

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.1491 and 3204 of 2003
and C.M.P.No.20578 of 2003

C.M.A.No.1491 of 2003:

New India Assurance Co.Ltd.
Udhagamandalam, The Nilgiris. ... Appellant/2nd Respondent

Vs

1.Kunju
2.Kamalakshmi @ Meenakshi
3.Sahadevan
4.J.W.Chelliah ... Respondents/Petitioners 1 to 3, 1st Respondent

C.M.A.No.3204 of 2003:

New India Assurance Co.Ltd.
Udhagamandalam, The Nilgiris District. ...Appellant/2nd Respondent
Vs

1.Annammal
2.V.P.Amudha
3.V.P.Reena Malathi
4.J.W.Chelliah ...Respondents/Petitioners 1 to 3/
1st Respondent

C.M.A.No.1491 of 2003 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 02.08.2001 made in MACTOP No.25 of 1999 on the file of the Motor Accidents Claims Tribunal (District Judge), Udhagamandalam, The Nilgiris.

C.M.A.No.3204 of 2003 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 02.08.2001 made in MACTOP No.60 of 1999 on the file of the Motor Accidents Claims Tribunal (District Judge), Udhagamandalam, The Nilgiris District.

For Appellant : Mr.S.Ramalingam
in both appeals

For Respondents : No appearance for respondents
in both appeals in C.M.A.No.1491 of 2003

Mr.Srinath Sridevan for R1
in C.M.A.No.3204 of 2003

Ms.Jayasri Baskar for R2 and R3
in C.M.A.No.3204 of 2003

COMMON JUDGMENT

Both these appeals arise out of the same accident, which took place on 16.10.1998. The son of the respondents 1 and 2 in C.M.A.No.1491 of 2003, by name Ananda Gopi was travelling in the Mahindra Maxi Cab bearing Reg.No.TN-43-3627, belonging to the fourth respondent, on 16.10.1998, in the Mettupalayam - Ooty Main Road. When the vehicle reached near Bridge No.2, Kallar, it collided with the lorry bearing Reg.No.TDV-9159, which was coming from the opposite direction. Due to the said impact, the said Ananda Gopi died on the spot. In the same accident, one P.Selvarajan, son of the first respondent in C.M.A.No.3204 of 2003, who was also travelling in the Mahindra Maxi Cab, sustained injuries and subsequently he died. The respective legal heirs of the deceased filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a lumpsum compensation of Rs.2,75,000/- with interest at the rate of 9% per annum from the date of petition, to the legal heirs of the deceased in respect of CMA No.1491 of 2003 and a total compensation of Rs.1,50,000/- with interest at the rate of 9% per annum from the date of petition, to the legal heirs of the deceased in respect of CMA No.3204 of 2003.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeals.

4.When these appeals were taken up, the learned counsel for the appellant has submitted that the Tribunal has erred in fixing the entire liability on the appellant Insurance Company, since the driver of the Mahindra Maxi Cab, did not possess valid driving license at the time of driving the vehicle. He further submitted that he is not disputing the quantum of compensation awarded by the Tribunal.

5. There is no representation on behalf of the respondents in C.M.A.No.1491 of 2003.

6. The learned counsel for the respondents 1 to 3 in C.M.A.No.3204 of 2003 have submitted that the Tribunal has correctly considered the materials and evidence available on record and has awarded the compensation to the legal heirs of the deceased and hence the same does not require any interference in the hands of this Court.

7. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 3 in C.M.A.No.3204 of 2003 and perused the materials available on record carefully and meticulously.

8. Now the question to be decided is only with regard to the liability fixed on the part of the appellant Insurance Company by the Tribunal. Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Mahindra Maxi Cab, which factual finding need not be interfered with by this Court. With regard to the point put forth on the side of the appellant Insurance Company before the Tribunal that the driver of the Maxi Cab was not possessing valid driving licence to drive the commercial vehicle, the Tribunal discussed the issue and observed that the driver was holding the license only till 27.12.1993 but it has not been renewed. The Tribunal has also observed that even though the accident took place on 16.10.1998, it is not the case as if the driver was not having the licence at any point of time. Stating so, the Tribunal fixed the liability on the part of the Appellant Insurance Company. This Court is of the considered opinion that in these circumstances, the Tribunal ought to have permitted the appellant Insurance Company to pay the amount to the claimants and thereafter recover the same from the owner of the vehicle, as there was a breach of policy conditions, by not possessing the valid driving licence by the driver of the Mahindra Maxi Cab.

9. At this juncture, it has been submitted on behalf of the Insurance Company that the entire compensation amounts have been deposited.

10. Since the entire compensation amounts have been deposited by the Insurance Company, the claimants in these appeals are permitted to withdraw their respective shares, less the amounts if any already withdrawn, on making proper application before the Tribunal. The appellant-Insurance Company shall proceed against the owner of the vehicle for recovery of the compensation amounts.

11.The Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal (District Judge),
Udhagamandalam, The Nilgiris.

2.The Section Officer,
VR Section, Madras High Court.

+2 Ccs to Mr.S.Ramalingam, Advocate sr 59876, 59875

+1 CC to M/s. Jayasri Baskar, Advocate sr 60823.

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NMI (CO)
SP(20/02/2020)