



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2019

WEB COPY

CORAM:
THE HONOURABLE MR. JUSTICE R.MAHADEVAN

C.M.A.Nos.1292 & 1293 of 2005

Branch Manager,
The Oriental Insurance Co Ltd.,
3-L, Sidda Veerappa Chetty Street,
Dharmapuri.

.. Appellant
in both C.M.As

Vs.

1.Minor Mangai rep. by
father & natural guardian Perumal

.. 1st Respondent in
C.M.A.No.1292 of 2005

Minor Govindasamy rep. by
mother and natural guardian Indira

.. 1st Respondent in
C.M.A.No.1293 of 2005

2.M.Rajalingam

3.Branch Manager,
National Insurance Co. Ltd.,
No.62, T.S.R.Big Street,
Kumbakonam, P.C.No.612 001.

4.P.Thiruvarasan

..Respondents 2 to 4
in both C.M.As

4th respondent remained ex parte in lower court;
respondents 2 & 3 given up as
unnecessary in C.M.A itself

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.08.2003 made in M.C.O.P.Nos.1370 & 1575 of 2002 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Krishnagiri at Dharmapuri.

For Appellant : Mr.N.Vijaya raghavan

For R1 : No Appearance

For R2 & R3 : Given up

For R4 : Exparte



COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the judgment and decree dated 29.08.2003 made in M.C.O.P.Nos.1370 & 1575 of 2002 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Krishnagiri at Dharmapuri, arising out of the same accident. Hence, they were heard together and are disposed of by this common judgment.

2.The facts leading to the filing of the present appeals are as follows:

On the fateful day i.e., on 7.6.2001, the claimants/first respondent(s) along with others, were travelling in a tempo bearing Regn.No.TN29 U 8004 belonging to the fourth respondent and insured with the appellant insurance company. At about 5.00pm, when the vehicle was plying on Dharmapuri-Thirupattur Main Road, near S.Kottavur Poultry Farm, another tempo bearing Regn.No.TN43 6727 belonging to the second respondent and insured with the third respondent insurance company, came in a rash and negligent manner from the opposite direction and dashed against the tempo, in which, the claimants were travelling. Due to the said impact, the claimants sustained grievous injuries. Stating so, they filed claim petitions, claiming compensation of Rs.2,00,000/- each. The Tribunal, on consideration of the materials and evidence available on record, has held that the accident had occurred due to the rash and negligent driving of the drivers of both the vehicles and accordingly, fastened the liability on the insurers/appellant and the third respondent herein at 50% each and ultimately quantified the total compensation at Rs.89,500/- (MCOP.No.1370/2002) and Rs.43,720/- (MCOP.No.1575/2002) with interest at 9%pa from the date of petition. Insofar as the appellant is concerned, they were directed to pay their liability of 50% compensation initially and thereafter, recover the same from the owner of the vehicle, as the claimants had travelled in the vehicle bearing Regn.No.TN29 U 8004 as gratuitous passengers, in violation of the policy conditions. Challenging the finding of the Tribunal with regard to pay and recovery at 50% on the appellant insurance company, both the appeals came to be filed before this Court.

3.Today, when the appeals are taken up for consideration, the learned counsel for the appellant /Insurance company fairly submitted that the appellant / Insurance company has already preferred a batch of petition in CRP.(NPD)Nos.939 to 943 of 2005 against the very same award dated 29.08.2003 passed in MCOP.Nos.1140, 1133, 1135, 1136 and 1141 of 2002, arising out of the same accident and this Court dismissed the said revision



petitions vide common order dated 31.08.2017.

4. Since the issue involved herein has already been decided by this Court in CRP (NPD) Nos.939 to 943 of 2005 dated 31.08.2017, this Court is inclined to decide the present Civil Miscellaneous Appeals on the similar lines.

5. Accordingly, both the appeals are dismissed. No costs. Consequently, the award passed by the Tribunal is confirmed. The appellant-Insurance Company is directed to deposit 50% of the award amount along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. It is represented that the minor claimants have attained majority as of now. Hence, on such deposit being made, the Tribunal shall transfer the same to the respective bank account of the first respondent(s)/claimants through RTGS within a period of one week thereafter. It is needless to state that the appellant insurance company can recover the compensation paid to the claimants in accordance with law.

Sd/-
Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

srk/rst

To

1. The I Additional District Judge,
(Motor Accidents Claims Tribunal)
Krishnagiri, Dharmapuri District.

2. The Section Officer,
V.R. Section,
High Court, Madras.

C.M.A.Nos.1292 & 1293 of 2005

PP (CO)
GN (14/02/2022)