



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 08.04.2019	Date of Pronouncing Judgment 08.08.2019
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CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.2731, 2078 of 2011
and M.P.No.1 of 2011

United India Insurance Co. Ltd.,
rep. By its Branch Manager,
Branch Office,
No.6, Ganga Griha, II Floor,
Nungambakkam High Road,
Chennai 600 034.

...Appellant/2nd Respondents in both CMAs

Vs.

1.Thamarai Selvi
2.Minor Suganya
3.Minor Poovendran
4.Samappan ...1 to 4/Respondents/Petitioners
(Minors rep. By Next Friend Mother 1st respondent
Thamarai Selvi)
5.M.Sankar ...5th Respondent/1st Respondents
in CMA.2731 of 2011

1.V.Mathesh ...1st Respondent/Petitioner
2.M.Shankar ...2nd Respondent/1st Respondent
in CMA.2078 of 2011

PRAYER in CMA.No.2731 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 11.08.2009 made in M.C.O.P.No.610 of 2008 on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Dharmapuri.

PRAYER in CMA.No.2078 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 23.06.2010 made in M.C.O.P.No.452 of 2005 on the file of the Motor Accident Claims Tribunal (Additional District Judge) at Dharmapuri.



For Appellant : Ms.R.Sreevidhya
in both CMAs

For Respondents 1 to 4 : Mr.C.Prabakaran
in CMA.2731 of 2011

For Respondent 5 : Exparte
in CMA.2731 of 2011

For Respondent 1 : Mr.C.Prabakaran
in CMA.2078 of 2011

For Respondent 2 : Not ready in Notice

JUDGMENT

These Civil Miscellaneous Appeals are preferred by the Insurance Company challenging the liability as well as the quantum of compensation. One M.V.Madesh filed M.C.O.P.No.452 of 2005 claiming compensation for the accidental injury sustained by him in the accident, alleging that on 18.11.2003 the petitioner was proceeding in the Eicher Tempo bearing Registration No. TN 39-K-1692 belonging to the 1st respondent and insured with the 2nd respondent along with and baskets Tomato and Vegetables from Hogenakkal to go to Palacode. The said Tempo was driven by the 1st respondent from Hogenakkal. At about 17.50 hours i.e., 5.50 p.m., when the said Tempo was proceeding in Hogenakkal to Pennageram Road, near Anjenayar Temple, the 1st respondent drove the said Tempo in a rash, reckless and negligent manner, without following any rules of the road, without sounding horn, with high speed, suddenly dashed against the 407 Tempo bearing Registration No. KA 03-6757 which was coming in the opposite direction. Due to the impact, the petitioner had sustained grievous injuries over the right shoulder, right femur, right eye brows head, right fore arm and also sustained multiple injuries all over the body. His Ulna bone in the right hand fractured. The accident the rash and negligent driving of the Driver of 1st respondent vehicle before the Tribunal.

2.The legal representatives of the deceased Samraj filed M.C.O.P.No.446 of 2005 (Re-numbered as M.C.O.P.No.610 of 2008) alleging that on the very same accident has referred to in the other case her husband has travelled in the vehicle and further alleged that on 16.11.2003 the deceased Samraj was proceeding in the Eicher Tempo bearing Registration No. TN 39 K 1692 belonging to the 1st respondent and insured with the 2nd respondent along with 50 Kgs, of Tamarind goods from Hogenakkal to go to Palacode. The said Tempo was driven by the 1st respondent from Hogenakkal. At about 17.50 hours i.e., 5.50 PM when the said



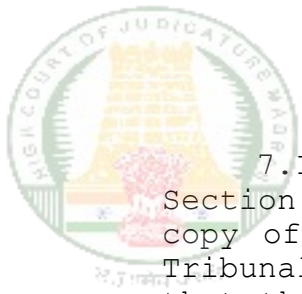
Tempo was proceeding in Hogenakkal to Pennagaram Road, near Anjenayar Temple, the 1st respondent drove the said Tempo in a rash, reckless and negligent manner, without following any rules of the road, without sounding horn, with high speed, suddenly dashed against the 407 Tempo bearing Registration No. KA 03 6757 which was coming in the opposite direction. Due to the impact, the deceased who was proceeding in the said Eicher Tempo bearing Registration No. TN 39 K 1692 had sustained severe head injuries. Immediately the deceased Samraj was taken to the Government Hospital, Pennagaram and admitted there as inpatient. In spite of intensive treatment, the deceased was died on the same day i.e., 16.11.2003. Since both the cases are arising out of the very same accident common evidence was let in and common Judgment was pronounced on 23.06.2010 holding that the accident has taken place due to the rash and negligent driving of the driver of the Tempo having Registration No. KA 03 6757 and awarded compensation.

3. Aggrieved against the order and decretal order passed in the common Judgment the Insurance Company has preferred this appeal alleging that as the petitioner in M.C.O.P.No.452 of 2005 and the husband of the 1st petitioner in M.C.O.P.No.446 of 2005 have travelled in the Tempo Van as an unauthorized passenger and by the terms and conditions of the Ex.P3 they are not entitled to claim insured amount as the same is in violation of the terms and conditions of the said policy.

4. The learned counsel for the respondent / claimant would contend that since they have travelled in the said Van along with 5 basket of Tomato they travelled in the vehicle as the owner of the case and hence as per the terms and conditions of the policy they are entitled for compensation.

5. After hearing the contention of the both the counsels for the respective parties and also perusing the terms and conditions of Ex.P3 policy and Ex.P1 FIR it is seen that at the instance of one Selvam FIR was filed before the concerned jurisdictional Police and after the accident the claim petitioner in C.M.A.No.2078 of 2011 and husband of the 1st claim petitioner in C.M.A.No.2731 of 2011 along with one Madayan and said to have suffered injury and subsequently and that the injured Samraj died and hence the legal representatives have filed the above M.C.O.P.No.446 of 2005 leading to C.M.A.No.2731 of 2011.

6. The core question that has to be decided is whether the claim petitioner and the deceased Samraj have travelled in the 1st respondent's offending vehicle as the owner of the goods are as an unauthorized passenger.



7.It is to be stated that the MCOP's filed only under Section 163A of the Motor Vehicles Act as could be seen from the copy of the petition and not under Section 166 as noted by the Tribunal. Be that as it may, While the claim petitioner contend that the respective Samraj and the injured Madayan travelled for the offending vehicle as the owner of the goods and on the contrary the Insurance company have categorically stated that they travelled as an unauthorized passenger.

8.On perusal of Ex.P1 FIR, the earliest document that came into force which was said to have been given by one Selvam. All the 3 persons mentioned in the said FIR were returning from the place after attending a funeral it is not anywhere stated that they travelled with the goods in the said Lorry. In the claim petition alone they have projected as if they are carrying with the Basket of Tomato. It is also seen that as per Ex.R1 the accident has taken place due to the rash and negligent driving of the driver of the Tempo Van having Registration No. KA 03 6757 and not the vehicle in which they have travelled namely TN 39 K 1692. The Tribunal also rendered a finding that the accident has taken place due to the rash and negligent driving of the driver of the Tempo Van having Registration No. KA 03 6757. However, the appellant / Insurance Company is not the Insurance Company of the said vehicle also assumes significance.

9.In the counter statement filed before the Tribunal the appellant / Insurance Company has taken a specific plea that the Insurance Company is only in respect of the vehicle in which the injured and deceased have travelled and hence considering the finding given by the Tribunal and also taking note of the P.W.1 and P.W.2 and also taking note of the fact that Ex.P1 they have been returning from the place after attending the funeral. This Court comes to the conclusion that the deceased and the injured have travelled in the vehicle as an unauthorized passenger and in view of the decision of the Division Bench Judgment in CMA No.3210 of 2017 dated 26.09.2018 the deceased and the injured have been travelled as an unauthorized passenger and having policy is the third party policy. In the goods carriage the Insurance Company cannot be mulgated with any liability and this Court holes that as per the terms of the policy the appellant / Insurance Company is exonerated from the liability. It is in the owner of the vehicle to pay the compensation and hence these CMAs are allowed to the limited extent that the liability of the Insurance Company is exonerated while quantum of compensation fixed by the Tribunal is hereby confirmed.

10.In the result,

(i) The Civil Miscellaneous Appeals are partly allowed and the award passed by the Tribunal is hereby modified to the



effect that the liability of the insurance company stands exonerated and the appellant / Insurance Company in both CMAs is not liable to pay any compensation to the claimant and if any amount is already deposited by the Insurance Company, it is permitted to withdraw the said amount and the quantum of compensation is directed to be paid by the owner of the vehicle.

(ii) There shall be no order as to costs.

(iii) Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rna
To

1.The Motor Accidents Claims Tribunal,
The Principal District Judge,
Dharmapuri.

2.The Motor Accidents Claims Tribunal,
The Additional District Judge,
Dharmapuri.

+1cc to M/s.R.Sreevidhya, Advocate Sr.69088
+2cc to M/s.C.Prabakaran, Advocate Sr.68130, 68131

C.M.A.Nos.2731, 2078 of 2011
and M.P.No.1 of 2011

bp[co]
srg 10/08/2021