IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.1907 to 1915 of 2005

National Insurance Co. Ltd.,
Mettur, Salem District. .. Appellant in all CMAs.

Vs.

M.Chinnu ..1st Respondent in CMA.No.1907 of 2005

Selvam ..1st Respondent in CMA.No.1908 of 2005

Nallakali alias
Nallakalai Chettiar ..1st Respondent in CMA.No.1909 of 2005

A.Jayasankar ..1st Respondent in CMA.No.1910 of 2005

Vellaiamma ..1st Respondent in CMA.No.1911 of 2005

Chinnan ..1st Respondent in CMA.No.1912 of 2005

Mathesh ..1st Respondent in CMA.No.1913 of 2005

Paramasivam ..1st Respondent in CMA.No.1914 of 2005

Murugaiyammal ..1st Respondent in CMA.No.1915 of 2005

Nallappan ..2nd Respondent in All CMAs.

Prayer: Civil Miscellaneous Appeal are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.01.2003 in M.C.O.P.No.276 of 1993 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Dharmapuri.

For Appellant : Mr.R.Sunil Kumar (in All CMAs.)

For R1 : Mrs.Mythili Suresh
(CMA.Nos.1904 & 1909 of 2005)

For R1 : Mr.M.Selvam,
(CMA.No.1908 of 2005)

For R1 : No Appearance
(CMA.No.1912 of 2005)

For R1 : Died (CMA.No.1915 of 2005)

For R2 : No appearance in all CMAs.

C O M M O N   J U D G M E N T

Since all these Civil Miscellaneous Appeals have been filed against the common Judgment dated 28.01.2003 arising out of the same accident, they were heard together and are disposed of, by this common judgment.

2.The facts leading to filing these appeal are as follows:

On the fateful day, ie., on 07.07.1993, at about 4.30pm, the first respondent(s)/claimant(s) were travelling in the Mahendra Van bearing No.M.D.E.7085, belonging to the second respondent and insured with the appellant insurance company, after paying the charges. Due to the rash and negligent driving by its driver, the van got down in a ditch, while turning the vehicle in a curve. As a result of the same, the claimant(s) and the other passengers in the van sustained injuries. Hence, they filed claim petitions claiming compensation. On consideration of the materials and evidence available on record, the Tribunal awarded the following compensation with interest at 9% pa from the date of petition, to the first respondent(s)/claimant(s)/ injured, holding that the appellant insurance company was liable to pay the compensation initially and recover the same from the second respondent (owner of the vehicle):

CMA.No.	M.C.O.P No.	Compensation claimed	Compensation awarded by the Tribunal
1907/2005	276/1993	Rs.1,50,000/-	Rs.1,47,500/- (wrongly mentioned as Rs.47,500/- in the decree)
1908/2005	208/1994	Rs.20,000/-	Rs.19,000/-
1909/2005	277/1993	Rs.75,000/-	Rs.74,000/-
1910/2005	210/1994	Rs.20,000/-	Rs.16,000/-
1911/2005	209/1994	Rs.20,000/-	Rs.18,000/-
1912/2005	213/1994	Rs.20,000/-	Rs.18,000/-
1913/2005	211/1994	Rs.20,000/-	Rs.17,500/-
1914/2005	212/1994	Rs.20,000/-	Rs.17,500/-
1915/2005	214/1994	Rs.20,000/-	Rs.19,000/-

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

3. The learned counsel for the appellant has not disputed the quantum of compensation awarded by the Tribunal. However, he submitted that the second respondent (owner of the van) has paid premium to use the vehicle for private purpose, whereas the

driver of the van used it for commercial purpose by collecting charges from the injured on the date of accident, which is a clear violation of the policy condition. He also submitted that at the time of accident, the driver of the van was not having valid and effective driving license and hence, the Insurance Company is not liable to pay any compensation to the first respondent(s)/claimant(s)/injured.

4. The learned counsel for the first respondent(s)/ claimant(s) in CMA.Nos.1907, 1908 and 1909 of 2005 submitted that the Tribunal after evaluating the oral and documentary evidence, has rightly fastened the liability on the appellant insurance company and awarded the just compensation and hence, the same do not call for any interference by this Court.

5. Heard the learned Counsel for the appellant and the learned counsel for the first respondent(s)/claimant(s) in some of the appeals and perused the materials available on record carefully and meticulously.

6. Despite service of notice, there is no representation on behalf of the first respondent/claimant in CMA.No.1912/2005. In some of the appeals, the appellant Insurance Company has not taken proper steps to serve papers to the unserved respondents, even at this length of time. However, considering the passage of time, this Court is inclined to proceed with these appeal on merits.

7. The first respondent(s)/claimant(s) have examined before the Tribunal, according to whom, on the date of accident, they travelled in the offending van by paying charges, as the town bus had not come; due to the rash and negligent driving on the part of the driver, the van got down into the ditch, resulting in grievous injuries to them. Their evidence was supported by Ex.P1 First Information Report, which was registered against the driver of the van. Considering those oral and documentary evidence, the Tribunal has rightly come to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the van and the same does not require any interference in the hands of this Court.

8. As regards the liability of the insurance company, the Tribunal, placing reliance on the oral and documentary evidence let-in by both the parties, has observed that the insurance policy was issued to the van involved in the accident, only for private purpose, whereas, the driver of the van used the vehicle for commercial purpose by collecting charges from the injured, which was in violation of the policy condition. After observing so, the Tribunal has rightly fastened the liability on the appellant insurance company to pay compensation to the first

respondent(s)/claimant(s)/injured, with a right to recover the same from the second respondent (owner of the van), which finding this Court is not inclined to interfere. Further, there is no modification with regard to the quantum of compensation and the rate of interest awarded by the Tribunal.

9.In the result, all the Civil Miscellaneous Appeals are dismissed. No costs. It is represented that as per the order of this Court dated 20.07.2005 passed in CMP.Nos.10369 to 10377 of 2005, the appellant/Insurance Company has deposited the entire compensation amount. Further, by order dated 24.11.2005, this Court permitted the claimant(s) to withdraw 50% of their share from the deposited award amount with proportionate interest and costs and also directed the Tribunal to invest the balance 50% of the deposited award amount in any nationalised bank initially for a period of three years, renewable thereafter under any reinvestment scheme till the disposal of the appeals. In view of the same, the Tribunal shall transfer the amount lying in the deposit to the respective bank accounts of the first respondent(s)/claimant(s) through RTGS within a period of one week thereafter. As it is reported that the first respondent in CMA.No.1915 of 2005 died, the Tribunal shall transfer the award amount to the legal heirs of the first respondent, on making proper application. It is open to the appellant Insurance Company to recover the compensation amount from the owner of the vehicle, in accordance with law, as ordered by the Tribunal.

Sd/-
Assistant Registrar (CS.VIII)

/True Copy/

Sub Assistant Registrar

To

The Additional District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.

Copy to : The Section Officer, V.R.Section,
High Court of Madras, Chennai.

AKM/05.03.21/ 4P-3C/

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