



C.M.A(MD)Nos.706, 707, 708, 709 and 710 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATE : 25.04.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

C.M.A(MD)Nos.706, 707, 708, 709 and 710 of 2018

and

Cros.Obj.(MD)No.10 of 2019

in C.M.A(MD)No.706 of 2018

and

C.M.P(MD)Nos.8135, 8136, 8137, 8138 and 8139 of 2018

C.M.A(MD)No.706 of 2018

The General Manager,
ICICI Lombard General Insurance Company Ltd.,
Rep. by its General Manager having Office at
Zenith House, Keshavrao Khade Marg,
2nd Floor, Mahalaxmi,
Mumbai – 400 034.

... Appellant/2nd Respondent

Vs.

1. Yuvarani

2. Praveen

...1st & 2nd Respondents/Petitioners

3. Aruna

... 3rd Respondent/1st Respondent

4. Ramakrishnan



C.M.A(MD)Nos.706, 707, 708, 709 and 710 of 2018

5.M/s.National Insurance Company Ltd.,
Rep. by its Branch Manager,
Having Office at 1st Floor,
1631-1/B, Salem – Bhavani Main Road,
Sangagiri,
Salem District – 637 301

... 4th & 5th Respondents/
3rd & 4th Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree dated 16.02.2017 in M.C.O.P.No.1406 of 2013 on the file of the Motor Accident Claims Tribunal cum Special District Judge, Tiruchirapalli and allow the Civil Miscellaneous Appeal.

For Appellant	: Mr.V.Muthukamatchi
For R1 – R2	: Mr.N.Sudhagar Nagaraj
For R4	: No Appearance
For R5	: Mr.D.Sivaraman

C.M.A(MD)No.707 of 2018

The General Manager,
ICICI Lombard General Insurance Company Ltd.,
Rep. by its General Manager having Office at
Zenith House, Keshavrao Khade Marg,
2nd Floor, Mahalaxmi,
Mumbai – 400 034.

... Appellant/2nd Respondent

Vs.

1.Parimala Devi
2.Minor Keerthi Prasath
3.Minor Nivetha
4.Aruna

...Respondents 1 to 3/Petitioners
...4th Respondent/1st Respondent



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5.Ramakrishnan

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6.M/s.National Insurance Company Ltd.,
Rep. by its Branch Manager,
Having Office at 1st Floor,
1631-1/B, Salem – Bhavani Main Road,
Sangagiri,Salem District – 637 301 ... 5th & 6th Respondents/
3rd & 4th Respondents

(Minor 2 & 3 respondents are represented by
their mother and next friend 1st Respondent)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree dated 16.02.2017 in M.C.O.P.No.1407 of 2013 on the file of the Motor Accident Claims Tribunal cum Special District Judge, Tiruchirapalli and allow the Civil Miscellaneous Appeal.

For Appellant	: Mr.V.Muthukamatchi
For R1 – R3	: Mr.N.Sudhagar Nagaraj
For R5	: No Appearance
For R6	: Mr.D.Sivaraman

C.M.A(MD)No.708 of 2018

The General Manager,
ICICI Lombard General Insurance Company Ltd.,
Rep. by its General Manager having Office at
Zenith House, Keshavrao Khade Marg,
2nd Floor, Mahalaxmi,
Mumbai – 400 034. ... Appellant/2nd Respondent

Vs.



C.M.A(MD)Nos.706, 707, 708, 709 and 710 of 2018

1.Minor Nivetha

...1st Respondent/Petitioner

2.Aruna

...2nd Respondent/1st Respondent

3.Ramakrishnan

4.M/s.National Insurance Company Ltd.,

Rep. by its Branch Manager,

Having Office at 1st Floor,

1631-1/B, Salem – Bhavani Main Road,

Sangagiri,Salem District – 637 301

... 3rd & 4th Respondents/

3rd & 4th Respondents

(Minor 1st respondent represented by her
mother and next friend Parimala Devi)

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree dated 16.02.2017 in M.C.O.P.No.1951 of 2013 on the file of the Motor Accident Claims Tribunal cum Special District Judge, Tiruchirapalli and allow the Civil Miscellaneous Appeal.

For Appellant	: Mr.V.Muthukamatchi
For R1	: Mr.N.Sudhagar Nagaraj
For R3	: No Appearance
For R4	: Mr.D.Sivaraman

C.M.A(MD)No.709 of 2018

The General Manager,

ICICI Lombard General Insurance Company Ltd.,

Rep. by its General Manager having Office at

Zenith House, Keshavrao Khade Marg,

2nd Floor, Mahalaxmi,

Mumbai – 400 034.

... Appellant/2nd Respondent



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C.M.A(MD)Nos.706, 707, 708, 709 and 710 of 2018

Vs.

1.Keerthi Prasath	...1 st Respondent/Petitioner
2.Aruna	...2 nd Respondent/1 st Respondent
3.Ramakrishnan	
4.M/s.National Insurance Company Ltd., Rep. by its Branch Manager, Having Office at 1 st Floor, 1631-1/B, Salem – Bhavani Main Road, Sangagiri,Salem District – 637 301	... 3 rd & 4 th Respondents/ 3 rd & 4 th Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree dated 16.02.2017 in M.C.O.P.No.1952 of 2013 on the file of the Motor Accident Claims Tribunal cum Special District Judge, Tiruchirapalli and allow the Civil Miscellaneous Appeal.

For Appellant	: Mr.V.Muthukamatchi
For R1	: Mr.N.Sudhagar Nagaraj
For R3	: No Appearance
For R4	: Mr.D.Sivaraman

C.M.A(MD)No.710 of 2018

The General Manager, ICICI Lombard General Insurance Company Ltd., Rep. by its General Manager having Office at Zenith House, Keshavrao Khade Marg, 2 nd Floor, Mahalaxmi, Mumbai – 400 034.	... Appellant/2 nd Respondent
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C.M.A(MD)Nos.706, 707, 708, 709 and 710 of 2018

Vs.

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1.Parimaladevi	...1 st Respondent/Petitioner
2.Aruna	...2 nd Respondent/1 st Respondent
3.Ramakrishnan	
4.M/s.National Insurance Company Ltd., Rep. by its Branch Manager, Having Office at 1 st Floor, 1631-1/B, Salem – Bhavani Main Road, Sangagiri,Salem District – 637 301	... 3 rd & 4 th Respondents/ 3 rd & 4 th Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree dated 16.02.2017 in M.C.O.P.No.1954 of 2013 on the file of the Motor Accident Claims Tribunal cum Special District Judge, Tiruchirapalli and allow the Civil Miscellaneous Appeal.

For Appellant	: Mr.V.Muthukamatchi
For R1	: Mr.N.Sudhagar Nagaraj
For R3	: No Appearance
For R4	: Mr.D.Sivaraman

Cros.Obj(MD)No.10 of 2019 in C.M.A(MD)No.706 of 2018

1.Yuvarani	
2.Praveen	...Cross Objectors/ 1 st & 2 nd Respondents/Petitioners

Vs.



C.M.A(MD)Nos.706, 707, 708, 709 and 710 of 2018

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1.The General Manager,
ICICI Lombard General Insurance Company Ltd.,
Rep. by its General Manager having Office at
Zenith House, Keshavrao Khade Marg,
2nd Floor, Mahalaxmi,
Mumbai – 400 034.

... 1st Respondent /Appellant

2.Aruna

...2nd Respondent/3rd Respondent/
1st Respondent

3.Ramakrishnan

4.M/s.National Insurance Company Ltd.,
Rep. by its Branch Manager,
Having Office at 1st Floor,
1631-1/B, Salem – Bhavani Main Road,
Sangagiri,Salem District – 637 301

... 3rd & 4th Respondents/4th & 5th
Respondents/3rd & 4th Respondents

PRAYER:-Cross Objection filed under Order 41 Rule 22(1) of Civil Procedure Code, to modify the award passed in M.C.O.P.No.1406 of 2013 on the file of the Motor Accident Claims Tribunal/Special District Judge, Trichy, dated 16.02.2017.

For Cross Objectors: Mr.N.Sudhagar Nagaraj

For R1 : Mr.V.Muthukamatchi

For R3 : No Appearance

For R4 : Mr.D.Sivaraman



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COMMON JUDGMENT

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(Judgment of the Court was delivered by P.VADAMALAI, J.)

These Civil Miscellaneous Appeals in C.M.A(MD)Nos.706 to 710 are preferred against the common order, dated 16.02.2017 passed in M.C.O.P.Nos.1406, 1407, 1951, 1952 and 1954 of 2013 by the Motor Accident Claims Tribunal/Special District Court for MCOP Cases (FAC), Tiruchirappalli.

2. The Cross Objection(MD)No.10 of 2019 is filed in C.M.A. (MD)No.706 of 2018.

3. The 2nd respondent in M.C.O.P.Nos.1406, 1407, 1951, 1952 and 1954 of 2013, which is the Insurance Company of a Lorry bearing registration No.TN 45 D 4767 which faces a liability to pay compensation for five separate claims made by the victims of a road accident that took place on 25.05.2010 at around 11.00 p.m. between the lorry insured with 2nd respondent and Maruti Omni bearing registration No.TN 05 A 6070, is the appellant herein.



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4. The respective respondent/petitioner/claimants (injured and dependants of deceased) have filed the respective claim petitions in M.C.O.P.Nos.1406, 1407, 1951, 1952 and 1954 of 2013 against four respondents (owners of lorry and Maruti car and their Insurance Companies).

5. For the sake of convenience, the parties arrayed in claim petitions M.C.O.P.Nos.1406, 1407, 1951, 1952 and 1954 of 2013 are adopted hereunder.

6.The brief facts of the case:

On the fateful day 25.05.2010 night around 11.00 p.m. the deceased Nirmaladevi & Rajasekaran along with their family members were travelling in a Maruti car bearing No.TN 05 A 6070 belonged to the 3rd respondent along Trichy to Kallanai road near Thiruvalarsolai. At that time, the 1st respondent's lorry bearing registration number TN 45 D 4767 driven by its driver in a rash and negligent manner came from opposite direction to the extreme right side of the road and collided with the car



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leaving four inmates of the car including the driver of the car caused injuries and the other two Niramaladevi & Rajasekaran to their ultimate end. The driver of the car had preferred a separate claim petition in M.C.O.P.No.677 of 2013 before the Special Sub Court, Erode and was awarded compensation for his injuries (Ex.R.4 Award) on 01.01.2016. The legal representatives of the deceased Nimaladevi and Rajasekaran and other victims or the injured in the accident, as the case may be, have preferred separate claim petitions in M.C.O.P.Nos.1406, 1407, 1951, 1952 and 1954 of 2013 claiming compensations.

7. The 2nd respondent/ICICI Lombard General Insurance Company objected that the accident took place due to negligent act of the driver of the Maruti car, who had driven the car in a rash and negligent manner and dashed against the parked lorry of the 1st respondent. So, the accident was taken place solely by rash and negligence on the part of the driver of the Maruti car. There is no negligence on the part of the driver of the lorry. Hence, the 1st respondent and his insurer the 2nd respondent/Insurance Company are not liable to pay any compensation.



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8. Before the Tribunal both side adduced oral and documentary evidence. Petitioners examined six witnesses as P.W.1 to P.W.6 and marked 19 documents as Ex.P.1 to Ex.P.19. On respondents side, three witnesses were examined as R.W.1 to R.W.3 and Ex.R.1 to Ex.R.4 were marked and also Ex.X.1 to Ex.X.10 marked.

9. After hearing both and after considering the evidences, the Tribunal has held that the accident happened due to negligence on the part of driver of 1st respondent and awarded compensation to the petitioners/claimants and the details are as below:

M.C.O.P.Nos.	Petitioners	Compensation Awarded
1406 of 2013	By LRs of deceased Nirmala Devi	Rs.22,63,140/-
1407 of 2013	By LRs of deceased Rajasekaran	Rs.10,01,104/-
1951 of 2013	Minor R.Nivetha (injured)	Rs. 1,42,333/-
1952 of 2013	Minor R.Keerthi Prasath (injured)	Rs. 20,000/-
1953 of 2013	Yuvarani (injured)	Rs. 23,608/-
1954 of 2013	Parimaladevi (injured)	Rs. 1,90,124/-



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10. Aggrieved by the said award, the 2nd respondent / ICICI Lombard General Insurance Company has preferred this batch of appeals against the award passed in M.C.O.P.Nos.1406, 1407, 1951, 1952 and 1954 of 2013 (except M.O.C.P.No.1953 of 2013) and the details are:

M.C.O.P.Nos.	C.M.A(MD)Nos.
1406 of 2013	706 of 2018
1407 of 2013	707 of 2018
1951 of 2013	708 of 2018
1952 of 2013	709 of 2018
1954 of 2013	710 of 2018

11. So far as C.M.A.(MD)No.706 of 2018 is concerned, the claimants have preferred the Cross Objection (MD) No.10 of 2019.

12. Heard both sides and perused the records in these Civil Miscellaneous Appeals.

13. The learned counsel for the appellant/2nd respondent/ICICI Lombard General Insurance Company submitted that inasmuch as the two



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vehicles involved in the accident involving head on collision between them, the Tribunal ought to have attributed reasonable negligence on the driver of the car also and its failure to apportion the negligence between the two drivers is erroneous. He took this Court through the testimony of R.W.1, driver of the alleged offending vehicle according to which he would say that the driver of the car had lost control and dashed against him. He also proceeded to depose that he had made arrangements for shifting of the injured to the hospital.

14. Per contra, the learned counsel for the claimants would submit that the driver of the car had preferred M.C.O.P.No.677 of 2013, in which, in its award, the Tribunal had held that R.W.1, the driver of the Tipper Lorry in question was solely responsible for the accident. The Insurance Company of the lorry (appellant herein) has not challenged that award. This finding now become conclusive and hence, it is not given to the Insurance Company to persuade this Court to take a different view on the aspect of negligence in the same accident.



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15. This apart, Ex.X.8 - Rough Sketch, which the Investigating Agency had prepared while investigating into the criminal angle of the accident, clearly indicates that the accident had taken place on the right of the lane earmarked for the vehicles that travel from east to west. In other words, Ex.X.8 indicates that the accident had taken place on the lane for the car which implies that the lorry had deflected from its lane and that had moved to the lane of the car. It is submitted that this document remains unrebutted.

16. After weighing the statements and evidences adduced on either side, this Court is left with a limited choice to confirm the finding of the Tribunal that R.W.1 /the driver of the Tipper Lorry was singularly responsible for the accident in question and a different conclusion is impossible since vide Ex.R.4, the award in M.C.O.P.No.677 of 2013, the Tribunal had already fastened the negligence entirely on R.W.1, which was admittedly unchallenged by the appellant / ICICI Lombard General Insurance Company as rightly contended by the claimants' side. Except for the negligence part, the appellant / ICICI Lombard General Insurance



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Company has not objected the compensation awarded by the Tribunal. In view of the same, all the five appeals are liable to be dismissed.

17. This now leaves this Court to consider only the Cross Objection of the claimants in M.C.O.P.No.1406 of 2013.

18. The learned counsel for the cross objector would submit that including the victim of the accident, he had a small family of two children. However, the Tribunal had proceeded to deduct 50% towards personal expenditure whereas it should have deducted only 1/3rd amount. This is an apparent error committed by the Tribunal and it is now to be rectified.

19. On perusal of records, the deceased Nirmala Devi was working as an Assistant at Government Higher Secondary School, Mukasi Anumanpalli, Erode District. Her salary certificate is marked as Ex.P.6. As deposed by P.W.4 the deceased would have drawn Rs.20,122/- and based on his evidence the Tribunal fixed salary as Rs.20,100/-. As evident from records, the deceased was aged 46 years at the time of accident and had two



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children and husband, totally three dependants on her. This was not disputed by the appellant/Insurance Company. In view of the settled proposition in **Pranay Sethi case (2017 (2) TNMAC 609 (SC)**, 1/3rd amount alone has to be deducted towards personal expenses. But, the Tribunal has erred in deducting 1/2 of the salary. So, this Court modified the deduction as 1/3rd and after deducting 1/3rd amount of income of the deceased the compensation would be arrived at. The income of the deceased is fixed at Rs.20,100/-, after deducting 1/3rd at Rs.6,700/- (1/3rd of Rs.20,100/-) the loss of income is fixed at Rs.13,400/-. The Tribunal awarded 30% future prospects and hence, Rs.4,020/- has to be added. Thus the loss of income per month is fixed at Rs.17,420/- (Rs.13,400/- + Rs.4,020/-).

20. In view of the settled proposition of law in **Sarla Verma case** reported in **2009 (2) TNMAC 1 (SC)**, considering the age of the deceased as 46 years, the Tribunal has adopted multiplier '13' is correct one. So, the loss of income of the dependents arrived by this Court is Rs.17,420/- x 12 x 13 = Rs.27,17,520/-.



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21. Thus, this Court holds that the total compensation payable to the appellants/petitioners/claimants in M.C.O.P.No.1406 of 2013 as per settled principle of law are as follows:

Sl. No.	Description	Amount awarded by this Court
1.	Loss of Income (Rs.17,420/- x 12 x 13)	Rs. 27,17,520/-
2.	Funeral Expenses	Rs. 15,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Transportation Expenses	Rs. 10,000/-
5.	Loss of Consortium (Rs.40,000/- x 2)	Rs. 80,000/-
	Gross Total	Rs. 28,37,520/-

22. Therefore, the petitioners/claimants in M.C.O.P.NO.1406 of 2013 are entitled to Rs.28,37,520/-. Therefore, to that extent, the compensation awarded by the Tribunal is set aside and the same is enhanced and fixed as Rs.28,37,520/- with interest at 7.5% p.a and with costs.

23. In view of the above discussion, the Civil Miscellaneous Appeal in C.M.A(MD)Nos.706 to 710 of 2018 are to be dismissed and Cross Objection(MD)No.10 of 2019 is to be partly allowed. No costs.



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24. In the result,

(i) The Civil Miscellaneous Appeals in C.M.A(MD)Nos.706 to 710 of 2018 are dismissed. The common order, dated 16.02.2017 passed in M.C.O.P.Nos.1406, 1407, 1951, 1952 and 1954 of 2013 by the Motor Accident Claims Tribunal/Special District Court for MCOP Cases (FAC), Tiruchirappalli are confirmed, however the compensation awarded in M.C.O.P.NO.1406 of 2013 is enhanced.

(ii) The Cross Objection(MD)No.10 of 2019 in C.M.A(MD)No. 706 of 2018 is partly allowed. The quantum of compensation awarded by the Tribunal in M.C.O.P.No.1406 of 2013 is modified and enhanced at Rs.28,37,520/- (Rupees Twenty eight lakhs thirty seven thousand five hundred and twenty only).

(iii) The petitioners/claimants in M.C.O.P.No.1406 of 2013 are entitled to receive a sum of Rs.14,18,760/- each with proportionate interests and costs.

(iv) The appellant/2nd respondent is directed to deposit the entire compensation amount less if already not deposited, less the amount already deposited, together with interest at the rate of 7.5% per annum from the date



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of claim petition till the date of deposit to the credit of M.C.O.P.Nos.1406, 1407, 1951, 1952 and 1954 of 2013 on the file of the Motor Accident Claims Tribunal/Special District Court for MCOP Cases (FAC), Tiruchirappalli respectively within a period of six weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the appellant/2nd respondent, the claimants/petitioners in M.C.O.P.No.1406 of 2013 herein are permitted to withdraw their entire share amount as apportioned by this Court with proportionate interest and cost by filing appropriate application before the Tribunal, less the amount already withdrawn if any. Consequently, connected Miscellaneous Petitions are closed.

(N.S.S.,J.)

(P.V.M.,J.)

24.04.2024

NCC : Yes / No

Internet : Yes / No

Index : Yes / No

VSD



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To

- 1.The Motor Accident Claims Tribunal cum Special District Judge,
Tiruchirapalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)Nos.706, 707, 708, 709 and 710 of 2018

N.SESHASAYEE, J.

AND

P.VADAMALAI. J.

VSD

Judgment made in
C.M.A(MD)Nos.706, 707, 708, 709 and 710 of 2018
and
Cros.Obj.(MD)No.10 of 2019

25.04.2024