

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2540 of 2010

M.Kumar

...Appellant/1st Respondent

Vs

1.The Branch Manager,
The New India Assurance Company Ltd,
No.80, Arcot Road, Porur,
Chennai - 116.

.. R1/R2

2.Rama

3.Minor Pradheep Raj

4.Minor Pradheesha

5.Lakshmi

...Respondents 2 to 5/
Petitioners

(Respondents 3 and 4 rep. by their mother
and natural guardian, the 2nd respondent).

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the judgment and decree in
M.C.O.P.No.109 of 2007 dated 23.03.2010 on the file of Motor
Accident Claims Tribunal, Principal Subordinate Court,
Mayiladuthurai.

For Appellant : Mr.R.Sivakumar
for M/s.K.M.Vijayan Associates

For Respondents : Mr.M.Krishna Moorthy For R1
Mr.S.Kumara Devan for R2 to R4
R5 - Not ready in notice

JUDGMENT

The instant appeal has been filed by the owner of the
insured vehicle challenging the Award dated 23.03.2010, passed by
the Motor Accident Claims Tribunal, Principal Subordinate Court,
Mayiladuthurai in M.C.O.P.No.109 of 2007.

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

(i) One Sridhar died on 02.02.2007 as a result of an accident caused by a Van bearing Registration No. TN-51-T-8248 owned by the Appellant and insured with the first respondent. The dependents of the deceased Sridhar are the respondent Nos. 2 to 5 in this appeal.

(ii) They preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.109 of 2007, seeking a compensation of Rs.30,00,000/-.

(iii) The Motor Accident Claims Tribunal by its Award dated, 23.03.2010 passed in M.C.O.P.No.109 of 2007, directed the first respondent to pay the respondent Nos. 2 to 5 a sum of Rs.6,63,400/- together with interest at the rate of 7.5% per annum from the date of the claim till the date of realisation and also permitted the first respondent to recover the compensation amount from the Appellant due to policy violation committed by the Appellant.

3. Aggrieved by the pay and recovery rights granted to the first respondent under the impugned Award, the instant appeal has been filed by the owner of the insured goods vehicle, challenging the finding given by the Tribunal that the Appellant had carried unauthorized occupants in the insured goods vehicle at the time of the accident.

4. Heard, Mr. R. Sivakumar, learned Counsel for the Appellant, Mr. M. Krishna Moorthy, learned Counsel for the first respondent and Mr. S. Kumara Devan, learned Counsel for the respondent Nos. 2 to 4.

5. According to the learned Counsel for the Appellant, in a connected matter involving the same accident another claimant, who was also a passenger travelling in the same Van sustained injuries due to the same accident, preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.148 of 2007. In that case, the Motor Accident Claims Tribunal by its Award dated 30.10.2009, in M.C.O.P.No.148 of 2007, did not grant pay and recovery rights to the first respondent. He also drew the attention of this Court to a judgment of the Additional Sub-Court, Mayiladuthurai dated 23.07.2010, passed in A.S.No.16 of 2010 in an appeal filed by the first respondent Insurance Company.

6. According to him, in the judgment dated 23.07.2010, passed in A.S.No.16 of 2010, the Additional Sub Court, Mayiladuthurai, has confirmed the judgment and decree dated 30.10.2008, wherein the Trial Court in O.S.No.139 of 2008, in a suit filed by the Appellant claiming damages for the goods vehicle, which was insured with the first respondent, has decreed the suit in favour

of the Appellant for a sum of Rs.45,214/-.

7. According to the learned Counsel for the Appellant, even though, there is a clear finding given by the Tribunal in M.C.O.P.No.148 of 2007 that the occupants travelling in the Van were not unauthorized occupants, the Tribunal which passed the impugned Award dated 23.03.2010 in M.C.O.P.No.109 of 2007, has given a contradictory finding as if the Appellant in his goods vehicle carried unauthorized occupants at the time of the accident.

8. According to learned Counsel for the Appellant, it is an admitted fact that the goods vehicle insured with the first respondent can have five occupants. In the instant case, admittedly, only three occupants were travelling in the insured vehicle. Considering all these factors, the learned Counsel would submit that the Tribunal has given an erroneous finding that unauthorized persons were travelling in the goods vehicle at the time of the accident and has also erroneously granted Pay and Recovery rights to the first respondent.

9. It is also contended by the learned Counsel for the Appellant that no appeal has been filed against the findings given in the connected M.C.O.P namely, M.C.O.P.No.148 of 2007 as well as against the judgment dated 23.07.2010, passed in A.S.No.16 of 2010.

10. The learned Counsel for the first respondent also concedes that no appeal has been filed by the first respondent as against the findings given by the Tribunal and its Award dated 30.09.2009, passed in M.C.O.P.No.148 of 2007 as well as against the finding given by the Additional Sub-Court in its judgment and decree dated 23.07.2010, passed in A.S.No.16 of 2010.

11. It is evident that in a connected matter involving the same accident, the Tribunal in M.C.O.P.No.148 of 2007, by its Award dated 30.10.2009 has given a categorical finding that no unauthorized persons were travelling in the insured vehicle. The First Appellate Court in A.S.No.16 of 2010, by its judgement and decree dated 23.07.2010, has also directed the first respondent to pay the Appellant for the damages suffered to the insured goods vehicle. Therefore, the finding given by the Tribunal under the impugned Award that the goods vehicle owned by the Appellant was carrying unauthorized persons is an erroneous finding and contradicts the finding given in the Award dated 30.10.2009, passed in MCOP No.148 of 2007.

12. In the result, the Civil Miscellaneous Appeal is allowed by setting aside the findings of the Tribunal granting pay and

recovery rights to the first respondent in M.C.O.P.No.109 of 2007 under its Award dated 23.03.2010. The Award of the Tribunal is confirmed in other aspects. No Costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

arb/pam

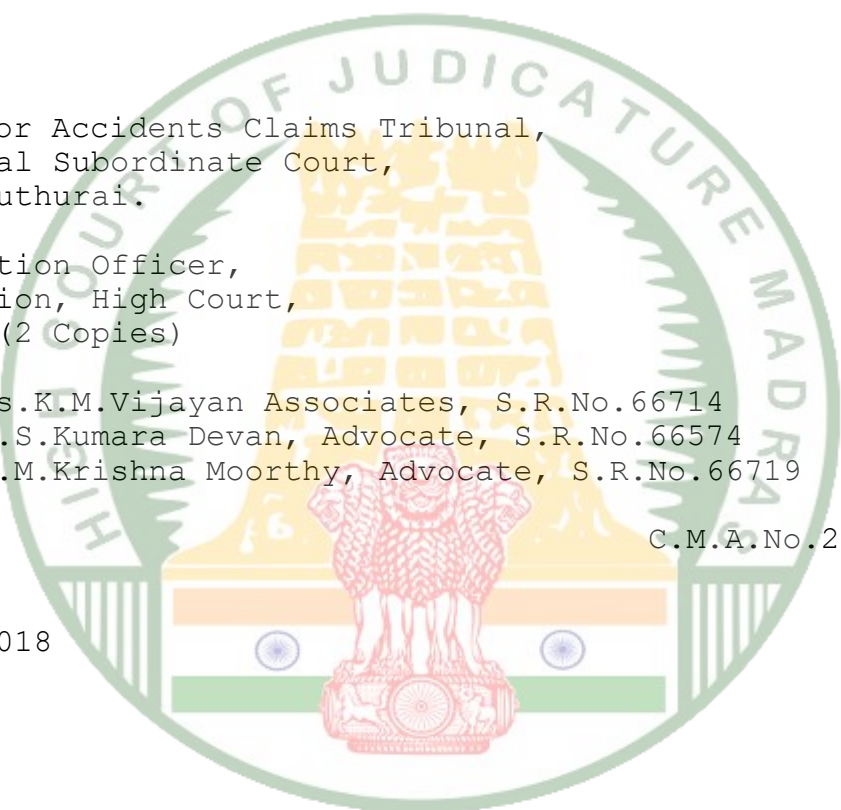
To

1. The Motor Accidents Claims Tribunal,
Principal Subordinate Court,
Mayiladuthurai.
2. The Section Officer,
VR Section, High Court,
Madras.(2 Copies)

+1cc to M/s.K.M.Vijayan Associates, S.R.No.66714
+1cc to Mr.S.Kumara Devan, Advocate, S.R.No.66574
+1cc to Mr.M.Krishna Moorthy, Advocate, S.R.No.66719

C.M.A.No.2540 of 2010

NRL (CO)
CS/26/11/2018

The seal of the High Court of Madras is a circular emblem. It features a central image of the Lion Capital of Ashoka, which is a four-lion capital carved from a single block of dark soapstone. The lions are facing the four corners of the capital. The capital is set on a base of four elephants, which are also facing the four corners. The entire emblem is surrounded by a green border. The words 'HIGH COURT OF JUDICATURE MADRAS' are written in a circular path around the emblem. At the bottom of the seal, the motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

सत्यमेव जयते

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