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CMA.No.1821 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-7-2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

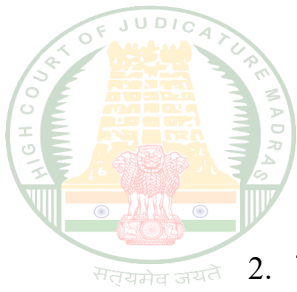
Civil Miscellaneous Appeal No.1821 of 2022

1. Rajammal
W/o. Late Minisamy,
Poomandagoundanur Street,
P.Mettupalayam Village,
P.Mettupalayam,
Bhavani Taluk, Erode District.
2. M.Srinivasan
S/o. Late Minisamy,
Poomandagoundanur Street,
P.Mettupalayam Village,
P.Mettupalayam,
Bhavani Taluk, Erode District.
3. M.Mythili
D/o. Late Minisamy,
Poomandagoundanur Street,
P.Mettupalayam Village,
P.Mettupalayam,
Bhavani Taluk, Erode District.

...Appellants

Vs

1. T.Elangovan,
S/o. Thangavel,
Kallangattuputhur,
Keelvani Athani,
Bhavani Taluk, Erode District.



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2. T.Gobinath
S/o. Thangavel,
Kallangattuputhur,
Keelvani Athani,
Bhavani Taluk, Erode District.
3. Cholamandalam General Insurance
Company Ltd, No.445, Magnum Towers,
Dr.Nanjappa Road, Coimbatore.

...Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988
praying to enhance the award amount passed in MCOP.No.113 of
2018 on the file of the Motor Accidents Claims Tribunal (Fourth
Additional District & Sessions Court), Erode District at Bhavani dated
22.7.2021 so as to direct all the respondents to pay the award
amount jointly and severally.

For Appellants:	Mr.V.S.Kesavan
For Respondents:	Mrs.R.Sree Vidhya for R3 R1 & R2 served & no appearance

JUDGMENT

This appeal has been filed against the award dated 22.7.2021
made in MCOP.No.113 of 2018 on the file of the Motor Accidents
Claims Tribunal (Fourth Additional District & Sessions Court), Erode
District at Bhavani wherein the appellants - claimants are seeking



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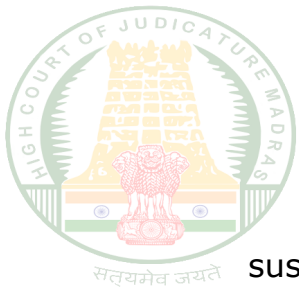
for enhancement of compensation and also want this Court to apply the principle of pay and recovery.

2. Heard the learned counsel for the appellants – claimants and the learned counsel appearing for the third respondent. Though respondents 1 and 2 were served and their names printed in the cause list, there is no representation on behalf of them either in person or through counsel.

3. The first appellant – first claimant is the wife and appellants 2 and 3 – claimants 2 and 3 are the children of one Mr.Minisamy.

4. The case of the appellants – claimants is as follows:

(i) On 07.11.2017, the said Mr.Minisamy was travelling along with other loadmen in a Mahindra Bolero Maxi Truck at P.Mettupalayam – Appakudal Main Road. At about 6 AM, when the truck was going near the river bridge, it was driven in a rash and negligent manner, as a result of which, the driver of the truck did not notice a speed breaker and the said Mr.Minisamy and other loadmen were thrown away from the truck. The said Mr.Minisamy



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sustained multiple injuries all over his body and ultimately succumbed to the injuries on 08.11.2017. It was under those circumstances, the claim petition came to be filed before the Tribunal below by the appellants – claimants.

(ii) The first respondent is the driver of the truck and the second respondent is the owner of the truck.

(iii) Before the Tribunal below, the third respondent – Insurance Company took a stand that the first respondent had carried more than seven persons in the truck as unauthorized gratuitous passengers and that there was no insurance cover for the gratuitous passengers. The further stand that was taken was that the driver of the truck namely the first respondent did not possess a valid driving licence. Ultimately, the third respondent – Insurance Company sought for dismissal of the claim petition.

(iv) The Tribunal below, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to the conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the truck.



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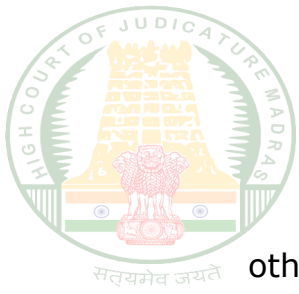
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(v) Thereafter, the Tribunal below also rendered a finding that seven persons were travelling in a goods vehicle and it was in violation of the policy condition and held that the third respondent – Insurance Company was not liable to pay any compensation to the claimants. Subsequently, the Tribunal below proceeded to fix the total compensation of Rs.10,28,700/- in the following manner:

<i>S.No.</i>	<i>Head</i>	<i>Amount</i>
1	<i>Loss of dependency</i>	<i>Rs. 8,71,200/-</i>
2	<i>Spousial consortium to the 1st petitioner</i>	<i>Rs. 40,000/-</i>
3	<i>Parental consortium to petitioners 2 & 3</i>	<i>Rs. 80,000/-</i>
4	<i>Loss of estate & funeral expenses (Rs.15,000/- + Rs.15,000/-)</i>	<i>Rs. 30,000/-</i>
5	<i>Transportation</i>	<i>Rs. 7,500/-</i>
	<i>Total</i>	<i>Rs.10,28,700/-</i>

(vi) The above compensation was directed to be paid together with interest at the rate of 7.5% per annum from the date of petition till payment. Aggrieved by that, the above appeal has been filed before this Court by the claimants.

5. The main ground that was urged on the side of the appellants – claimants is that the vehicle in question was a goods vehicle, that the deceased Mr.Minisamy was travelling along with



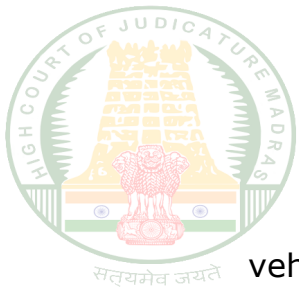
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other loadmen to the sugarcane field in order to cut the sugarcane, load it in the vehicle and bring it back, that the policy covered two persons, that therefore, the third respondent – Insurance Company should have been made liable for paying compensation, that if there had been any violation of the policy condition, the compensation should have been recovered from the owner of the vehicle and that however, the Tribunal below went wrong in exonerating the third respondent – Insurance Company from paying any compensation.

6. It is also submitted on the side of the appellants - claimants that the compensation that was fixed by the Tribunal below under the head 'loss of dependency' is on the lower side and it requires the interference of this Court.

7. Per contra, the learned counsel appearing for the third respondent – Insurance Company has submitted that it is a clear case of gratuitous passengers travelling in a vehicle, that therefore, the policy did not cover such gratuitous passengers, that however, while filing the claim petition, a clever drafting was made as if it was a goods vehicle whereas admittedly, there were no goods inside the



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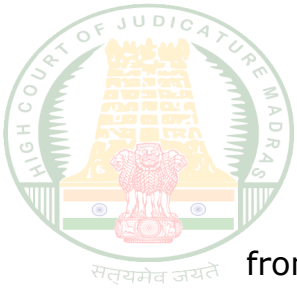
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vehicle at the time of accident and that therefore, the award passed by the Tribunal below does not require the interference of this Court.

8. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

9. In the case in hand, from the evidence of P.W.1 and the first information report (FIR) that was marked as Ex.P.1, it is clear that the persons had travelled in the offending vehicle as coolis and that they were engaged in cutting sugarcane from the sugarcane field. It also came out in evidence that nearly seven persons travelled in the vehicle. The policy covered only the driver and a passenger and nothing more.

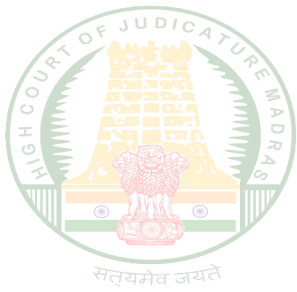
10. It is true that at the time when the accident had taken place, there were no goods inside the vehicle. However, the evidence on record would show that the coolis were engaged to cut the sugarcane from the sugarcane field and that they were taken



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from their respective residences to the sugarcane field. Therefore, just because there were no goods inside the vehicle, that does not automatically raise a presumption that it is not a goods vehicle. The earliest document namely Ex.P.1 – FIR would show that the persons were carried in the vehicle from their respective residences to the sugarcane field only to cut sugarcane and load it in the vehicle. In the light of the above discussions, this Court holds that this is not a case, which falls within the category of gratuitous passenger and that it is a clear case, which falls within the category of cooli travelling in a goods vehicle.

11. The policy covered only two persons namely the driver and a passenger. It is seen that apart from the claim petition involved, no other claim petition has been brought to the notice of this Court. Therefore, one passenger permitted in the vehicle can be easily covered in the policy. The said Mr.Minisamy can be held to be a cooli, who travelled in the goods vehicle and the policy covered one person apart from the driver. In view of the above, the third respondent – Insurance Company ought to have been made liable to pay compensation to the appellants – claimants.

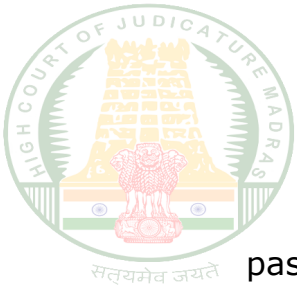


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12. The next issue is regarding the violation of the policy condition as the vehicle was supposed to carry only two persons whereas more than seven persons travelled in the vehicle. Therefore, there is a violation of the policy condition. In such a scenario, the Tribunal below ought to have applied the principle of pay and recovery.

13. In so far as the quantum of compensation is concerned, the total compensation that has been fixed under various heads is found to be fair and reasonable and does not require the interference of this Court.

14. For the foregoing reasons, the above civil miscellaneous appeal is partly allowed and the award dated 22.7.2021 passed in MCOP.No.113 of 2018 by the Tribunal below is modified only to the extent that the total compensation shall be payable by the third respondent – Insurance Company to the appellants – claimants. It is also made clear that the third respondent – Insurance Company shall not be made liable to pay any more compensation to any other claimants since the policy confines itself only to the driver and a



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passenger. It goes without saying that by paying the compensation awarded in this case, the liability of the third respondent – Insurance Company comes to an end.

15. Accordingly, the above civil miscellaneous appeal is partly allowed in the above terms and there shall be a direction to the third respondent – Insurance Company to deposit the entire compensation amount of Rs.10,28,700/- (Rupees ten lakhs twenty eight thousand and seven hundred only) as awarded by the Tribunal below along with interest at the rate of 7.5% per annum the date of petition till payment within six weeks from the date of receipt of a copy of this judgment. On such deposit, the same shall be permitted to be withdrawn by the appellants – claimants in the proportion fixed by the Tribunal below. It is needless to point out that the third respondent – Insurance Company will be entitled to recover the entire compensation awarded along with accrued interest from the owner of the vehicle namely the second respondent. No costs.

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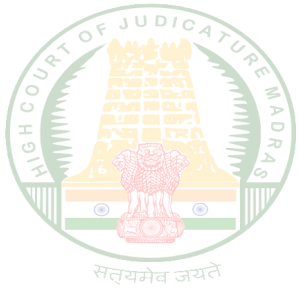
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To

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