

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2402 of 2015
and M.P.No.1 of 2015

The New India Assurance Co. Ltd.
Kumaran shopping complex
Kumaran road, Tiruppur. ... Appellant/3rd Respondent

Vs.

1.Mani ...1st Respondent/Petitioner
2.Marimuthu
3.K.Duraisamy ... 2nd and 3rd Respondents/ 2nd
and 3rd Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 13.04.2015 made in M.C.O.P.No.435 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Mr.S.S.Swaminathan

R2 : Exparte

For R3 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is filed against the award dated 13.04.2015 made in M.C.O.P.No.435 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur.

2.The appellant/Insurance Company is third respondent in M.C.O.P.No.435 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur. The first respondent filed the said M.C.O.P. claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that occurred on 12.07.2012.

3.The Tribunal after considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent driving of the second respondent/driver of the vehicle belonging to the third respondent, insured with the appellant and directed the appellant, respondents 2 and 3 to pay a sum of Rs.2,22,000/- as compensation to the first respondent/claimant, jointly and severally.

4.Against the said award passed by the Tribunal, dated 13.04.2015 made in M.C.O.P.No.435 of 2012, the appellant/Insurance Company has come out with the present Civil Miscellaneous Appeal challenging the liability fastened on them.

5.The learned counsel appearing for the appellant/Insurance Company contended that the first respondent travelled as gratuitous passenger in a commercial vehicle in violation of permit and policy conditions. As per the permit condition, only two persons are allowed to travel in a commercial vehicle. At the time of the accident, five persons travelled as passengers and the Tribunal erred in directing the appellant to pay the compensation jointly and severally along with the respondents 2 and 3 and prayed for setting aside the award of the Tribunal.

6.Per contra, the learned counsel appearing for the first respondent contended that the first respondent travelled as owner of the goods in the vehicle along with the goods. It is well settled that the owner of the goods or his authorized representative can travel along with the goods and if accident happens, while he was travelling along with goods, the Insurance Company is liable to pay compensation to the injured or legal representative of the deceased. The Tribunal considering all the materials available on record has held that the appellant is liable to pay compensation jointly and severally along with the respondents 2 and 3. There is no error in the said findings of the Tribunal and prayed for dismissal of the appeal.

7.The second respondent remained exparte before the Tribunal and no notice is necessary for him. Though notice was served on the third respondent and his name is printed in the cause list, there is no representation on behalf of the third respondent either in person or through counsel.

8.Heard the learned counsel appearing for the appellant as well as the first respondent and perused the materials available on record.

9.According to the learned counsel appearing for the appellant, the Tribunal erred in directing the appellant to pay the compensation, when the first respondent travelled in the

goods vehicle at the time of accident as an unauthorised passenger, while the seating capacity is only for two persons. The said contention is contrary to its own evidence let in through R.W.1/Assistant Manager of appellant/Insurance Company. R.W.1 stated that there were goods in the vehicle and he did not deny that the first respondent is the owner of the goods. The first respondent along with other claimant travelled in the vehicle along with the goods. In view of the said admission, the contention of the learned counsel for the appellant that the first respondent travelled as a passenger in the vehicle, is without merits.

10.As far as the contention of the learned counsel appearing for the appellant that five persons travelled in the vehicle at the time of accident in violation of permit and policy conditions is concerned, as per the Rule 236 of Tamil Nadu Motor Vehicles Rules, up to six persons can travel in the commercial vehicle along with the goods. As per Section 147 of the Motor Vehicles Act, owners of the goods or their authorised representative accompanying goods in a commercial vehicle are covered by policy. The Tribunal considering the evidence of R.W.1 as well as the contention of the first respondent, held that the appellant is liable to pay the compensation to the first respondent jointly and severally along with the respondents 2 and 3. There is no error in the said reasoning of the Tribunal.

11.In the result, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company, respondents 2 and 3 are directed to deposit the award amount granted by the Tribunal along with interest and costs, jointly and severally, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/claimant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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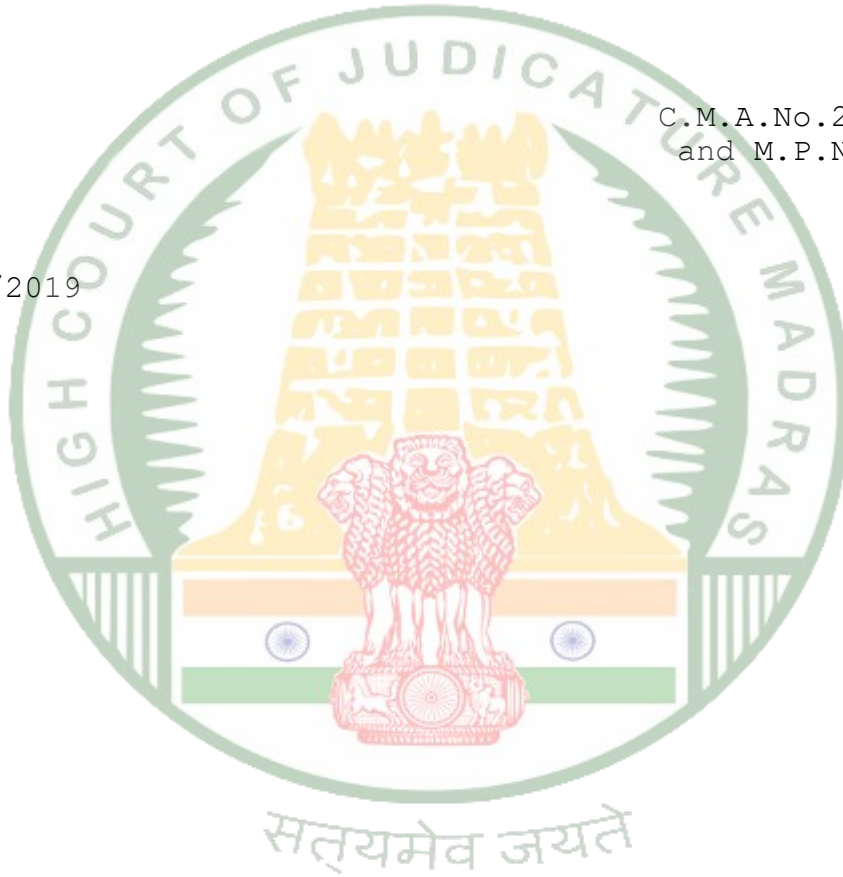
To

The Motor Accidents Claims Tribunal
The Chief Judicial Magistrate, Tiruppur.

+lcc to M/S.M.Krishnamoorthy, Advocate Sr.83180
+lcc to M/S.S.Swaminathan, Advocate Sr.83923

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and M.P.No.1 of 2015

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