

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2120 to 2122 of 2009
and M.P.Nos.1,1 and 1 of 2009

National Insurance Co.Ltd.,
Rep. By its Branch Manager,
Branch Office, Mangala Chamber,
G.I.D.C. Chamber, Rasta, VAPI, Valsad,
Gujarat State ... Appellants in all appeals/2nd Respondent

Vs

V.Nagaraj ... 1st respondent in C.M.A.No.
2120 of 2009/Claimant

D.Srinivasan ... 1st respondent in C.M.A.No.
2121 of 2009/Claimant

V.Annamalai ... 1st respondent in C.M.A.No.
2122 of 2009/Claimant

K.N.R. Constructions Ltd.,
No.28, NILE Station,
Opp. State Bank of India, Dasna,
Ghaziabad and District,
Uttar Pradesh - 201 009. ... 2nd respondent in all appeals/
1st Respondent

C.M.A.No.2120 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 05.02.2009 made in MCOP No.501 of 2006 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

C.M.A.No.2121 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 05.02.2009 made in MCOP No.588 of 2006 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

C.M.A.No.2122 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 05.02.2009 made in MCOP No.1010 of 2006 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

For Appellant : Mr.S.Arunkumar
in all CMAs

For R1 in all CMAs : Mr.V.Kumaravelan

R2 : Not ready in Notice

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the Insurance Company against the awards of a sum of Rs.62,000/- towards compensation to the first respondent in C.M.A.No.2120 of 2009, a sum of Rs.52,000/- towards compensation to the first respondent in C.M.A.No.2121 of 2009, and Rs.9,500/- towards compensation to the first respondent in C.M.A.No.2122 of 2009, respectively, due to the injuries sustained by them in a motor vehicle accident.

2.The case in brief, is as follows:

On 02.03.2004, the first respondent in these appeals were travelling in the Tipper Taurus Lorry bearing Reg.No.AP-36-U-5778 belonging to the second respondent herein, towards Krishnagiri in the Natrampalli - Krishnagiri Road along with some raw materials from their company's camp to be used in the road laying field. The said lorry was driven by its driver in a rash and negligent manner at an uncontrollable speed. At about 7.30 p.m., when the lorry was proceeding near Velakalanatham in the Jayapuram Junction Road, the driver of the lorry lost his control and suddenly hit behind the parked lorry bearing Reg.No.TN-04-H-4216. Due to the said impact, the first respondent in these appeals sustained injuries. They filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.62,000/-, Rs.52,000/- and Rs.9,500/- respectively, with interest at the rate of 7.5% per annum from the respective dates of the petitions.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeals.

4.The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. But he submitted that the injured have travelled in the goods vehicle as unauthorised passengers and the driver of the Tipper Taurus Lorry bearing Reg.No.AP-36-U-5778, was not having valid and effective driving licence and therefore, the insurance company is not liable to pay any compensation to the claimants. It is also submitted that the Tribunal has erred in not appreciating the evidence of RW1, RW2 and Exs.R1 and R2,

while arriving at the conclusion that the appellant is liable to pay compensation to the claimants.

5.The learned counsel for the first respondent in these appeals/ claimants has submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant as well as the learned counsel for the first respondent in these appeals and perused the materials available on record carefully and meticulously.

7.Since the quantum of compensation is not disputed, the same need not be interfered with by this Court.

8.Considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry belonging to the second respondent and insured with the appellant Insurance Company and the said finding is not disputed by both sides. However, it was put forth on behalf of the Insurance Company that the second respondent had violated the conditions laid down in the policy, by permitting unauthorized passengers to be carried in a goods vehicle and the driver of the vehicle was also not possessing valid driving licence at the relevant point of time. The Tribunal has not discussed the contention of the insurance company as regards the issue of unauthorised passenger. However, with regard to the aspect of non-possession of valid driving licence, the Junior Assistant of the Regional Transport Office, Krishnagiri has been examined as R.W.1 before the Tribunal. He deposed that the driver of the lorry in question was having driving licence only to drive light motor vehicle, but in the cross examination, he deposed that the driver had obtained the badge for driving light motor vehicle and he was having licence to drive heavy motor vehicle and with that licence he can drive heavy, commercial and passenger vehicles. Taking note of the same, the Tribunal has held that the Insurance Company has not proved as to how the policy conditions have been violated by the driver and accordingly directed the appellant Insurance Company, being the insurer, to pay the compensation. But the fact remained that the driver was not possessing the valid driving licence to drive heavy motor vehicle, as the licence for driving heavy motor vehicle, has not been produced before the Tribunal. Ex.R1 is the driving licence of the driver marked before the Tribunal. A perusal of the same, would go to show that the driver was entitled to drive only light motor vehicle and transport vehicle and he was not entitled to drive Tipper lorry. In these circumstances, this Court deems it fit to direct the

appellant Insurance Company to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle, as there was a breach of policy conditions.

9. In the result, the Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected miscellaneous petitions are closed. The appellant Insurance Company is directed to deposit the award amounts as ordered by the Tribunal with interest and costs, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 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.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

gbi

To

The Chief Judicial Magistrate Court,
Motor Accidents Claims Tribunal,
Krishnagiri.

+lcc to Mr.S.Arunkumar, Advocate SR.No.73337

C.M.A.Nos.2120 to 2122 of 2009
and
M.P.Nos.1,1 and 1 of 2009

TM(CO)
GMY (28/08/2020)

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