

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.820 to 824 of 2003
and
C.M.P.Nos.5864 to 5866 of 2003

The National Insurance Co.Ltd.,
Salem.

...Appellant in all the
appeals/2nd Respondent

Vs

1.Minor Easu
Rep. by next friend and mother Pappathi

2.M.Senthil Kumar ...Respondents in C.M.A.No.
820 of 2003/Claimants & 1st Respondent

1.Pappathi
2.M.Senthil Kumar ...Respondents in C.M.A.No.
821 of 2003

1.Perumal
2.M.Senthil Kumar ...Respondents in C.M.A.No.822 of 2003/
Claimants & 1st Respondent

1.Pappathi
2.M.Senthil Kumar ..Respondents in C.M.A.No.823 of 2003/
Claimants & 1st Respondent

1.Krishnan
2.M.Senthil Kumar ...Respondents in C.M.A.No.824 of 2003/
Claimants & 1st Respondent

C.M.A.No.820 of 2003 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 28.06.2002 made in MCOP No.211 of 1998 on the file of the Motor Accidents Claims Tribunal, Principal Sub-Court, Salem.

C.M.A.No.821 of 2003 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 28.06.2002 made in MCOP No.212 of 1998 on the file of the Motor Accidents Claims Tribunal, Principal Sub-Court, Salem.

C.M.A.No.822 of 2003 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 28.06.2002 made in MCOP No.214 of 1998 on the file of the Motor Accidents Claims Tribunal, Principal Sub-Court, Salem.

C.M.A.No.823 of 2003 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 28.06.2002 made in MCOP No.215 of 1998 on the file of the Motor Accidents Claims Tribunal, Principal Sub-Court, Salem.

C.M.A.No.824 of 2003 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 28.06.2002 made in MCOP No.460 of 1997 on the file of the Motor Accidents Claims Tribunal, Principal Sub-Court, Salem.

For Appellant : Mr.S.Arun Kumar
in all appeals

For Respondents : Mr.J.Ramakrishnan for R1
in CMA.Nos.820, 821, 822 and
823 of 2003

: Mr.D.Shivakumar for R1
in CMA.No.824 of 2003

: Mr.K.Selvaraj for R2
in all the appeals

COMMON JUDGMENT

These appeals are filed against the common judgment dated 28.06.2002 passed by the Motor Accidents Claims Tribunal, Principal Sub-Court, Salem, in MCOP Nos.211, 212, 214, 215 of 1998 and 460 of 1997 respectively.

2.All these appeals are being disposed of by a common judgment as the same arise out of the same accident that took place on 10.06.1997.

3.The facts of the case are that on 10.06.1997 at 07.00 a.m., the first respondent in these appeals / claimants were travelling in a tempo van bearing Reg.No.TN-28-B-2678 and the said van was proceeding in the Valapadi Main Road. When the vehicle reached near Anna Nagar, due to the rash and negligent driving of its driver, it dashed against a lady who was taking tea and thereafter, against a tamarind tree. Due to the impact, the first respondent in these appeals / claimants sustained

fractures and multiple injuries all over the body. They filed claim petitions before the Tribunal separately. The Tribunal, based on the oral and documentary evidence, has awarded a total compensation of Rs.43,000/-, Rs.48,000/-, Rs.42,000/-, Rs.48,000/- and Rs.13,000/- respectively, with interest at the rate of 9% per annum from the respective dates of petitions. The said sums have been directed to be paid by the owner of the vehicle and the Insurance Company, jointly and severally.

4. Aggrieved over the same, the Insurance Company has filed these appeals.

5. The learned counsel for the Appellant/Insurance Company submitted that the Tribunal has erred in holding that the appellant is liable to pay compensation to the claimants, in spite of the fact that the second respondent / owner of the vehicle has committed breach of policy conditions. It is also submitted that the compensation amounts awarded by the Tribunal are excessive.

6. The learned counsel for the first respondent(s)/claimants submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned award, which do not require any interference in the hands of this Court.

7. This Court has also heard the learned counsel for the second respondent / owner of the vehicle, on the submissions made by the learned counsel for the appellant and the learned counsel for the first respondent(s)/claimants and perused the materials available on record, carefully and meticulously.

8. 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 van and the same is not disputed by both the sides. In respect of the contention of the Insurance Company that the Insurance Company is not liable to pay compensation to the claimants since the owner of the vehicle had violated the policy conditions, the Tribunal examined R.W.1-Rajendran, working as Assistant in the Insurance Company. During the cross examination, he deposed before the Tribunal that he did not know directly as regards the non-possession of the valid driving licence by the driver of the vehicle and also as to whether 25 persons had travelled in the vehicle beyond the permissible limit or not. Further, it is seen that the policy covers third parties. Considering the materials and evidence available on record, the Tribunal came to the conclusion that the Insurance Company has failed to prove that the driver of the van was not

possessing the valid driving licence at the time of accident. Taking note of the fact that there was valid insurance policy coverage for the vehicle during the time of accident and the policy coverage was available for the third parties also and also considering the fact that the Insurance Company has failed to prove the non-possession of valid driving licence by the driver of the vehicle, the Tribunal directed both the owner of the vehicle and the insurer to pay the compensation, jointly and severally, to the claimants. This Court is not inclined to interfere with the said factual finding arrived at by the Tribunal.

9. With regard to the quantum of compensation, this Court is of the view that the compensation awarded by the Tribunal under various heads to the claimants are based on a threadbare analysis of the materials and evidence. The Tribunal has relied upon the exhibits, evidence of witnesses, treatment records, percentage of disability assessed by the Doctor and all other aspects in a proper perspective and has awarded compensation to the claimants. Further, this Court is of the considered view that the compensation amounts awarded to the claimants are reasonable and justifiable and hence the same are confirmed.

10. In the result, the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed. The Appellant/Insurance Company is directed to deposit the compensation amounts, along with interest and costs, as awarded by the Tribunal, less the amounts already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. The first respondent minor in C.M.A.No.820 of 2003 would have attained majority by now. Hence, on such deposit being made, the first respondent in these appeals / claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

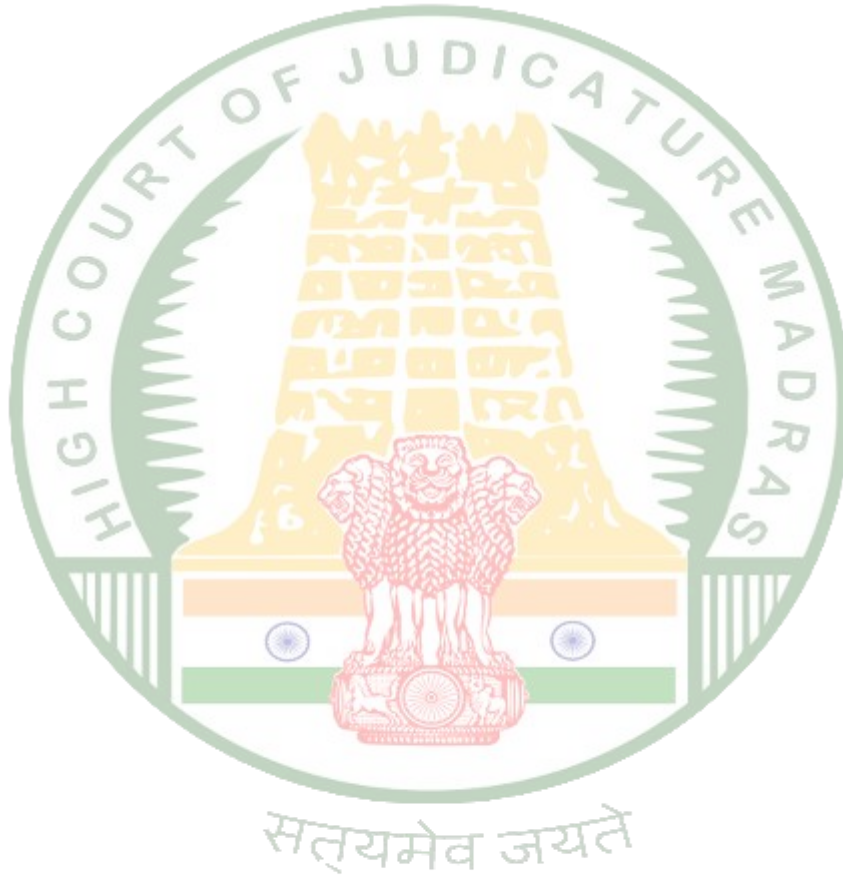
To

1. The Principal Sub-Judge,
Motor Accidents Claims Tribunal,
Salem.

+1cc to Mr.S.Arunkumar, Advocate SR.59349
+2cc to Mr.J.Ramakrishnan, Advocate SR.58929 & 58930
+1cc to Mr.K.Selvaraj, Advocate SR.59309

C.M.A.Nos.820 to 824 of 2003

TM(CO)
CB(12/06/2020)



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