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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1334 of 2008

to

C.M.A.No.1344 of 2008

and

M.P.No.1 of 2008(in all the appeals)

CMA.No.1334 of 2008

United India Insurance Co.Ltd.,
Oriental Complex,
Salem-1.

...Appellant/1st Respondent

Vs

1.Pachaiammal

2.Jaganathan

(set exparte before tribunal)

...Respondents/Petitioner/2nd Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Awards and Decrees dated 30.10.2007 made in M.C.O.P.Nos.125 of 2003, 126 of 2003, 127 of 2003, 128 of 2003, 129 of 2003, 130 of 2003, 131 of 2003, 134 of 2003, 135 of 2003, 78 of 2005, and 79 of 2005 respectively on the file of the Motor Accident Claims Tribunal, Subordinate Court, Athur.

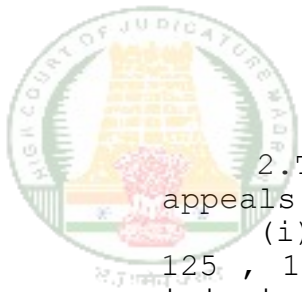
For Appellant : Mr.N.Vijayaragavan

For Respondents : Mr.G.Mohammed Aseef for R1

: R2 - Exparte

COMMON JUDGMENT

The instant appeals have been filed by the respective claimants challenging the common Award dated 30.10.2000 passed by the Motor Accident Claims Tribunal, Subordinate Court, Athur. in M.C.O.P.Nos. 125 of 2003, 126 of 2003, 127 of 2003, 128 of 2003, 129 of 2003, 130 of 2003, 131 of 2003, 134 of 2003, 135 of 2003, 78 of 2005, and 79 of 2005 respectively.



2.The brief facts leading to the filing of the instant appeals are as follows:

(i) The respective respondents/claimants in M.C.O.P.Nos. 125 , 126, 127, 128, 129, 130, 131, 134 , 135 of 2003 sustained injuries on 11.9.2002 as a result of an accident caused by a Tempo goods vehicle Tempo bearing registration No.TN 39 E 3438, which was owned by one Jagannathan and insured with the appellant herein. The respective respondents/claimants in MCOP.No. 78 of 2005, and MCOP.No. 79 of 2005 are the legal heirs of the persons who succumbed to injuries in the same accident.

(ii) The claimants/respondents herein have preferred a claim petition before the Motor Accident Claims Tribunal, Subordinate Court, Athur claiming compensation.

(iv) The Motor Accident Claims Tribunal by its common award dated 30.10.2007, awarded compensation along with interest at the rate of 7.5% per annum from the date of claim till the date of realisation to the respective claimants in respective MCOPs as tabulated hereunder;

Sl.No	MCOP Nos	CMA.No.	Trial Court Awarded	Interest
1	MCOP.No.125 of 2003	CMA.No.1334 of 2008	Rs. 15,000/-	7.5%
2	MCOP.No.126/2003	CMA.No.1335 of 2008	Rs.10,000/-	7.5%
3	MCOP.No.127/2003	CMA.No.1336 of 2008	Rs.40,000/-	7.5%
4	MCOP.No.128/2003	CMA.No.1337 of 2008	Rs.45,000/-	7.5%
5	MCOP.No.129/2003	CMA.No.1338 of 2008	Rs.35,000/-	7.5%
6	MCOP.No.130/2003	CMA.No.1339 of 2008	Rs.20,000/-	7.5%
7	MCOP.No.131/2003	CMA.No.1340 of 2008	Rs.1,70,000/-	7.5%
8	MCOP.No.134/2003	CMA.No.1341 of 2008	Rs.35,000/-	7.5%
9	MCOP.No.135/2003	CMA.No.1342 of 2008	Rs.20,000/-	7.5%
10	MCOP.No.78/2005	CMA.No.1343 of 2008	Rs.2,45,000/-	7.5%
11	MCOP.No.79/2005	CMA.No.1344 of 2008	Rs.25,000/-	7.5%



(v) Aggrieved by the common Award dated 30.10.2007 passed by the Motor Accident Claims Tribunal, the appellant Insurance Company has preferred the instant appeals disputing its liability.

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3. Heard, Mr.N.Vijayaragavan learned Counsel for the Appellant and Mr.G.Mohammed Aseef, learned Counsel for the 1st respondent in all these appeals.

4. According to the learned counsel for the appellant, the only ground raised in all these appeals is that all the claimants were gratuitous occupants of the insured vehicle, and therefore the appellant is not liable to compensate them.

5. Per contra, the learned counsel for the 1st respondent in all these appeals would submit that the said issue is now well settled by a decision of the Honourable Supreme Court in the case of Shivaraj Vs. Rajendra and another passed on dated 05.09.2018 in Civil Appeal Nos. 8278 - 8279 of 2018, wherein, the Supreme Court has held that the insurer is liable to compensate the claimants, even though they had travelled in the subject vehicle as gratuitous passengers and the insurer was permitted to recover the compensation amount paid to the claimants from the owner of the vehicle (insured). The owner of the insured vehicle has remained exparte before the tribunal as well as this Court.

6. On going through the facts of the judgment cited supra, the facts and circumstances of that judgment are similar to the instant case. But in the instant case, the tribunal under the impugned common Award, has not granted pay and recovery rights to the appellant Insurance Company.

7. Therefore this Court permits the appellant to recover the compensation amount along with interest thereof that has already been deposited by them, before the Tribunal from the 2nd respondent. In so far as the quantum of compensation assessed by the tribunal and the liability of the appellant to pay the respective claimants, the said finding is not disturbed by this Court.

8. In the result,



(i) the appeals are partly allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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(ii) the appellant is permitted to recover the compensation amount awarded by the tribunal along with interest from the 2nd respondent.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

msr/sbn

To

1. The Motor Accident Claims Tribunal,
Subordinate Court, Athur.

2. The Section Officer,
Vernacular Section,
Madras High Court.

+11cc to Mr.M.B.Gopalan, Advocate Sr.68257 to 68267

C.M.A.No.1334 of 2008
to
C.M.A.No.1344 of 2008

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srg 22/01/2019