

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.3275 and 3276 of 2009
and M.P.Nos.1 and 1 of 2009

The Divisional Manager,
National Insurance Co.Ltd.,
Vellore-632 001.

..Appellant in both appeals/
2nd Respondent in both appeals

Vs

1.C.Pachaiappan ..1st Respondent/Petitioner
2.S.Senthil Kumar ..2nd Respondent/1st Respondent

3.M/s.A.B.T.Ltd.,
10/14-15, Kalingarayan Street,
Ram Nagar,
Coimbatore-641 009.3rd Respondent/3rd Respondent

4.The Divisional Manager,
United India Insurance Co.Ltd.,
Kadpadi Road,
Vellore-632 004.4th Respondent in CMA No.
3275 of 2009/4th Respondent

1.Renu ..1st Respondent/Petitioner
2.S.Senthil Kumar ..2nd Respondent/1st Respondent

3.M/s.A.B.T.Ltd.,
10/14-15, Kalingarayan Street,
Ram Nagar,
Coimbatore-641 009.3rd Respondent/3rd Respondent

4.The Divisional Manager,
United India Insurance Co.Ltd.,
Kadpadi Road,
Vellore-632 004.4th Respondent in CMA No.
3276 of 2009/4th Respondent

CMA No.3275 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 24.08.2009 made in MCOP No.263 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Vellore.

CMA No.3276 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 24.08.2009 made in MCOP No.265 of 2004 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Vellore.

For Appellant : Mr.S.Vadivel
in both appeals

CMA No.3275 of 2009

For R2 : Mr.K.G.Senthil Kumar
For R4 : Mr.M.Krishnamoorthy

CMA No.3276 of 2009

For R1 : Mr.C.Prabakaran
For R2 : Mr.K.G.Senthil Kumar
For R4 : Mr.M.Krishnamoorthy

COMMON JUDGMENT

CMA No.3275 of 2009 is preferred by the Insurance Company against the award of a sum of Rs.7,500/- passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Vellore, towards compensation to the 1st respondent, due to injuries suffered by him in the motor vehicle accident.

2.CMA No.3276 of 2009 is preferred by the Insurance Company against the award of a sum of Rs.7,500/- passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Vellore, towards compensation to the first respondent for the injuries sustained by him in a motor vehicle accident.

3.The case in brief, is as follows:

On 30.08.2004, the first respondent(s) in both appeals were proceeding along with two goats for business purpose in a lorry bearing Reg.No.TN-23-H-2289 belonging to the second respondent from Arni to Polur in the Polur-Kunnathur Kootu Road. At about 12.00 hours, the driver of the lorry drove it in a rash and negligent manner and hit against another lorry bearing Reg.No.TAG-663. Due to the said impact, the first respondent(s) in both appeals had sustained grievous injuries. Stating so, they filed separate Claim petitions claiming compensation. On consideration of the evidence available on record, the Tribunal awarded a total compensation of Rs.7,500/- with interest at the rate of 7.5% per annum from the date of petition to each claimant(s).

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

5.The learned counsel appearing for the appellant/Insurance Company submitted that the claimant(s) were travelling in the said vehicle as unauthorized passengers along with eight more persons which is against the provisions of the statute and the conditions of the Insurance Policy. However, the Tribunal has erroneously awarded the compensation based on the materials available on record after holding that the accident had occurred only due to rash and negligent driving of the driver of the second respondent vehicle for which the appellant is liable to pay the compensation, which cannot be sustained and the same is liable to be interfered with.

6.The learned counsel for the first respondent(s) /claimant (s) submitted that the Tribunal has properly considered the materials and evidence on record, and granted the compensation, which is just, fair and reasonable and hence, the same need not be interfered with by this Court.

7.Heard the learned counsel for the appellant as well as the learned counsel for the respondents and perused the materials available on record carefully and meticulously.

8.There is no dispute with regard to the factum and the manner in which the accident had occurred. What was disputed herein is the liability of the appellant insurance company to pay compensation to the claimants.

9.It was put forth on the side of the appellant/Insurance Company before the Tribunal that the first respondent(s)/claimants had traveled in the vehicle involving in the accident as gratuitous passengers in violation of the policy conditions and hence, they are not liable to pay compensation to the first respondent(s)/claimants. However, no evidence either in oral or documentary was placed before the Tribunal to prove that the owner of the vehicle permitted the driver to carry the claimants in the goods vehicle in violation of the policy conditions. Taking note of those materials and evidence coupled with the fact that the insurance policy was in force and the driver of the lorry was having a valid driving licence at the time of accident and also in the light of the decisions of the Supreme Court, the Tribunal has rightly fastened the liability on the appellant/Insurance Company to pay compensation to the first respondent(s)/claimants, which finding this Court is not inclined to interfere.

10.Since the appellant/Insurance Company has not disputed the quantum of compensation awarded by the claims Tribunal, the same is hereby confirmed as such.

11.In such view of the matter, the Civil Miscellaneous Appeals are dismissed. 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 four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent(s)/claimant(s) are permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

gbi

To

1.The Chief Judicial Magistrate Judge,
Motor Accident Claims Tribunal,
Vellore.

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

+1cc to Mr.S.Vadivel, Advocate SR.No.69638

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.69568

C.M.A.Nos.3275 and 3276 of 2009
and M.P.Nos.1 and 1 of 2009

MR (CO)
GMY (12/06/2020)

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