

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.04.2012

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.1241 to 1249 of 2012
and
M.P.Nos.1 of 2012 (8 cases)

in CMA.No.1241/2012:

The New India Assurance Co.Ltd., Nagapattinam.
Rep.by its Branch Manager, having office
At Nagapattinam Town & District Munsif.

... Appellant/4th Respondent in all CMA's

Versus

1.Sivabarathi

2.Premalatha ...Respondents 1&2/Petitioners in CMA.1241/2012

1.Karthikeyan

2.Vimala Respondents 1&2/Petitioners in
CMA.1242/12, 1243/2012

1.Veerapandiyan

2.Manjula Respondents 1&2/Petitioners in
CMA.1244/2014

1.Murugarajan

2.Vanitha Respondents 1&2/Petitioners in
CMA.1245/2012

1.Kumar

2.Megala Respondents 1&2/Petitioners in
CMA.1246/2012

1.Selvakumar

2.Vasuki Respondents 1&2/Petitioners in
CMA.1247/2012

1.Boopathi

2.Srividhya Respondents 1&2/Petitioners in
CMA.1248/2012

1.Manokaran

2.Nirmala Respondents 1&2/Petitioners in
CMA.1249/2012

3. K. Sumita

...3rd Respondent/1st Respondent in all CMA's

4.The United India Insurance Co.Ltd., Nagapattinam
Rep.by its Branch Manager, having office
At Nagapattinam Town & District Munsif.

....4th Respondent/2nd Respondent
in all CMA's

5.Thangarasu,
Correspondent, Kalaivani Matriculation School,
Kariyapattinam, vedaranyam Taluk,
Nagapattinam District.

...5th Respondents/3rd
Respondents in all CMA's

Prayer for CMA.No.1241 of 2012 to CMA.No.1249 of 2012:

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree made in M.C.O.P.No.162, 163, 164, 165, 166, 167, 168, 169 & 170 of 2011 respectively, dated 30.09.2011 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate) Nagapattinam and batch cases.

For Appellant : Mr.M.Krishnamoorthy
(in all cases)

For Respondents : Mr.K.Kalidasan (for R1 & R2)
(in all cases) : Mr.K.M.Subramanian (for R3)

: Mr.D.Vairamoorthy (for R5)

: Given up - R4

COMMON JUDGMENT

All these appeals are filed by New India Assurance Company Limited, Nagapattinam, challenging the Common Judgment and decree dated 30.09.2011 in M.C.O.P.Nos.162,163,164,165,166,167,168 and 169 of 2011 respectively, on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate) Nagapattinam.

2.The short facts of the case are as follows:-

(i) The respondents 1 and 2 in all the cases are the parents of the deceased minor child. The deceased minors are sent by their parents in the third respondent's Van bearing Regn.No.TN-46-2682, which was sent by the fifth respondent, who is the Correspondent of the Kalaivani Matriculation School at Katharipulam.

(ii) On 03.12.2009, at about 8.15 am, the Van belonging to the third respondent, being driven by the driver one Mahendran in a rash and negligent manner, capsized and the Van fell in the pond viz., Kalikulam, near Kamatchi Amman Kovil,

Katharipulam.

(iii) The Van submerged in the pond and students, who traveled in the Van were drowned. All the claimants have lost their children in the said accident, they filed the claim petitions before the Tribunal, claiming a sum of Rs.6,00,000/- as compensation respectively.

3.All these claim petitions have been resisted by the appellant/Insurance company by contending that it was an error committed by the van driver, who has driven the vehicle in a reckless manner and caused the accident. Therefore, the Insurance company pleaded that they cannot be mulcted with any liability to pay compensation to the claimants. Thus, the Insurance company prayed for dismissal of the claim petitions.

4.Before the Tribunal, common evidence was let in all the claim petitions namely M.C.O.P.Nos.162,163,164,165,166,167,168 and 169 of 2011 respectively. On behalf of the claimants, PW1 to P10 were examined and as many as thirty seven documents as Exs.P1 to P37 were marked. On behalf of the respondents, one Jayasree was examined as RW1 and Exs.R1 to R6 documents were marked.

5.After analysing the evidence and records, the Tribunal awarded a sum of Rs.2,65,000/- in each of the claim petition and directed the said award amount to be paid by the appellant/ Insurance company.

6.Challenging the compensation amount awarded by the Tribunal, the appellant/Insurance Company has filed these appeals contending that they ought to have been completely exonerated of the liability. In other words, it is their plea that direction to pay the compensation and thereafter recover from the owner is not called for.

7.Heard the learned counsel appearing for the appellant / Insurance company and the learned counsel appearing for the claimants and perused the materials available on record.

8.The learned counsel appearing for the appellant/ Insurance company would contend that the driver of the offending van, did not possess valid and effective licence at the time of accident. He also drew my attention to the evidence produced before the Tribunal under Ex.R2/Advocate notice sent by the appellant herein to the advocate of the third respondent, Ex.R3/Advocate notice sent by the appellant to the driver as well as the third respondent with receipts and Ex.R4/Acknowledgment card. He contended that the vehicle was insured as private vehicle with seating capacity of 12+1 including driver, but, it has been used as school van for transporting the students from place to place.

9. After hearing the learned counsel for the appellant/insurance company and also taking note of the fact that the learned counsel for the insurance company, before the Tribunal had sent a notice to the learned counsel appearing for the owner and also the driver of the offending vehicle with acknowledgment card and the communications are marked under Exs.R2, R3 & R4, it is seen that despite, the issuance of notice to produce the driving license of the driver, they have failed to do so. As per Ex.P4/MVI report coupled with RW.1/Administrative officer of the New India Assurance company, it is seen that at the time of accident, the van was insured with the insurance company and the policy was in force. The first respondent had also paid the premium for the own purpose. Hence, taking note of the fact that the number of persons claimed compensation is only for 13 and the seating capacity of the van sanctioned also as per policy is 13 and in the absence of any positive evidence to show that due to the over crowding alone the accident has taken place, this Court is of the view that the Tribunal has rightly come to the conclusion that at the time of accident the driver of the van did not possess any valid driving license to drive the van and found that the van was registered for 13 persons i.e., 12+1 = 13. Hence, the claim petitions allowed by the Tribunal and it directed the insurance company to pay the compensation award amount and recover the same from the owner of the vehicle. Since the driver of the van does not possess valid license at the time of accident, hence, it does not call for any interference, hence the pay and recover clause, as ordered by the Tribunal, does not call for any interference at this appellate stage. Therefore, the compensation awarded by the Tribunal under different heads appears to be reasonable and the appeals filed by the appellant/Insurance company are, therefore, dismissed as devoid of merits and the awards passed by the Tribunal are hereby confirmed.

10. In the result,

(i) the Civil Miscellaneous Appeals filed by the Insurance company are dismissed by confirming the award dated 30.09.2011 made in M.C.O.P.No.162 of 2011, dated 30.09.2011 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate) Nagapattinam and batch cases.

(ii) the appellant/Insurance Company is directed to deposit the award amount as awarded by the Tribunal, with interest at the rate of 7.5% per annum, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit, the claimants are entitled to withdraw their respective share of the award amount as determined before the Tribunal and as per the ratio of apportionment is also fixed by the Tribunal, along with interest and costs, less the amount if any, already withdrawn

by making necessary applications before the Tribunal.

(iv) Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

klt

To

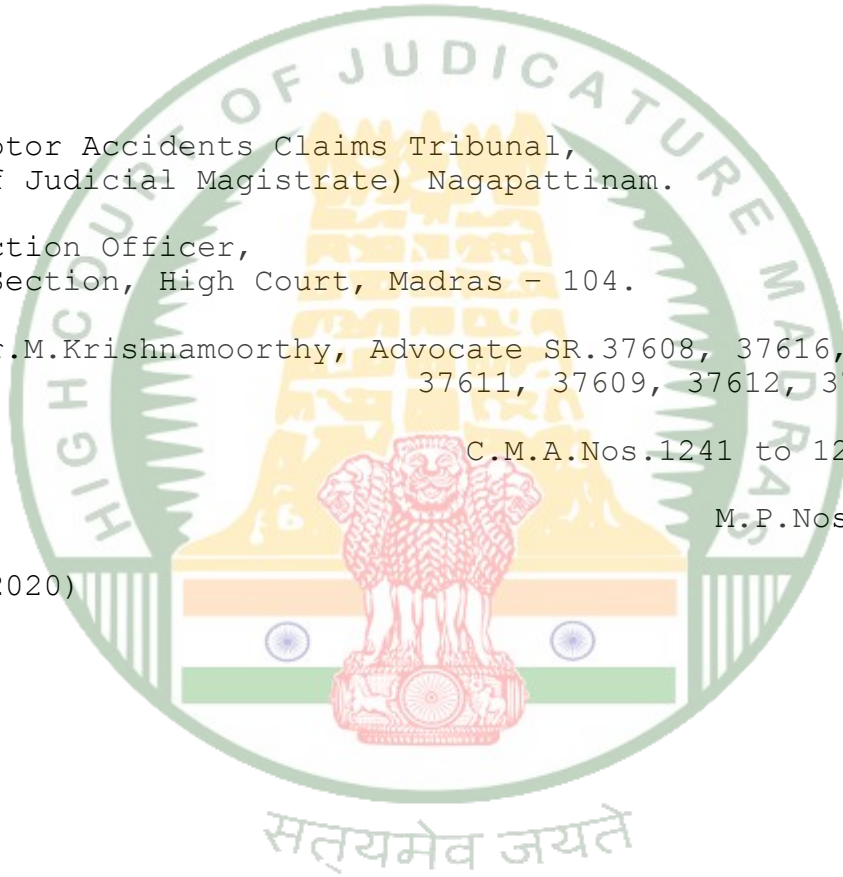
1. The Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate) Nagapattinam.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+7cc to Mr.M.Krishnamoorthy, Advocate SR.37608, 37616, 37615,
37611, 37609, 37612, 37613

C.M.A.Nos.1241 to 1249 of 2012
and
M.P.Nos.1 of 2012

CNR(CO)
CB(12/03/2020)



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