BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 31.07.2024

DELIVERED ON : 28.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGOVAN

C.M.A.(MD).Nos.270, 271 and 281 of 2022

C.M.A.(MD)No.270 of 2022

1.Anuja

2.Kaniammal ... Appellants/Petitioners

Vs.

1.Karthikraja

2.The Branch Manager,
United India Insurance Co. Ltd.,
443, Periyakulam Road,
Theni. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to fix the liability on both respondents and enhance the compensation amount in M.C.O.P.No.2 of 2020 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Judge, Periyakulam, dated 23.12.2021.

C.M.A.(MD)No.271 of 2022

Perumayee ... Appellant/Petitioner

Vs.

1.Karthikraja

2.The Branch Manager,
United India Insurance Co. Ltd.,
443, Periyakulam Road,
Theni. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to fix the liability on both respondents and enhance the compensation amount in M.C.O.P.No.3 of 2020 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Judge, Periyakulam, dated 23.12.2021.

C.M.A.(MD)No.281 of 2022

1.Karuppayee

2.Senthilkumar

3.Pandiselvi

4.Sundarapandi ... Appellants/Petitioners

Vs.

1.Karthikraja

2.The Branch Manager,
United India Insurance Co. Ltd.,
443, Periyakulam Road,
Theni. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to fix the liability on both respondents and enhance the compensation amount in M.C.O.P.No.4 of 2020 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Judge, Periyakulam, dated 23.12.2021.

For Appellant : Mr.K.Kumaravel

For Respondents : Mr.B.Rajesh Saravanan for R2
For R1 – No Appearance
(In all petitions)

COMMON JUDGMENT

These appeals have been filed to fix the liability on both respondents and enhance the compensation amount awarded in M.C.O.P.Nos.2 to 4 of 2020 on the file of the Motor Accident Claims Tribunal / Additional District and Sessions Judge, Periyakulam, by the order dated 23.12.2021.

2.The facts in brief:

On 27.09.2019, the deceased Manikandan and others were travelling in a vehicle bearing registration No.TN 60 AA 8058 a pick up van for the purpose of fertilizing a land belongs to the Durai Raj at about

7.45 a.m. The driver of the pick up van drove the same in a rash and negligent manner and tried to over take a bus and in that process he lost the control and the van capsized. As a result of which, the deceased Manikandan and others, who were travelling in the back side of the pick up van, sustained grievous injuries. The deceased Manikandan was taken to the Government Medical College Hospital, Theni and died there. A case in Crime No.357 of 2019 was registered against the first respondent on the file of the Devadhanapatti Police Station. Claiming compensation amount of Rs.30,00,000/-, the claimants filed M.C.O.P.No. 2 of 2020 before the Tribunal for the death of Manikandan.

3.In the very same accident, one Perumayee, filed claim petition in M.C.O.P.No.3 of 2020 for the death of one Muthupandi, claiming compensation amount of Rs.10,00,000/-.

4.Similarly, one Karuppayee and others filed another claim petition in M.C.O.P.No.4 of 2020 before the very same Court for the death of one Chinnan, claiming compensation amount of Rs.20,00,000/-.

5.All the three petitions were filed before the Additional District Judge / Motor Accident Claims Tribunal, Theni and heard by the very same Judge and separate awards were passed by making separate enquiry.

6.Against the awards passed by the Tribunal, the respective claimants filed these appeals seeking enhancement of the award amount and also fixation of liability upon the respondents herein. Since the cause of action in all the three matters are one and the same, all the appeals were heard together by this Court and this common judgment is passed.

7.Regarding the M.C.O.P.No.2 of 2020 it is stated by the claimants that the deceased Manikandan was earning Rs.20,000/- per month by doing agricultural and load man work. In M.C.O.P.No.3 of 2020, the claimant stated that the deceased Muthupandi was also load man and earning Rs.20,000/- per month. So far M.C.O.P.No.4 of 2020 is concerned, the claimants Karuppayee and others has stated that the Chinnan was also a load man and apart from that he was doing agricultural work and merchant and earning Rs.20,000/-.

8.All the matters were resisted by the Insurance Company filing counter stating that the first respondent's vehicle is a goods vehicle. Against the policy conditions and Motor Vehicles Rules, he carried 13 persons on the back side of the vehicle. Since there is a policy violation and all the deceased persons travelling as gratuitous passengers, the Insurance Company is not liable to pay the compensation. Apart from that other customary denials were also made.

9.At the conclusion of the enquiry, the Tribunal recorded a finding of fact that the occurrence took place because of the rash and negligent driving on the part of the first respondent's vehicle's driver.

10.With regard to the question of liability to pay the compensation amount, the Tribunal recorded a finding noting that there was policy violation and Motor Vehicle Rules violation, the Insurance company was exonerated from the liability and directed the owner of the vehicle namely the first respondent to pay the compensation amount.

11.Now coming to the individual case of compensation in respect of M.C.O.P.No.2 of 2020, the notional income of the deceased was fixed at Rs.10,000/-. Since the age of the deceased was fixed as 27, 1/3rd was deducted towards personal and living expenses and 18 was taken as multiplier and arrived Rs.14,40,072/- as loss of dependency. To that the customary amounts were added and finally Rs.15,60,072/- was awarded as follows:

Sl. No.	***Nature of Head***	***Award (Rs.)***
1.	*Loss of Income*	*14,40,072/-*
2.	*Loss of love and affection*	*50,000/-*
3.	*Loss of Consortium*	*40,000/-*
4.	*Transportation*	*15,000/-*
5.	*Funeral Expenses*	*15,000/-*
	Total	***15,60,072/-***

12.In respect of M.C.O.P.No.3 of 2020, the age was fixed at 27, the notional income was fixed at Rs.10,000/- and 1/3rd was deducted. 18 was taken as multiplier and loss of dependency was fixed as at Rs.10,80,000/-. To that other customary amounts were added as noted in the tabulation below.

Sl. No.	Nature of Head	Award (Rs.)
1.	Loss of Income	10,80,000/-
2.	Loss of love and affection	25,000/-
3.	Transportation	15,000/-
4.	Funeral Expenses	15,000/-
	Total	**11,35,000/-**

13.Regarding M.C.O.P.No.4 of 2020, the age of the deceased was fixed as 65. Notional income was fixed as Rs.10,000/-. 1/3rd was deducted. Multiplier 5 was taken and the loss of dependency was fixed as Rs.4,20,000/-. To that other customary amounts were added as noted below.

Sl. No.	Nature of Head	Award (Rs.)
1.	Loss of Income	4,00,020/-
2.	Loss of Love and affection	1,00,000/-
3.	Loss of Consortium	40,000/-
4.	Transportation	15,000/-
5.	Funeral Expenses	15,000/-
	Total	**5,70,020/-**

14.In all, as mentioned above, the first respondent, who is the owner of the vehicle was directed to pay the compensation amount. Against which, these separate appeals are preferred by the claimants aggrieved over not only the quantum, but also the liability.

15.The learned counsel for the appellant would rely upon the following Judgments passed by the Co-ordinate Benches of this Court, in the cases of

1.***Ravi Sundar Vs. C.Ravi and others*** reported in ***2019 (2) TN MAC 271,***

2.***Anu Bhanvara, etc. Vs. Iffco Tokio General Insurance Co. Litd., and others*** reported in ***2019 (2) TN MAC 433 (SC)*** and

3.***Branch Manager, New India Assurance Co. Ltd., Saathur Vs. P.Ayyanar and others*** reported in ***2023 (2) TN MAC 9.***

16.There is no cross appeal by the first respondent in the main petition namely the owner of the vehicle. Since the Insurance Company was exonerated, no appeal was filed by them.

17.In respect of third point of negligence, no interference is called for, since the manner of occurrence itself clearly indicates that the occurrence is due to the rash and negligent driving on the part of the first respondent's vehicle driver, in the main petition.

18.The learned counsel for the appellant would submit that since the policy was taken for the load man also and all persons travelled in the vehicle only as a load man, the Tribunal ought to have directed the payment of compensation by the Insurance Company and recover the same from the owner of the vehicle due to the violation of the policy conditions. This is the general arguments advanced in all the matters.

19.Per contra, the learned counsel for the insurance company, who is arrayed as second respondent in this matter would submit that un-authorizedly the persons were carried in the goods vehicle. It is a clear finding by the Tribunal on that aspect. Even the FIR also contains the very same averments with regard to the carrying unauthorized persons in the goods vehicle. As per the policy, only two persons can travel that too in the cabin and the persons who are travelling in the backside of the goods vehicle are not covered.

20.Per contra, the learned counsel for the appellant in all the matters would submit that what they want is only pay and recovery order and not absolute liability upon the Insurance Company to pay the compensation amount along with and separately with the owner of the vehicle.

21.Apart from that in the individual cases, enhancement of compensation was also requested by the appellant stating that future prospects was not added by the Tribunal and that must be considered.

22.So regarding the aspect of liability, it is seen that even in the FIR itself it is stated that for doing fertilizing work in the land, which belongs to one Durai Raj all travelling in the vehicle, which belongs to Durai Raj, on the backside of the vehicle along with fertilizer boxes. They were siting on the top of the load. During the course of the enquiry, it is seen that the vehicle belongs to the first respondent in the main petition namely Karthik Raja, who was shown as first respondent in this matter also. It is also seen that he is the son of the Durai Raj. So it is seen that Karthik Raja is the owner of the vehicle and load were taken to his father's land namely Durai Raj, for doing the fertilizing work.

23.Now, we will go to the policy conditions. The policy reads that it is a package police and premium was paid for third party, own damage, compulsory personal accident coverage for owner cum driver, legal liability to paid driver. It does not indicate any collection of the insurance premium for the load man. But, there is a finding by the Tribunal that the policy covers load man numbering about 5. But, the learned counsel for the appellant would submit that it is a package. In the policy it is mentioned as package policy. We can take that all the persons travelled in the vehicle as load man, but about 15 persons were travelling on the backside of the vehicle.

24.Now the learned counsel for the appellant would rely upon the judgment of the Co-ordinate Bench of this Court in the case of ***Branch Manager, New India Assurance Co. Ltd., Saathur Vs. P.Ayyanar and***

others reported in ***2023 (2) TN MAC 9*** and submitted that there is no evidence on record to show that the persons, who are carried in the vehicle, in such a position, that there is a danger of falling from the vehicle, is not established by the Insurance Company that the height was exceeding 300 cms. from the surface upon which the vehicle rest. So in the absence of any such contention on the part of the Insurance Company, it cannot disown the liability. But as seen from the contention of the FIR, it is seen that more than 15 persons were travelling on the backside of the vehicle and apart from that they also carrying the fertilizer boxes. So there is clear violation of these Rule 236. When there is clear violation of Motor Vehicle Rules, then the Insurance Company cannot be fastened with any liability. But the fact remains that the vehicle belongs to the first respondent. The load belongs to the first respondent's father and all the persons were carried as load man. So in view of the above said circumstances, the Insurance Company cannot be fastened with any liability and it was rightly decided by the tribunal. But, since the insurance was in force and since it is package policy, which covers the load man also, it must pay the compensation amount awarded and recover the same from the first respondent herein, for violation of the policy conditions. The Insurance Company shall pay the compensation and recover the same from the first respondent in the main petition.

25.Now coming to the individual cases in M.C.O.P.No.2 of 2020 pertaining to C.M.A.(MD).No.270 of 2022, as stated above, as mentioned in the FIR itself, the deceased namely Manikandan was a load man. So the Tribunal fixed Rs.10,000/- as notional income, taking into account the daily wages condition of load man or agricultural coolie as the case may be, which requires no interference. But, the Tribunal committed a mistake in not adding 40% future prospects. Since he was aged about 27 years at the time of occurrence, add 40 % of notional income as future prospects as Rs.10,000 + Rs.4,000 = Rs.14,000. From that amount 1/3rd to be deducted towards personal expenses as Rs.14,000 – Rs.4600 = Rs.9,400. By applying the multiplier as 18 the loss of dependency arrived as Rs.9,400 x 12 x 18 = 20,30,400. To that the following customary amounts are added as tabulated below.

Sl. No.	***Nature of Head***	***Award (Rs.)***
1.	*Loss of Dependency*	*20,30,400*
2.	*Loss of consortium for two petitioners (40,000x2)*	*80,000*
3.	*Loss of Estate*	*15,000*
4.	*Funeral Expenses*	*15,000*
	Total	***21,40,400***

The total compensation Rs.21,40,000/-. Accordingly, the amount is enhanced.

26.Now coming to the individual cases in M.C.O.P.No.3 of 2020 pertaining to C.M.A.(MD).No.271 of 2022, as stated above, as mentioned in the FIR itself, the deceased namely Muthupandi was a load man. So the Tribunal fixed Rs.10,000/- as notional income, taking into account the daily wages condition of load man or agricultural coolie as the case may be, which requires no interference. But, the Tribunal committed a mistake in not adding 40% future prospects. Since he was aged about 27 years at the time of occurrence, add 40 % of notional income as future prospects as Rs.10,000 + Rs.4,000 = Rs.14,000. To that amount half of the amount to be deducted towards personal expenses as Rs.14,000 – Rs.7,000 = Rs.7,000 since he was unmarried. By applying the multiplier as 18 the loss of dependency arrived as Rs.7,000 x 12 x 18 = 15,12,000. To that the following customary amounts are added as tabulated below.

Sl. No.	*Nature of Head*	*Award (Rs.)*
1.	*Loss of Dependency*	*15,12,000*
2.	*Loss of consortium*	*40,000*
3.	*Loss of Estate*	*15,000*
4.	*Funeral Expenses*	*15,000*
	Total	***15,82,000***

The total compensation Rs.15,82,000/-. Accordingly, the amount is enhanced.

27.Now coming to the individual case in M.C.O.P.No.4 of 2020 pertaining to C.M.A.(MD).No.281 of 2022, as stated above, as mentioned in the FIR itself, the deceased namely Chinnan was a load man. So the Tribunal fixed Rs.10,000/- as notional income, taking into account the daily wages condition of load man or agricultural coolie as the case may be, which requires no interference. Since he is aged about 65, no future prospects is added. To that amount 1/3rd amount to be deducted towards personal expenses as Rs.10,000 – Rs.3,333 = Rs.6,667.

By applying the multiplier as 5 the loss of dependency arrived as Rs.6667 x 12 x 5 = 4,00,020/-. 1st petitioner is the wife of the deceased and she is entitled for Rs.40,000/- and the petitioners 2 to 4 are the children and who are entitled for Rs.40,000/- each towards parental consortium. Totally Rs.1,60,000/-. To that the following customary amounts are added as tabulated below.

Sl. No.	***Nature of Head***	***Award (Rs.)***
1.	*Loss of Dependency*	*4,00,020*
2.	*Loss of Consortium (40,000x4)*	*1,60,000*
3.	*Loss of Estate*	*15,000*
4.	*Funeral Expenses*	*15,000*
	Total	***5,90,020***

The total compensation Rs.5,90,020/-. Accordingly, the amount is enhanced.

28.Accordingly, these civil miscellaneous appeals are allowed.

(i) In respect of **C.M.A.(MD).No.270 of 2022**, the award amount is enhanced to **Rs.21,40,000/- (Rupees Twenty One Lakhs and Forth Thousand only)**. In respect of **C.M.A.(MD).No.271 of 2022**, the award amount is enhanced to **Rs.15,82,000/- (Rupees Fifteen Lakhs and**

Eighty Two Thousand only). And in respect of **C.M.A.(MD).No.281 of 2022**, the award amount is enhanced to **Rs.5,90,020/- (Rupees Five Lakhs Ninety Thousand and Twenty only).**

(ii) The second respondent / insurance company is directed to deposit the above said enhanced entire compensation amount in respect of the above said 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 and recover the same from the first respondent before the Tribunal.

(iii) On such deposit being made by the second respondent / insurance company, the appellants / claimants in all the three petitions are permitted to withdraw the entire award amount as mentioned above, after following the due process of law, less any amount already received by them.

28.08.2024

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

1.The Additional District and Sessions Judge, Motor Accident Claims Tribunal , Periyakulam.

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.270, 271 and 281 of 2022

28.08.2024