

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.875 to 878 of 2008 and
114 of 2011 and
M.P.Nos.1,1,1 and 1 of 2008 and 1 of 2011

The National Insurance Co. Ltd,
Namakkal ... Appellant / 3rd respondent in all CMAs

Vs

1.Amsaveni
... 1st respondent in CMA.No.875 of 2008/Petitioner

Arukani ... 1st respondent in CMA.No. 876 of
2008/Petitioner

Vellingiri ... 1st respondent in CMA.No. 877 of
2008/Petitioner

Rangasami ... 1st respondent in CMA.No. 878 of
2008/Petitioner

2.D. Ganesh
3.P.Kulandaivel ... Respondents 2 & 3 in CMA.Nos.875,
876,877 and 878 of 2008/Respondents 1&2

1.Chithra
2.Minor A. Divya
3.Minor A. Kirupa
(minors are rep. by
next friend and mother
Chitra, 1st respondent) ... Respondents 1 to 3/Petitioners
in CMA 114/2011

4.D.Ganesh
5.P.Kulandaivel
... Respondents 4&5 in CMA.No.114 of 2011/
Respondent 1 & 2

Prayer in CMA.Nos.875 to 878 of 2008: Appeals filed under
Section 173 of the Motor Vehicles Act, 1988, against the
judgment and Decree dated 05.01.2007 passed in

M.C.O.P.Nos.606 of 2005 to 609 of 2005 on the file of the Motor Accident Claims Tribunal, Additional District cum Sessions Judge, Fast Track Court No.III, Dharapuram, Erode District.

Prayer in CMA.No.114 of 2011: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and Decree dated 06.12.2007 passed in M.C.O.P.No.1306 of 2001 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Dharapuram, Erode District.

For Appellant : Mr.J.Chandran
[in all CMAs]

For R1 : Mr.Ma.Pa.Thangavel
in CMA.Nos.875, 876, 877 and 878 of 2008
and For R1 to R3 in CMA.No.114 of 2011

For R2 & R3 : No appearance
in CMA.Nos.875, 876, 877 and 878 of 2008
and For R4 & R5 in CMA.No.114 of 2011

COMMON JUDGMENT

The case in brief, is as follows:

On 15.09.2000, at about 09.00 p.m., the first respondent in C.M.A.Nos.875 to 878 of 2008 (4 persons), deceased-Aruchamy @ Shahul Hameed and some others, were travelling in the lorry bearing Reg.No.TN-28-B-0855, belonging to the third respondent and insured with the appellant Insurance Company in C.M.A.No.875 of 2008, as loadmen, from Mettukadai to Jallipatty. When the lorry was proceeding near Periyakumarapalayam, due to the rash and negligent driving of its driver, he lost control over the vehicle and the lorry turned turtle. Due to the impact, the first respondent in C.M.A.Nos.875 to 878 of 2008 sustained multiple grievous injuries all over the body and the deceased-Aruchamy @ Shahul Hameed died on the spot. The injured and the legal heirs of the deceased have filed claim petitions before the Tribunal separately. Considering the materials and evidence available on record, the Tribunal vide two separate orders dated 05.01.2007 and 06.12.2007, has awarded a total compensation of Rs.10,000/- with interest at the rate of 7.5% per annum from the respective dates of petitions, to each of the claimants in C.M.A.Nos.875 to 878 of 2008 (MCOP Nos.606 to 609 of 2005) and a total compensation of Rs.4,57,000/- with interest at the rate of 7.5% per annum from the date of petition to the claimants in C.M.A.No.114 of 2011 (MCOP No.1306 of 2001).

In respect of MCOP.Nos.606 to 609/2005, the Tribunal has directed the Insurance Company to pay the compensation amounts and thereafter recover the same from the owner of the vehicle, on the ground of violation of policy conditions by the owner of the lorry.

2.Challenging the same, the present appeals have been filed by the Insurance Company.

3.The learned counsel for the appellant Insurance Company has submitted that without giving any clear finding as to whether the injured and the deceased travelled in the lorry as gratuitous passengers or not, the Tribunal has simply mentioned that they have travelled to their native place and held that the Insurance Company is liable to pay compensation to the claimants. It is also submitted that the compensation amounts awarded by the Tribunal are excessive and exorbitant.

4.The learned counsel for the first respondent in C.M.A.Nos.875 to 878 of 2008 and the respondents 1 to 3 in C.M.A.No.114 of 2011 / claimants, has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned judgments, which do not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellant Insurance Company and the learned counsel for the claimants and perused the materials and evidence available on record carefully and meticulously.

6.In MCOP.Nos.606 to 609 of 2005, the persons who got injured in the accident, have been examined as P.Ws.1 to 10 before the Tribunal. All of them deposed before the Tribunal that at the relevant point of time, when the lorry in question was about to proceed to Theni from Mettukadai, they went to the driver of the lorry and asked him to drop them at Jallipatti and accordingly they travelled in the lorry. When the lorry reached near Veruvendampalayam, due to the rash and negligent driving of its driver, it fell into a ditch and subsequently turned turtle and due to the impact, they sustained grievous injuries. They deposed before the Tribunal that they had travelled in the lorry without paying any fare and the driver of the lorry was rash and negligent in his driving. It was put forth on behalf of the Insurance Company before the Tribunal that the claimants have to prove that the lorry in question was having the permit, Registration Certificate and insurance coverage at the time of accident. It was also put forth that the owner of the lorry had violated the policy conditions by

permitting 14 persons to be travelled in the vehicle. Considering the materials and evidence, the Tribunal has given a finding that the claimants and the deceased travelled in the lorry as loadmen, along with onion bags to their native place and held that since all the injured and deceased have travelled in the lorry as loadmen, the Insurance Company, being the insurer of the vehicle, is liable to pay compensation to the claimants. Further, the Tribunal has accepted the contention of the Insurance Company that the owner of the lorry has violated the policy conditions and accordingly given liberty to the Insurance Company to recover the compensation from the owner of the vehicle, after payment of compensation to the claimants. This Court is of the considered view that the Tribunal has correctly considered the materials and evidence and has arrived at the correct conclusion fixing the liability on the Insurance Company and directing the Insurance Company to pay the compensation to the claimants and thereafter to recover the same from the owner of the vehicle.

7. In MCOP.No.1306 of 2001, based on the evidence and materials available on record, the Tribunal has held that the accident had occurred only due to the rash and negligent driving of the driver of the lorry. However, there was no discussion as regards the liability of the insurance company to pay compensation to the claimants for the death of the deceased. This Court is of the view that MCOP.No.1306 of 2001 and MCOP.Nos.606 to 609 of 2005 arise out of the one and the same accident and hence, the finding of the Tribunal as regards the liability of the appellant insurance company in MCOP.Nos.606 to 609 of 2005, which is now confirmed by this Court, is squarely applicable to the case in MCOP.No.1306 of 2001. Accordingly, the order of the Tribunal in MCOP.No.1306 of 2001 with regard to liability alone, is modified to the effect that the appellant insurance company is directed to pay the compensation to the claimants at first instance and thereafter, recover the same from the owner of the vehicle.

8. With regard to the quantum of compensation, the Tribunal has relied upon the evidence of witnesses and documents and also taken note of the II Schedule of the Motor Vehicles Act and all other aspects in a proper perspective and has awarded the above compensation amounts 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.

9. In the result, CMA Nos.875 to 878 of 2008 are dismissed. CMA.No.114 of 2011 is partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed. The appellant Insurance Company is directed to deposit the award amounts, along with interest and costs, as awarded by the Claims 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. The respondents/claimants in CMA.No.114 of 2011 would have attained majority as of now. On such deposit being made, the claimants are permitted to withdraw their respective compensation amounts, as apportioned by the Tribunal, on making proper application. Thereafter, the Insurance Company shall proceed against the owner of the lorry, for recovery of the compensation amounts.

Sd/-

Assistant Registrar(CS-III-MDU)

//True Copy//

Sub Assistant Registrar

srk / mp

To

1.The Additional District cum Sessions Judge,
Fast Track Court No.3,
Dharapuram.

2.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Dharapuram, Erode District.

Copy to:

The Section Officer
V.R.Section
Madras High Court
Chennai 104.

सत्यमेव जयते

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.67304

TM(CO)

CB(21/07/2020)

CMA. Nos.875 to 878 of 2008 and
114 of 2011