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THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.09.2017
CORAM:

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

CMA (MD) Nos. 1482 & 1483 of 2011

and

CMA (MD) Nos. 1584 to 1591 of 2011

The General Manager,
Cholamandalam MS General Insurance Company Ltd.,
"Dare House" II Floor,
N.S.C. Bose Road,
Chennai - 1.

... Appellant/2nd Respondent in CMA (MD) No. 1482 of 2011

Cholamandalam MS General Insurance Company Ltd.,
Karur Town, Karur District,
Rep. By its Regional Officer.

... Appellant/2nd respondent in CMA (MD) Nos. 1483 of 2011 &
CMA (MD) Nos. 1584 to 1591 of 2011

Vs.

1. Minnal Kodi

2. Kumar ... Respondents 1 & 2 / Petitioners in CMA (MD)
No. 1482/2011

Balamurugan ... 3rd respondent/1st respondent in CMA (MD)
No. 1482/11
... 2nd respondent/1st respondent in CMA (MD) Nos. 1483/11
and CMA (MD) Nos. 1584 to 1591 of 2011

Chinna Pandi ... 1st respondent/Petitioner in CMA (MD)
No. 1483/11

Vijayan ... 1st respondent/Petitioner in CMA (MD)
No. 1584/11

Gurusen ... 1st respondent/Petitioner in CMA (MD)
No. 1585/11

Muthiah ... 1st respondent/Petitioner in CMA (MD)
No. 1586/11

Azhagupandi ... 1st respondent/Petitioner in CMA (MD)
No. 1587/11

Sarangan ... 1st respondent/Petitioner in CMA (MD)
No. 1588/11

<https://hccs.courtsofmadras.org/services/ReviewCommission> ... 1st respondent/Petitioner in CMA (MD)
No. 1589/11



Azhagarsamy

...1st respondent/Petitioner in CMA(MD)

No.1590/11

Paraman

...1st respondent/Petitioner in CMA(MD)

No.1591/11

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COMMON PRAYER: Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Order and Decree, dated 28.04.2011 Passed in M.C.O.P.Nos.636, 224 to 227, 267, 268, 294, 295 and 136 of 2008 respectively, on the file of Motor Accident Claims Tribunal (Additional District Judge/Fast Track Court), Dindigul.

For Appellant in

all CMAs

: Mr.S.Srinivasa Raghavan

For R1 in CMA(MD)

Nos.1482 & 1483/11

& 1584 to 1591 of 2011

: Mr.S.M.Mohan Gandhi

For R2 in CMA(MD)

No.1482 & 1584 to 1586

of 2011

: No Appearance

For R2 in CMA(MD)

No.1483 & 1587 to

1591 of 2011 & for

R3 in CMA(MD) No.

1482 of 2011

: Mr.C.Jaganathan

* * * * *

COMMON JUDGMENT

All these Civil Miscellaneous Appeals have been filed by the appellant/Insurance Company against the common award, dated 28.04.2011, passed in M.C.O.P.Nos.636, 224 to 227, 267, 268, 294, 295 and 136 of 2008 respectively, by the Additional District Judge/Fast Track Court, Motor Accident Claims Tribunal, Dindigul, filed by the respective respondents/claimants.

2. Since all the appeals arise out of a common award passed in respect of the same accident occurred on 24.09.2007, these appeals are disposed of by this common judgment.

3. The facts of the case are as follows:-

(i) On 24.09.2007, at about 10.15 a.m., when the deceased and other victim persons were standing in Veerasingampatti bus stop at Thangapandi-Vathalagundu road, a van bearing registration No.TN 57 K 2970 belonging to the first respondent came in a rash and negligent manner and dashed against them and caused the accident.

(ii) The claimants are the legal heirs of the deceased person in one claim petition and all other claimants are the injured persons. According to the claimants, the driver of the Van drove the vehicle in a rash and negligent manner and dashed against them. The claimants furnished the details of the nature of injuries, age and income of the deceased. They claimed the compensation for



the injuries and for the death occurred in the accident that took place due to the rash and negligent driving of the driver of the van.

4. The second respondent/appellant filed counter statement and contended that the deceased and the victims of the road accident were only unauthorised and gratuitous passengers and they were travelled as passengers in the goods carrier insured with the appellant at the time of the accident and they were not pedestrians in the road at the time of accident. In view of the same, the appellant is not liable to pay any compensation.

5. Before the Tribunal, all the claimants examined themselves as P.W.1 to P.W.10 and 35 documents were marked as Ex.P.1 to Ex.P.35. The appellant examined two witnesses as R.Ws.1 and 2 and marked two documents as Ex.R.1 and Ex.R.2.

6. The Tribunal after considering the pleadings and evidence and materials on record, came to the conclusion that the accident took place due to rash and negligent driving by the driver of the van. The vehicle was insured with the appellant / Insurance Company and directed the appellant / Insurance Company to pay the compensation awarded to the claimants.

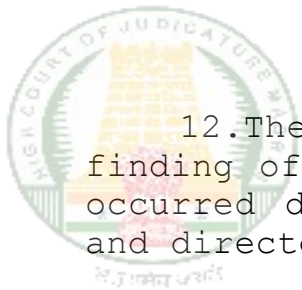
7. Against the said award dated 28.04.2011, the appellant / Insurance company has come out with the present appeal challenging the liability.

8. The learned counsel for the appellant / Insurance Company contended that order dated 28.04.2011, is liable to be set aside on the ground that as the vehicle involved in the accident is a goods vehicle and the deceased and claimants are unauthorised passengers, the appellant / Insurance Company is not liable to pay compensation.

9. Per contra, the learned counsel for the claimants submitted that the claimants have proved that the accident occurred only due to the rash and negligent driving of the driver of the van and submitted that the Tribunal considered all the materials and ordered just compensation and therefore, prayed for dismissal of the Civil Miscellaneous Appeals.

10. Heard the learned counsel appearing for the appellant / Insurance Company and the learned counsel for the 1st respondent / claimant. I have carefully perused the materials on record and considered the arguments of the learned counsel on either side.

<https://hcservices.courts.gov.in/hcservices/> point for consideration in these appeals is whether the appellant is liable to pay compensation?



12. The appellant / Insurance Company has challenged the finding of Tribunal with regard to the fact that the accident had occurred due to rash and negligent driving by driver of vehicle and directed the appellant to pay the compensation.

13. The learned Judge after considering the evidence of P.Ws.1 to 10 and R.W.1, has held that at the time of capzising the offending vehicle, the claimants, who were standing in the bus stop, were sustained injuries. In the cross examination also, P.Ws.2 to 10 had denied that at the time of travelling in van only, the accident had occurred. Accordingly, the learned Judge, came to the conclusion that the accident took place only due to rash and negligent driving by the Driver of the van. There was no reason to disbelieve the version of P.Ws.2 to 10 and reject Exs.P5, P8, P10, P11, P12, P15 to P18 wound certificates. Hence, there is no reason to interfere with the said conclusion.

14. In view of the above, I do not find any infirmity in the award passed by the Tribunal in directing the appellant / Insurance Company to pay the compensation amount.

15. In the result,

(i) All these Civil Miscellaneous Appeals are dismissed;

(ii) The Claimants are directed to submit their respective Savings Bank Account Details along with the copies of their passbooks to the Tribunal forthwith;

(iii) The appellant-Insurance Company is directed to deposit the entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of respective M.C.O.Ps on the file of the Motor Accident Claims Tribunal (Additional District Judge/Fast Track Court), Dindigul, within a period of eight weeks from the date of receipt of a copy of this judgment;

(iv) On such deposit, the Tribunal is directed to transfer the entire award amount along with accrued interest and costs directly to the Personal Savings Bank Account Number of the respective claimants, through RTGS/NEFT system, after getting their Account Details, within a period of two weeks thereafter; and

(v) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1. The Additional District Judge,
The Motor Accident Claims Tribunal,
Fast Track Court, Dindigul.



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

+2cc to Mr.S.SRINIVASA RAGHAVAN,Advocate,SR. 78922,78248
+1cc to M/S.VEERA ASSOCIATES,Advocate,SR. 78459
+1cc to Mr.S.M.MOHAN GANDHI,Advocate,SR. 78879

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12.09.2017

RJ2

KK SDS/SKN RSK/SAR 1/13.11.2017/ 5P- 7C/