



C.M.A.(MD)No.989 of 2022:

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A.(MD)Nos.989 and 990 of 2022

and

C.M.P.(MD)Nos.9782, 9783 of 2022,

11284 and 11285 of 2023

C.M.A.(MD)No.989 of 2022:

Divisional Manager,
Cholamandalam General Insurance
Company Limited,
Nos.3 and 4, Dindigul Highway,
Near ENT Hospital,
Kalavasal, Madurai.

... Appellant/ 3rd Respondent

Vs.

1.Karanthan Ambalam
2.Loganathan
3.Elanchezian

... 1st Respondent/ Petitioner

... Respondents 2 & 3/ Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree made in M.C.O.P.No.439 of 2017, dated 23.11.2021, on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Madurai.



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Divisional Manager,
Cholamandalam General Insurance
Company Limited,
Nos.3 and 4, Dindigul Highway,
Near ENT Hospital,
Kalavasal, Madurai.

... Appellant/ 3rd Respondent

Vs.

1.Palanichamy
2.Loganathan
3.Elanchezian

... 1st Respondent/ Petitioner

... Respondents 2 & 3/ Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree made in M.C.O.P.No.440 of 2017, dated 23.11.2021, on the file of the Motor Accident Claims Tribunal, (Special Sub Court), Madurai.

In both cases:

For Appellant : M/s.K.R.Shivashankari
For R1 : Mr.K.Sudalaiyandi
For R2 and 3 : No appearance

COMMON JUDGMENT

The 3rd respondent in both cases is the owner of the vehicle. The 3rd respondent remained ex-parte in the Tribunal as well. In spite of the same, this Court directed to serve notice through paper publication and the appellant has issued paper publication and filed proof to that effect. Hence, the process is



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2. The Insurance Company has preferred these Civil Miscellaneous Appeals.

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3. The contention of the Insurance Company is that the vehicle met with an accident wherein the Cleaner of the vehicle was injured. Since the Cleaner is covered under the policy and there is no violation of policy conditions and the Insurance Company has admitted the liability and settled the entire amount in M.C.O.P.No. 430 of 2017.

(*) "4. However, the Insurance Company has preferred the present two Civil Miscellaneous Appeals against the order granting compensation for the present respondents who have claimed to be gratuitous passengers. The contention of the Insurance Company is that the seating capacity of the vehicle is only two persons, wherein the Driver and Cleaner are seated. The gratuitous passengers were seated at the backside of the vehicle, which is violation of policy condition. Therefore, the present claimants who are gratuitous passengers are not entitled to compensation. The further contention of the Insurance Company is that the two persons were travelling after the delivery of goods. Hence, they cannot be considered as owners of the goods. The owner of the goods will be permitted to travel along with the goods but once the goods are sold, the owners of the goods ought to have taken passenger vehicle instead of travelling in the goods vehicle.



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Therefore, there is violation of conditions. Hence, the award passed by the Tribunal is erroneous. At least, the Tribunal ought to have considered to grant pay and recovery from the owner of the vehicle."

5. The learned Counsel appearing for the 1st respondent in both cases submitted that the FIR is filed by the Cleaner who had stated in the FIR that the mangoes were carried in tray and after selling the same, the owners were permitted to travel in the vehicle, hence the Insurance Company cannot raise such plea. The relevant portion of the FIR is extracted hereunder:

“TN-55-K-6588 மகேந்திரா பிக்கப்பில் கிளீனராக இருந்து வருகிறேன். மேற்படி வேனில் கடந்த 13.04.16 ம் தேதி இரவு எங்க ஊரிலிருந்து எங்க ஊரைச்சேர்ந்த 1.சுப்பையா மகன் சுருட்டையன் (எ) பழனிச்சாமி, 2.காளி அம்பலம் மகன் கரந்தன் என்பவரது மாங்காய்களை வாடகைக்கு ட்ரே மூலம் ஏற்றினோம். மேற்படி வேனை பொன்னையா மகன் வெள்ளைச்சாமி என்பவர் ஓட்டினார். மேற்படி வேனில் நான் கிளீனராகவும் மேற்படி மாங்காய் உரிமையாளர்கள் மேற்சொன்ன இருவரும் ஏறிக்கொண்டு அன்று இரவே மதுரை மார்க்கெட் சென்று மேற்படி மாங்காய்களை இறக்கி அதற்குள்ள பணத்தைப்பெற்றுக்கொண்டு மறுநாள் 14.04.2016-ம் தேதி காலையில் மதுரையிலிருந்து புறப்பட்டு ஊமச்சிக்குளம் சத்திரப்பட்டி வழியாக தெற்கே இருந்து வடக்கு முகமாக நத்தம் நோக்கி வந்து கொண்டிருந்தோம்.”

6. The Learned Counsel for the Insurance Company submitted that the Cleaner of the vehicle has not stated or shown that the trays were available while returning the vehicle. If the mangoes are carried in trays, then after dispatching the mangoes, the trays should be available then only it can be concluded that they have



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travelled after the delivery of mangoes, but no such evidence is available. But this plea of the Learned Counsel appearing for the Insurance Company was vehemently opposed by the Learned Counsel appearing for the 1st respondent and relied on the deposition of RW 1 who is the Officer of the Insurance Company who had also admitted that after the delivery of the goods, the owners of the goods were travelling in the vehicle. The relevant portion of the deposition is extracted hereunder:

“TN-55-K-6588 என்ற வாகனத்தில் சரக்கு ஏற்றி கொண்டு சென்றபோது விபத்து ஏற்பட்டது என்று சொன்னால் சரக்குகளை இறக்கிவிட்டு வரும்போது விபத்து நடந்தது. ம.சா.ஆ.1 முதல் தகவல் அறிக்கையில் மாம்பழங்களை இறக்கி விட்ட காலி கூடைகளுடன் திரும்ப வந்ததாக கூறப்பட்டுள்ளதா என்றால் இல்லை. மனுதாரர்கள் 3 பேரும் TN-55-K-6588 என்ற வாகனத்தில் லோடுமேன் ஆக தான் சென்று வந்தார் என்றும் அதனால் எங்கள் நிறுவனம் மனுதாரர்களுக்கு இழப்பீடு வழங்க கடமைப்பட்டது என்றால் சரியல்ல.”

Since the Insurance Company had admitted before the Tribunal, now the Insurance Company cannot raise such plea. Further it is seen that the Insurance Company has not substantiated the same through any evidence. Moreover, the *mahazar* was not marked. Therefore, the case of the Insurance Company cannot be considered.

7. In C.M.A.(MD)No.989 of 2022, it is a case of injury and the award amount is Rs.2,82,400/- with 7.5% interest and costs. In C.M.A.(MD)No.990 of 2022, it is also a



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case of injury and the award amount is Rs.3,45,200/- with 7.5% interest. The award in both the cases are just and fair compensation. Therefore, this Court is not inclined to interfere with the award. Therefore, the orders passed by the Tribunal in the M.C.O.P.s are confirmed.

8. In C.M.A.(MD)No.989 of 2022, the appellant is directed to deposit Rs. 2,82,400/- with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same with accrued interests and costs, less the amount already withdrawn by him, if any, by filing appropriate application before the Tribunal.

9. In C.M.A.(MD)No.990 of 2022, the appellant is directed to deposit Rs. 3,45,200/- with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same with accrued interests and costs, less the amount already withdrawn by him, if any, by filing appropriate



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application before the Tribunal.

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10. Hence, both the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

**(*)Corrected as per the order of this Court dated. 10.04.2024 made in
CMA(MD)No.989 and 990 of 2022**

Sd/-

Assistant Registrar(P&A)

// True Copy //

12/04/2024

Sub Assistant Registrar

Tmg

(*)To be substituted to the order already despatched on 06.03.2024.

To

1.The Special Subordinate Judge,
Motor Accident Claims Tribunal, Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.K.SUDALAIYANDI, Advocate (SR-9212[F] dated 04/03/2024)

+2 CC to M/s.K.R.SHIVA SHANKARI, Advocate (SR-9650[F] dated 05/03/2024)

<https://www.mhc.tn.gov.in/judis>



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RD(06/03/2024) 8P / 7C

SI (12/04/2024) 8P / 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.