

(2009) 07 MAD CK 0464

Madras High Court

Case No: C.M.A. (MD) Sr. No"s. 12746, 12756 and 12778 of 2009

A. Valliammal

APPELLANT

Vs

Chitra Travels and The  
Branch Manager,  
United India  
Insurance Co. Ltd.

RESPONDENT

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Date of Decision: July 2, 2009

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, 147, 163A, 165, 167
- Tamil Nadu Motor Accidents Claims Tribunal Rules, 1989 - Rule 24, 24(1A)

Citation: (2011) ACJ 1964 : (2010) 3 LW 132

Hon'ble Judges: V. Ramasubramanian, J; D. Hariparanthaman, J

Bench: Division Bench

Advocate: D. Venkatesh, J. Anandkumar and Na. Palaniyandi, for the Appellant;

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### Judgement

V. Ramasubramanian, J.

All these appeals arise out of the awards passed by the Motor Accidents Claims Tribunals in various petitions. For easy appreciation, the details are furnished in a tabular form as follows:

CMA(MD) SR No.	MCOP No.	Name of the Court	Date of judgment and decree
12746 of 2009	420 of 2002	Motor Accidents Claims Tribunal (Sub Court), Palani.	19/06/2008

12756 of 2009	16 of 2007	Motor Accidents Claims Tribunal (Sub Court), Devakottai.	18/09/2007
12778 of 2009	3 of 2007	Motor Accidents Claims Tribunal (Sub Court), Tuticorin.	29/09/2008

2. While C.M.A.SR. No. 12746 of 2009 is by the claimant in M.C.O.P. No. 420 of 2002, on the grievance that the mere no fault liability of Rs. 25,000/- was awarded by the Tribunal as against her claim of Rs. 2 lakhs, the appeal in C.M.A.SR. No. 12756 of 2009 is filed by the owner of the vehicle, on the grievance that the liability was fixed on him rather than on the Insurance Company. The other appeal C.M.A.SR. No. 12778 of 2009 is by the claimant in M.C.O.P. No. 3 of 2007, on the grievance that the Tribunal fixed the liability only on the owner of the vehicle, rather than on the Insurance Company.

3. In all the above appeals, the Appellants had affixed a fixed court fee of Re. 1/- only. Therefore, the Registry returned the papers pointing out that proper court fee has not been paid as per Section 24(1A) of the Tamil Nadu Motor Accidents Claims Tribunal Rules, 1989.

4. The counsel in these cases re-presented the papers, contending that the court fee paid was proper, in the light of the decision of J.A.K. Sampathkumar, J., in Karuthapandi v. R. Sivakumar and Anr. {2006 (5) CTC 526}. Therefore, the papers were placed before G.M. Akbar Ali, J., for orders as to maintainability.

5. After analysing the facts leading to the present appeals and after adverting to Rules 24 and 24(1A) of the aforesaid Rules and to the provisions of the Act, G.M. Akbar Ali, J., found himself unable to agree with the ratio laid down by J.A.K. Sampathkumar, J., in Karuthapandi v. R. Sivakumar and Anr. {2006 (5) CTC 526}. Therefore, the question has been referred to us for consideration.

6. We have heard the learned Counsel appearing for the Appellant in all these appeals and we have also gone through the opinion of G.M. Akbar Ali, J.

7. In Karuthapandi, the appeal was filed by the claimant challenging the fixation of liability by the Tribunal on the owner of the vehicle and exonerating the insurer of any liability. Therefore, after referring to Rule 24(1A) of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules 1989, J.A.K. Sampathkumar, j., held that when the appeal is not for enhancement of compensation but only on the question of fixation of liability between the owner and the insurer, the appeal is incapable of valuation and consequently, a fixed court fee of Re. 1/- is sufficient.

8. But in the order of reference, the learned Judge pointed out that the Rule deals with three types of claims viz., (ii) special damages and (iii) general damages. The

learned Judge also pointed out that though Sections 140, 147, 163A, 165 and 167 of the Act, use the word "compensation", the expressions "special damages" and "general damages" are not defined in the Act. The learned Judge then referred to the decision of the Supreme Court in [R.D. Hattangadi Vs. M/s. Pest Control \(India\) Pvt. Ltd. and Others,](#), wherein the Court indicated what constituted pecuniary and non pecuniary damages. The learned Judge also referred to the decision in [Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others,](#), where pecuniary and non pecuniary losses were listed out by the Court. On the strength of the above statutory provisions and these decisions, the learned Judge found it not possible to agree with the view expressed in Karuthapandi.

9. Therefore, the question that arises for consideration is as to whether a fixed court fee of Re. 1/- is the proper court fee under Rule 24(1A), in cases where the quantum of compensation awarded by the Tribunal is not challenged, but the fixation of liability on one or the other of the Respondents alone is challenged. Such challenge may be made by the claimant himself on the ground that the insurer ought not to have been exonerated. It may also be made by the owner of the vehicle on the ground that the insurer"s liability cannot be excluded.

10. Rule 24(1A) reads as follows:

(1-A) An appeal u/s 173 of the Act, shall be accompanied by a fee of Re. 1/-(Rupee one only) in the form of court fee stamp, if the claim in a case of accident is confined to special damages and if any further general damage is claimed, an advalorem fee shall be charged on the aggregate of the special and general damages claim on the following scales, namely:

	Amount of claim (1)	Amount of court fee (2)
1	Below Rs. 2,000	No appeal
2	Rs. 2,001 to 5,000	Rs. 10/-

3	Rs. 5,001 to 50,000	Rs. 10 plus one-fourth per cent of the amount by which the claim exceeds Rs. 5,000/-.
4	Rs. 50,001 to 1,00,000	Rs. 122.50 plus half per cent of the amount by which the claim exceeds Rs. 50,000/-.
5	Over Rs. 1,00,000	Rs. 372.50 plus one per cent of the amount by which the claim exceeds Rs. 1,00,000/-.

11. Substantively, the charging provision under Sub-rule (1A) of Rule 24, is in pari materia with Rule 24. While Rule 24 prescribes the court fee payable in an application for compensation before the Tribunal, Rule 24(1A) prescribes the court fee payable in an appeal. But both provisions contain two prescriptions namely (i) if the claim is confined to special damages, a fixed court fee of Re. 1/- is payable and (ii) if in addition to special damages, any further general damage is claimed, an advalorem fee is chargeable on the aggregate of the special and general damages, on the scales indicated in both the Rules.

12. As pointed out by G.M. Akbar Ali, J., the expressions "special damages" and "general damages" are not defined either in the Motor Vehicles Act, 1988 or in the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989. The expression "compensation" alone is used in many portions of the Statute as well as in the Rules.

13. The word "damages" has a plurality of variants. It was brought out in an interesting manner by V.R. Krishna Iyer, J., (as he then was) in [Organo Chemical Industries and Another Vs. Union of India \(UOI\) and Others](#), as follows:

38. What do we mean by "damages" ? The expression "damages" is neither vague nor over-wide. It has more than one signification but the precise import in a given context is not difficult to discern. A plurality of variants stemming out of a core concept is seen in such words as actual damages, civil damages, compensatory damages, consequential damages,, contingent damages, continuing damages, double damages, excessive damages, exemplary damages, general damages,

irreparable damages, pecuniary damages, prospective damages, special damages, speculative damages, substantial damages, unliquidated damages. But the essentials are (a) detriment to one by wrongdoing of another, (b) reparation awarded to the injured through legal remedies and (c) its quantum being determined by the dual components of pecuniary compensation for the loss suffered and often, not always, a punitive addition as a deterrent-cum-denunciation by the law. For instance, "exemplary damages" are damages on an increased scale, awarded to the Plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the Defendant, and are intended to solace the Plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the Defendant for his evil behavior or to make an example of him, for which reason they are also called "punitive" or "punitory" damages or "vindictive" damages, and (vulgarly) "smart-money".

14. In [Common Cause, A Registered Society Vs. Union of India and Others](#), the Supreme Court extracted the definition of the word "damages", as propounded by Mc Gregor in para 127 as follows:

Damages are the pecuniary compensation, obtainable by success in an action, for a wrong which is either a tort or a breach of contract, the compensation being in the form of a lump sum which is awarded unconditionally.

However, the Supreme Court did not, in *Common Cause*, go into the question of what constitutes general damages or special damages, though it considered the distinction between pecuniary and non pecuniary damage and the principles governing the award of exemplary damages.

15. Broadly speaking, general damages are compensation for that kind of damage which the law presumes to follow from the wrong complained of and which therefore, need not be specifically mentioned in the pleadings. On the contrary, special damages are compensation for damage of such a kind that it will not be presumed by the law, but must be specially set out and proved by the party who claims it.

16. Halsbury's Laws of England (Vol. 24, 3rd Edn., paras 222 - 224), provides the list of items that could fall under general and special categories of damages. They are as follows: -

General

- (a) mere injury to feelings,
- (b) the illness of the Plaintiff, illness not being a natural result of the defamatory words,
- (c) illness of any other person,
- (d) the death of any other person,

- (e) the mere loss of the society of acquaintances, as contrasted with the material loss of hospitality,
- (f) the loss of membership of some society or congregation constituted for religious purposes, the membership of which does not carry with it material temporal advantages,
- (g) any damage not pecuniary or capable of being estimated in money.

#### Special

- (a) loss of consortium of husband,
- (b) loss of marriage,
- (c) loss of material hospitality,
- (d) loss of employment,
- (e) loss of dealing, even though it might have turned out unprofitably,
- (f) loss of particular customers,
- (g) general falling off of profits,
- (h) any other material loss.

17. Section 163-A of the Motor Vehicles Act, 1988, imposes a liability upon the owner of the motor vehicle or the authorized insurer to pay compensation as indicated in the Second Schedule. The Second Schedule contains (i) general damages in the case of death (ii) general damages in the case of injuries and disabilities (iii) disability in non fatal accidents and (iv) notional income for compensation to those who had no income prior to accident.

18. Thus the Second Schedule to the Motor Vehicles Act, 1988, gives an indication of what constitutes "general damages". The items at Serial Nos. 3, 4, 5 and 6 of the Second Schedule read as follows:

3. General Damages (in case of death) The following General Damages shall be payable in addition to compensation outlined above:

(i) Funeral expenses .... Rs. 2000.

(ii) Loss of consortium, if beneficiary is the spouse .... Rs. 5000.

(iii) Loss of Estate .... Rs. 2500.

(iv) Medical Expenses - actual expenses incurred before death supported by bills/vouchers but not exceeding.... Rs. 15000.

4. General Damages in case of injuries and disabilities:

(i) Pain and sufferings

(a) Grievous injuries .... Rs. 5000.

(b) Non-grievous injuries .... Rs. 1000.

(ii) Medical Expenses-actual expenses incurred supported by bills/vouchers but not exceeding as one time payment.... Rs. 15000.

#### 5. Disability in non-fatal accidents:

The following compensation shall be payable in case of disability to the victim arising out of nonfatal accidents:

Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks.

Plus either of the following:

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923.

#### 6. National Income for compensation to those who had no income prior to accident-Fatal and disability in non-fatal accidents:

(a) Non-earning persons .... Rs. 15000 p.a.

(b) Spouse.... 1/3rd of Income of the earning surviving spouse.

In case of other injuries only "General Damages" as applicable.

19. The Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989, prescribe a form in Form II, for making an application for compensation to the Tribunal. Part I and Part II of the said Form, provides the different heads of claims. They are as follows:

#### PART I

(a) Loss of earnings from.... to....

(b) Partial loss of earnings from.... to.... at the net rate of Rs. ....a day.... week (c) Transport to hospital.

(d) Extra nourishment.

(e) Damage to clothing and articles.

(f) Others. PART II (g) Compensation for pain and suffering.

(h) Compensation for continuing or permanent disability, if any.

(i) Compensation for the loss of earning power.

(j) Total.

20. Therefore, the items of claim that would fall under the category of "general damages" and those which would fall under the category of "special damages", can be identified with reference to the Second Schedule to the Act and Form II under the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989. Once they are identified, the court fee payable on an original claim petition under Rule 24 or on an appeal under Rule 24 (1A), would be easily known. If the claim is confined only to special damage, a fixed court fee of Re. 1/- alone is payable, on an original claim petition under Rule 24 and on an appeal under Rule 24(1A). If a claim is made both with respect to special damage and also with respect to general damage, advalorem court fee is payable, as per the table below Rule 24 or Rule 24(1A), as the case may be.

21. In the background of the above principles underlying Rules 24 and 24 (1A), if we look into the issue on hand, it will be clear that the Appellants in these unnumbered appeals, do not assert a right to pay a fixed court fee of Re. 1/- only, on the ground that their claim either in the O.P. before the Tribunal or in the appeal before this Court, is confined to special damage. In two out of the three unnumbered appeals on hand, the Appellants seek to pay a fixed court fee of Re. 1/- only, solely on the ground that their grievance is not with respect to the quantum of compensation awarded by the Tribunal, but with respect to the fixation of liability, only on the owner of the vehicle and not on the Insurance Company. In the third unnumbered appeal, the Appellant seek to pay a fixed court fee of Re. 1/- only, solely on the ground that the Tribunal refused to award any compensation other than the no fault liability compensation.

22. But unfortunately for the Appellants, a fixed court fee of Re. 1/- is payable, both under Rule 24 and under Rule 24(1A), only if the claim is confined to special damage. In other words, the quantum of court fee payable is related only to a single issue viz., whether the claim is confined to special damage or not. It has no correlation to the person against whom one seeks the relief or the person on whom the Tribunal fixes the liability. Therefore, the contention of the Appellants in two of the appeals that they have no grievance about the quantum fixed by the Tribunal and the contention of the Appellant in the third appeal that he is merely aggrieved by the refusal of the Tribunal to award any compensation, have no place either in Rule 24 or in Rule 24(1A). It is not even the contention of the Appellants that they are confining the present appeals to special damage or that even before the Tribunal, they paid only a fixed court fee under Rule 24. In such circumstances, it is not possible for this Court to allow the Appellants to pay a fixed court fee of Re. 1/- only, under Rule 24(1A), when the condition prescribed under the Rule is obviously not satisfied.

23. Therefore, we hold that the law laid down in Karuthapandi v. R. Sivakumar and Anr. {2006 (5) CTC 526}, is incorrect and we answer the reference as follows:

A fixed court fee of Re. 1/- is payable under Rule 24(1A) of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989 only if the claim in the appeal is confined to special damage. It is not possible for the Court to extend the benefit conferred by Rule 24(1A), to an Appellant, merely on the ground that his grievance against the award of the Tribunal is not with respect to the quantum of compensation but confined only to the fixation of liability on one or the other of the Respondents or on the ground that the claim for compensation was rejected by the Tribunal.

24. The Registry is therefore directed to return the papers in the unnumbered appeals to their respective counsel, giving them either the option of confining the appeal to special damage or the option of paying the deficit court fee, within the time fixed.