

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.1232 & 1233 of 2011 and
M.P.Nos.1 & 1 of 2011 in
C.M.A.Nos. 1232 & 1233 of 2011

The Branch Manager,
National Insurance Company Ltd.,
198-A, Nethaji Road,
Thiruvavarur Town and
T.M.Elakka

...Appellant/2nd Respondent
in both CMAs

Vs.

1.Rajendran ... 1st Respondent/Petitioner

2.Arivoli ...2nd
Respondent/Respondent
in C.M.A.No.1232 of 2011

1.Kaikesu ... 1st Respondent/Petitioner

2.Arivoli ...2nd Respondent/2nd Petitioner
in C.M.A.No.1233 of 2011

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 10.01.2008 in M.C.O.P.Nos. 485 & 558 of 2006 respectively, on the file of the Motor Accident Claims Tribunal (Subordinate Court), Mannargudi.

For Appellant
in both CMAs

: Mr.S.Vadivel

For Respondents
in both CMAs

: Mr.D.Lakshmipathy for R1
No appearance for R2

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COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed by the National Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.Nos. 485 & 558 of 2006 respectively, on the file of the Motor Accident Claims Tribunal (Subordinate Court), Mannargudi. They have filed the both appeals questioning the liability as well as the quantum of compensation awarded by the Tribunal.

2. For the sake of convenience, the claimant in M.C.O.P.No.485 of 2006 is referred as the first claimant and the claimant in M.C.O.P.No.558 of 2006 is referred as the second claimant.

3. The brief case of the first and second claimants is as follows:

On 30.04.2005, the first and the second claimants together with some other persons were travelling in the Mini van bearing Registration No. TN 23 C 2736. The driver of the said van drove the vehicle rashly and negligently, as a result of which, the van dashed against a tree. Due to the accident, the first and second claimants sustained injuries. According to them, since, the said van is insured with the present appellant, both the owner of the said van and the present appellant are jointly and severally liable to pay compensation of Rs.50,000/- and Rs.3,00,000/- to them respectively.

4. The National Insurance Company Limited contested the claim petition. The learned Tribunal, after analysing the evidence on record, awarded compensation of Rs.12,000/- and Rs.35,000/- together with interest at the rate of 9% per annum to the first and second claimants respectively. Aggrieved over the quantum of compensation awarded by the Tribunal, the National Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. The learned counsel appearing for the Insurance Company submitted that the said Mini van is a goods carrying vehicle and the seating capacity of the same is only three. He submitted that the claimants were said to have been travelled as the owner of the goods. He would therefore, contend that the first and the second claimants would not be covered under the policy.

6. Per contra, the learned counsel appearing for the first and the second claimants submitted that, including the driver, three persons are permitted to travel in the Mini van bearing

Registration No. TN 23 C 2736 and the said factual position with regard to the contract of the Insurance Company has been admitted by RW1 during cross examination. As in the present case, only two persons have claimed compensation, the award passed by the Tribunal cannot be questioned on the ground of liability.

7. It is seen from the records that the first and second claimants were examined as PW1 and PW2 respectively. Dr.Rajagopal who has given treatment to the first and second claimants has been examined as PW3. The 'accident register' copies of the first and second claimants were marked as P3 and P4.

8. Quantum of compensation awarded to the first claimant: the Tribunal considered the nature of injuries sustained by first claimant, particularly, the head injury and awarded a sum of Rs.12,000/- to him, which cannot be said to be on the higher side.

9. Quantum of compensation awarded to the second claimant: the Tribunal fixed the disability as 20%, based on the wound certificate (Ex.P6) as spoken to by Dr.Rajagopal (PW3) and awarded a sum of Rs.20,000/- under the same head, which cannot be treated as excessive. In the same manner, based on the medical bills (Ex.P5), awarded a sum of Rs.5,000/- towards medical expenses. This court finds that the amounts awarded under other heads are also just and reasonable. Therefore, the plea raised by the Insurance Company stands negative.

10. In the result,

(i) The Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(ii) The orders passed by the Tribunal in M.C.O.P.Nos.485 and 558 of 2006 is upheld.

(iii) The present appellant - National Insurance Company Limited is directed to deposit the entire compensation awarded by the Tribunal (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.Nos. 485 and 558 of 2006, respectively, dated 10.01.2008, on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Mannargudi within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the present appellant, the first and second claimants are at liberty to withdraw the same, respectively, after following due process of law.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mbi

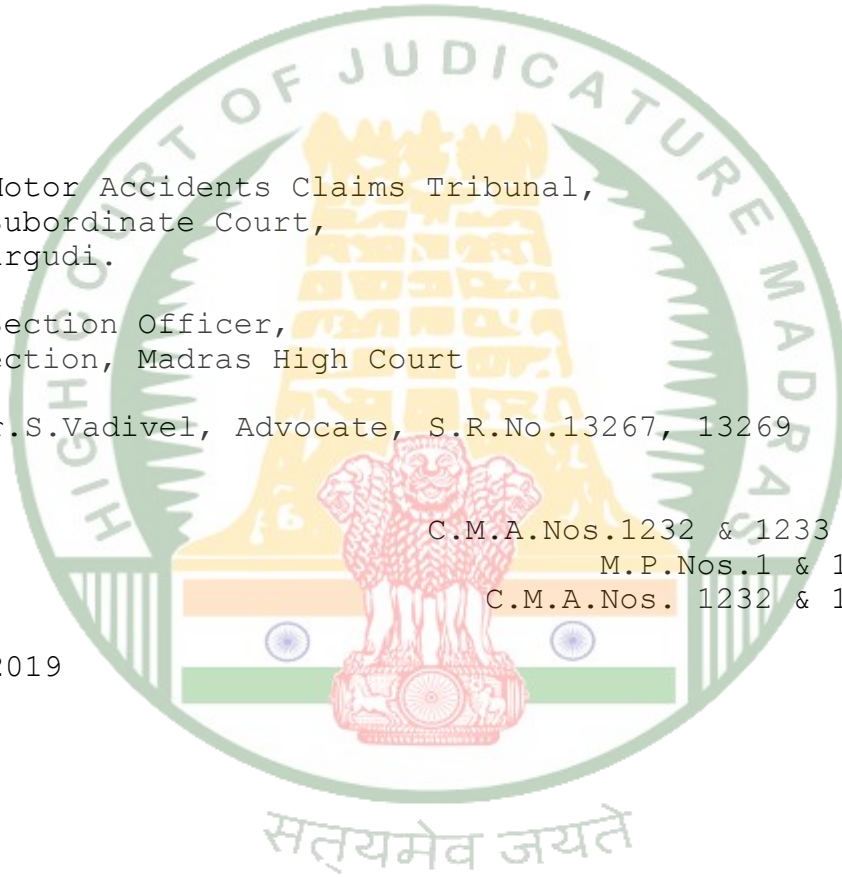
To

1. The Motor Accidents Claims Tribunal,
The Subordinate Court,
Mannargudi.
2. The Section Officer,
VR Section, Madras High Court

+2cc to Mr.S.Vadivel, Advocate, S.R.No.13267, 13269

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CS/09/05/2019



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