



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.1246 to 1248 of 2005

C.M.A.No.1246 of 2005:

The Oriental Insurance Co.Ltd. ... Appellant

Vs

1.Ramayee
2.Ilaiyaraja
3.Balamurugan
4.S.Ramasamy
5.The General Manager,
Southern Railways,
Salem. ... Respondents

C.M.A.No.1247 of 2005:

The Oriental Insurance Co.Ltd. ... Appellant

Vs

1.Ammasi
2.Godhandam
3.Ramalingam
4.S.Ramasamy
5.The General Manager,
Southern Railways,
Salem. ... Respondents

C.M.A.No.1248 of 2005:

The Oriental Insurance Co.Ltd. ... Appellant

Vs

1.Adhimoolam
2.Kasiyammal
3.S.Ramasamy
4.The General Manager,
Southern Railways,
Salem. ... Respondents



WEB COPY

CMA No.1246 of 2005 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 11.02.2004 made in MCOP No.248 of 2003 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Kallakurichi.

CMA No.1247 of 2005 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 11.02.2004 made in MCOP No.250 of 2003 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Kallakurichi.

CMA No.1248 of 2005 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 11.02.2004 made in MCOP No.251 of 2003 on the file of the Motor Accidents Claims Tribunal, Fast Track Court, Kallakurichi.

For Appellant : Mr.S.Arunkumar
in all appeals

For Respondents: Mr.A.G.Rajan for
in all appeals R1 to R3 in CMA Nos.1246 and
1247 of 2005 and
R1 and R2 in CMA No.1248/2005

COMMON JUDGMENT

The case in brief, is as follows:

On 09.06.2001 at 5.30 hours, the deceased Periyasamy, Kaliyan and Venkatesan, were travelling in the tractor belonging to the fourth respondent in CMA Nos.1246 and 1247 of 2005 and the third respondent in CMA No.1248 of 2005, bearing Reg.Nos.TN-32-X-1699, TN-32-X-0115 (Tractor and Tractor), in Vridhachalam. The driver of the tractor proceeded the tractor-trailor in a Railway level crossing near Asakalathur. At that time, a train was coming in the track. On seeing the same, instead of stopping the vehicle, the driver proceeded the tractor-trailor in the level crossing, thinking that he could cross it, before the train reaches. But he was not able to cross the level crossing, before the train reached. The train dashed against the tractor, due to which it turned turtle and all the deceased sustained fatal injuries and died. The respective legal heirs of the deceased filed claim petitions before the Tribunal. The Tribunal awarded a compensation of Rs.1,40,000/- in respect of the legal heirs of the deceased in CMA No.1246 of 2005, Rs.1,31,000/- in respect of the legal heirs of the deceased in CMA No.1247 of 2005 and Rs.1,34,000/- in respect of the legal heirs of the deceased in CMA No.1248 of 2005, with interest at the rate of 9% per annum from the date of petition.



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

3.The learned counsel for the appellant has submitted that the owner of the tractor has violated the policy conditions by permitting more than 30 passengers to be travelled in the trailer and hence the appellant Insurance Company is not liable to pay any compensation to the claimants. He has not questioned the quantum of compensation awarded by the Tribunal.

4.The learned counsel for the claimants in these appeals, has submitted that the Tribunal has correctly considered the materials and evidence available on record and has correctly arrived at the compensation and hence the same does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellant Insurance Company and the learned counsel for the claimants and perused the materials available on record carefully and meticulously.

6.R.W.1-Manoharan, was examined on behalf of the Insurance Company, before the Tribunal. He deposed before the Tribunal that he is the Senior Assistant of the Insurance Company; that the policy in question does not cover loadman to travel in the vehicle; that the policy covers only the driver of the vehicle; that the vehicle has been insured only to use it for agricultural purpose and hence the Insurance Company is not liable to pay any compensation to the claimants. But the Insurance Company has not adduced proper documentary evidence before the Tribunal to substantiate that the deceased travelled in the vehicle, as unauthorised passengers. Hence, the Tribunal has taken note of the deposition of the claimants that the deceased were working as loadman in the tractor-trailer, and accordingly came to the conclusion that the Insurance Company is liable to pay compensation. This Court is not inclined to interfere with the said finding rendered by the Tribunal. Since the quantum of compensation is not questioned by the learned counsel for the appellant Insurance Company, this Court confirms the compensation awarded by the Tribunal in all these MCOPs.

7.In the result, the Civil Miscellaneous Appeals are dismissed. No costs.

8.It is stated that the entire compensation amounts have been deposited and the respective claimants have withdrawn 50% of their shares, out of the deposited amounts. If that be so, the claimants are permitted to withdraw their respective balance amounts from the deposit, on making proper application before the Tribunal.



9.If the compensation is not deposited, the appellant Insurance Company is directed to deposit the same with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants in these appeals are permitted to withdraw their respective amounts, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal
Fast Track Court, Kallakurichi.

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

+3cc to Mr.Rajan, Advocate Sr.57792, 57793, 57791
+1cc to Mr.Arunkumar, Advocate Sr.57705

C.M.A.Nos.1246 to 1248 of 2005

mg[col]
srg 17/12/2019