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and  
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