

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1561 of 2010
and
MP.No.1 of 2010

The New India Assurance Co. Ltd.,
103, Yercaud road, Premier Complex,
Alagapuram Post, Salem 16.

...Appellant/2nd respondent
vs.

- 1.Pachiyammal
- 2.Minor Kannan
- 3.Minor Gokilapriya
(2nd and 3rd respondents represented by their
mother, next friend and guardian, Pachiyammal)
- 4.Pappal ... Respondents 1 to 4/ Petitioners
- 5.Mallikeswaran ...5th Respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 08.09.2008 passed in MCOP.No.69 of 2005 on the file of the Motor Accident Claims Tribunal/ Subordinate Court, Mettur.

For Appellant : Mrs.R.Sreevidhya
For Respondents : Mr.T.S.Vijayaraghavan for R1
R2&R3 Minor Rep.by R1
R5-Exparte
R4-Not Ready in notice

J U D G M E N T

The New India Assurance Company, the second respondent in MCOP.No.69 of 2005 on the file of the Subordinate Court, Mettur has filed the present appeal. The respondents 1 to 4 / claimants filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the death of one Mariappan, husband of the first claimant, father of the second and third claimants and son of the fourth claimant in a road accident on 30.12.1999.

2. The case of the claimants in nutshell is as follows:

The deceased Mariappan was an additional driver in a mini lorry bearing Registration No.TN 27 Y 5367 and on 30.11.2009, he was proceeding towards Thoppur from Koyambedu Market and

at about 01.30 pm, when the mini lorry was nearing Minoor Village on MC Road, the driver of the mini lorry applied sudden brakes, as a result of which, the mini lorry toppled and the deceased Mariappan sustained grievous injuries and died in the Hospital on 13.01.2000.

3. The driver of the mini lorry (fifth respondent) remained absent before the Tribunal and therefore, he was set *ex parte*. The New India Assurance Company contested the claim petition on all the grounds available to the insured. The learned Subordinate Judge / Motor Accident Claims Tribunal, Mettur while awarding a compensation of Rs.4,63,845/- together with interest at the rate of 7.5% per annum to the claimants, directed the New India Assurance Company to pay the compensation. Questioning their liability to pay compensation, the New India Assurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mrs.R.Sreevidhya, learned counsel appearing for the appellant contended that since the Insurance Policy does not cover the passengers in the mini lorry bearing Registration No. TN 27 Y 5367, the Tribunal was wrong in mulcting liability on the Insurance Company.

5. Per Contra, Mr.T.S.Vijayaraghavan, learned counsel appearing for the first respondent contended that since the deceased was an additional driver and the Policy of Insurance covers the cleaner / additional driver, the Tribunal was right in fixing liability on the part of the Insurance Company and therefore prayed for dismissal of the present appeal.

6. A perusal of the Insurance Policy (Ex.P4) shows that it is a 'package policy' and premium has been paid for the persons employed in connection with the operation of the vehicle. Since the deceased was sitting within the seating capacity of the mini lorry and was also stated to be the additional driver, the Tribunal was right in fixing liability on the part of the Insurance Company. Therefore I do not see any reason to interfere with the orders passed by the Tribunal.

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The orders passed by the Tribunal is upheld.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1.The Judge, Motor Accidents Claims Tribunal,
Subordinate Court, Mettur.

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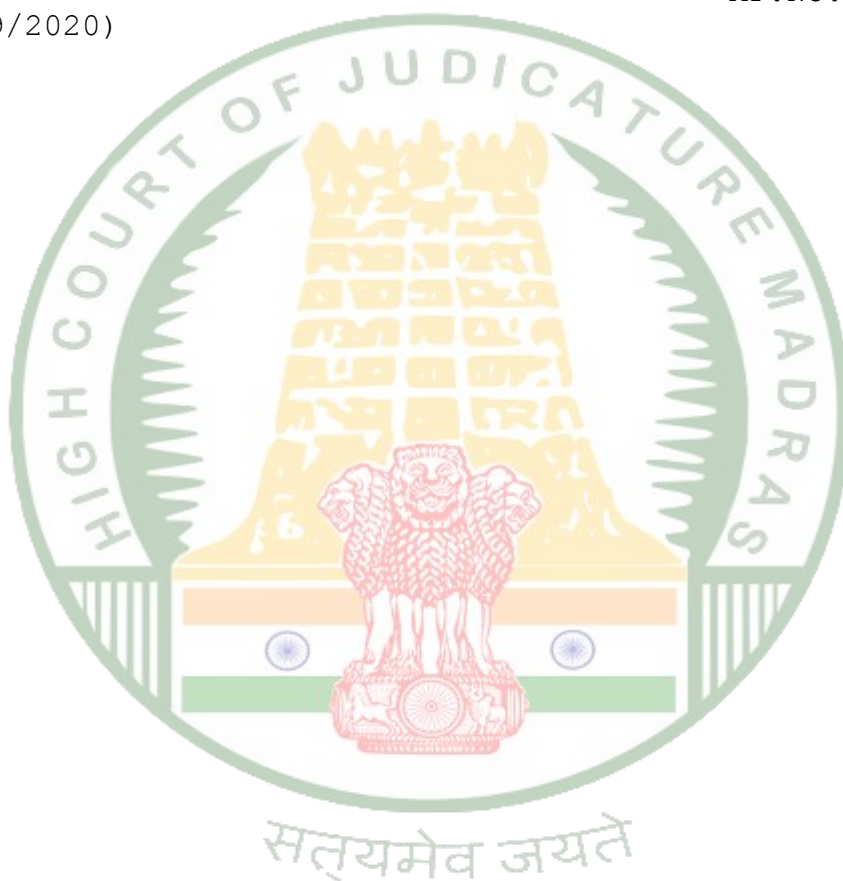
The Section Officer, VR Section, High Court, Madras.

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A.SK (03/09/2020)



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