

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2015

CORAM

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

C.M.A.Nos.2251
and 2324 of 2011
and
M.P.Nos.1 and 1 of 2011

C.M.A.No.2251 of 2011:

M/s.ICICI Lombard General Insurance
Co. Ltd., 'Vigneswara Crests',
1095, Avinashi Road,
Pappanaickenpalayam,
Coimbatore.

... Appellant/3rd respondent

vs.

1.Kulandaisamy
2.Ramasamy
3.C.Palanisamy

...Respondents /Petitioner/
R1 and R2

(R2 & R3 are set exparte
before the lower court)

C.M.A.No.2324 of 2011:

M/s.ICICI Lombard General Insurance
Co. Ltd., 'Vigneswara Crests',
1095, Avinashi Road,
Pappanaickenpalayam,
Coimbatore.

... Appellant/3rd Respondent

vs.

1.Moorthy
2.Ramasamy
3.C.Palanisamy

(R2 & R3 are set exparte
before the lower court)

... Respondents/Petitioner/
R1 and R2

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act against the judgments and decrees dated 30.9.2010 and 22.7.2009 made in M.C.O.P.Nos.191 and 189 of 2008 respectively on the file of the Motor Accidents Claims Tribunal,

(Additional District Judge cum Sessions Judge) (Fast Track Court No.V) Coimbatore camp at Tiruppur, and Motor Accidents Claims Tribunal, (Principal Subordinate Judge) at Tiruppur respectively.

For Appellant : Mrs.R.Sreevidya,
in both the appeals.

For Respondents : Mr.MA.P.Thangavel,
for R.1 in both the appeals.

COMMON JUDGMENT

The insurer of the goods carrying auto in which both the injured were travelling at the time of the accident, is the appellant in both the appeals.

2. Both the appeals are filed against the award of compensation solely on the ground that since the claimants in both the cases travelled in a goods carrying auto as gratuitous passengers, no liability can be fastened on the insurance company for payment of compensation on behalf of the owner of the vehicle. In this regard, the claim petitions filed by both the claimants / father and son by relationship, say that the claimants in both the claim petitions were travelling in the auto along with their respective cement bags. The fact that cement bags were carried on in the vehicle is not denied. What is denied is that the cement bags belonged to the father and son. In this regard, the claimants throughout stated that the cement bags were purchased by them for the purpose of putting up construction and the same were carried in the vehicle and they travelled along with the cement bags. It is stated so in Ex.P.1-First Information Report as well as in the oral evidence of the claimants, whereas there is no denial of the same by way of serious cross examination of P.W.1 on behalf of the insurance company. Considering the pleadings and evidence available in this case, the Tribunal has rightly held that the claimants in both the claim petitions travelled along with their cement bags in the auto. In view of the same, the objection that the claimants as gratuitous passengers are not entitled to raise any claim has to necessarily fail. As the appellant insurance company has not raised any objection regarding the quantum of compensation, the impugned awards warrant no interference.

3. In the result, both the civil miscellaneous appeals are dismissed. The balance award amount along with interest and costs, if any, shall be deposited within four weeks from the date of receipt of the copy of this judgment. The claimants in both the claim

petitions are permitted to withdraw their respective amounts, with the accrued interest and costs, less the amount, if any, that has already been withdrawn by them, by filing cheque petition. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sbi

To

1.The Additional District Judge
cum Sessions Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.V, Coimbatore Camp at Tiruppur.

2.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
at Tiruppur

3.The Record Keeper,
V.R. Section,
High Court, Madras.

+ 1 cc to Mrs. R. Sreevidhya, Advocate 43405

+ 2 ccs to M/s. Ma.P. Thangavel, Advocate Sr.43415, 43416

C.M.A.Nos.2251 and
2324 of 2011

SVI (CO)
EU 15.10.15

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