

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.05.2020

CORAM:

**THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

**CMA No. 1113 of 2020**  
**and**  
**CMP No.7007 of 2020**

M/s. Cholamandalam General Insurance Company Limited  
Legal Department,  
Shaw Wallace Building,  
No.154, Thambu Chetty Street,  
Chennai – 600001.

.... Appellant / 2nd Respondent

1.M.Ashok Kumar  
2.C.Viswanathan  
3.Income Tax Department

... Respondents

**Prayer:** This Civil Miscellaneous Appeal has filed under Section 173 of The Motor Vehicles Act, 1988, made in MCOP No. 79/2018, on the file of Motor Accident Claims Tribunal / Special Sub Court, Krishnagiri.

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For Appellant : Mr.R.Shankaranarayanan, Sr. Advocate

: Mr. V. Lakshminarayanan, Advocate

: Mr. M.B.Raghavan, Advocate

: Mr. N.P. Vijayakumar, Advocate

For Respondents: Mr.J.Narayanaswamy,  
Sr. Standing Counsel (Income Tax)

**N.ANAND VENKATESH., J.**

The above appeal has been filed against an award for Rs.10,46,200/- with interest @ 9% per annum from date of claim i.e., from 21-11-2016 and costs of Rs.27,332/-. The Claimant is one Mr. M. Ashok Kumar who suffered grievous injury and was assessed disablement by Medical Board vide orders of this Court made in Tata AIG General Insurance Co. Ltd. Vs. Prabhu dated 12-04-2016, including medical expenses of Rs.3,54,000/-. A simple nudge was sufficient to the Counsel for Insurance Company to surrender the appeal to the larger cause of community of victims in these pandemic times. The Insurer has deposited Rs.25,000/- towards statutory deposit. The learned counsel appearing on behalf of the insurance company fairly submitted that the entire balance amount including interest and cost will be deposited by the insurance company and that he has instructions to state so before this court. Recording the said submission, the Insurer is hereby directed to deposit the entire award with interest and costs less

statutory deposit within 2 weeks of receipt of this order by email. It is pertinent to note that despite the grant of interest @ 9% p.a., the Insurer and its Counsel have gracefully not made an issue of it. However, it is made clear that the affirmation of the award with interest at 9% p.a. shall not be treated as a precedent, since the ordinary rate of interest is 7.5% p.a. only.

2.The learned counsel for the appellant insurance company submitted that under normal circumstances, he would have withdrawn this appeal. However he was compelled to bring to the notice of this Court, a vexed issue which has its origins in an Insertion by Finance Act, 2003 W.E.F. 01.06.2003 to Sec. 194 A of Income Tax Act, 1961. The learned counsel pointed out that while satisfying this award in MCOP No.79/2018, the interest liability would be subject to Tax Deducted at Source (TDS) under Sec. 194 A. But the Insurer submitted that they were facing a situation akin to facing between the devil and the deep sea. The present factual and legal position in Tamil Nadu postulates that in cases where the Insurer satisfies the award and deducts TDS, they face the prospect of attachment by way of execution petitions. As live examples 4 CRPs in CRP Nos. 587/2017, 3622/2017 and 3623/2017 and CRP SR No.136671/2019 which are pending before this Court against orders of attachment in Execution Petitions by the respective Tribunals was brought to the notice of this court.

3.Per contra, if the Insurer does not apply TDS, they run the risk of facing penal consequences under Sec. 201 of Income Tax Act, 1961 as per which the Principal Officer of the insurance company could be subjected to a fine of Rupees One thousand per day for non-compliance, when last heard.

4.In such a stifling atmosphere, the Insurer has called upon this Court to make it clear as to which of the two courses they should embrace in this case, to avoid either of the difficult situations. Despite the Insurer gracefully agreeing to satisfy the award with interest & costs, they are in an undeniable quandary. This Court is duty bound to address the issue and not shy away from it, since this issue is not immune to the Pandemic. This Court may have to consider discovering a vaccine to solve the viral impact of this TDS issue.

5.Accordingly, this Court deemed it fit and proper to requisition the services of amicus curiae in Mr. R. Sankaranarayanan, Sr. Advocate, Mr. V. Lakshminarayanan, Advocate, Mr. M.B.Raghavan, Advocate and Mr. N.P. Vijayakumar, Advocate to address the issue. In addition, since this issue is umbilically tied with the Income Tax Department, Mr. J. Narayanaswamy, Sr. Standing Counsel was requested to assist the Court to satisfactorily deal with the issue. This Court, has the luxury of time and the Counsel also readily agreed and we analyzed various issues threadbare to consider as to what could be the best vaccine in the present circumstances, to protect the interest of the stake holders. Apart from the statutory provisions, a series of citations from various High

Courts, including this Court were brought to the notice of this Court. Based on this exercise, the following order is found appropriate.

6.Fundamentally, this Court is now convinced that the germination of the TDS issue in this jurisdiction is traceable to “delayed compensation” under the erstwhile Land Acquisition dispensation. TDS was applied on the interest paid to the Landholders in the course of acquisition. Picking up from this idea, the Income Tax Department in Chennai had sent a notice to National Insurance Co. Ltd., a Public Sector Insurer, asking for details of satisfaction of awards with interest liability, over a long period. On advice, the said Insurer challenged the notice by way of W.P. No. 7480/1999. Since clearance was necessary from the Central Government for a PSU Insurer to challenge the orders of a statutory department, there was delay in disposal of the Writ Petition. In the meanwhile, aware of this challenge, Central Government deemed it proper to amend 194 A of Income Tax Act, 1961 to specifically provide for TDS in relation to interest liability of over Rs.50,000/-.

7.Hence, on and from the date of said amendment, TDS is being applied Pan India. In so far as Tamil Nadu is concerned, TDS was being applied as a matter of course wherever applicable. However, a victim in Erode chose to file EP challenging the TDS applied. The Tribunal ruled that the claim petition was pending for several years and as such “spread over” if applied TDS was avoidable. The New India Assurance Co. Ltd., a Public Sector Insurer, was directed to pay the TDS deduction amount to the Claimant in

the EP proceedings. The Insurer challenged this direction and by orders made in *New India Assurance Vs. Mani* reported in 270 (2004) ITR 394 Mad, the order of attachment and direction to pay the TDS amount were set aside. The High Court pointed out Sec. 194 A was a specifically intended introduction and it was not under challenge and the benefit of spread over was also with the Department and cannot be usurped by the Claims Tribunal. This was the legal position for over a decade since 2005.

8. While so, scanning the entire nation, it is found that there are different viewpoints expressed by different High Courts (reference may be usefully made *Hansaguri Prafulchandra Ladhani Vs. Oriental Insurance Co. Ltd.*, 2007ACJ1897 Guj, *Islamic Investment Co. Vs. Union of India* 2002(4) BOM CR 585, *Ramabai Vs. CIT AP* 1990 (181) ITR 400, *Gauri Deepakbai Vs. CIT* 1990(181) ITR 400, *United India Insurance Co. Ltd. Vs. Mitaben Dharmeshbhai Shah* 2004ACJ1996 Guj, *United India Insurance Co. Ltd. Vs. Jankidevi* 2009ACJ1937 MP, *Gauri Deepak Patel Vs. New India Assurance Co. Ltd.* 2010 (1) ACC 766 (BOM) (DB), *Gauri Deepak Patel Vs. New India Assurance Co. Ltd.* 2011 ACJ 1782(Guj) (DB), *Gauri. New India Assurance Co. Ltd. Vs. Bhoyabai Harbhai Bharvad* 2017 ACJ 1727 Guj, *IFFCO Tokio General Insurance Co. Ltd. Vs. Krishnakumar Munshiram Agrawal* 2019 ACJ 376 (Guj), *New India Assurance Co. Ltd. Vs. Sudesh Chawla* 2017 ACJ 1639 (HP), *Oriental Insurance Co. Ltd. Vs. Sita Kanwar* 2016 ACJ 1231 (Chat.), *Oriental Insurance Co. Ltd. Vs. Chennabasavaiah* 2016 ACJ 78 (Kar) and a host of others) and no one uniform or consistent application of the law. And it is also brought to my notice that when the matter was escalated to the

Hon'ble Supreme Court of India (SLP No. 4007/2014), the issue was not decided but kept alive upon dismissal of the challenge, on the ground that the stakes involved was too low.

9.It would be appropriate to point out that where the Claimants produce the proof of PAN Card, TDS is applied at 10%. In the absence of such PAN Card, it shall be 20%. Not so, insignificant amounts and when refunds are not made to the poor victims, the issue is exacerbated. Following these difficulties for the innocent motor accident victims, a few High Courts have ruled that Sec 194 A was not applicable in these claims. They appear to have done so after due notice and hearing the Income Tax Department.

10.While so, this Court in MD, TNSTC Vs. Chinnadurai, dated 02-06-2016, reported in 2017 ACJ 505 ruled that TDS in Motor accident claims was inapplicable. It followed the example set by a few other High Courts such as Himachal Pradesh, and gave primacy to Motor Vehicles Act, 1988 as a social welfare legislation to Income Tax Act, 1961 as a Revenue legislation. By this verdict, it was held that the interest liability was also not exigible to TDS despite the amended Sec 194 A. It is pertinent to note that in Chinnadurai case this Court did not have the benefit of hearing the Income Tax Department, which has vital interest in the issue. More importantly, the earlier decision of this Court in New India Assurance Vs. Mani in CRP No. 2628/2003 dated 07-07-2004 appears to have been brought to the notice of this Court and the same is evident from Para 18 of the judgement. In spite of the same, the learned single judge chose not to follow the

same and took an independent path by placing reliance upon the judgements of certain other high courts.

11.It is the submission of all the Amicus that there is an apparent disagreement between the 2005 decision in Mani and the 2016 decision in Chinnadurai. The Counsel for the Income Tax Department was unable to contradict the same. The Department Counsel only highlighted that there was no judgment of a larger bench on this tax issue. It was therefore submitted that a clarity is required with regard to the interpretation and applicability of Sec 194 A of the Income Tax Act and it would help not only the claimants but also the respective insurance companies and other entities and also the Income Tax department for a consistent and uniform approach.

12.It is also brought to my notice that insurance companies and Transport Corporations are facing Execution Petitions before Claims Tribunals, where TDS was applied. The decisions in Mani and Chinnadurai arose from such EPs. C.R.P Nos. 3622/2017, 3623/2017 and 587/2018 are also of the same genre. In fact, even a W.P. No. 7544/2018 in Govindammal Vs. Collector was decided on 02-04-2019 following Chinnadurai from a Workmens Compensation claim. Motor accident claims, be it under Motor Vehicle Act, 1988 or Employees Compensation Act, 1923, gets impacted by this TDS issue.

13. An earnest submission is made by the Counsel that the TDS issue in this jurisdiction has become too complicated and vexed, requiring immediate clarification/ solution. All the stakeholders have serious interest which needs immediate attention. That there is an apparent disagreement between the decision in *New India Assurance Vs. Mani* 270 (2004) ITR 394 Mad and MD, TNSTC Vs. Chinnadurai in 2017 ACJ 505, is undeniable.

14. The Income Tax Department was not heard in the later case. Sec 194 A was not struck down. It continues to be on the statute book. If so, the judgment debtors are facing either Execution Petitions or Penal consequences under Sec 201 of Income Tax Act, 1961. It is not a happy situation to confront. I am therefore eminently satisfied that the TDS issue flagged off before me requires to be elevated to a Division Bench or a larger Bench as may be deemed fit by the Hon'ble Chief Justice for a clear cut verdict on the applicability of TDS on interest in Motor Accident Claims atleast insofar as Tamil Nadu is concerned.

15. Further, the Counsel have made a submission that in view of the apparent conflict between the decisions in *Mani* and *Chinnadurai*, several execution petitions are filed and orders are pending before Claims Tribunals. There are also CRPs pending. The Counsel are unable to lay their hands on more of them considering the lockdown times. Hence, it is their sincere submission, while a reference may be made to a larger bench for resolution of the apparent conflict between the decisions in *Mani* and *Chinnadurai*, this

Court may consider keeping in abeyance all pending Execution Petitions at whatever stage, and even where orders have been passed, in so far as the TDS issue is concerned, until a firm and clear decision is obtained from a larger bench.

16. Going by the above discussion and the obvious and apparent disagreement between two learned single judges on the issue and unnecessary pendency of EPs and CRPs and difficulties faced by all the stakeholders, I am more than satisfied that it is a fit case to order a blanket stay of all Execution Petitions pending before all Motor Accident Claims Tribunals in Tamil Nadu in relation to and confined to the issue of Tax Deduction at Source vide 194 A of the Income Tax Act, 1961. In respect of EPs which may include the TDS issue and not solely confined to it, only the dispute relating to TDS issue will stand suspended, awaiting a verdict from the larger bench.

17. It is also brought to my notice that TDS is in application in millions of motor accident cases since 01.06.2003. Huge sums may have accumulated in the coffers of Income Tax Department. Not all victims may have sought and/ or obtained refunds. Many victims may belong to such strata of society that they may not be in a position to pursue the refund. I deem it fit to leave it to the larger bench to allude to this issue also, and examine the possibility of proper utilization of the unrefunded amounts for the benefit of motor accident victims. The Income Tax Department could be asked to provide statistics relating to the TDS amounts, refunds sought and pending, refunds

ordered and no refunds sought for at all, and the period for the same, for this purpose.

18.The Counsel have thoughtfully brought to my notice Act 32 of 2019 which has introduced replacement of Chapter XI of Motor Vehicles Act, 1988. Under the new dispensation, Parliament has introduced changes for the benefit of accident victims to protect them during the “Golden Hour”, immediately after the accident and also to protect the interest of the victims in respect of “Hit and Run Accidents” or those involving uninsured vehicles. If a meaningful corpus is available with the Income Tax Department, as unrefunded TDS, it could come for proper use under this new dispensation. This is a suggestion made for consideration by the Larger Bench of this Court. In any case, the issue of unrefunded TDS lying to the credit of Income Tax Department rightly belonging to the innocent motor accident victims, may have to be addressed as a live issue. Of course, the law relating to refund of Income Tax shall have to be taken note of and the stand of the Income Tax Department heard and decided in a manner known to law.

19.For any and all the above reasons, I am satisfied that this is a fit and proper case to direct the Registry to place this matter before the Hon’ble Chief Justice for considering the issues for resolution by a larger bench, as found fit and proper by the Hon’ble Chief Justice. All the connected cases may also be tagged along with this case and placed before the Hon’ble Chief Justice so that the same can be tagged while referring to the larger bench.

20. In the meanwhile, the Appellant Insurance Company is directed to satisfy the award in MCOP No. 79/2018, on the file of Motor Accident Claims Tribunal / Special Sub Court, Krishnagiri together with interest and costs less Rs.25,000/- already deposited, within 2 weeks from the date of order in this proceedings by email.

21. In view of the peculiar circumstances of the disposal of this appeal and a reference being made on the TDS issue, the insurance company is hereby directed to deposit the entire award sum of Rs. 10,46,200/- with interest at 9% p.a. from 21-11-2016 with cost of Rs. 27,332/- and without applying any Tax Deduction at Source (TDS), in so far as this award is concerned, without setting a precedent. The insurance company has readily agreed to do so, in compliance with the orders of this court.

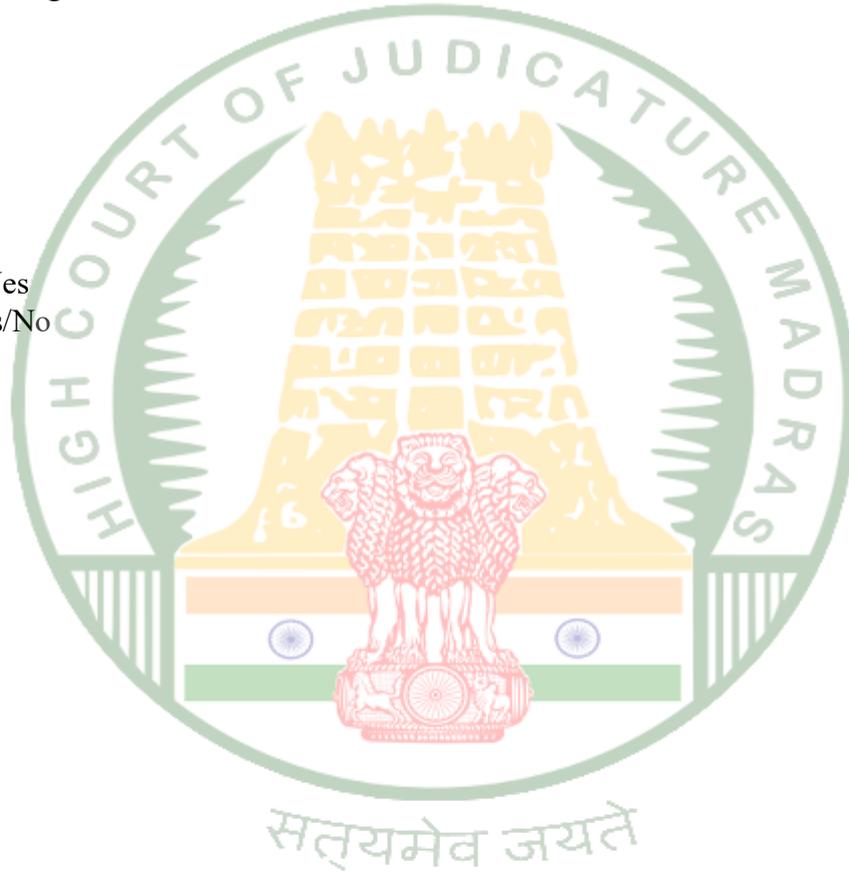
22. On such deposit by the insurance company, the entire award sum with interest and costs without applying TDS also, the claimant would be at liberty to withdraw the same, upon identification by the Counsel for petitioner, as per the practice before the said claims tribunal.

23. For the reasons stated supra, this Court further directs that all Execution Petitions relating to and confined to the issue of Tax Deduction at Source under Sec 194 A of Income Tax Act, 1961 pending on the files of all Motor Accident Claims Tribunals in Tamil Nadu at whatever stage, shall stand stayed to await orders from the larger bench on the applicability of Sec. 194 A of Income Tax Act, 1961 and the mode and manner of

application of the same, in terms of the orders deemed fit and proper by the larger bench in the circumstances of the case in the interest of justice. At the risk of repetition, it is made clear that the stay shall be confined only to the issue of tax deduction at source under Sec 194 A of Income Tax Act, 1961 and the execution petition can be proceeded further with regard to all the other claims.

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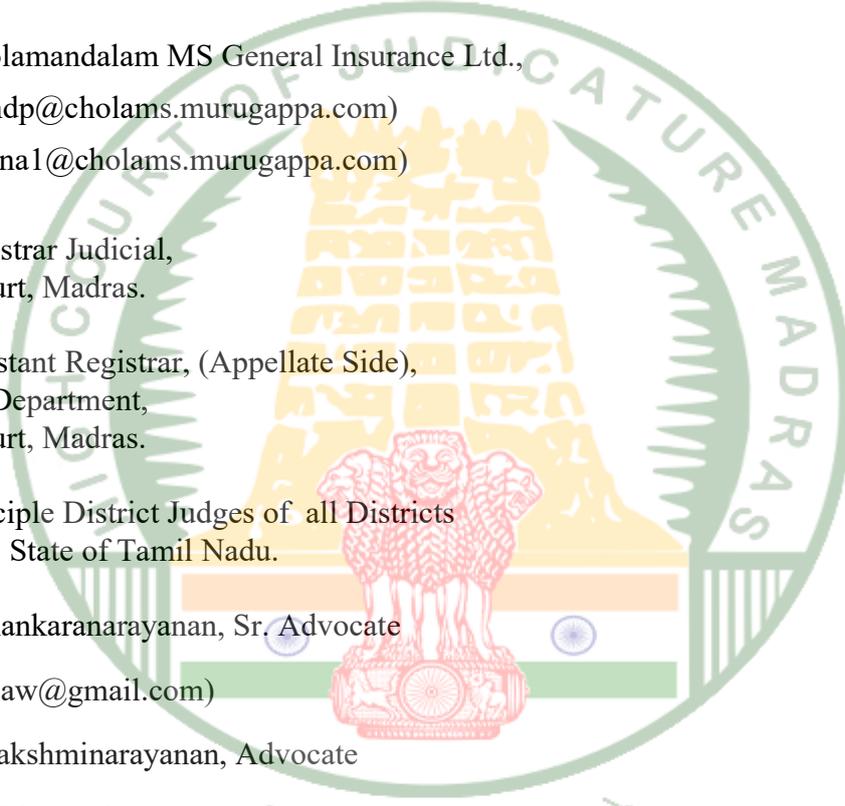
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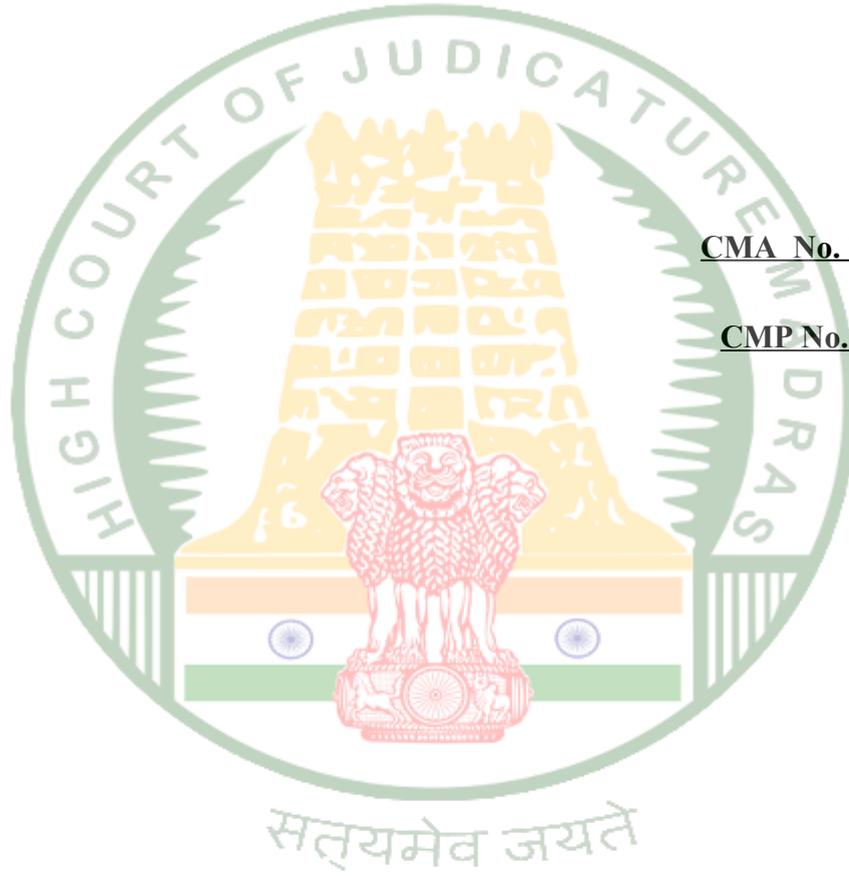
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**N.ANAND VENKATESH., J.**

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