

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.05.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Tr.CMP.Nos.231 to 253 of 2020

M/s.Cholamandalam MS Genl Ins Co., Ltd.,
No.154, Shaw Wallace Building,
Thambu Chetty Street,
Chennai-600 001.

...Petitioner in all Tr. CMPs

.Vs.

- | | |
|----------------------------|---|
| 1. N.Parthiban and Another | Respondents in
Tr.CMP No.231/2020 |
| 2. Murugammal and Another | Respondents in
Tr.CMP No.232/2020 |
| 3.Elango and Another | Respondents in
Tr.CMP No.233/2020 |
| 4 Karthikeyan and Another | Respondents in
Tr.CMP No.234/2020 |
| 5.Sambasivam and Another | Respondents in
Tr.CMP No.235/2020 |
| 6.Sivakumar K. and Another | Respondents in
Tr.CMP No.236/2020 |
| 7.Selvam and Another | Respondents
in Tr.CMP No.237/2020 |

8. Dhandapani D and Another ..Respondents
in Tr.CMP.No.238/2020
9. Neelakandan A and Another ..Respondents
in Tr.CMP.No.239/2020
10. Kumaran S and Another ..Respondents
in Tr.CMP.No.240/2020
11. Lakshmi and Another ..Respondents
in Tr.CMP.No.241/2020
12. Narayanan and Another ..Respondents
in Tr.CMP.No.242/2020
13. Rangan and Another ..Respondents
in Tr.CMP.No.243/2020
14. Kumar C and Another ..Respondents
in Tr.CMP.No.244/2020
15. Velmurugan and Another ..Respondents
in Tr.CMP.No.245/2020
16. Sivasankar and Another ..Respondents
in Tr.CMP.No.246/2020
17. Kuralarasan and Another ..Respondents
in Tr.CMP.No.247/2020
18. Gowri and Another ..Respondents
in Tr.CMP.No.248/2020

- 19.Selva Kumar M and Another ..Respondents
in Tr.CMP.No.249/2020
- 20.Velvizhi A and Another ..Respondents
in Tr.CMP.No.250/2020
- 21.Prakash P and Another ..Respondents
in Tr.CMP.No.251/2020
- 22.Subramanian S and Another ..Respondents
in Tr.CMP.No.252/2020
- 23.Venkatesan D and Another ..Respondents
in Tr.CMP.No.253/2020

1)Prayer in Tr.CMP No.231/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No. 7/2020, on the file of the learned Principal Sessions Judge, Kanchipuram.

2)Prayer in Tr.CMP No.232/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.153/2019, on the file of the learned Sub Judge, Arakonam.

3)Prayer in Tr.CMP No.233/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.1301/2019, on the file of the learned Additional District Judge-I, Tindivanam.

4)Prayer in Tr.CMP No.234/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.2304/2019, on the file of the learned Additional District Judge-II, Tindivanam.

5)Prayer in Tr.CMP No.235/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.1243/2019, on the file of the learned Additional District Judge-II, Tindivanam.

6)Prayer in Tr.CMP No.236/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.2335/2019, on the file of the Motor Accident Claims Tribunal, Tindivanam.

7)Prayer in Tr.CMP No.237/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.2274/2019, on the file of the Motor Accident Claims Tribunal, Tindivanam.

8)Prayer in Tr.CMP No.238/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.2275/2019, on the file of the Motor Accident Claims Tribunal, Tindivanam.

9)Prayer in Tr.CMP No.239/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.1273, on the file of the learned

Additional District Judge-I, Tindivanam.

10)Prayer in Tr.CMP No.240/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.2434/2019, on the file of the learned Additional District Judge-I, Tindivanam.

11)Prayer in Tr.CMP No.241/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.2199/2018, on the file of the learned Motor Accident Claims Tribunal, Tindivanam.

12)Prayer in Tr.CMP No.242/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.2213/2019, on the file of the learned Additional District Judge-I, Tindivanam.

13)Prayer in Tr.CMP No.243/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.151/2019, on the file of the learned Additional District Judge-II, Chidambaram.

14)Prayer in Tr.CMP No.244/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.141/2019, on the file of the learned Additional District Judge-II, Chidambaram.

15)Prayer in Tr.CMP No.245/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.646/2019, on the file of the learned Additional Sessions Judge, Puducherry.

16)Prayer in Tr.CMP No.246/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.426/2019, on the file of the learned Additional Sessions Judge-I, Puducherry.

17)Prayer in Tr.CMP No.247/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.481/2019, on the file of the learned Sub Judge, Panruti.

18)Prayer in Tr.CMP No.248/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.866/2019, on the file of the learned Subordinate District Judge, Villupuram.

19)Prayer in Tr.CMP No.249/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.843/2019, on the file of the learned Subordinate Sessions Judge, Villupuram.

20)Prayer in Tr.CMP No.250/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.736/2019, on the file of the

learned Subordinate District Judge, Villupuram.

21)Prayer in Tr.CMP No.251/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.79/2019, on the file of the learned Subordinate Sessions Judge-I, Villupuram.

22)Prayer in Tr.CMP No.252/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.710/2019, on the file of the learned Subordinate Sessions Judge-II, Villupuram.

23)Prayer in Tr.CMP No.253/2020:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., r/w Article 227 of Constitution of India, to withdraw and transfer the petition in MCOP No.783/2019, on the file of the learned Subordinate Sessions Judge-I, Villupuram.

For Petitioner : Mr.N.Vijayaraghavan
(in all Tr.CMPs)

COMMON ORDER

1.These are unusual times. This is an unusual order. It is sheer force of circumstances, which the entire world is witnessing, not just Chennai or India alone, that has impelled and compelled this court to take note and come to the rescue of the litigants and in particular, the innocent motor accidents victims. The peculiar scenario in which the viral Pandemic has placed us in, has

necessitated and warranted the exercise of available jurisdiction of this Court, to aid the cause of justice.

2. The consolidated Memo dated 04.05.2020 with a List of 23 Motor Accidents Claim Petitions (23 MCOPs) pending on the file of various claims tribunals in the State of Tamil Nadu, have been filed by a private sector insurer M/s. Cholamandalam MS General Ins. Co Ltd. The Memo has been filed under Sec. 24 of the Civil Procedure Code (“CPC”) read with Art. 227 of the Constitution of India (“the Constitution”).

3. The insurer has submitted that instead of waiting for the pandemic to cease and the lockdown to be lifted and normalcy to return, they chose to avail the time, to explore the possibility of reaching a compromise, through the services of a panel advocate of theirs. The said counsel along with officials of the petitioner insurer reached out across Tamil Nadu, to various counsel for claimants, and negotiated compromise in 23 MCOPs, the list of which is annexed to the Memo.

4. A reading of the Memo along with the List of MCOPs, with the necessary details of the claim numbers, the courts before which they were pending, the claim amounts, the identity of the claimants and the amounts reached in compromise, are provided along with the names of the respective counsel for claimants, with their mobile numbers. The insurer has affirmed that the details furnished are true and the respective claimants’ counsel have given

their digital consent via Whatsapp messages (which also form part of the details furnished with the List) and they have reached out to their clients and taken their consent as well. Not all the claimants have the benefit of access to digital media or internet services. Hence, the counsel for claimants have replaced the consent of their clients with their affirmation that the claimants' have been spoken to, and the amounts agreed to by their clients. The insurer of course, has agreed for the sums and indicated so in the Memo itself and the List is also sent by the insurer.

5. From the above delineation of facts, it is clear and evident that the 23 MCOPs have been negotiated for compromise and the contesting parties are *ad idem* on it. This Court is satisfied that the insurer has provided satisfactory material to accept that the consent obtained are real and genuine, and the respective claimants and their counsel are agreeable for the amounts reached in compromise and are ready for recording of compromise decree in terms thereof. There is no cause for any doubt in this regard and the manner and procedure adopted by the parties to provide proof of their consent is satisfactory, given the peculiar circumstances of the case.

6. What remains is the exercise of powers of this Court, to give its assent for the compromises to fructify. The claims are pending before Motor Accidents Claims Tribunals in Tamil Nadu. Harking back to judicial history, it would appear that since they were 'tribunals', doubts were raised whether they had all the 'trappings of a civil court', for exercise of Sec. 24, CPC for

ordering such withdrawal to this court or transfer to any other tribunal within the State.

7. That debate now stands settled for all practical purposes. It is now admitted and agreed that Sec. 24, CPC in relation to transfer within the State and Sec. 25, CPC for transfer by the Hon'ble Supreme Court, across States, do apply for withdrawal and transfer of motor accidents claim petitions. Any lingering doubt in this regard was settled unequivocally by the Apex Court in *State of Haryana vs Darshana Devi* in *AIR 1979 SC 855*, *Anand Kumar Jain vs Union of India* in *AIR 1986 SC 1125*, and *Bhagwati Devi vs I.S.Goel* 1983 in *ACJ 123 (SC)*.

8. Even otherwise, this court had ruled, that in case of even a semblance of doubt as to the invocation of Sec. 24, CPC, the constitutional power under Art. 227 – 'Power of superintendence of High Court over all subordinate courts', would come to the rescue to order so. Useful reference can be made to *Rajeswari vs United India Insurance Co Ltd* reported in *1994 (1) MLJ 19*.

9. Thus, there is no difficulty now to readily concede that this court has the power and jurisdiction to entertain the Memo filed by the petitioner insurer under Sec. 24, CPC read with Art. 227 of the Constitution. Be that as it may, the asinine quality of law of Doubting Thomases also needs to be answered, for the record.

10.Can the memo replace the usual format of an affidavit accompanied by a petition and that too a consolidated Memo of this genre for all 23 MCOPs? Is there a mandated procedure that needs to be adhered to, for this court to exercise its jurisdiction, which it undeniably has in this case? The answer is plain and simple and that is “Procedure is the handmaid of Justice” and it cannot take away the residuary power in judges to act *ex debito justitiae*, where otherwise it would be wholly inequitable.

11.A reading of Sec. 24, CPC makes it clear that the power is not available for exercise only ‘upon an application’. It can be exercised, upon the court coming to know of the need for such exercise. For invoking the power under Sec. 24, CPC, no notice to the parties would be necessary. This court can, on its own, order such withdrawal or transfer, to meet the ends of justice. There cannot be a fitter case than the present, for invocation of this power. Failure to exercise such power, at this instance, would be possible abdication of responsiveness. Assumption of jurisdiction is the need of the hour. And this court is unhesitatingly ready and agreeable to do so. There is no prescribed format for the same. There is no bar for the High court to take note, in the given facts and circumstances, the compelling need for the exercise of such power. The filing of the petition in a given format or upon affixing requisite court fees etc. or a Memo or a consolidated memo in this case, all answer the requirements of law. In my view, they do not suffer from any vice or inadequacy in order not to accept the memo filed by the petitioner/Insurance

Company.

12.This court cannot be immune or oblivious of the Pandemic times. The Judiciary is in a virtual lockdown except for access through the virtual frame in its Video Conferencing *avatar*. That is not a satisfactory tool as experience shows. Apart from the technical glitches of its inability to be tapped into easily, within a timeline or in uninterrupted fashion by all stake holders, it is not easily accessible and does not serve the cause of such circumstances as in the present case.

13.Law is an art and a science. There are legislations of 18th century origin which are still in vogue. Forget not that Epidemic Diseases Act is of 1897 vintage and now amended by April, 2020 Ordinance, to provide for more serious punishments to those who attacked or assaulted health care workers. Law is never static and it keeps evolving and adjusts itself to the advances in technology. We cannot continue to live in the caves. We need to readily embrace technology whose growth has been exponential.

14.In fact, this court has itself talked of ready embrace of technology in *Royal Sundaram Alliance & Insurance Co Ltd vs Priya* reported in 2016 (3) MLJ 458 (DB), *The Oriental Ins Co Ltd vs Rajesh* reported in 2016 (1) TN MAC 433 (DB) and *M/s. Cholamandalam MS General Insurance Co Ltd vs Inspector of Police*, dt. 30/9/2018, in *Cr.OP No.18110/2016*. In these three decisions, all relating to motor accidents claims, this court has elaborately

discussed, delineated and concluded that technology is the way to go, if we are to advance to providing legal services to litigants. We cannot keep relying on the past and archaic procedures and practices to deny ourselves, the benefit of technology. As per the decision in *Cholamandalam vs Inspector of Police (Supra)*, all FIRs and subsequent records relating to motor accidents, are uploaded on the CCTNS platform of State Crime Records Bureau, Chennai and digital access is given to victims and other stakeholders. Even the TN Motor Vehicles Accidents Claims Tribunal Rules, 1989- have been amended vide Rule 4A, for the digital route.

15. Viewed thus, this court is more than satisfied that the Memo filed by the insurance company would suffice and meet the requirements of today, for ordering the withdrawal of the MCOPs from the files of the respective Claims Tribunals to this court and for recording compromise, as entered into between the parties. The consent furnished by the insurer for themselves and from the counsel for claimants, on behalf of their clients, through the digital message route, made available to this court, would suffice to accept that there is consent in a manner known to law, to approve the passing of the decrees in terms thereof.

16. As on date, this court is engaged to keeping alive the dispensation of justice via the Video Conferencing route. That is available not to the entirety of the litigants or access is not available to all the advocates at large. This court was even inclined to give up on the summer vacations. But to no avail, as the dance of the deathly virus, is not yielding yet. It does appear as if the viral

Pandemic may be here to stay for longer than we may all wish and pray. The scientists, health experts and state administrations are struggling to flatten the curve, in the first place, before we can even dream of a normalcy as before. Until then, this court fears and feels that we cannot sit back and wait but be ready and willing to invent and innovate and tweak the available means, and technology platforms, to keep providing justice to the litigant public wherever possible and feasible.

17. Even if the present alternative is seen not to be too satisfactory, this court cannot choose to avoid it either. It does not serve the cause of justice, to wait for the Pandemic to go lock, stock and barrel. Nature's ways are mysterious. Man is born to adjust to the changing ways. We have come a long way from the past. E-Governance platform, though has improved, still may have a long way to go. We may therefore, have to make do with what we have. In this case, I am satisfied that the private sector insurer did not sit back for things to improve. They have tapped into available digital applications and come up with a solution. 23 MCOPs worth in all Rs.51,59,000/- are available before me, to accord compromise. I am satisfied that the insurer and the respective claimants and their counsel have agreed for the compromise. The consents from the counsel for claimants meets the requirement of law, as permissible in the present difficult times. I commend the insurer for taking these efforts and all the counsels who have contributed for the positive solution in culmination. Law has never failed to rise up to the situation. It moulds itself. But it requires the stakeholders to play their part too. The court is always

willing to listen, adjust and accommodate, for the very purpose of its existence is to serve the Lady of Justice. Blindfolded she may be, but not blind of the eyes of men who look upto her for Justice, not deaf, to the simple words of truth spoken by the men that seek justice and most certainly not dumb, for the very purpose of her existence is to resonate the voice of Justice. She is therefore, ready to listen and respond as well as she must. The response from this court cannot lag behind the efforts taken by the insurer, their counsel and the counsel for the claimants in Tamil Nadu, not to forget the victims who have lodged their claims. The victims/claimants also need to be warmly congratulated for their readiness and inclination to interact with their counsel and agree for the compromise of the claims. Give and take is inherent in the cause of justice, as this instance demonstrates to us.

18. This court readily accords its approval for the withdrawal of the 23 MCOPs from the file of the respective claims Tribunals as per the List appended to the Memo filed by the petitioner. This Court in exercise of its powers under Sec.24, CPC read with Art.227 of the Constitution hereby holds that all the 23 MCOPs as per the List appended to this order be treated as compromised in terms of the accorded consent of the contesting parties. It goes without saying that this is an extraordinary order passed under extraordinary circumstances and it cannot be taken as a precedent for the future cases dealt with under normal circumstances wherein the regular procedure for recording compromise should be undertaken .

19. Just as the Covid19 health workers and warriors on the front, middle and back ends are working for our safety and welfare, the officials in the High Court Registry are also engaged in serving the cause in these catastrophic times. This court would be failing in its duty if it did not recognise and commend the services of the officials of this Court's registry who are selflessly engaged in performing their duty at great risk to their lives. Unless all of us, as We The People, get together to contribute our mite, and offer our services, as the circumstances enable and demand, this court fears that we may be letting the present times pass without our contributions. This court feels that the effort of the insurer and the claimants and their counsel can be replicated by other parties and counsel also. That this court was able to achieve this result without the need and benefit of any video conferencing commends itself for replication for other cases also. Where there is a Will, there is a Way. But, it is for us to Will, so that we may go the way in the cause of justice.

20. In view of the above, this court proceeds to dispose of the petitions with the following directions:

(i) the petitioner insurance company M/s. Cholamandalam MS Genl Ins Co Ltd is hereby directed to satisfy all the 23 awards as per the List appended to this order within 2 weeks of receipt of this order by E-mail to them and their counsel on record. The insurer shall deposit the compromise amounts by way of NEFT transfer to the accounts of the claims tribunals in the respective MCOPs. The List of 23 MCOPs

shall form part of this order for the purpose of communication.

(ii) The Registry is directed to send copies of this order with the List as appended to, to the respective claims tribunals in the List by mail and as and when it becomes feasible and possible, to send hard certified copies of this order with the List to the respective claims tribunals for the record.

(iii) It is hereby ruled that the respective claims tribunals can treat the mailed communication from the High Court Registry as certified copy meant for strict compliance.

(iv) On such deposit of the compromised award sums by the petitioner insurance company to the credit of the respective MCOPs, the respective Claims Tribunals are hereby directed to disburse the said amounts upon proper identification of the claimants by their counsel, in a manner known to law.

(v) Such procedure for disbursement may have to obviously await for resumption of the court proceedings, hence the claims tribunals are directed to deposit the award amounts in interest bearing accounts with nationalised banks to serve the benefit of the claimants until they get the opportunity to seek for disbursement.

(Vi) The insurance company is directed, as agreed to by them, to send copy of this order to all the counsel for claimants on Whatsapp, to complete the process of compromise and communications.

(Vii) with these directions the Memo filed by the petitioner insurance

company along with the Appended List of MCOPs with details of the claims settled before respective Motor Accidents Claims Tribunals in Tamil Nadu, stands ordered as prayed for and all parties thereto shall strictly comply with the same in the interest of justice.

No orders as to costs in these proceedings.

05.05.2020

Internet: Yes/No

Index: Yes/No

KP/RKA

To

- 1.The Principal Sessions Court,
Kancheepuram.
- 2.The Sub Court,
Arakkonam.
- 3.The Additional District Court I,
Tindivanam.
- 4.The Additional District Court II,
Tindivanam.
- 5.The Motor Accident Claims Tribunal,
Tindivanam.
- 6.The Motor Accident Claims Tribunal,
Tindivanam.

- 7.The Additional District Court II,
Chidambaram.
- 8.The Additional Sessions Court,
Puducherry.
- 9.The Additional Sessions Court I,
Puducherry.
- 10.The Sub Court,
Panruti.
- 11.The Subordinate District Court,
Villupuram.
- 12.The Subordinate Sessions Court II,
Villupuram.
- 13.The Subordinate Sessions Court I,
Villupuram.

N.ANAND VENKATESH, J.

KP/RKA

Common Order
in Tr.CMP.Nos.231 to 253 of 2020

05.05.2020

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