

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :25.10.2018

CORAM:

THE HONOURABLE Tmt. JUSTICE S. RAMATHILAGAM

C.M.A.No.1260 of 2006

and

C.M.P.No.5266 of 2006

The Branch Manager,
United India Insurance Co. Ltd.,
Ambur, Vellore District. Appellant/ 2nd Respondent

Versus

1.R.Madesh
2.K.Gnanam Respondents /Petitioner &
1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Sections 173 of Motor Vehicles Act, 1988 against the award and Decreetal order dated 07.12.2004 made in M.C.O.P.No.1256 of 2003 on the file of the Motor Accident Claims Tribunal, (Sub Court), Krishnagiri.

For Appellant : Mr.S.Arunkumar

For Respondents : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and Decreetal order dated 07.12.2004 made in M.C.O.P.No.1256 of 2003 on the file of the Motor Accident Claims Tribunal, (Sub Court), Krishnagiri.

2. The facts of the case are as follows :

On 06.05.2002, at about 11.15 hours, when the petitioner and the villagers were travelling with the goods i.e 25 kgs of rice and 5 kgs of Dhal in the Tempo bearing Registration No.TN 55 8759 belonging to the 1st respondent and insured with the 2nd respondent, the driver drove the vehicle in a rash and negligent manner without control and dashed against the TVS-50 Super XL bearing Registration No.TN 29 T 9283 which was coming in the opposite direction and the Tempo capzised in the Forest. As a result, the petitioner sustained severe injuries in the said accident and he claimed a sum of Rs.2,00,000/- as compensation.

3. The 1st respondent was set exparte before the Tribunal.

4. The 2nd respondent has filed a counter statement denying the accident and also stated that the claimant and others were traveling in a goods vehicle, which meant only for carrying goods and not for carrying passengers and at the time of accident, 40 passengers were travelling which is against the terms and conditions of the policy. By travelling in the goods vehicle as passengers, they, themselves invited the accident.

5. The Tribunal, after analyzing the evidence and documents placed before it, has given a finding that though the persons were travelling in the goods vehicle as unauthorised passengers, they are entitled for compensation and awarded a sum of Rs.1,00,000/- as compensation with direction to the Insurance Company to pay the said amount to the claimant and receive the same from the owner of the vehicle. Aggrieved against the said order, the 2nd respondent/ Insurance Company has preferred this appeal.

6. In the grounds of appeal, it has been stated that there is no proof placed before the Tribunal that the claimants were travelling in the said vehicle with goods. It is also stated that the Tribunal has not considered the fact that the claimant along with other passengers travelled in the goods vehicle against the terms and conditions of the policy. Hence, fixing the liability on the respondent is without any basis, when there is no additional premium paid by the 2nd respondent. In all, the liability fixed on the Tribunal is very much aggrieved in this appeal.

7. Heard the appellant's side and perused the documents available on record.

8. On the side of the appellant, it is argued that the vehicle involved in the incident is a goods vehicle which very much proved before the Tribunal. It is also argued at the time of accident there were 40 passengers travelled in the said vehicle, which is against the terms of the policy. It has also been stated that the Tribunal cannot fix the liability on the Insurance Company when it is very much proved that the said vehicle is meant for the purpose of carrying goods. But, they travelled in the said vehicle as passengers and that too, 40 passengers were travelled in the vehicle. It is further argued on the side of the appellant that in the absence of any claim with regard to premium, the claimant cannot claim any compensation and the Tribunal ought to have dismissed the claim application.

9. In support of the arguments advanced by the appellant, a similar case that was disposed of earlier was also brought to the notice of this Court. When it is observed that when 40 persons were allowed to travel in the vehicle and they sustained injuries, they cannot claim any compensation. It is very much discussed in the case that there is no proof made before the Tribunal regarding the persons travelled along with the goods. It is also observed that when it is a goods vehicle carrying heavy goods, at the time of accident, a very lesser weight of goods were taken and hence, the argument of the claimant that he was travelling as the owner of the goods and the load-man was not considered by the Tribunal.

10. On a perusal of records, it is observed that at the time of accident, they were taken only 25 kgs of rice and 5 kgs of dhal. Hence, in view of the finding that the vehicle which meant only for the purpose of carrying the goods, the owner has allowed it to carry the passengers 40 in numbers is responsible for the said liability and in view of the above said argument and also, the finding which was already decided, the award passed by the Tribunal warrants interference.

11. In this regard, it is pertinent to refer the judgment delivered by this Court reported in 2004 (2) TN MAC 146(DB) in the case of United India Insurance Company Ltd., v. Chinnakannan and another, dated 02.09.2004. The relevant portion of the judgement is extracted below:

"The Tribunal has awarded compensation against the Insurance Company only on the ground that the claimants travelled along with the goods. The Tribunal has not properly appreciated the pleadings and the evidence and also the intention of the parties regarding the purpose for which the vehicle was hired. It cannot be said that though 30 passengers are allowed to travel in the goods vehicle and they can sustain claim compensation against the Insurance Company on the basis that they have taken very small quantum of goods and that too, nobody can claim exclusive ownership on the same. Moreover, according to Rule 236 of the Tamil Nadu Motor Vehicles Rules, even along with goods only six persons are allowed to travel in a goods vehicle. In view of the above, the order of the Tribunal cannot be sustained and it is set aside insofar as it is against the appellant".

12. In view of the earlier decision rendered by this Court in a similar matters, this Court is of the view to decide the same. Accordingly, this Civil Miscellaneous Appeal is allowed. Since the award made by the Tribunal is reasonable, the Appellant is directed to recover the amount from the owner of

the vehicle/2nd respondent and the 1st respondent is permitted to withdraw the amount deposited, if any. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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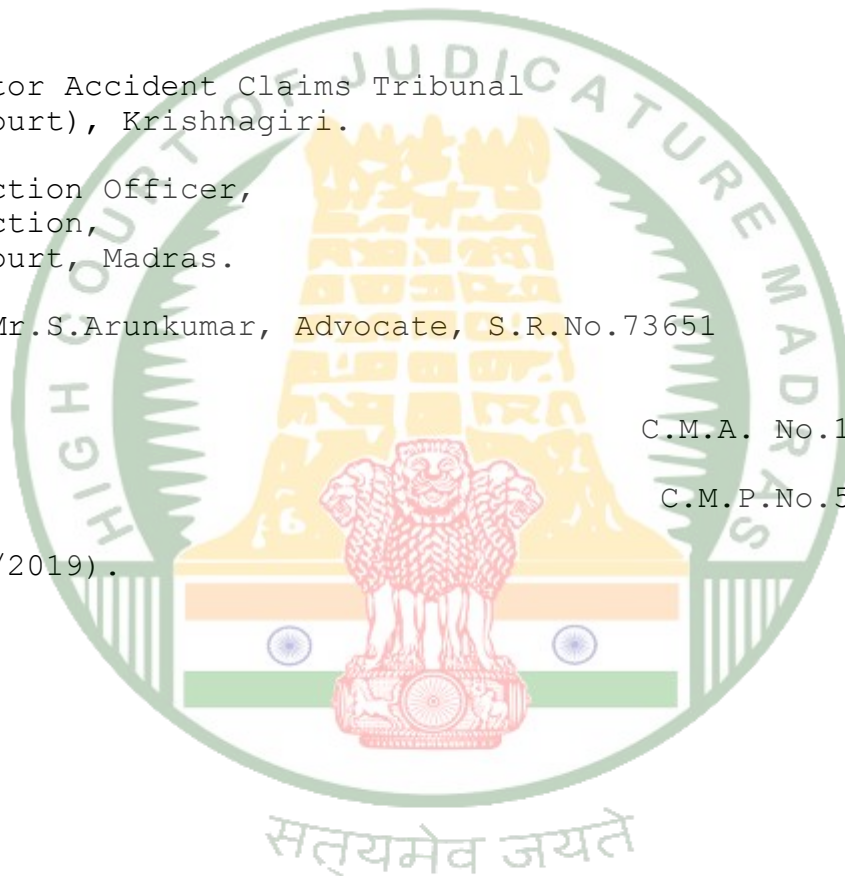
1. The Motor Accident Claims Tribunal
(Sub Court), Krishnagiri.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.S.Arunkumar, Advocate, S.R.No.73651

C.M.A. No.1260 of 2006
and
C.M.P.No.5266 of 2006

PA(CO)
SSM(02/08/2019).



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