

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2342 & 2343 of 2015  
and M.P.No.1 of 2015

M/s.TATA AIG General Insurance Co. Ltd.,  
Rep. By its Branch Manager,  
3<sup>rd</sup> Floor, Jaya Enclave,  
Avinashi Road,  
Coimbatore Town,  
Coimbatore District.

...Appellant/2<sup>nd</sup> Respondent in  
both C.M.As.

Vs.

1.M.Selvakumar

...1<sup>st</sup> Respondent in  
C.M.A.No.2342/2015

1.Vennila

...1<sup>st</sup> Respondent in  
C.M.A.No.2343/2015

2.K.Selvaraj

...2<sup>nd</sup> Respondent  
in both C.M.As.

(R2 set exparte before the Tribunal)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 06.01.2014 made in M.C.O.P.Nos.224 & 225 of 2012 on the file of the Sub Court, (Motor Accident Claims Tribunal), Gobichettipalayam.

For Appellant : Mr.N.Vijayaraghavan

For R1 : Mr.Ma.P.Thangavel  
(in both C.M.As.)

For R2 : Not Claimed

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeal have been filed against the award dated 06.01.2014 made in M.C.O.P.Nos.224 & 225 of 2012 on

the file of the Sub Court, (Motor Accident Claims Tribunal), Gobichettipalayam.

2.Both the appeals are arising out of the same accident and common award. Hence, they are disposed of by this common judgment.

3.The appellant-Insurance Company is the 2<sup>nd</sup> respondent in M.C.O.P.Nos.224 & 225 of 2012 on the file of the Sub Court, (Motor Accident Claims Tribunal), Gobichettipalayam. The 1<sup>st</sup> respondents/claimants filed the said claim petitions, claiming a sum of Rs.5,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 18.08.2012.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 2<sup>nd</sup> respondent and appellant, as the insurer of the lorry is liable to pay a sum of Rs.1,87,710/- and Rs.1,56,760/- as compensation to the 1<sup>st</sup> respondents respectively, at the first instance and recover the same from the 2<sup>nd</sup> respondent, owner of the lorry.

5.Challenging the award fastening the liability on the 2<sup>nd</sup> respondent herein, owner of the vehicle as well as the appellant to pay the compensation jointly and severally to the 1<sup>st</sup> respondents in both the appeals and directing the appellant to pay at the first instance and recover the same from the 2<sup>nd</sup> respondent, owner of the vehicle, the appellant-Insurance Company has come out with these appeals.

6.The learned counsel appearing for the appellant contended that the 1<sup>st</sup> respondents/claimants in both the appeals traveled along with others as gratuitous passengers and they are not load men. In the FIR registered against the driver of the 2<sup>nd</sup> respondent, it has been mentioned that 14 persons traveled in the lorry at the time of accident. The Tribunal having held that the 2<sup>nd</sup> respondent, owner of the vehicle has violated permit and policy condition and claimants in both the appeals traveled as passengers, erred in holding that the appellant and 2<sup>nd</sup> respondent are jointly and severally liable to pay compensation and ordered pay and recovery. The appellant is not liable to pay any compensation. The Tribunal ought to have exonerated the appellant and erred in ordering pay and recovery.

7.Per contra, the learned counsel appearing for the 1<sup>st</sup> respondents/claimants contended that the 1<sup>st</sup> respondents/claimants along with others traveled as load men. After loading corn stalks, they traveled along with the goods to unload the same. The Tribunal has held that accident occurred

only due to rash and negligent driving by the driver of the lorry and insurance policy was in force. In view of the same, the award of the Tribunal holding that both the appellant as well as the 2<sup>nd</sup> respondent are liable to pay compensation is valid and order of pay and recovery is not erroneous and prayed for dismissal of the appeals.

8. Heard the learned counsel appearing for the appellant as well as the 1<sup>st</sup> respondents in both the appeals and perused the materials available on record.

9. From the materials available on record, it is seen that admittedly 14 persons traveled in the lorry which is a goods vehicle. It is seen from the award of the Tribunal that the Tribunal has considered Ex.P1, FIR wherein it has been stated that 14 persons traveled in the lorry and the 1<sup>st</sup> respondents/claimants also admitted that they traveled in the lorry along with others as load men. In view of the above fact, the Tribunal has held that the 2<sup>nd</sup> respondent has violated the terms and conditions of policy. Further, there is nothing on record to show that the 1<sup>st</sup> respondents and others traveled along with goods. The Tribunal having held that the 2<sup>nd</sup> respondent violated policy condition, erred in holding that the appellant along with 2<sup>nd</sup> respondent is liable to pay compensation on the ground that the policy issued by the appellant was in force at the time of accident. The said reasoning is erroneous. It is well settled that the gratuitous passengers are not entitled to compensation from the Insurance Company and Insurance Company is not liable to pay compensation to the gratuitous passenger even if the policy taken by owner of the goods was in force. When the appellant-Insurance Company is not liable to pay compensation, direction of the Tribunal to order pay and recovery is also erroneous.

10. For the above reason, the appeals are allowed, setting aside the portion of the award holding that the appellant-Insurance Company is liable to pay compensation and directing the appellant to pay at the first instance and recover the same from the owner of the vehicle. The 2<sup>nd</sup> respondent-owner of the vehicle is directed to pay a sum of Rs.1,87,710/- and Rs.1,56,760/- along with interest and costs, respectively to the 1<sup>st</sup> respondents/claimants within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1<sup>st</sup> respondents/claimants are permitted to withdraw the award amount, along with interest and cost, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the amount already deposited, along with proportionate interest and cost, if any, lying in the credit of M.C.O.P.Nos.224 & 225 of 2012, by filing necessary application.

11.In the result, both the appeals are allowed. No costs.  
Consequently, connected Miscellaneous Petition is closed.  
gsa

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To  
The Subordinate Judge,  
(Motor Accident Claims Tribunal),  
Gobichettipalayam.

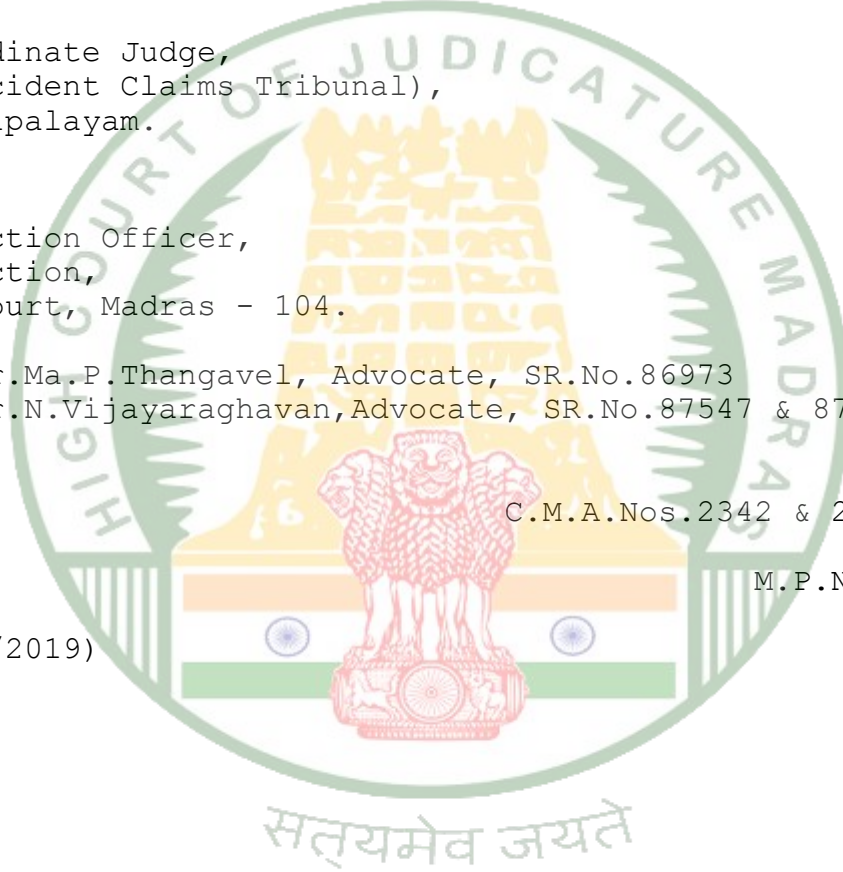
Copy to:-

The Section Officer,  
V.R.Section,  
High Court, Madras - 104.

+1cc to Mr.Ma.P.Thangavel, Advocate, SR.No.86973  
+1cc to Mr.N.Vijayaraghavan, Advocate, SR.No.87547 & 87548

C.M.A.Nos.2342 & 2343 of 2015  
and  
M.P.No.1 of 2015

Kak (29/04/2019)



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