

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.Nos.3169 to 3173 of 2004CMA.No.3169 of 2004 :

The Oriental Insurance Company Limited
No.108, Vallal Pachaiyappan Street,
Kancheepuram.

... Appellant

Vs.

1.Ponnuswamy
2.Dhanalakshmi
3.Boopathy

CMA.No.3170 of 2004 :

The Oriental Insurance Company Limited
No.108, Vallal Pachaiyappan Street,
Kancheepuram.

... Appellant

Vs.

1.Vedham
2.Boopathy

... Respondents

CMA.No.3171 of 2004 :

The Oriental Insurance Company Limited
No.108, Vallal Pachaiyappan Street,
Kancheepuram.

... Appellant

Vs.

1.Ambika
2.Boopathy

... Respondents

CMA.No.3172 of 2004 :

The Oriental Insurance Company Limited
No.108, Vallal Pachaiyappan Street,
Kancheepuram.

... Appellant

Vs.

1.Ambika
2.Sathish Kumar
3.Minor Sasikala
4.Chellammal
5.Boopathy

... Respondents

CMA.No.3173 of 2004 :

The Oriental Insurance Company Limited
No.108, Vallal Pachaiyappan Street,
Kancheepuram.

... Appellant

Vs.

1.Rajendran
2.Boopathy

... Respondents

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.10.2003 made in MCOP.No.174 of 1999, MCOP.No.175 of 1999, MCOP.No.176 of 1999, MCOP.No.177 of 1999 and MCOP.No.254 of 1999 respectively on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Chengalpattu.

For Appellant (in all CMAs)	:Ms.R.Sreevidhya
For Respondents (in all CMAs)	:No Appearance

COMMON JUDGMENT

This batch of cases arise out of a common award passed in five separate MCOPs filing of which were occasioned owing to the death of 5 individuals in a road accident. The details are as below :

<i>CMA. No.</i>	<i>MCOP. No.</i>	<i>Award Amount (Rs.)</i>
3169 of 2004	174 of 1999	2,06,000/-
3170 of 2004	175 of 1999	77,000/-
3171 of 2004	176 of 1999	77,000/-
3172 of 2004	177of 1999	1,58,000/-
3172 of 2004	254 of 1999	1,58,000/-

2. The common case of all the claimants in this batch were that some five people travelled in a lorry as loadmen on 04.12.1997. They were accompanying a load of bricks in the said lorry. The lorry capsized and all the five died on the spot. The respective legal representatives of the deceased have come forward with the claim, the details of which have already been tabulated above. Aggrieved by the said awards the insurance company has come forward with these appeals.

3. The learned counsel for the appellant fairly stated that there was in force an insurance cover for the driver and seven loadmen, but argued that all those who died in the accident were not travelling in the lorry as loadmen when the accident took place but as family members who travelled gratuitously, and there is no policy cover for gratuitous passenger for which there was no cover. To mulct liability on the insurance company under circumstance is erroneous, argued the counsel.

4. All the claimants are served but there is no representation today. So far as the claimants in CMA.No.3172 of 2004 is concerned, the learned counsel for the appellant filed a memo stating that the second claimant/second respondent is dead and the respondents 1 and 3 in the said appeal are the only legal heirs and they were already on record. But records indicate that the second respondent was the son of the victim of the accident and as per Sec.8 of the Hindu Succession Act, his mother, the first respondent alone would be his heir to his estate. This is recorded.

5. The learned counsel for the owner of the lorry is present and he argued that the victims at that relevant time were the loadmen and not gratuitous passengers and the insurance company has invented this argument only to escape liability.

6. On weighing rival submissions and perusing the records, I find that nothing concrete has emanated from the evidence on record to indicate that the victims of the accident were gratuitous passenger of the lorry in question when it met with the accident. On the other hand, I find evidence to support the findings of the Tribunal that they were travelling as loadmen along with the load of bricks. This finding I confirm and once it is so done, the case falls squarely within the ambit of cover offered by the insurance company.

7. In the result, I find no merit in this batch of appeals and the same are dismissed without costs. The counsel for the appellant also submitted that the entire award amount has been deposited in all the cases and part of the amount too has been withdrawn. The claimants would be free to withdraw whatever that still remains in the Court deposit with interest forthwith.

8. So far as CMA.No.3172 of 2004 (that arises from MCOP.No.177/1999) is concerned, since the second claimant/second respondent is died, the amount due to him shall go to his mother, the first claimant/first respondent.

10.02.2017

ds

To

- 1.The Motor Accident Claims Tribunal
Principal Sub Court,
Chengalpattu.
- 2.The Section Officer,
VR Section,
High Court, Madras.

N.SESHASAYEE, J.

ds

CMA.No.3169 to 3173 of 2004

10.02.2017

<http://www.judis.nic.in>