



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)Nos.63 to 65 of 2021

and

C.M.P(MD)Nos.2118, 2120 & 2121 of 2021 and
599, 602 & 603 of 2021

M/s. National Insurance Company Limited,
Through its Divisional Manager,
No.3, North Veli Street,
Madurai.

... Appellant in Both
the Appeals

Vs.

1. Banu Priya
2. Arunkumar
3. Vinothkumar
4. Muniyammal [Died]
5. Pandi
6. E.Sonai [Died]
7. A.R.Kannan

... Respondents in
C.M.A(MD)No.63 of 2021

1. Sangumuthu
2. Saravanan
3. Saridha
4. Saranya
5. Muniyamma
6. Alagan [Died]



7. E.Sonai [Died]

8 A.R.Kannan

... Respondents in
C.M.A(MD)No.64 of 2021

1. A.Ganesan

2. A.Rakku @ Muthu Rakku

3. A.Kannan

4. M.Aravind

5. M.Abinaya

6. M.Anitha

7. E.Sonai [Died]

8 A.R.Kannan

... Respondents in
C.M.A(MD)No.65 of 2021

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, to set aside the Judgment and Decree, dated 29.04.2019 made in M.C.O.P.Nos.165, 164 & 166 of 2008 on the file of the Motor Accident Claims Tribunal/District and Sessions Judge/Communal Clash Cases Court, Madurai.

In C.M.A(MD)No.63 of 2021

For Appellant	: M/s.P.Malini
For R-1, 3 & 5	: Mr.A.Anbalagan
R-7	: Non appearance

In C.M.A(MD)No.64 of 2021

For Appellant	: M/s.P.Malini
For R-1 to & R-5	: Mr.A.Anbalagan
R-8	: Non appearance



In C.M.A(MD)No.65 of 2021

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For Appellant : M/s.P.Malini
For R-1 to & R-6 : Mr.A.Anbalagan
R-8 : Non appearance

COMMON JUDGEMENT

The Insurance company has preferred these appeals to set aside the Judgment and Decree, dated 29.04.2019 made in M.C.O.P.Nos.165, 164 & 166 of 2008 on the file of the Motor Accident Claims Tribunal/District and Sessions Judge/Communal Clash Cases Court, Madurai.

2. It is a case of fatal. The claimants have filed three claim petitions seeking compensation in M.C.O.P.Nos.165, 164 & 166 of 2008 on the file of the Motor Accident Claims Tribunal/District and Sessions Judge/Communal Clash Cases Court, Madurai.

3. The nature of accident is that the driver of the mini lorry was driving on the left side. The heavy vehicle had tried to overtake a car plying in front of the heavy vehicle, while doing so the lorry's hook had pulled all the deceased and brought outside the mini lorry and the accident occurred.



4. Initially, the claimants have filed claim petitions under Workmen Compensation Act and the same were dismissed with liberty to file claim petitions under Motor Vehicle Act.

5. Therefore, with delay the claimants have filed claim petitions in the year 2006. Subsequently, there was delay in numbering the petitions. Even in appeal, there was a delay. Finally, the delay petition was numbered and take up for admission. At the time of admission, this Court directed the Insurance Company to deposit the entire amount and the Insurance Company has also complied with the Order passed by this Court.

6. The contention of the Insurance Company is that the mini lorry can accommodate three persons only. But, in the present cases, mini lorry was carrying more than three persons at the time of accident. Therefore, there is violation of policy conditions. Further contributory negligence ought to be fixed on the deceased as well as on the owner of the mini lorry.

7. The Learned Counsel appearing for the claimants vehemently opposed and submitted that there is no negligence on their part and also on the part of mini lorry. Further the mini lorry was on the extreme left side of the



road. The accident had occurred since the heavy vehicle tried to overtake the car plying in front of the heavy vehicle. In such circumstances, the contributory negligence cannot be fixed on the part of the claimants as well as mini lorry.

8. But this Court is of the considered opinion when the mini lorry can carry only three persons, then the mini lorry had violated the conditions by carrying more than three persons, hence contributory negligence ought to be fixed on the mini lorry as well as the persons who had travelled in the mini lorry.

9. The further contention of the Learned counsel appearing for the Insurance company is that the Tribunal has taken notional income as Rs. 6,500/-. When the accident had occurred in the year 2000, the monthly income fixed by the Tribunal is on higher side. It is seen as per the Judgment in the case of ***Syed Sadiq Vs. United India Insurance Co. Ltd. reported in 2014 TN MAC 459***, the notional income of Rs.6,500/- was taken for the accident which was committed in the year 2008. In the present case, the accident had occurred in the year 2000. Therefore, this Court is of the considered opinion that the Tribunal ought to have taken lesser notional income, hence the notional income of Rs.6,500/- fixed by the Tribunal is higher side.



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10. The next contention of the Insurance Company is that there is a huge delay in filing claim petitions and hence the same ought to have been dismissed. There is no limitation for filing the claim petitions, but if there is huge delay then the claimants are not entitled to interest.

11. For the observations and reasons stated supra this Court is inclined to reduce the compensation for all the claimants. And the details are stated below:

S. No.	MCOP No.	Compensation by Tribunal	Compensation by this Court
1	M.C.O.P.No.164 of 2008	Rs.9,14,000/-	Rs.6,78,000/-
2	M.C.O.P.No.165 of 2008	Rs.10,79,500/-	Rs.6,80,000/-
3	M.C.O.P.No.166 of 2008	Rs.8,40,500/-	Rs.6,20,000/-

12. Accordingly, the Insurance Company is directed to pay compensation to the respective parties accordingly. The Insurance Company has already deposited the entire compensation. The claimants are entitled to withdraw their respective compensation, as apportioned by the Tribunal. The Insurance company is permitted to withdraw the excess amount, if any.



13. With these observations, these Civil Miscellaneous Appeals are partly allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

14.03.2024

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

1. The District and Sessions Judge/
Communal Clash Cases Court,
Madurai.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

**Common Order made in
C.M.A(MD)Nos.63 to 65 of 2021**

14.03.2024