

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.09.2018	Delivered on 26.10.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.Nos.2653 to 2667 of 2016

- 1.A.Palaniyandi
- 2.P.Nagarajan
- 3.S.Rajamani
- 4.J.Vennila ..Appellants 1to4 in CMA.No.2653/2016/
Claimants
5. N. Saraswathi ..Sole Appellant in CMA.2654/16/
Claimant
6. N. Palaniyammal ..Sole Appellant in CMA.2655/16/
Claimant
7. S. Chinnamani ..Sole Appellant in CMA.2656/16/
Claimant
8. S. Chellammal ..Sole Appellant in CMA.2657/16/
Claimant
9. N. Mohanambal ..Sole Appellant in CMA.2658/16/
Claimants
- 10.A. Pichaiammal ..Sole Appellant in CMA.2659/16/
Claimant
- 11.D. Nachammal ..Sole Appellant in CMA.2660/16/
Claimant
- 12.M. Pappathi ..Sole Appellant in CMA.2661/16/
Claimant
- 13.S. Mala ..Sole Appellant in CMA.2662/16/
Claimants
- 14.N. Sumathi ..Sole Appellant in CMA.2663/16/
Claimant
- 15.S. Chellammal ..Sole Appellant in CMA.2664/16/
Claimant

16.S. Kandan
17.B. K. Selvam
18.K. Vadivel
19.G. Sellamani
20.P. Nallammal
21.T. Rajamani

..Appellants 1to6 in CMA.2665/16/
Claimants

22.D. Vijaya

..Sole Appellant in CMA.2666/16/
Claimants

23.N. Marikannu

..Sole Appellant in CMA.2667/16/
Claimants

-vs-

1.K.Mookkan

2.ICICI Lombard GI Insu. Co.
Chotabhai Towers,
No.140, Nungambakkam High Road,
Chennai - 600 006.
Now functioning at
ICICI Lombard GI. Insurance Co. Ltd.,
Harihant Plaza, 1st Floor,
No.83/84, Walltax Road,
Chennai - 600 003.

..Respondents No.1 &2 in all the
appeals/Respondents 1&2

PRAYER IN CMA.Nos.2653 to 2667 of 2016: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 30.08.2016 made in MACT.OP.Nos.4266 of 2014 to 4280/14 respectively on the file of the IV Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellants : Mrs.P.T.Salim Fathima

For Respondents: Mr.C.Elamurugan
for Mr.K.K.Ramakrishnan for R2.
R1 - Exparte.

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J U D G M E N T

R.SUBRAMANIAN, J.

1. All these appeals are at the instance of the claimants in MACTOP.Nos.4266 to 4280 of 2014. All these claim petitions arouse out of one accident, hence they were tried together, and disposed of by a common judgment by the Motor Accident Claims Tribunal, (IV Judge Court of Small Causes), Chennai.

2. The case of the claimants before the Tribunal was that several persons had travelled in a TATA ACE Van bearing registration No.TN-55-AB-2671 from Velur Village to Ananthur Village, Thottiapatti, Trichy District. The said vehicle which is a goods vehicle capsized due to the rash and negligent driving of its driver resulting in death as well as grievous injuries to the occupants of the vehicle. Claiming that the accident occurred only due to the rash and negligent driving of the driver of the goods vehicle in which the deceased as well as the injured were travelling, the claimants sought for various amounts as compensation.

3. The 2nd respondent Insurance Company was impleaded as insurer of the goods vehicle and it was claimed that the insurer is liable to satisfy the awards. The owner of the goods vehicle who was arrayed as 1st respondent remained exparte.

4. The 2nd respondent Insurance Company resisted the claim contending that the Insurance Company cannot be made liable, since the deceased as well as the injured claimants were travelling in a goods vehicle, therefore, there is a violation of the provisions of the Motor Vehicles Act. It was also contended on behalf of the Insurance Company that an unauthorized/ gratuitous passenger in a goods vehicle is not required to be covered and hence the Insurance Company cannot be made liable to pay the compensation.

5. On the side of the claimants it was contended that the Insurance Company is liable to pay the compensation and at the best it can seek liberty to recover the same from the owner of the vehicle/ insured.

6. The Tribunal on a consideration of the evidence on record awarded various amounts as compensation to the individual claimants who happened to be the dependents of the deceased claimants or the injured claimants themselves. The Tribunal however found that the Insurance Company cannot be made liable to pay the compensation as the injured claimants and the deceased persons were unauthorized passengers in the goods vehicle. As against the awards the claimants have come up with these appeals mainly contending that the Tribunal was not right in exonerating the Insurance Company from the liability.

7. We have Mrs.P.T.Salim Fathima, learned counsel appearing for the appellants and Mr.C.Elamurugan, learned counsel appearing for Mr.K.K.Ramakrishnan for the 2nd respondent, Insurance Company. The 1st respondent owner of the vehicle remained exparte.

8. Mrs.P.T.Salim Fathima, learned counsel appearing for the appellants/ claimants would contend that the Insurance Company

should have been made liable to pay the compensation to the claimants/ dependents with liberty to recover the same from the Insured/ owner of the vehicle.

9. Per contra Mr.C.Elamurugan, learned counsel appearing for Mr.K.K.Ramakrishnan for the 2nd respondent Insurance Company would submit that this Court as well as the Hon'ble Supreme Court have consistently held that the Insurance Company is not required to cover the risk in case of passengers in a goods vehicle. Therefore, the Insurance Company cannot be made liable to pay the compensation. The respective counsel would also draw our attention to various pronouncements of the Hon'ble Supreme Court including

- New India Assurance Company Ltd., Vs. Asha Rani and others reported in 2003 ACJ 1 (SC),
- New India Assurance Company Vs. Shri Satpal Singh and others reported in 2000 ACJ 2 (SC),
- National Insurance Company Ltd., Vs. Baljit Kaur and others reported in 2004 (2) SCC 1,
- New India Assurance Company Ltd., Vs. Asha Rani and others reported in 2003 (2) SCC 223,
- United India Insurance company Vs. Nagammal and others reported in 2009 (1) CTC 2,
- National Insurance Company Ltd., Vs. Swaran Singh and others reported in (2004) 3 SCC 297,
- Skandia Insurance Co. Ltd., vs. Kokilaben Chandravadan & Ors reported in 1987 ACJ 411,
- Oriental Insurance Company Vs. Nanjappan and others reported in 2004 (1) TNMAC 211 (SC),
- Oriental Insurance Co. Ltd Vs. Brij Mohan & Ors reported in 2007 (7) SCC 56,
- National Insurance Company Ltd., Vs. Saju P. Paul reported in 2013 (2) SCC 41,
- Mallawwa Vs. Oriental Insurance Co. Ltd., reported in 1999 ACJ 1,
- New India Assurance Company Ltd., Vs. Kanchan Bewa and others reported in 1994 ACJ 138 and
- Shivaraj Vs. Rajendra and another dated 05.09.2018, made in Civil Appeal Nos.8278 and 8279 of 2018.

10. Both the counsels have not addressed the court on the quantum of compensation or on the finding on the question of negligence recorded by the Tribunal. The only question that was argued before us was the question relating to the liability of the Insurance Company to pay the compensation to the victims/dependents, where it is found that the victims were unauthorized passengers in the goods vehicle.

11. The fact that the victims were unauthorized passengers in the goods vehicle is admitted. Neither the claimants nor the owner of the vehicle had chosen to contend that these persons were travelling along with the goods. From the records it is found that nearly 15 to 20 persons had travelled in the goods vehicle and the accident had occurred when the vehicle capsized. Therefore, the only legal question that survives is the liability of the Insurance Company to satisfy the awards.

12. We have considered the similar question in detail, in our judgment in CMA.Nos.1529 to 1533 of 2015. After discussing all the judgments on the legal issue, we have concluded that the Insurance Company cannot be made liable for payment of compensation to the victim or a dependent of a victim who suffers injuries or dies in a motor accident while travelling as an unauthorized passenger/ gratuitous passenger in a goods vehicle. The issue raised in these appeals is also squarely covered by the above pronouncement. Hence, we find no merit in these appeals and these appeals are dismissed. However, there will be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

1. The IV Judge, (Motor Accidents Claims Tribunal),
Court of Small Causes, Chennai.

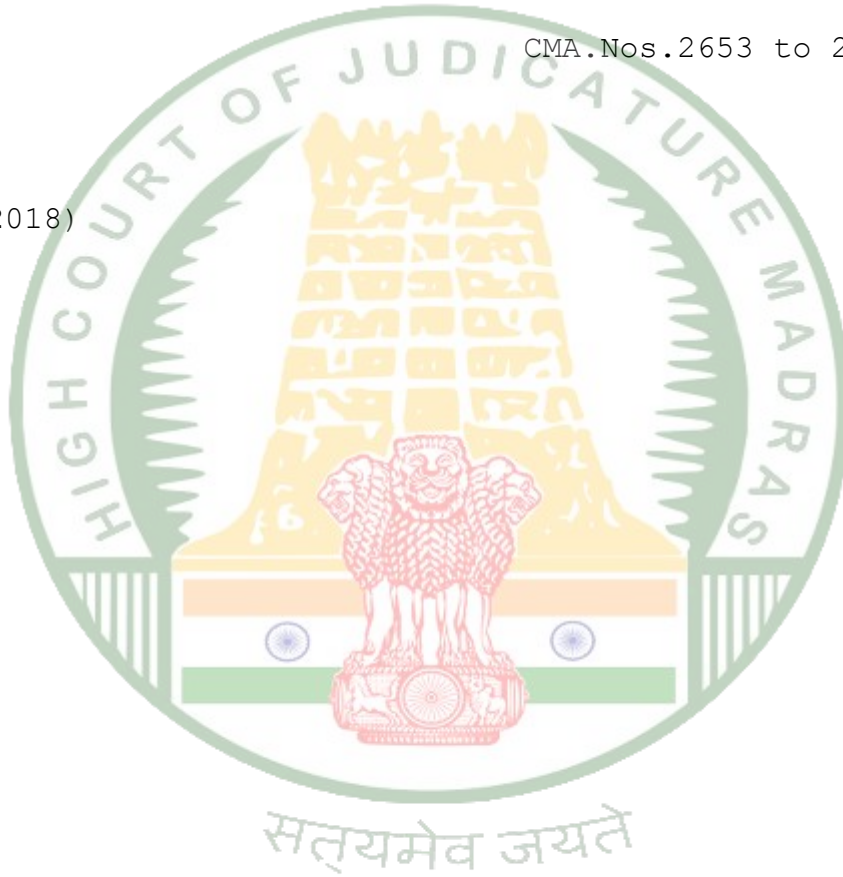
2. The Section Officer, (s-copies)
V.R.Section, High Court, Madras.

+ 1 cc to Mr. M. Swamikannu, Advocate Sr.73357

+ 1 cc to Mr. K.K.Ramakrishnan, Advocate SR.73420

CMA.Nos.2653 to 2667 of 2016

TM(CO)
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