



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.1187 of 2014
and M.P. (MD) No.2 of 2014
and CROS.OBJ (MD) No.9 of 2018

C.M.A (MD) No.1187 of 2014

M/s. ICICI Lombard General Insurance Company Ltd.,
No.7, A.A.Road, Gnana Olipuram,
Madurai - 600 016.

... Appellant/2nd Respondent**Vs.**

Periya Udappan (Died)

1.Tmt.Chinna Ezhuvi
2.Selvi Meena
3.Ganesan

(Respondents 1 to 3 were impleaded
as petitioners in IA.No.678/2011 as per
order dated 15.09.2011 petition has been
amended as per order dated 08.12.2011
in IA.No.128/2011.) ... Respondents 1 to 3/Petitioners 2 to 4

4.A.Kalimuthu ... Respondent No.4 / Respondent No.1

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the fair and decreetal order
dated 12.07.2012 made in M.C.O.P.No.1173 of 2009 on the file of
the Motor Accident Claims Tribunal (Chief Judicial Magistrate),
Madurai.

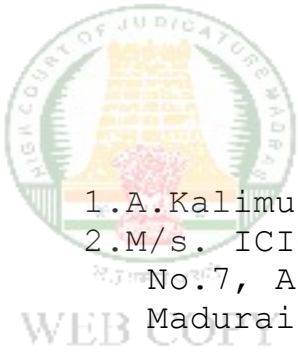
For Appellant : Mr.S.Srinivasa Raghavan
For R-1 to R-3 : Mr.K.Kumaravel
For R-4 : Mr.V.Sasikumar

CROS.OBJ (MD) No.9 of 2018

Periya Udappan (Died)

1.Tmt.Chinna Ezhuvi
2.Selvi Meena
3.Ganesan

... Petitioners / 1 to 3 Cross Appellants



Vs.

1.A.Kalimuthu

2.M/s. ICICI Lombard General Insurance Company Ltd.,
No.7, A.A.Road, Gnana Olipuram,
Madurai - 600 016.

...Respondents/Respondents

CROS.OBJ(MD)No.9 of 2018 is filed under Section 173 of the Motor Vehicles Act, to set aside the award in respect of finding given as the deceased was a gratuitous passenger in M.C.O.P.No.1173 of 2009 on the file of the MACT/Chief Judicial Magistrate, Madurai dated 12.7.2012 and allow this Cross Objection and fix the liability on the Insurance Company.

COMMON JUDGMENT

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the fair and decreetal order dated 12.07.2012 made in M.C.O.P.No.1173 of 2009 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Madurai. Similarly, cross Objection is also filed by the claimants under Order 41 Rule 22 r/w Section 96(1) & (2) Civil Procedure Code, to condone the delay of 915 days in filing the cross appeal.

2. Since the issue involved in both the matters are one and the same, they are taken up together and disposed of by this common judgment.

3. It is a case of the fatal accident that took place on 07.12.2008 at about 3.30 p.m, at Alagar Koil Main Road near Petrol bunk, while the deceased was traveling as Loadman in the TATA ACE bearing Registration No.TN-51-T-7656 and at that time, the driver of the offending vehicle drove the vehicle in a rash and negligent manner and due to the impact, the TATA ACE vehicle was capsized in the centre of the road. The vehicle in question was insured with the appellant-Insurance Company. In the said accident, the deceased sustained grievous injuries and after taking treatment, he died.

4. The claimants filed an application in M.C.O.P.No.1173 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Madurai, seeking compensation against the insurance company.

5. Before the Tribunal, on the side of the claimants four witnesses were examined as P.W.1 to P.W.4 and eight documents were marked as Ex.P.1 to Ex.P.8. On the side of the Insurance Company, one witness was examined as R.W.1 and one document was marked as Ex.R.1

6. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for the



appellant and claimants and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the appellant/Insurance Company and directed the appellant/Insurance Company to pay a sum of Rs.4,98,000/-, as compensation.

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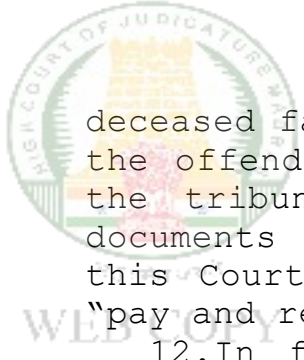
7. Aggrieved over the same, the appellant/Insurance Company filed this present appeal on the ground that the Tribunal ought not to have directed the appellant Insurance Company to pay the compensation and recover the same from the owner of the vehicle even after finding that the deceased had travelled in the insured good carrier as unauthorized/ gratuitous passenger. Hence, he prays for appropriate orders.

8. *Per contra*, the learned counsel for the respondents 1 to 3/claimants contended that the Tribunal awarded a just and reasonable compensation and the same does not require interference and hence, this appeal is liable to be dismissed.

9. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3 and the learned counsel for the fourth respondent and perused the materials available on record.

10. In the case on hand, the evidence of P.W.2 (Ayyavu) is crucial who along with the deceased had travelled in the vehicle in question. In his evidence, he clearly deposed that the deceased is a load man and travelled with the package of vegetables and it is due to the negligence of the offending vehicle, the accident had occurred. In that accident, two persons are victims and one person, namely, the said Ayyavu filed M.C.O.P.No.1024 of 2009, III Additional Sub-Court, Madurai and after trial, the findings were arrived at to pay compensation to the said Ayyavu by the insurance company and thereafter, directed the insurance company to recover the same from the owner of the vehicle by applying 'pay and recovery' formula. Therefore, the insurance company cannot take a different stand than the one that was already taken in M.C.O.P.No.1024 of 2009, in which, already findings had been arrived at by the tribunal against the insurance company. In otherwords, the findings of the learned Judge in the case on hand that the deceased is a gratuitous passenger cannot be countenanced in the eye of law and the same is without any application of mind. Thus, the findings of the Tribunal that the deceased travelled as a gratuitous passenger alone is set aside and the award of the Tribunal, dated 12.07.2012, stands confirmed in all other aspects.

11. While doing so, it is well settled law that the claimants should not suffer even after obtaining an order for compensation. The provisions relating to the award of compensation are benevolent provisions in favour of the claimants. The Hon'ble
<https://hcc.mca.gov.in/services> ~~Andhra Pradesh High Court~~ various Judgments have formulated the policy of "pay and recovery". In the present case also, the Court below has rightly directed the insurance company to pay compensation to the



deceased family and thereafter, recover the same from the owner of the offending vehicle. Added further, the compensation awarded by the tribunal are quite reasonable which is only based on the documents produced by the claimants. In the considered view of this Court, there is no reason to deviate from the principle of "pay and recovery" and the same is confirmed.

12. In fine, this Appeal is dismissed and Cross Objection is allowed. The appellant/Insurance Company is directed to pay the amount awarded by the Tribunal at the first instance and then, recover the same from the owner of the vehicle in question. The appellant Insurance Company shall deposit the award amount to the credit of M.C.O.P.No.1173 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Madurai, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order and in the later stage, the appellant Insurance Company is entitled to recover the same from the owner of the offending vehicle, by way of Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in **2004(2)CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)**. On making such deposit, the claimants are at liberty to withdraw the entire award amount along with accrued interest and costs. However, the claimants are directed to pay excess Court fee, if any. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To,

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal, Madurai.

2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+ 1 cc TO Mr.S.Srinivasa Raghavan , Advocate in SR No. 80324
+ 1 cc TO Mr.A.Mohan , Advocate in SR No. 80626
+ 1 cc TO Mr.K.Kumaravel , Advocate in SR No. 80180

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AE/SV MMS/SAR1/11.06.2018/4P/7C

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