

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2016

PRONOUNCED ON : 15.12.2016

CORAM :

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CMA.Nos.923 & 924 of 2010
and MP.Nos.1 and 1 of 2010

The Oriental Insurance Co Ltd.,
Suba Govindan building
Emperial Road, Cuddalore.

... Appellant in both the
cases/2nd Respondent in
both the Petitions

Vs.

1. K.Mathyazhagan
2.K.Liyakth Ali
(R2 set exparte in the lower Court)

... Respondents in CMA.No.923/2010/
Petitioner & 1st Respondent

1.G.Ambika
2.R.Chockalingam
3.C.Gurunayagi
4.Minor G.Thiruvengadam
(minor rep by R1 - Mother)
5.K.Liyakath Ali
(R5 set exparte in the lower Court)

...Respondents in CMA.924/2010/Petitioners 1
to 4 & 1st Respondent

PRAYER : Petition filed under Section 173 of Motor Vehicles
Act, against the judgment and decree dated 12.08.2009 made in
MCOP.Nos.33 & 34 of 2005 on the file of the Motor Accident
Claims Tribunal, I Additional Sub Court, Cuddalore.

For appellant in
both the Appeals : Ms.Harini
for Mr.N.Vijayaraghavan

For respondents: R1 No appearance in CMA.923/10
Mr.A.N.Viswantha Rao
for R1, 3 & 4 in CMA.924/10
Service awaited for R2 in CMA.924/10.

COMMON JUDGMENT

Both the Civil Miscellaneous Appeals are filed against the common judgment and decree dated 12.08.2009 made in MCOP.Nos.33 and 34 of 2005 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore.

2.The second respondent/insurance company before the tribunal filed the CMA.No.923 of 2010 against the order made in MCOP.No.33 of 2005 and CMA.No.924 of 2010 is filed against the order made in MCOP.No.34 of 2010. Both the appeals are arising out of the common order passed by the learned I Additional Sub Judge, Cuddalore, this Court is also inclined to pass common judgment in both the appeals.

3.The learned counsel for the appellant mainly contended that the trial Court without application of mind erroneously fixed the liability on the second respondent/insurance company and directed to pay compensation to the claimants. The trial Court ought to have exonerated the appellant/second respondent from the liability and the appellant is not liable for the accident and denied the liability and hence prays to allow the appeal.

4.The learned counsel for the respondents in both the appeals mainly contended that in both the cases the victims travelled as a coolie and the policy was covered to the claimants. The trial Court after appreciating the entire facts and circumstances, comes to a correct conclusion and directed the second respondent to pay compensation to the claimants, there is no illegality or infirmity in the order of trial Court and prays for dismissal of both the appeals.

5.Heard the rival submissions made on both sides and perused the records.

6.On perusal of the records, the respondents has produced the copy of the policy before this Court, the trial Court after considering the evidences of both sides comes to a conclusion, at the time of accident the victims were travelling in the said vehicle. RW1 in his deposition specifically admitted that the insurance company is liable to pay compensation to the driver, cleaner and also five loadmans, he also admitted that there is internal investigation was conducted by appointing an officer to enquire about the accident. The insurance company has not filed any report or not examined the officer who investigated the accident, before the trial Court. RW1 has not able to deny that

deceased Gurusamy was travelled in the vehicle as loadman. The legal heirs of the deceased/Gurusamy filed MCOP.No.34 of 2005 and the injured/loadman/Mathialagan filed MCOP.No.33 of 2005. The appellant/insurance company was not able to prove that the claimants are not the legal heirs of the deceased and the injured/Mathialagan has not travelled as coolie and the evidence of the claimants has to be accepted and the insurance company is liable to pay the compensation to the injured/Mathialagan and also to the legal heirs of the deceased/Gurusamy. The trial Court after considering the oral and the documentary evidences adduced on either side comes to a conclusion that the appellant/insurance company is liable to pay compensation to the claimants. Further, the learned counsel for the appellant mainly denied the liability stating that the company is not liable to pay the compensation and it has not questioned about the quantum of compensation granted to the claimants.

7.The trial Court after perusing the entire facts and circumstances awarded just and fair compensation to the claimants, which cannot be treated as excessive one. In view of the above, this Court finds there is no illegality, infirmity or perversity in the award passed by the Tribunal, and the common judgment and decree passed by the Tribunal does not warrant any interference by this Court.

8.In the result, both the civil miscellaneous appeals stands dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
I Additional Sub Court, Cuddalore.

+2cc to Mr.N.Vijayaraghavan, Advocate SR.73971 & 73972
+2cc to Mr.A.N.Viswanatha Rao, Advocate Sr.73490 & 73491

CMA.Nos.923 & 924 of 2010

pa[co]
srg 8/2/2017