



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMA (MD) Nos.714 & 715 & 825 of 2014

&

CMA (MD) No.665 of 2015

and

CMP (MD) Nos.1,1 & 2 of 2014

CMA (MD) Nos.714 & 715 of 2014 :

The Branch Manager,
New India Assurance Co., Ltd,
913, Main Road,
Kovilpatti - 1.

... Appellant in both CMAs/2nd Respondent

Vs.

1.N.Mariappan ...1st respondent in CMA (MD) No.714 of 2014/Petitioner2.C.Balakrishnan ..1st respondent in CMA (MD) No.715 of 2014/Petitioner

2.M/s.Kulanthai Yesu Timber Dipppo,
1/132-A, Main Road,
Kamanaickanpatti,
Kovilpatti Taluk.

... 2nd respondent in both CMAs/
1st Respondent

Common Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.03.2014 made in MCOP.Nos.216 & 239 of 2013 respectively on the file of the Motor Accident Claims Tribunal, 1st Additional District Court, Thoothukudi.

For Appellant
in both appeals

: Mr.G.Prabhu Rajadurai

For R.2 in both appeals

: Mr.T.Selvakumaran

For R1 in both appeals

: No appearance

CMA (MD) Nos.825 of 2014 & 665 of 2015 :

The Branch Manager,
New India Assurance Co., Ltd,
913, Main Road,
Kovilpatti - 1.

... Appellant in CMA (MD) No.825 of 2014
& ...2nd respondent in CMA (MD) No.665 of 2015



Vs.

1.L.Govinthammal
2.L.Veeralakshmi
3.L.Vimala
4.L.Kanniammal
5.L.Murugaperumal
6.V.Murugapandi
7.M.Avudaiyammal

... 1 to 7th respondents in
CMA(MD)No.825 of 2014 &
... Appellants in
CMA(MD)No.665 of 2015

8.M/s.Kulanthai Yesu Timber Diplo,
1/132-A, Main Road,
Kamanaickanpatti,
Kovilpatti Taluk.

... 8th respondent in
CMA(MD)No.825 of 2014 &
... 1st respondent in
CMA(MD)No.665 of 2015

Common Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.09.2013 made in MCOP.Nos.90 of 2013 on the file of the Motor Accident Claims Tribunal, 1st Additional District Court, Tuticorin.

For Appellant
in CMA(MD)No.825 of 2014
& for 2nd respondent in
CMA(MD)No.665 of 2015 : Mr.G.Prabhu Rajadurai

For appellants in
CMA(MD)No.665 of 2015 &
for 1 to 7th respondent
in CMA(MD)No.825/2014 : Mr.A.George Stephen Kanikkair

For R8 in
CMA(MD)No.825 of 2014 : Mr.T.Selvakumaran

JUDGMENT

Heard the learned counsel for the parties.

CMA(MD)Nos.714 of 2014 :

On 23.07.2012, One Mariyappan travelled in a TATA 407 Van along with others. It is admittedly a goods vehicle. On account of the rash and negligent driving of the van driver, the vehicle capsized. In the resulting accident, one person died and the said Mariyappan suffered injuries. He filed MCOP.No.216 of 2013 before the Motor Accident Claims Tribunal, 1st Additional District Court, Tuticorin.



2.It is true that the goods vehicle was insured with the appellant insurer. The Tribunal awarded a sum of Rs.12,000/- and fastened liability on the appellant insurer. Challenging the award dated 10.03.2014, this appeal has been filed.

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3.It is the admitted case that one Mariyappan, claimant in MCOP.No.216 of 2013, had travelled in the said goods vehicle as a gratuitous passenger along with others and not in the capacity of the driver, cleaner or owner or load man. Since the insurance policy does not cover the case of a gratuitous passenger, it is only for the vehicle owner who has to answer the claim and satisfy the award.

4.The Tribunal erred in fastening the liability on the appellant insurer. Therefore, the award 10.03.2014 made in MCOP.No.216 of 2013 on the file of the Motor Accident Claims Tribunal, 1st Additional District Court, Thoothukudi is set aside insofar as the insurer is concerned leaving the claimant to proceed against the owner for enforcing the award. This appeal stands allowed. The insurer is permitted to withdraw the amount if any.

CMA(MD) Nos.665 of 2015

and

CMA(MD) Nos.715 & 825 of 2014 :

On 23.07.2012 in the Tata 407 van belonging to M/s.Kulanthai Yesu Timber Dippo, the deceased Lakshmana Perumal was travelling along with two others namely, Balakrishnan and Mariyappan.

2.It is seen from the reading of Ex.P1, F.I.R that Lakshmana Perumal was taken by Balakrishnan for purchase of timber from Kulanthai Yesu Timber Dippo. The vehicle was driven in a rash and negligent manner. It capsized. In the ensuing accident, Lakshmana Perumal died while Balakrishnan and Mariyappan suffered injuries. The legal heirs of the Lakshmana Perumal filed MCOP.No.90 of 2013 and Balakrishnan filed 239 of 2013 & Mariyappan filed 216 of 2013 on the file of Motor Accident Claims Tribunal, Ist Additional District Judge, Tuticorin. All the three MCOPs were allowed and liability was fastened on the insurer of the said goods vehicle.

3.Admittedly, Mariyappan was travelled as a gratuitous passenger. The insurer was absolved of all liability and CMA(MD) No.714 of 2015 filed by the insurer was allowed by this Court. However, it cannot be disputed that Balakrishnan was the owner of the goods. He was therefore entitled to travel in the said goods vehicle in that capacity. He had taken Lakshmana Perumal to help him in loading and unloading. Even though Lakshmana Perumal might otherwise be an agricultural coolie, in this case he had travelled only as a load man. Therefore, his travel in the said goods vehicle cannot be said to be unauthorized. When once it is seen



that the injured claimant is the owner of the goods and the deceased was travelling as a load man, automatically, the insurance coverage will apply.

4. It is true that in the policy in question, the seating capacity including driver has been mentioned as one. This obviously cannot be correct. The insurer cannot determine the seating capacity of the vehicle. The Tata 407 van does have the seating capacity of 1+2. Therefore, in the present case, the Tribunal ought to have fastened the entire liability on the insurer. The question of invoking the pay and recover principle will not apply in this case.

5. This Court in the decision reported in (2009) 1 MLJ 862 (B.M., National Insurance Co., Ltd Vs. Pavunammal) has held that when the claimants had travelled in a goods vehicle in the capacity of the owner of the goods or load man, they would be automatically covered under the policy and the insurer must be made liable to satisfy the award of the Tribunal. The said decision clearly applies to the facts of this case. I therefore have no hesitation in dismissing the CMA(MD)No.825 of 2014 and CMA(MD)No.715 of 2014.

6. Even though the vehicle owner has not preferred any appeal, I am inclined to modify the award passed by the Tribunal and fasten the entire liability on the insurer.

7. The legal heirs of the deceased Lakshmana Perumal who filed MCOP.No.90 of 2013 have filed CMA(MD)No.665 of 2015 claiming enhancement of compensation.

8. The Tribunal had taken the monthly income of the deceased Lakshmana Perumal as Rs.5,000/-. The accident took place in the year 2012. Therefore, the monthly income ought to have been taken as Rs.6,000/-. There were seven dependents. Therefore, the deduction can only be 1/5th. The age of the deceased was 51. 10% towards future prospects will have to be added. The compensation payable to the claimants will have to be reworked as under :

Monthly income of the deceased	Rs.6,000/-
After adding 10% future prospects	Rs.6,600/-
After deducing one fifth	Rs.5280/-
Pecuniary loss for the family (5280x12x11)	Rs.6,96,960/-
Loss of consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Medical expenditure	Rs.1,15,260/-
Total	Rs.8,82,220/-



9.The compensation payable to the claimants is enhanced from Rs.6,50,260/- to Rs.8,82,220/-. The award dated 04.09.2013 in MCOP.No.90 of 2013 on the file of the Motor Accident Claims Tribunal / 1st Additional District Judge, Tuticorin is modified.

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10.The New India Assurance Company Limited is directed to deposit the sum of Rs.8,82,220/- in MCOP.No.90 of 2013 and a sum of Rs.12,000/- in MCOP.No.239 of 2013, with interest at the rate of 7.5% per annum from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimants in both the MCOPs are entitled to withdraw the same in the same ratio as laid down by the Tribunal, by filing proper application, less the amount already withdrawn by them, if any. Registry is directed to collect excess Court fee from the appellants in CMA(MD)No.665 of 2015 within a period of two weeks from the date of receipt of a copy of this order.

11.In the result, CMA(MD)No.665 of 2015 filed by the claimants is allowed. CMA(MD)Nos.715 & 825 of 2014 filed by the insurer is dismissed and CMA(MD)No.714 of 2015 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1.The 1st Additional District Judge,
Motor Accident Claims Tribunal / Tuticorin.

2.The Record Keeper, V.R.Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+4 ccs to Mr.G.Prabhu Rajadurai, Advocate,
SR.Nos.92048, 92049, 92047 and 92050,

+One cc to Mr.T.Selvakumaran, Advocate, SR.No.92302

+One cc to Mr.A.George Stephsn Kenikkairaj, Advocate, SR.No.91717
skm

RL/10C/5P/CVC/SAR2/2/3/2018

CMA (MD) Nos.714 & 715 & 825 of 2014
&
CMA (MD) No.665 of 2015
and
CMP (MD) Nos.1,1 & 2 of 2014
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