BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.08.2024

DELIVERED ON : 12.09.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGOVAN

C.M.A.(MD).Nos.538, 566 & 573 of 2022
and Cross Obj.(MD)Nos.10 to 12 of 2023
and C.M.P.(MD).Nos.6812, 6745 & 6746 of 2022

C.M.A.(MD).No.538 of 2022

Reliance General Insurance Company Limited,
Thirunelveli represented by its Branch Manager,
Thakaplaza South Bye-pass Road,
Vanarpettai, Tirunelveli District. ... Appellant/Respondent No.3.

Vs.

1.Papa ... 1st Respondent/Petitioner

2.Deepak

3.James

4.Bharath Motors,
represented by its Proprietor,
Vettuvenni Junction, Marthandam.

5.Christhuvukkul Pthuvazhvu Trust,
represented by its Managing Trustee,
Thanja Retnam Agnesammal,
D/o. Nocholas, 21A, Zion Garden,
Sankaranputhoor, Ramapuram,
Theroor Village, Agasteeswaram Taluk,
Kanniyakumari District. ... Respondents 2 to 5/Respondents 1,2,4 & 5

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the award and decree dated 17.09.2019 passed in M.C.O.P.No.59 of 2019 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate Court, Nagercoil in so far as liability to pay compensation is concerned.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.R.Murugan for R1
Mr.S.Xavier Rajini for R2, 3 & 5
Mr.A.Balakrishnan for R4

Cros.Obj.(MD)No.10 of 2023

Papa ... Cross Objector/1st Respondent

Vs.

1.Reliance General Insurance Company Limited,
Thirunelveli represented by its Branch Manager,
Thakaplaza South Bye-pass Road,
Vanarpettai, Tirunelveli District. ... 1st Respondent/Appellant

2.Deepak

3.James

4.Bharath Motors,
represented by its Proprietor,
Vettuvenni Junction, Marthandam.

5.Christhuvukkul Pthuvazhvu Trust,
represented by its Managing Trustee,
Thanja Retnam Agnesammal,
D/o. Nocholas, 21A, Zion Garden,
Sankaranputhoor, Ramapuram,

Theroor Village, Agasteeswaram Taluk,
Kanniyakumari District. ... Respondents 2 to 5/Respondents 1 to 5

PRAYER : Cross Objection is filed under Order 41 Rule 22 of C.P.C., to set aside the portions of award dated 17.09.2019 passed in M.C.O.P.No.59 of 2019 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate Court, Nagercoil as against the 1, 2, 4 and 5 Respondents.

For Appellant : Mr.R.Murugan

For Respondents : Mr.V.Sakthivel for R1
Mr.S.Xavier Rajini for R2, 3 & 5
Mr.A.Balakrishnan for R4

C.M.A.(MD).No.566 of 2022

Reliance General Insurance Company Limited,
Thirunelveli represented by its Branch Manager,
Thakaplaza South Bye-pass Road,
Vanarpettai, Tirunelveli District. ... Appellant/Respondent No.3.

Vs.

1.Rahul ... 1st Respondent/Petitioner
(Represented by his Guardian father Subramonian, S/o Kumarasamy)

2.Deepak

3.James

4.Bharath Motors,
represented by its Proprietor,
Vettuvenni Junction, Marthandam.

5.Christhuvukkul Pthuvazhvu Trust,

represented by its Managing Trustee,
Thanja Retnam Agnesammal,
D/o. Nocholas, 21A, Zion Garden,
Sankaranputhoor, Ramapuram,
Theroor Village, Agasteeswaram Taluk,
Kanniyakumari District. ... Respondents 2 to 5/Respondents 1,2,4 & 5

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the award and decree dated 17.09.2019 passed in M.C.O.P.No.60 of 2019 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate Court, Nagercoil in so far as liability to pay compensation is concerned.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.R.Murugan for R1
Mr.S.Xavier Rajini for R2, 3 & 5
Mr.A.Balakrishnan for R4

Cros.Obj.(MD)No.11 of 2023

Rahul ... Cross Objector/1st Respondent
(Represented by his Guardian father Subramonian, S/o Kumarasamy)

Vs.

1.Reliance General Insurance Company Limited,
Thirunelveli represented by its Branch Manager,
Thakaplaza South Bye-pass Road,
Vanarpettai, Tirunelveli District. ... 1st Respondent/Appellant

2.Deepak

3.James

4.Bharath Motors,

represented by its Proprietor,
Vettuvenni Junction, Marthandam.

5.Christhuvukkul Pthuvazhvu Trust,
represented by its Managing Trustee,
Thanja Retnam Agnesammal,
D/o. Nocholas, 21A, Zion Garden,
Sankaranputhoor, Ramapuram,
Theroor Village, Agasteeswaram Taluk,
Kanniyakumari District. ... Respondents 2 to 5/Respondents 1 to 5

PRAYER : Cross Objection is filed under Order 41 Rule 22 of C.P.C., to set aside the portions of award dated 17.09.2019 passed in M.C.O.P.No.60 of 2019 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate Court, Nagercoil as against the 1, 2, 4 and 5 Respondents.

For Appellant : Mr.R.Murugan

For Respondents : Mr.V.Sakthivel for R1
Mr.S.Xavier Rajini for R2, 3 & 5
Mr.A.Balakrishnan for R4

C.M.A.(MD).No.573 of 2022

Reliance General Insurance Company Limited,
Thirunelveli represented by its Branch Manager,
Thakaplaza South Bye-pass Road,
Vanarpettai, Tirunelveli District. ... Appellant/Respondent No.3.

Vs.

1.Subramonian ... 1st Respondent/Petitioner

2.Deepak

3.James

4.Bharath Motors,
represented by its Proprietor,
Vettuvenni Junction, Marthandam.

5.Christhuvukkul Pthuvazhvu Trust,
represented by its Managing Trustee,
Thanja Retnam Agnesammal,
D/o. Nocholas, 21A, Zion Garden,
Sankaranputhoor, Ramapuram,
Theroor Village, Agasteeswaram Taluk,
Kanniyakumari District. ... Respondents 2 to 5/Respondents 1,2,4 & 5

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the award and decree dated 17.09.2019 passed in M.C.O.P.No.58 of 2019 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate Court, Nagercoil in so far as liability to pay compensation is concerned.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.R.Murugan for R1
Mr.S.Xavier Rajini for R2, 3 & 5
Mr.A.Balakrishnan for R4

Cros.Obj.(MD)No.12 of 2023

Subramanian ... Cross Objector/1st Respondent

Vs.

1.Reliance General Insurance Company Limited,
Thirunelveli represented by its Branch Manager,
Thakaplaza South Bye-pass Road,

Vanarpettai, Tirunelveli District. ... 1st Respondent/Appellant

2.Deepak

3.James

4.Bharath Motors,
represented by its Proprietor,
Vettuvenni Junction, Marthandam.

5.Christhuvukkul Pthuvazhvu Trust,
represented by its Managing Trustee,
Thanja Retnam Agnesammal,
D/o. Nocholas, 21A, Zion Garden,
Sankaranputhoor, Ramapuram,
Theroor Village, Agasteeswaram Taluk,
Kanniyakumari District. ... Respondents 2 to 5/Respondents 1 to 5

PRAYER : Cross Objection is filed under Order 41 Rule 22 of C.P.C., to set aside the portions of award dated 17.09.2019 passed in M.C.O.P.No.58 of 2019 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate Court, Nagercoil as against the 1, 2, 4 and 5 Respondents.

For Appellant : Mr.R.Murugan

For Respondents : Mr.V.Sakthivel for R1
Mr.S.Xavier Rajini for R2, 3 & 5
Mr.A.Balakrishnan for R4

COMMON JUDGMENT

These appeals well as Cross objections have been filed against the award passed in M.C.O.P.Nos.58, 59 and 60 of 2019 on the file of Chief

Judicial Magistrate Court, Motor Accident Claims Tribunal, Nagercoil, dated 17.09.2019.

2.The facts in C.M.A.(MD).No.538 of 2022:

On 01.03.2015, the petitioner namely Papa was travelled as pillion rider along with her husband Subramonian and son Rahul on the Thazhakudy to Kulasekarapuram Road, in a motor cycle bearing Registration No.TN 74 AA 2818. It was driven by the husband. At that time, at about 7.30 p.m. nearing the place of occurrence an auto was driven by the first respondent namely Deepak in rash and negligent manner, which was not registered, from the opposite direction and hit the two wheeler. As a result of which, all the three persons sustained grievous injuries, were taken to Manuel Orthopaedic Hospital, Therekalputhoor, and taking treatment, till 13.03.2015. A case in Crime No.62 of 2015 was registered against the first respondent. She was aged about 29 at the time of occurrence, a home maker. Apart from that she was also doing tailoring work and earning Rs.6,000/- per month. Because of the accidental injuries, she was unable to carry her work. So claiming compensation amount of Rs.10,00,000/-, she filed the petition.

3.The facts in C.M.S.(MD).No.566 of 2022:

In respect of the very same accident, Rahul, S/o Pappa filed M.C.O.P.No.60 of 2019 through his father namely Subramonian filed a petition seeking compensation amount of Rs.5,00,000/- for the injuries sustained by him.

4.The facts in C.M.A.(MD).No.573 of 2022:

Another M.C.O.P.No.58 of 2019 was filed by the rider of the two wheeler namely Subramonian, who is the father of Rahul and husband of Pappa, claiming compensation amount of Rs.15,00,000/- for the injuries sustained by him.

5.All the matters were tried separately and separate award were passed by the tribunal.

6.Against the award passed in M.C.O.P.No.59 of 2019, the Insurance Company namely Reliance General Insurance Company Limited, filed the appeal in C.M.A.(MD).No.538 of 2023, in which cross objection was made by Papa in Cross Obj.(MD)No.10 of 2023.

7.Similarly, in respect of M.C.O.P.No.60 of 2019, the insurance company filed C.M.A.(MD).No.566 of 2022, in which the Rahul through his father filed cross objection in Cross Obj.(MD)No.11 of 2023.

8.In respect of M.C.O.P.No.58 of 2019, the insurance company filed C.M.A.(MD)No.573 of 2022, in which the claimant Subramonian, filed cross objection in Cross Obj.(MD)No.12 of 2023.

9.Since common question arises for consideration in all three matters, all the matters tried together and this common order is passed in this appeal.

10.In respect of the first aspect of negligence, which is common in all the matters, the Tribunal recorded finding that the auto driver namely the first respondent was responsible for the accident. So we will take up first common question.

11.The learned counsel for the appellant namely the insurance company would submit that on the date of occurrence there was no insurance. Only a proposal form was made. No premium amount was paid by the first respondent. Not even cover note was issued. So the Insurance Company cannot be fastened with any liability.

12.Now, we will go to the first aspect of negligence and then to the liability to satisfy the award. In all the matters, the claimants were examined to show the nature of occurrence as mentioned in the preamble portion of the order. It is seen that both were driving the vehicles in opposite directions. From the Motor vehicle Inspectors Report, it is seen that the front side of the auto was severely damaged, so also the right side of the two wheeler. The auto driven by the first respondent came in the wrong side of the road and hit the two wheeler. There is no contra evidence on the side of the first respondent or by the appellant. So from the evidence of the claimants and the manner of the accident, the Tribunal recorded a finding of fact against the first respondent. So in the absence of any contra evidence on the side of the appellant or on the first respondent, the finding recorded by the Tribunal on that aspect requires no interference even on facts.

13.Now we will also go to the liability, which is also common in all the matters, which is specific case of the third respondent before the Tribunal, who is the appellant herein that the second respondent has not submitted any claim form along with vehicle details. A private investigation was appointed. There was no insurance to the vehicle and so the insurance company cannot fastened with any liability. The second respondent before the tribunal is the owner of the vehicle. His father's name is one Vincent, who is the trustee of the fifth respondent herein. The vehicle was purchased from Bharath Motors, Marthandam, which was shown as fourth respondent in the main petition. The cover note was issued on 24.05.2015. Premium amount of Rs.6,200/- was paid. The vehicle was taken delivery from Bharath Motors, Marthandam on 28.02.2015. The trustee of the trust namely Vincent died. So the first respondent presented the proposal to RTO, Nagercoil on 22.06.2015. He was informed by the Insurance company that the Insurance starts from 04.03.2015 to 03.03.2016. The endorsement will be effective only from 18.06.2015. The fourth respondent namely Bharathi Motors filed a counter stating that they sold the vehicle to the second respondent, who took delivery on 28.02.2015. The Insurance and other Registration process were left at the choice of the purchaser.

14.So from the proceedings set out above, it is seen that fourth respondent's role was over in selling the same. It was not the case of the fourth respondent in the main petition that a cover note was issued by him as a seller. But, it is the case of the second respondent that cover note was issued. The insurance company received the premium amount on 24.02.2015. So According to the second respondent in the main petition on the date of occurrence, cover note was in force. But, according to him, he was informed that cover note period will start only from 04.03.2015. So according to the Insurance Company, there was no effective Insurance on the date of occurrence.

15.Now we will go to the finding recorded by the tribunal on that aspect. Ex.R2 is the policy copy, which shows that the effective date of the policy is 04.03.2015. But, cover note Ex.R3 was produced, which, shows that the effective date of the commencement of the cover note is

24.02.2015. Premium amount was also collected by the Insurance Company.

16.So on the factual aspect, the Tribunal by relying upon the Judgment of this Court made in ***Vadukachetty Vs. Munusamy and others*** in ***C.M.A.No.1930 of 2006, dated 16.03.2011***, submitted that the real intention of the parties in issuing the cover note is to cover the risk of third parties and commencement of indemnity. So according to the trial Court, it is the issue between the insurance company and the insurer, in which, the third parties claim is have no so. But, the claimants can take the advantage of issue the cover note. On that ground the responsibility was fixed upon the appellant also in satisfying the award.

17.It is contended that Ex.R3, was issued in the name of the trust called Christhuvukkul Pthuvazhvu Trust namely 5th respondent in the main petition and the period of insurance is 24.02.2015 to 24.02.2016. The vehicle is also noted as new vehicle, chassis number and engine number are mentioned, which shows that cover note was issued. Not only that we also find a minimum amount of Rs.6,200/- was collected. The seal of the Insurance company is also found.

18.Now we will go to the evidence of the respondent as to how they can disown the responsibility. RW1 is the Officer attached to the appellant / Insurance Company would say that Ex.R3 is not a cover note. It is only a proposal form. We can also find seal affixed on the first page of the document, wherein, we find that it is mentioned as Proposal for the Commercial Vehicle's Package. So it is seen that it is only proposal form and not cover note as stated by the second respondent in the main petition. So it is seen that on the date of occurrence, the cover note is not in force, so also the policy. So the appellant Insurance Company is not liable to pay the compensation amount on behalf of the Insurer. So finding of the trial Court on that aspect requires interference, accordingly, it interfered.

19.Now coming to the compensation regarding M.C.O.P.No.59 of 2019 in connection with C.M.A.(MD).No.538 of 2022 and Cross objection 10 of 2023 in respect of claimant namely Papa. She was admitted as in patient on the Manuel Orthopaedic Hospital, Nagercoil from 01.03.2015 to 13.03.2015. PW2 Dr.Senthamarai treated Papa. Surgery was conduced. From the discharge summary and wound certificate, it was found that the injuries are grievous in nature. But, there was no disability either permanent or partial. Towards pain and sufferings Rs.30,000/- was awarded and customary amounts were included and totally Rs.2,15,000/- was awarded as compensation. Why she was not referred to the Medical Board for assessing the disability is not known. From the evidence of PW2 namely the treatment Doctor, it is seen that lacerated injuries, cutting nerves and blood vessels were found on the palm region. There was no fracture. So probably for the reasons sated above, she was not referred to assess the disability. There is no disability at all. She underwent surgery for the cutting of the nerves and blood vessels. From the nature of injury suffered by Papa it is seen that there is no disability. The contention of the Papa that she is suffered total functional disability is not established by her. Considering the above said aspect, the compensation assessed by the Tribunal is required no interference. But, Pain and sufferings is enhanced to Rs.50,000/-. Accordingly, the total compensation in respect of Papa is enhanced to Rs. 2,35,000/-.

20.Regarding the compensation for the minor Rahul in M.C.O.P.No.60 of 2019 in connection with C.M.A.(MD).No.566 of 2022 and Cross objection 11 of 2023, it appears that he was aged about 5 at the time of occurrence. There was a compound fracture on his right toe region. He underwent treatment from 01.03.2015 to 06.03.2015. For him also there was no reference to the Medical Board for assessing disability. In fact even the Doctor, who treated minor Rahul was not examined. Only the medical bills and wound certificate were produced by the claimant. On that ground the Tribunal awarded total compensation of Rs.80,000/-. It awarded Rs.20,000/- towards grievous injury and Rs. 10,000/- for simple injury. To that other customary amounts such as transportation and extra nourishment were included. Totally Rs.80,000/- was awarded. But, the Tribunal has not fixed the compensation for pain and sufferings. Considering the nature of injury suffered by the minor Rahul, this Court fixed the compensation for pain and sufferings as Rs.25,000/-. Accordingly, the total compensation in respect of Minor Rahul, is enhanced to Rs.1,05,000/-.

21.So far as M.C.O.P.No.58 of 2019 in connection with C.M.A.(MD).No.573 of 2022 and Cross objection 12 of 2023, PW2 Doctor Chenthamarai, Manuel Orthopaedic Hospital, was examined and apart from that PW3 Doctor Mohammed Subir was also examined. Subramonian suffered several injuries, which is noted in the order as extracted below.

> *"1) Right Knee was found with lacerated wound along with dislocation. 2) A laceration wound over frontal region is also seen, 3) Laceration wound and deformity over posterior aspect of right ankle, 4) Laceration wound over (Right) middle Ring fingers, 5) Pain over cervical spine. 6) Abrasion over (left) knee and 7) Tenderness over (right) hip."*

22.At the time of the accident, the claimant Subramonian was working as salesman in Tamil Nadu State Marketing Corporation Limited, which was proved through the salary slip under Ex.P22. Ex.P26 is the disability certificate issued by the Orthopaedic surgeon attached to Kanniyakumari Medical College Hospital, Kanniyakumari. It assessed the disability as 45%. But, he has been referred to the Medical Board attached to the Government Medical College hospital, Kanniyakumari for assessing the disability. The reason is not known. But, from the accidental injuries it does not stand established that he was removed from the service due to the functional disability. So in the absence of any such evidence on record for partial permanent disability, the Tribunal awarded Rs.1,35,000/- as compensation. Pain and sufferings was fixed as Rs.1,00,000/-. To that medical expenses supported by medical bills, transport, as well as the extra nourishment were also added.

23.Challenging the quantum, he filed the cross appeal. From the facts narrated above and the nature of injuries suffered by the claimant, it appears that there was no total functional disability. Rs.3,000/- was taken as a unit for 1% of the disability. So I find absolutely no reason to interfere into the above said assessment of compensation, which is just and reasonable. So no interference is called for. Therefore, the cross objection made by the Subramonian is deserves to be dismissed.

24.In the result,

(i) all the civil miscellaneous appeals in C.M.A.(MD).No.538, 566 and 573 of 2022 are allowed.

(ii) Cros. Obj.(MD).No.12 of 2023 is dismissed.

(iii) Cros. Obj.(MD)Nos.10 and 11 of 2023 are partly allowed.

(iv) The compensation awarded in M.C.O.P.Nos.58 and 60 of 2019 is enhanced to Rs.2,35,000/- and Rs.1,05,000/- respectively, which shall carry interest at the rate of 7.5% per annum.

(v) In respect of the M.C.O.P.No.59 of 2019, the award namely Rs.6,15,000/- passed by the Tribunal is hereby confirmed, which also shall carry interest at the rate of 7.5% per annum.

(vi) The appellant / Insurance company in the appeals is exonerated from the liability and the owner of the vehicle namely the 5th respondent in the main petition, who is also the 5th respondent herein is directed to pay the entire compensation awarded in all the matters to the claimants.

(vii) The 5th respondent is directed to deposit the entire compensation amounts in respect all the three cases, (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs before the Tribunal, within a period of two months from the date of receipt of a copy of this order.

(viii) On such deposit being made by the 5th respondent, the claimants namely Papa and Subramonian are permitted to withdraw their respective award amount, after following the due process of law, less any amount already received by him.

(ix) In respect of the minor claimant namely Rahul, the entire share shall be deposited in a Nationalized Bank and the father of the minor namely Subramonian is permitted to withdraw the interest once in three months.

(iv) Consequently, connected miscellaneous petition stands closed.

12.09.2024

Index : Yes / No
Internet : Yes / No
TM

To

1.The Chief Judicial Magistrate, Motor Accident Claims Tribunal,
Nagercoil.

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

G.ILANGOVAN,J.

TM

C.M.A.(MD).Nos.538, 566 & 573 of 2022 and
Cross Obj.(MD)Nos.10 to 12 of 2023

12.09.2024