

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.902 to 909 of 2009

and

M.P.Nos.1, 1, 1, 1, 1, 1, 1 and 1 of 2009

The Branch Manager,
New India Assurance Co.Ltd,
Tirupattur,
Vellore.

... Appellant/2nd Respondent in all appellant

Vs

1.Pappannan ...1st Respondent/Claimant

2.M.Ahamed Basha

(Ex-parte in the Lower Court) ... 2nd Respondent/1st Respondent
in C.M.A.No.
902 of 2009

1.Alamelu

2.M.Ahamed Basha

(Ex-parte in the Lower Court) ... Respondents in C.M.A.No.
903 of 2009

1.Duraiswamy

2.M.Ahamed Basha

(Ex-parte in the Lower Court) ... Respondents in C.M.A.No.
904 of 2009

1.Vanitha

2.M.Ahamed Basha

(Ex-parte in the Lower Court) ... Respondents in C.M.A.No.
905 of 2009

1.Rajammal

2.M.Ahamed Basha

(Ex-parte in the Lower Court) ... Respondents in C.M.A.No.
906 of 2009

1.Mooventhan

2.M.Ahamed Basha

(Ex-parte in the Lower Court) ... Respondents in C.M.A.No.
907 of 2009

1.Soundhari
2.M.Ahamed Basha
(Ex-parte in the Lower Court) ... Respondents in C.M.A.No.
908 of 2009

1.Amaravathi
2.M.Ahamed Basha
(Ex-parte in the Lower Court) ... Respondents in C.M.A.No.
909 of 2009

C.M.A.No.902 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2003 made in MCOP No.913 of 2002 on the file of the Motor Accidents Claims Tribunal/I Additional District Court, Dharmapuri at Krishnagiri.

C.M.A.No.903 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2003 made in MCOP No.914 of 2002 on the file of the Motor Accidents Claims Tribunal/I Additional District Court, Dharmapuri at Krishnagiri.

C.M.A.No.904 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2003 made in MCOP No.546 of 2002 on the file of the Motor Accidents Claims Tribunal/I Additional District Court, Dharmapuri at Krishnagiri.

C.M.A.No.905 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2003 made in MCOP No.547 of 2002 on the file of the Motor Accidents Claims Tribunal/I Additional District Court, Dharmapuri at Krishnagiri.

C.M.A.No.906 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2003 made in MCOP No.548 of 2002 on the file of the Motor Accidents Claims Tribunal/I Additional District Court, Dharmapuri at Krishnagiri.

C.M.A.No.907 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2003 made in MCOP No.549 of 2002 on the file of the Motor Accidents Claims Tribunal/I Additional District Court, Dharmapuri at Krishnagiri.

C.M.A.No.908 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2003 made in MCOP No.550 of 2002 on the file of the Motor Accidents Claims Tribunal/I Additional District Court, Dharmapuri at Krishnagiri.

C.M.A.No.909 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2003 made in MCOP No.551 of 2002 on the file of the Motor Accidents Claims Tribunal/I Additional District Court, Dharmapuri at Krishnagiri.

For Appellant (in all appeals): Mrs.R.Sreevidhya

For R1 (in all appeals) : Mr.M.Selvam

R2 : Exparte

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

Since all these Civil Miscellaneous Appeals have been filed against the awards passed by the Tribunal by way of a common judgment dated 31.07.2008 arising out of the same accident, they were heard together and are being decided, by this common judgment.

2. The facts of the case in brief, are as follows:

On 13.03.2000 at about 12.00 noon, the first respondent in these appeals / claimants were proceeding to Hogenekal along with their goods intended to perform death ceremony of the deceased Kannan, in the mini lorry bearing Regn.No.TN23 W 1065, belonging to the 2nd respondent herein and insured with the appellant herein, on the Pennagaram - Hogenekal Road. The claimants and other persons have travelled in the said vehicle, with the consent of the owner of the vehicle. When the mini lorry reached near Kattu Valaivu, at about 04.30 p.m., the right side rear wheel of the mini lorry got burst, due to which, the vehicle capsized. Due to the impact, the claimant in all these appeals sustained grievous injuries. They filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal has awarded compensation and the details of the same are as under:

CMA No.	MCOP No.	Amount of compensation (Rs.)
902 of 2009	913 of 2002	31,000.00
903 of 2009	914 of 2002	23,800.00
904 of 2009	546 of 2002	12,000.00
905 of 2009	547 of 2002	9,600.00
906 of 2009	548 of 2002	12,100.00
907 of 2009	549 of 2002	12,100.00

CMA No.	MCOP No.	Amount of compensation (Rs.)
908 of 2009	550 of 2002	11,800.00
909 of 2009	551 of 2002	11,900.00

These amounts have been awarded, with interest at the rate of 9% per annum from the respective dates of petitions.

3. Challenging the same, the appellant Insurance Company has come up with these appeals.

4. The learned counsel for the appellant has submitted that the Tribunal has erred in holding that the appellant is liable to pay the compensation, since the vehicle in question is a Goods Carriage vehicle and the same was engaged to transport about 35 passengers contrary to the terms of the policy and permit conditions. The learned counsel further submitted that the Tribunal has failed to note that the claimants are not third parties but they are hirers of the vehicle and they cannot seek any indemnity. Hence, the judgment of the Tribunal needs to be set aside, according to the learned counsel for the appellant.

5. The learned counsel for the claimants in these appeals, has submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the impugned awards, which do not require any interference in the hands of this Court.

6. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7. All the injured deposed before the Tribunal that while they were travelling in the mini lorry bearing Reg.No.TN23 W 1065, the driver of the said vehicle drove the same in a rash and negligent manner, due to which, the rear wheel of the said vehicle burst and thereby it got capsized. The said version of the injured has been denied on the side of the Insurance Company. The Tribunal, after verification of the First Information Report, came to the conclusion that the accident had occurred not due to the rash and negligent driving of the driver of the mini lorry, but due to bursting of tyre. Having rendered such a finding, the Tribunal has directed the owner of the vehicle and the appellant Insurance Company to pay the compensation to the claimants. Even though it was claimed by the Insurance Company before the Tribunal that there was violation of policy conditions by the owner of the mini lorry by allowing 35 persons to be travelled in the goods carriage vehicle, the Tribunal has not at all dealt with the said aspect in the

judgment. As per the evidence of P.W.1, it is apparently clear that 35 persons travelled in the vehicle. When that be the case, it is purely a fault committed by the owner of the vehicle. In such view of the matter, this Court is of the considered view that the Insurance Company is not liable to pay any compensation to the claimants and only the owner of the vehicle has to pay the compensation to the claimants.

8.Since this Court came to the conclusion that the appellant Insurance Company is not liable to pay compensation, the compensation amounts awarded by the Tribunal need not be interfered with by this Court.

9.In the result, the impugned judgment and decree dated 31.07.2003 are set aside and the Civil Miscellaneous Appeals are allowed. The Insurance Company is permitted to withdraw the amounts if any already deposited before the Tribunal. No costs. Consequently, the connected miscellaneous petitions are closed. It is open to the claimants to proceed against the owner of the vehicle, in the manner known to law.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The I Additional District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri at Krishnagiri.

+1cc to Mr.M.Selvam, Advocate Sr.73312
+1cc to M/s.R.Sreevidhya, Advocate Sr.73956

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and
M.P.Nos.1, 1, 1, 1, 1, 1,1 and 1 of 2009

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srg 18/08/2020