

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.08.2019

Coram

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

C.M.A. Nos.1785 and 1786 of 2009
M.P.Nos.1 and 1 of 2009

CMA No.1785 of 2009:

The Divisional Manager,
United India Insurance Company Limited,
M.M.Reddy Complex, Old Bangalore Road,
Hosur.

... Appellant/2nd Respondent in both CMAs

Vs

1.Singaram ... 1st Respondent/Petitioner in CMA. 1785/19

2.K.Jagadish ... 2nd Respondent/1st Respondent in CMA.1785/2009

1.Selvam ... 1st Respondent/Petitioner in CMA. 1786/2009

2.K.Jagadish ... 2nd Respondent/1st Respondent in CMA.1786/2009

(2nd Respondent exparte in
the Lower Court)

COMMON PRAYER: This Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act against the Judgment and Decree dated 19.09.2008 passed by the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri in M.C.O.P.Nos.1208 and 1209 of 2003.

For Appellant
in both C.M.As : Mr.N.Vijayaraghavan

For Respondents : R1 - No appearance
in both C.M.As. R2 - Exparte

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

The case of the first respondent in these appeals / claimants is that on 11.11.2002, they were travelling as loadman along with vegetables from Uthangarai to Bangalore in the Tempo bearing Registration No. KA 05 B 5306 belonging to the the second respondent in these appeals and insured with the appellant Insurance Company. When the said vehicle was proceeding in the Royakotta - Hosur Road, due to the rash and

negligent driving of its driver, it hit against a way-farer and dashed against a road side pungan tree, due to which, the first respondent in C.M.A.No.1785 of 2009 sustained head injuries and the first respondent in C.M.A.No.1786 of 2009 sustained lacerated cut injury on his right eye and decloving over the left shoulder and fracture injuries on his left shoulder joint. Both of them filed separate claim petitions claiming compensation. The Tribunal based on the weightage of evidence, probabilities of case, settled principles of law and the evidence and documents account has awarded a total compensation of Rs.20,200/- in respect of the first respondent in C.M.A.No.1785 of 2009 and a total compensation of Rs.8,000/- in respect of the first respondent in C.M.A.No.1786 of 2009, with interest at the rate of 7.5% per annum from the respective dates of petitions. The Tribunal has directed the appellant Insurance Company to pay the compensation to the claimants and to recover the same from the owner of the vehicle, on the ground of violation of policy conditions. Challenging the same, the present appeals have been filed by the appellant Insurance Company.

2. There is no representation for the first respondent(s), despite service of notice and their names having been printed in the cause list.

3. The learned counsel for the appellant in both the appeals submitted that the Tribunal has erred in directing the Insurance Company to pay the compensation to the claimants and to recover the same from the owner of the vehicle, when the fact remained that the claimants have travelled in the vehicle as gratuitous passengers. However, the learned counsel has not disputed the quantum of compensation awarded by the Tribunal.

4. Heard the learned counsel for the appellant and perused the records.

5. With regard to the contention of the Insurance Company that the claimants travelled in the vehicle as gratuitous passengers, since no definite answer has been obtained through cross examination as to whether the claimants travelled in the vehicle as gratuitous passengers or not, the Tribunal held that the contention of the Insurance Company that the claimants have travelled as gratuitous passengers, cannot be sustained. But since, it has been proved through the evidence on record that 11 persons have travelled in the vehicle, which is more than the permissible limit and thus there was violation of policy conditions, the Tribunal has correctly ordered the Insurance Company to pay the compensation to the claimants and thereafter, recover the same from the owner of the vehicle.

6. Since the quantum is not disputed, this Court is not inclined to interfere with the compensation awarded by the Tribunal in both these cases.

<https://hcservices.ecourts.gov.in/hcservices/>

7. In the result, the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected Miscellaneous

Petitions are closed.

8.The appellant / Insurance Company is directed to deposit the entire compensation amounts along with interest and costs, as ordered by the Claims Tribunal, less the amount 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 the same on making proper application before the Tribunal. Thereafter, the Insurance Company shall proceed against the owner of the vehicle, the second respondent in these appeals, to recover the compensation, in accordance with law.

Sd/-

Assistant Registrar (CO MDU)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Motor Accident Claims Tribunal
Additional District Court, Krishnagiri.
2. The Section Officer
V.R.Section
Madras High Court
Chennai 104

+2cc to Mr.M.B.Gopalan, Advocate, S.R.No. 71572

सत्यमेव जयते

C.M.A. Nos.1785 and 1786 of 2009

NRL (CO)
GN(16/10/2020)

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