

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.1492 and 1493 of 2009
and
M.P.Nos.1 and 1 of 2009

The National Insurance Co. Ltd.,
Branch Office, 17-3-654/B,
Opp: to R.T.C. Bus Stand,
Andhra District - 515 201.
Andhra Pradesh State. .. Appellant in both C.M.As/
Respondent II

Vs.

1. Muniraj ..1st Respondent/Petitioner
2. Akram Basha ..2nd Respondent/1st Respondent
..Respondents in C.M.A.No.1492 of 2009

1. Venkatamma ..1st Respondent/Petitioner
2. Akram Basha ..Respondents in C.M.A.No.1493 of
2009

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.06.2007 made in M.C.O.P.Nos. 319 & 320 of 2005, respectively, on the file of the Motor Accidents Claims Tribunal, (First Additional District Judge), Krishnagiri at Dharmapuri District.

For Appellant : Mr.J.Chandran in both CMAs
For R1 : Mr.M.M.Selvam in both CMAs

COMMON JUDGMENT

The facts of the case are that on 15.09.2004 at about 20.30 hours, the deceased-Munirathinamma and Ellappa were travelling along with goods in the vehicle bearing Reg.No.CTX-9308 MGW on the Sarjapuram - Bagalur Road. When the vehicle reached near Kothapalli Village diversion road, due to the rash and negligent driving of its driver, the vehicle capsized. Due to the impact, both the deceased sustained severe injuries and died on the spot. The legal heirs of the deceased filed claim petitions before the Tribunal. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.2,00,000/- with interest at the rate of 7.5% per annum from the date of petition to the claimant in CMA No.1492 of 2009 (MCOP.No.319 of 2005) and a total compensation of Rs.1,37,000/- with interest at the rate of 7.5% per annum from the date of petition to the claimant in CMA No.1493 of 2009 (MCOP.No.320 of 2005). Challenging the same, the appellant Insurance Company has preferred the present appeals.

2.The learned counsel for the appellant has submitted that the deceased had travelled in the vehicle as unauthorised passengers thereby violating the policy conditions and hence the Insurance Company is not liable to pay any compensation to the claimants. He also disputed the quantum of compensation amounts awarded by the Tribunal, stating that the same are excessive.

3.The learned counsel for the first respondent in these appeals/ claimants has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgment, which does not require any interference in the hands of this Court.

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

5.With regard to the argument put forth on the side of the Insurance Company that there was violation of policy conditions by the owner of the vehicle since the deceased travelled as unauthorised passengers, the Tribunal accepted the same and accordingly ordered the Insurance Company to pay the compensation amounts to the claimants and thereafter recover the same from the owner of the vehicle. It is seen from Ex.P3-Insurance Policy that the vehicle in question is a goods carriage vehicle. Further, the claimants have not proved their

case that at the time of accident, the deceased were travelling as authorised passengers. In the circumstances, the Tribunal came to the conclusion that the deceased had travelled in the vehicle as unauthorised passengers. Thereafter, the Tribunal, relying upon the decisions in the case of Oriental Insurance Co.Ltd. v. Dhanabackiam and others, reported in 2007(1) MLJ 65 and in the case of New India Assurance Co.Ltd. v. Chandra and others, reported in 2006 ACJ 370, deemed it fit to direct the Insurance Company to pay compensation to the claimants and thereafter to recover the same from the owner of the vehicle. The Tribunal has correctly considered the materials and evidence and has ordered for pay and recovery, which this Court is not inclined to interfere.

6. With regard to the quantum of compensation amounts, the Tribunal has relied upon the exhibits, evidence of witnesses and all other aspects in a proper perspective and has awarded the above compensation amounts under various heads to the claimants. Further, this Court is of the considered view that the compensation amounts awarded are reasonable and justifiable and hence the same are confirmed.

7. In the result, the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed. The appellant-Insurance Company is directed to deposit the compensation amounts with interest and costs, as ordered by the Tribunal, less the amounts already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent in these appeals / claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal. Thereafter, the appellant Insurance Company shall proceed against the owner of the vehicle, the second respondent herein, for recovery of the compensation amounts, in accordance with law.

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-s/d-

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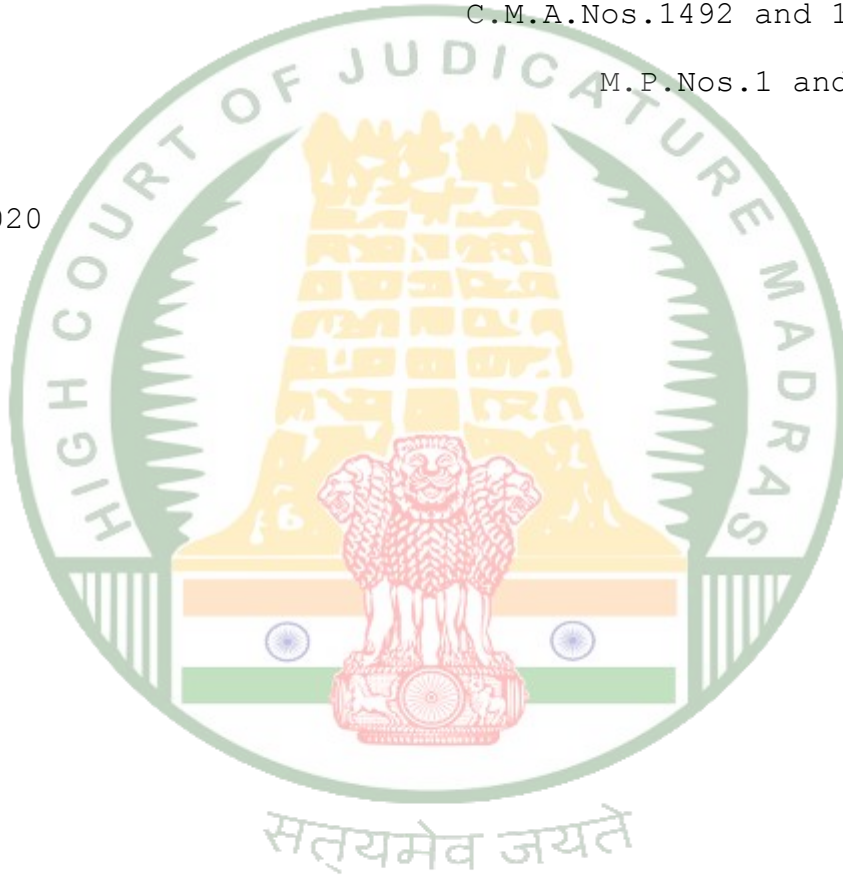
1.The First Additional District - Judge,
Motor Accident Claims Tribunal,
Krishnagiri, Dharmapuri District.

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

+1 cc to M/s.M.Selvam Advocate sr72237,72238

C.M.A.Nos.1492 and 1493 of 2009
and
M.P.Nos.1 and 1 of 2009

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