

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM

THE HON'BLE MR.JUSTICE N. SESHASAYEE

C.M.A.Nos.2242 & 2243 of 2009
and CMA.No.2571 of 2009 &
and M.P.No.1 of 2009 in CMA.No.2571 of

The National Insurance Co. Ltd.,
Third Party Motor Claims,
No.751, Anna Salai,
Chennai - 600 002.

... Appellant in all CMAs
/2nd Respondent MCOPs

Vs

- 1.P.Ponnusamy ... 1st respondent in CMA.No.2242 of
2009/Petitioner in MCOP 49/2005
2.A.Yasoda ... 1st respondent in CMA.No.2243 of
2009/Petitioner in MCOP No.57/05
3.M.Devaki ... 1st respondent in CMA.No.2571 of
2009 /Petitioner in MCOP No.45/05
4.K.Murugan ... 2nd respondent in all CMAs/1st Respondent
MCOP's

Common Prayer : Civil Miscellaneous Appeal preferred under
Section 173 of the Motor Vehicles Act, 1988, against the
judgment and decree dated 03.01.2008 and made in
M.A.C.T.O.P.No.49 of 2005, M.A.C.T.O.P.No.57 of 2005 and
M.A.C.T.O.P.No.45 of 2005 respectively on the file of the Motor
Accident Claims Tribunal, Ponneri.

For Appellant : Mr.S.Vadivel
(in all CMAs)

For Respondents : Mr.C.R.Malarvannan [for R2]
(in all CMAs) R1 - No appearance

COMMON JUDGMENT

The appellant in this batch of appeals is the Insurance Company
and it challenges its liability to pay compensation as per the
common award dated 03.01.2008 passed by the Motor Accident
Claims Tribunal, Ponneri. The details are hereunder :

CMA.No.	MCOP. No.	Amount Claimed (Rs.)	Amount Awarded (Rs.)
CMA.No.2242 of 2009	OP.No.49 of 2005	3,00,000	54,000
CMA.No.2243 of 2009	OP.No.57 of 2005	5,00,000	92,000
CMA.No.2571 of 2009	OP.No.45 of 2005	3,00,000	62,000

2. In a accident that took place on 30.11.2004, a tempo admittedly a goods carrier, bearing registration No.TN31-B-0776 met with an accident and the three claimants referred above have moved the Tribunal seeking compensation.

3.The Tribunal too has passed the award as indicated in the above tabulation and fastened the liability on the owner of the vehicle as well as on the Insurance Company jointly and severally to pay the amount awarded with interest @ 7.5% per annum.

4. The learned counsel for the appellant raised two points in the course of his arguments:

a) All the three claimants have categorically admitted that they were paid passengers in the goods carrier and as such there is no insurance cover for the injuries sustained by the said passengers travelling in goods vehicle. He relied on the authorities of the Hon'ble Supreme Court in National Insurance Co. Ltd., Vs. Kaushalya Devi & Ors. in [2008(2) TNMAC 497 (SC)] and National Insurance Co. Ltd., Vs. Rattani & Others in [2009(1) TNMAC 103 (SC)] to verify his submission.

b) That the driver of the vehicle in question does not have valid driving licence.

He added that the award is essentially silent on the point as to how the insurance company is liable or whether the policy covers the liability for personal injuries sustained by the passengers in the goods vehicle.

5. Per contra the learned counsel for the second respondent (in all the appeals) submitted that there is no pleading either in the petition or in the counter of the second respondent as to

the real status of the claimants: whether they are travelling as servant of the owner of the vehicle or as passengers. Ex.P4 - Policy shows that there is a policy cover for six employees and inasmuch as there is no evidence to indicate that they are not employees. It is necessary to hold that all the three claimants are employees of the owner of the vehicle and in the said circumstance, the Insurance Company would become liable to pay the award amount.

6. Relying on the authority held by this Court in *The Oriental Insurance Company Limited, Gobichettipalayam Vs. Kannammal & Others* in [MANU/TN/0398/2012] the learned counsel submitted that in fitness of things, the matter may either be remanded back to the Tribunal giving the owner of the vehicle an opportunity to contest the matter or giving the owner another opportunity to file a fresh proceedings.

7. This Court is not impressed with the last leg of the submissions made by the learned counsel for the second respondent, the owner of the vehicle, for it would be irrational to drive the claimants to suffer the agony of a fresh course of litigation in a matter where accident had taken place on 30.11.2004. It will also be a travesty of justice if this Court is to grant the owner of the vehicle another opportunity to defend his cause. Nobody prevented the owner of the vehicle to participate in the proceedings when the matter was pending before the Tribunal. Having defaulted and lost an opportunity, it is too late in the day to revive something which is willfully lost.

8. Turning to the merits of the contest, all the three claimants in the testimonies which they tendered when they were examined as P.W.1 to P.W.3, have averred that they were paid passengers in the goods vehicle in question. In the cross-examination they go further when they state that each of them have paid Rs.10/- for their travel. When this evidence is available before the Court and this fact gets proved by the admission of the parties, this Court cannot ignore them. Since it is established that the claimants are paid passengers of a goods vehicle and not servants of the owner of the vehicle, the Insurance Company cannot be held liable to pay them as per Ex-P4 -Policy. As already indicated the owner of the vehicle even if he had a cause to defend, he had lost his right by his default.

9. In the result, the appeals are allowed and claimants are directed to realise the award amount from the owner of the

vehicle/2nd respondent herein (in all CMAs). It is submitted that the Insurance Company had deposited the entire amount in the Court and it is permitted to withdraw the same with accrued interest if any. The owner of the vehicle/2nd respondent herein is directed to deposit the award amount within four weeks from the date of receipt of a copy of this order and on such deposit, the claimants are entitled to withdraw the same forthwith. The claimants are directed to pay the necessary court fee, if the same has not been paid by them. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accidents Claims Tribunal,
Ponneri.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+3cc to M/S.S.Vadivel, Advocate Sr.70307 to 70309

C.M.A.Nos.2242,2243 & 2571 of 2009

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