

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 22.07.2019
DELIVERED ON : 25.07.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2593 to 2599 of 2008
and
M.P.Nos.1, 1, 1, 1, 1, 1 and 1 of 2008

The Manager,
United India Insurance Co.Ltd.,
38, Anna Salai,
Chennai-2. ... Appellant/2nd respondent in all the appeals

Vs

1.Harikrishnan
2.Rajeswari ... Respondents 1&2/ Petitioners
3.R.Rajkumar
(Ex-parte in the Lower Court) ...3rd respondent/1st Respondent
in C.M.A.No. 2593 of 2008

1.Vennila ...1st Respondent/ Petitioner
2.R.Rajkumar
(Ex-parte in the Lower Court) ...2nd Respondents/1st Respondent
in C.M.A.No.2594 of 2008

1.D.Vasanth ...1st Respondent/ Petitioner
2.R.Rajkumar
(Ex-parte in the Lower Court) ...2nd Respondent/1st Respondent
in C.M.A.No.2595 of 2008

1.N.Senbagavalli ...1st Respondent/ Petitioner
2.R.Rajkumar
(Ex-parte in the Lower Court) ...2nd Respondent/1st Respondent
in C.M.A.No.2596 of 2008

1.Alamelu ...1st Respondent/ Petitioner
2.R.Rajkumar
(Ex-parte in the Lower Court) ...2nd Respondent/1st Respondent
in C.M.A.No.2597 of 2008

1.K.Anitha ...1st Respondent/ Petitioner
2.R.Rajkumar
(Ex-parte in the Lower Court) ...2nd Respondent/1st respondent
in C.M.A.No.2598 of 2008

1.Chellammal
2.R.Rajkumar
(Ex-parte in the Lower Court) ... 2nd Respondent/1st Respondent in
C.M.A.No.2599 of 2008

C.M.A.No.2593 of 2008 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 01.03.2005 made in OP No.384 of 2004 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruvallur.

C.M.A.No.2594 of 2008 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 01.03.2005 made in OP No.385 of 2004 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruvallur.

C.M.A.No.2595 of 2008 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 01.03.2005 made in OP No.386 of 2004 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruvallur.

C.M.A.No.2596 of 2008 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 01.03.2005 made in OP No.387 of 2004 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruvallur.

C.M.A.No.2597 of 2008 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 01.03.2005 made in OP No.388 of 2004 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruvallur.

C.M.A.No.2598 of 2008 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 01.03.2005 made in OP No.389 of 2004 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruvallur.

C.M.A.No.2599 of 2008 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 01.03.2005 made in OP No.391 of 2004 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruvallur.

For Appellant : Mr.R.Ravichandran
in all appeals

For Respondents : Mr.R.Neelakandan for R1 & R2
in all appeals in C.M.A.No.2593 of 2008
and for R1 in C.M.A.Nos.2594
to 2599 of 2008

COMMON JUDGMENT

The facts of the case in brief, are as follows:

On 23.06.2003 at about 16.30 hours, the deceased Kalpana and the first respondent in C.M.A.Nos.2594 to 2599 of 2008 (7 persons) were walking along the extreme left side of the Thiruvallangadu Road near Varadapuram Rice Mill. At that time, the lorry bearing Reg.No.TDA-1456, belonging to the third respondent in C.M.A.No.2593 of 2008 and the second respondent in the other appeals, driven by its driver in a rash and negligent manner, came from behind and dashed against the deceased and the first respondent in C.M.A.Nos.2594 to 2599 of 2008 (7 persons), and got capsized. Due to the said impact, all of them sustained grievous injuries. The deceased was taken to KMC Hospital, Chennai and she died in the hospital. The legal heirs of the deceased (father and mother) and the injured have filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded compensation and the details of the same are as under:

CMA No.	OP No.	Amount of compensation (Rs.)
2593 of 2008	384/2004	2,60,000/-
2594 of 2008	385/2004	25,000/-
2595 of 2008	386/2004	25,000/-
2596 of 2008	387/2004	25,000/-
2597 of 2008	388/2004	25,000/-
2598 of 2008	389/2004	25,000/-
2599 of 2008	391/2004	25,000/-

These amounts have been awarded, with interest at the rate of 9% per annum from the respective dates of petitions.

2.Challenging the awards passed by the Tribunal, the appellant Insurance Company has come up with these appeals.

3.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erred in holding that the Insurance Company is liable to pay compensation to the claimants. He also submitted that the Tribunal, having given a finding that the victims were travelling in the vehicle as gratuitous passengers, ought to have exonerated the Insurance Company from payment of compensation. In this connection, he relied upon the decision of the Division Bench of this Court in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi, reported in 2018 (2) TN MAC 731 (DB). He further submitted that

the compensation given by the Tribunal to the legal heirs of the deceased, particularly the sum of Rs.80,000/- towards non-pecuniary loss known as conventional damages, is contrary to law.

4.The learned counsel for the claimants in these appeals, has submitted that the Tribunal has considered the materials and evidence in proper perspective and has awarded the just, fair and reasonable compensation and hence the same need not be interfered with, by this Court.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.In respect of MCOP No.386 of 2004 (C.M.A.No.2595 of 2008), the name of the claimant is stated as D.Vasanthi, D/o.Dharman in the claim petition. Even in the cause title of the judgment passed by the Tribunal, the claimant's name is mentioned as Vasanthi. But in the cause title in C.M.A.No.2595 of 2008, the name of the claimant is stated as D.Vasanth, S/o.Dharman.

7.All the injured deposed before the Tribunal that while they were travelling in the the lorry bearing Reg.No.TDA-1456, the accident occurred and the lorry turned turtle. On consideration of the materials and evidence available on record, the Tribunal came to know that they were engaged in building construction work and they were returning in the lorry after completing their work. The Tribunal has also given a finding that had the driver of the lorry was careful and followed the traffic rules in driving the vehicle, the accident would not have occurred. Finally, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the lorry, which factual finding is not disputed by the learned counsel on either side.

8.It was put forth on behalf of the Insurance Company before the Tribunal that the lorry is a goods carriage vehicle and the deceased Kalpana and the injured have travelled in the lorry as unauthorised passengers. As per the insurance policy, the driver or owner of the lorry has no right to carry passengers in the goods carriage. It was submitted that 10 persons travelled in the lorry from Mullapalayam to Thiruvallangadu Koot Road, including the driver. Allowing such 9 persons to travel in the lorry by the driver, is against the terms and conditions of the insurance policy and hence the Insurance Company is not liable to pay any compensation to the claimants.

9.Even though the Tribunal has accepted the contention of the Insurance Company that there was violation of policy conditions, it has observed that the claimants should not be affected due to the negligence on the part of the lorry driver and since the Insurance Company has not proved that there was no

insurance coverage for the vehicle, the Insurance Company has to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle.

10. But the fact remains that there was violation of policy conditions by the owner of the vehicle. Hence, the decision of the Division Bench of this Court in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi, reported in 2018 (2) TN MAC 731 (DB), which has been relied upon by the learned counsel for the appellant Insurance Company, will come to their aid.

11. The Hon'ble Supreme Court held in the case of Oriental Insurance Co.Ltd. v. Brij Mohan & Ors., reported in 2007 (2) TN MAC 66 (SC) : 2007 (7) SCC 56, that the intention of the Parliament was that the words "any person" occurring in Section 147 will not cover all persons, who are travelling in a goods carriage in any capacity whatsoever. The Division Bench of this Court in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi (cited supra) has taken note of this aspect and dealt with the issue in detail, by taking note of the various judgments of the Hon'ble Supreme Court and this Court and finally held that the direction given by the Tribunal to the Insurance Company to pay the compensation and to recover the same from the owner of the vehicle, is not correct. The Division Bench has also observed that even though in many cases, the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident, the said factual position alone cannot impel the Court to do something against the provisions of the Statute and the decisions of the Larger Benches of the Hon'ble Supreme Court.

12. In the case on hand, it is very clear even from the finding given by the Tribunal that there was violation of policy conditions and the deceased and the injured have travelled as unauthorised passengers. But the Tribunal has ordered for pay and recovery, which, according to this Court is not correct, in view of the law laid down by the Division Bench of this Court in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi, reported in 2018 (2) TN MAC 731 (DB) (cited supra). Hence, this Court holds that the appellant-Insurance Company is not liable to pay any compensation to the claimants.

13. In the result, the appeals are allowed in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation in these appeals, is affirmed and there will be awards only against the owner of the vehicle and the awards against the Insurance Company stand set aside. No costs. Consequently, the connected miscellaneous petitions are closed.

14.If any amounts had already been deposited by the Insurance Company, the Insurance Company is at liberty to withdraw the same by making proper application before the Tribunal.

Sd/-
Assistant Registrar

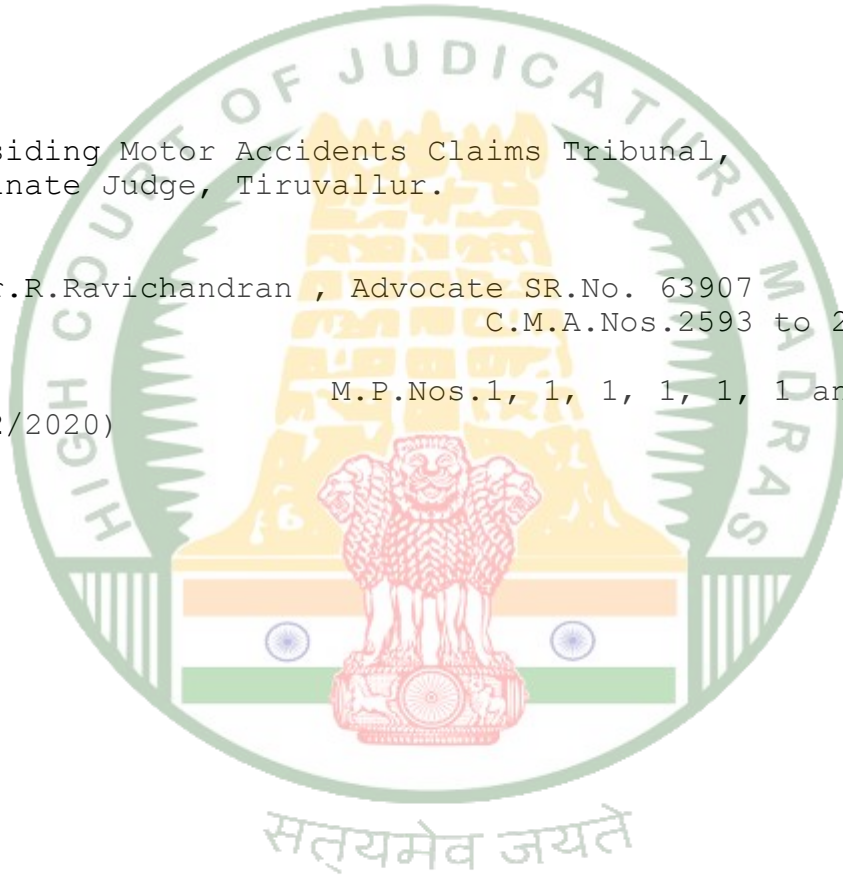
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Sub Assistant Registrar

KM
To

The Presiding Motor Accidents Claims Tribunal,
Subordinate Judge, Tiruvallur.

+1cc to Mr.R.Ravichandran , Advocate SR.No. 63907
C.M.A.Nos.2593 to 2599 of 2008
and
M.P.Nos.1, 1, 1, 1, 1, 1 and 1 of 2008
A.SK(11/02/2020)



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