

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.1676 and 1677 of 2008 and
M.P.No.1 + 1 of 2008

In CMA 1676 of 2008

The Branch Manager,
National Insurance Company Limited,
Branch Office,
88-F, Bye Pass Road,
Dharmapuri- 636701. Appellant / 2nd respondent

Vs.

1. Kuil
2. Minor. Ramani
3. Minor Hariram
respondents 1 and 2 are represented by
their mother Kuil Respondents 1 to 3/claimants
4. V.Palani 4th respondent/first respondent

In CMA 1677 of 2008

The Branch Manager,
National Insurance Company Limited,
88-F, Bye Pass Road,
Dharmapuri- 636701. Appellant / 2nd respondent

Vs.

1. Palaniammal
- 2 Minor Srinivasan
3. Minor Chitra
minors (2nd and 3rd respondents)are represented
by N.F.Palaniammal
4. Shanthi
5. Minor Vetrivel
6. Minor Prakash
minors (5th and 6th respondents) are represented
by Shanthi.

7. Pachaiammal ... Respondents 1 to 7/Claimants
8. V.Palani. ... 8th respondent/ 1st respondent

PRAYER in CMA 1676 and 1677: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the orders passed by the I Additional District Judge, Motor Accidents Claims Tribunal, Dharmapuri at Krishnagiri in MCOP No.1334 of 2003 and 1335 of 2003 dated 09.08.2007

For Appellant : Ms.D.Bhaskaran

For Respondents : No appearance

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

The appellant in both the appeals are National Insurance Company Limited, Darmapuri and they are the second respondent in MCOP No.1334/2005 and 1335/ 2003 filed under Section 163-A of the Motor Vehicles Act on the file of the I Additional District Judge, Motor Accident Claims Tribunal, Dharmapuri at Krishnagiri.

2. The respondents in both the present appeals in CMA 1676/2008 and 1677/2008, filed the above claim petitions in MCOP No.1334/2003 and 1335 /2003 respectively seeking compensation for the death of one Selvam @ Selvakumar and one Kannan, who were travelling as a pillion rider in a two wheeler TVS Victor bearing registration No.TN-29-M-3569.

3. The brief case of the claimants /appellants in both the claim petitions is as follows. On 06.01.2003, both the deceased Selvam @ Selvakumar and Kannan were travelling as pillion riders in a motor cycle bearing registration No.TN-29-M-3569 on Sennampatti-Morappur road. At about 19.30 hours, while they were nearing Government Girls Higher Secondary School, Morappur, the rider of the motor cycle drove the vehicle rashly and negligently, as a result of which, the motor cycle hit a Tamarind tree and both the deceased were thrown out of the vehicle and died on spot. According to the claimants, the rash and negligent driving of the rider of the two wheeler bearing registration No.TN-29-M-3569 was the cause of the accident and that since he had insured his vehicle with the present appellant, both of them are jointly and severally liable to pay compensation to them.

4. The owner of the two wheeler, first respondent in both the claim petitions remained absent before the tribunal and therefore, he was set exparte. The present appellant, insurance company contested the claim petition.

5. The tribunal while awarding a sum of Rs.4,39,000/- in MCOP No.1334 / 2003 and a sum of Rs.4,72,000/- in MCOP No.1335 / 2003 held that since the policy in the instant case is a comprehensive / package policy, the present appellant is liable to pay compensation to the claimants in both the claim petitions. Aggrieved over the orders passed by the tribunal, the National Insurance Company Limited, Dharmapuri has filed both the present appeals.

6. Mr.D.Baskaran , learned counsel appearing for the appellant would contend that both the deceased were travelling as pillion riders in the two wheeler bearing registration No.TN-29-M-3569, and since the seating capacity in the two wheeler is only one, apart from the driver, the insurance company cannot be held liable to pay compensation to both the claimants of the victims. He also relied on the following decisions.

i) Oriental Insurance Company Limited Vs. Sudhakaran K.V. and others reported in (2008) 7 Supreme Court Cases 428.

ii) Bhagyalakshmi and others Vs. United India Insurance Company Limited and another reported in (2009) 1 TNMAC 659 S.C.

and contended that a pillion rider cannot be considered as a third party when the rider of the two wheeler is at fault and that the insurance company cannot be burdened with liability for the persons, who are not authorised to travel in a vehicle beyond the seating capacity, as there is no privity of contract between the insurer and the insured.

7. In a two wheeler, there can be only one pillion-rider and in the instance case, a perusal of the records shows that two persons were travelling as pillion-riders. Therefore, the insurance company cannot be fastened with liability over and above the permitted seating capacity in a vehicle.

8. In the decision in United India Insurance Company Vs. Nagammal and others reported in 2009 (1) CTC 1, a Larger Bench of this court has held that the insurance company would not be held liable to pay compensation to those who travelled beyond the seating capacity of the vehicle.

9. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel for the appellant. Hence, the quantum of compensation awarded in MCOP No.1334/2003 and MCOP No.1345/2003 by the tribunal is upheld. However, since the seating capacity in the two wheeler for pillion rider is only one, the present appellant is liable to pay compensation of Rs.4,72,000/- to the claimants in MCOP No.1335 of 2003 with interest at the rate of 7.5% per annum and

the owner of the two wheeler is liable to pay compensation of Rs.4,39,000/- to the claimants in MCOP No.1334 of 2003 with interest at the rate of 7.5% per annum.

10. In the result,
CMA No.1676 of 2008

(i) The appeal in CMA No.1676 of 2008 is allowed. No costs. The connected miscellaneous petition is closed.

(ii) The quantum of compensation awarded by the tribunal is upheld and the owner of the two wheeler is directed to pay compensation of Rs.4,39,000/- to the claimants in MCOP No.1334 of 2003 with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of 4 weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the owner of the two wheeler, the claimants are at liberty to withdraw the same, as per the apportionment made by the tribunal, after following due process of law.

(iv) The appellant, the insurance company is exonerated from paying compensation to the claimants.

(v) The appellant is entitled to withdraw the compensation amount, if already deposited by them.

CMA 1677 of 2008

(i) The appeal in CMA No.1677 of 2008 is dismissed. No costs. The connected miscellaneous petition is closed.

(ii) The quantum of compensation awarded by the tribunal is upheld and the insurance company, present appellant is directed to pay the compensation of Rs.4,72,000/- to the claimants in MCOP No.1335 of 2003 with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, less the amount already deposited by them, within a period of 4 weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimants are at liberty to withdraw the same, as per the apportionment made by the tribunal, after following due process of law.

WEB COPY
Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mst

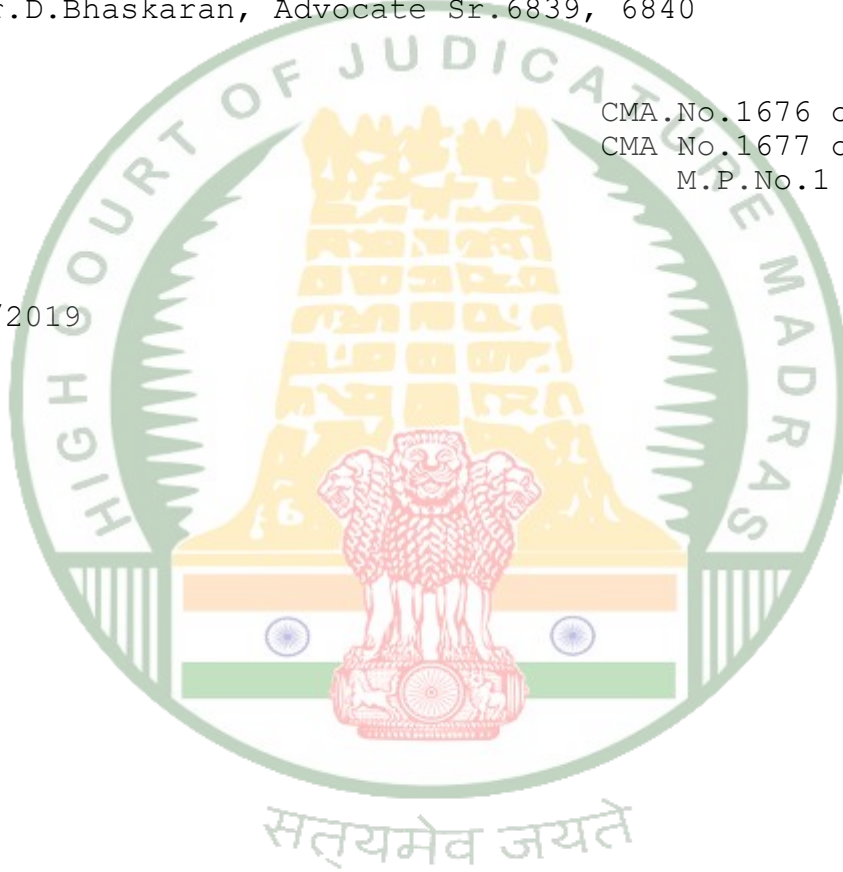
To

1. The I Additional District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri at Krishnagiri.
2. Section Officer,
VR Section, High Court, Madras.

+2cc to Mr.D.Bhaskaran, Advocate Sr.6839, 6840

CMA.No.1676 of 2008 and
CMA No.1677 of 2008 and
M.P.No.1 + 1 of 2008

mp[col
srg 01/04/2019



WEB COPY