

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.93 to 95 of 2015

The Branch manager,
The United India Insurance Co.Ltd.,
Pallivasal Street,
Perambalur.

.. Appellant/3rd Respondent in
all the three appeals

Vs.

1.Kasiammal
2.Narayanasamy
3.M.Manikandan

.. Respondents/Petitioner
in C.M.A.No.93 of 2015

1.Murugesan
2.Sakunthala
3.Sangeetha
4.Chandrakala
5.Mekala
6.Minor.Maruthamuthu
(6th respondent minor rep. By
father and next friend 1st respondent)

7.Narayanasamy
8.M.Manikandan

.. Respondents/Petitioner &
Respondent in C.M.A.No.94 of 2015

1.Minor.Uma
(Represented by her mother and
next friend Vijaya)

2.Narayanasamy
3.M.Manikandan

.. Respondents/Petitioner &
Respondent in C.M.A.No.95 of 2015

Prayer: Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.03.2014 made in M.A.C.T.O.P.Nos.472, 498 and 478 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

In C.M.A.No.93 of 2015

For Appellant : Mr.N.Vijayaraghavan
For R1 : Mr.T.Gobinath
For R2 : No Appearance
R3 : II batta due

In C.M.A.No.94 of 2015

For Appellant : Mr.N.Vijayaraghavan
For R1 to R6 : Mr.T.Gobinath
For R7 : No appearance
R8 : II batta due

In C.M.A.No.95 of 2015

For Appellant : Mr.N.Vijayaraghavan
For R1 : Mr.T.Gobinath
For R2 : No appearance
R3 : II batta due

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

Civil Miscellaneous Appeals are filed by the Insurance Company against the award dated 28.03.2014 made in M.A.C.T.O.P.Nos.472, 498 and 478 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

2. All the three appeals are arising out of the same accident and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petitions for the sake of convenience.

3.The appellant/Insurance Company is third respondent in M.A.C.T.O.P.Nos.472, 498 and 478 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur, respectively. The claimants in M.C.O.P.Nos.472 and 478 of 2011 filed the said claim petitions for the injuries sustained by them in the accident that took place on 10.04.2011 and the claimants in M.C.O.P.No.498 of 2011 filed the said claim petition for the death of one Selvi, who died in the accident that took place on 10.04.2011.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the tractor belonging to the respondents 1 and 2/owners and the third respondent as insurer of the said tractor is liable to pay the compensation to the claimants and recover the same from the respondents 1 and 2. The Tribunal ordered pay and recovery on the ground that the injured claimants and deceased were travelling in the angle of the harvesting machine in violation of policy condition.

5.Against the said award dated 28.03.2014 made in M.C.O.P.Nos.472, 498 and 478 of 2011, the present three appeals have been filed by the Insurance Company challenging the liability as well as quantum of compensation.

6.The learned counsel appearing for the third respondent/Insurance Company contended that there is no coverage for the injured claimants and the deceased, who travelled in the harvesting machine. The harvesting machine is not registered to carry any passengers and no liability can be fastened against the third respondent/Insurance Company. The Tribunal failed to appreciate the difference between lack of coverage and breach of policy condition such as driving licence and permit etc. and erred in ordering pay and recovery in the absence of any coverage. The amounts awarded by the Tribunal under various heads are excessive and not in consonance with the facts and circumstances of each case and prayed for setting aside the award of the Tribunal.

7.Per contra, the learned counsel appearing for the claimants contended that no evidence was let in by the third respondent/Insurance Company to show that the harvesting machine was not registered to carry passengers. The Tribunal considering the evidence let in by the parties with regard to age, nature of work and nature of injuries, has awarded just compensation and the compensation awarded by the Tribunal are not excessive and prayed for dismissal of the appeals.

8.Heard the learned counsel appearing for the third respondent/Insurance Company as well as the claimants and perused the materials available on record.

9.The learned counsel appearing for the third respondent/Insurance Company contended that the harvesting machine was not registered to carry passengers. From the materials on record, it is seen that the third respondent/Insurance Company has examined R.W.1, a typist from R.T.O., Ulundurpet and R.W.2, Assistant Manager of the third respondent/Insurance Company and they have deposed that they are

not aware whether the harvesting machine was registered or not. R.W.1 admitted that usually, harvesting machine is attached to the tractor. The accident occurred in the agriculture field, when the harvesting machine capsized. The third respondent/Insurance Company claimed that they are not liable to pay the compensation, as there is no coverage for the passengers travelling in the harvest machine. No evidence was let in to substantiate the said contention and evidence of R.W.1 and R.W.2 does not support the case of the third respondent/Insurance Company. It is not disputed by the third respondent that the injured claimants and deceased were agricultural coolies engaged by the first respondent/owner of the tractor as well as the harvesting machine. In such circumstances, the award of the Tribunal directing the third respondent to pay the compensation at the first instance and recover the same from the respondents 1 and 2 is not erroneous on the ground that the injured claimants and deceased were travelling in the angle of the harvesting machine.

10.As far as quantum of compensation is concerned, the Tribunal elaborately considered all the facts and awarded compensation to the claimants, which are just compensation. There is no reason to interfere with the said findings.

11.In the result, all the three Civil Miscellaneous Appeals are dismissed. The third respondent/Insurance Company is directed to deposit the award amount along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/claimant in C.M.A.No.93 of 2015 and the respondents 1 to 5/claimants in C.M.A.No.94 of 2015 are permitted to withdraw their respective award amount granted by the Tribunal with proportionate interest and costs, after adjusting the amount already withdrawn, if any. The respective shares of the minors/sixth respondent in C.M.A.No.94 of 2015 and first respondent in C.M.A.No.95 of 2015 are directed to be deposited in any one of the nationalised banks till they attain majority. The first respondent in C.M.A.No.94 of 2015 being the father of the sixth respondent in C.M.A.No.94 of 2015 and one Vijaya, who is the mother of the first respondent in C.M.A.No.95 of 2015 are permitted to withdraw the interest from the respective share amounts of the minors once in three months for the welfare of the minors. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
Principal District Judge, Perambalur.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.M.B.Gopalan, Advocate Sr.No.81047

+1 cc to Mr.T.Gobinath, Advocate Sr.No.80536

AK(CO)
CSL/11.02.2019

C.M.A.Nos 93 to 95 of 2015



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